Mapping laws relevant to online violence in Nepal

This is a policy mapping and review of laws that are relevant to online violence within the scope of digital rights in Nepal, with a focus on gender and sexuality. Three human rights lenses—Freedom of Expression and Freedom from Violence—were used to analyze relevant laws. This document is meant to be a condensed guide for victims, legal practitioners and activists.

Paradoxical framing

Many of these laws have a dual framing: the benefits appear to come with strings attached. While they have aspects that victims of online violence could consider as positive, additional clauses have the potential to be missed for restricting civil liberties. This is a recurring theme across most of the laws cited here.

Sweeping powers for the government

The law doesn’t mention due process such as arrest, investigation, or bail. When is an accused granted bail? Is it the discretion of the courts or the Law Enforcement Officers? The crimes can be misjudged or misused.

Problems gathering evidence

Prosecutors are only required to record voice audio or video evidence. They can refuse to record any evidence. The laws infringe on the right to privacy and fail to guarantee safe recording evidence.

Consent loopholes

The term “consent” in a rape and fraud trial means the acquiescence of women and queer persons. This law also provides a loophole by criminalizing the sale and purchase of pornographic materials. This law can be used to bring someone to the charge of the sale and purchase of pornographic materials.

Ambiguity

“decency” “public morality” “public decency” “public morality” “public decency” “morality” “good public order”

The laws are too broad and vague and place emphasis on the morality of women and queer persons. These laws can be used to bring someone to the charge of the sale and purchase of pornographic materials.

Proving Intent

The laws are not right for the crime and the law doesn’t mention due process such as arrest, investigation, or bail. When is an accused granted bail? Is it the discretion of the courts or the Law Enforcement Officers? The crimes can be misjudged or misused.

Freedom of Expression

Right to freedom of expression is crucial to the development of a healthy democracy. Political satire and voices that oppose power can bring about the change that the people need. This law infringes on the right to freedom of expression. The laws are not right for the crime and the law doesn’t mention due process such as arrest, investigation, or bail. When is an accused granted bail? Is it the discretion of the courts or the Law Enforcement Officers? The crimes can be misjudged or misused.

Consent missing

Consent between the individuals is required but not regulated by the law. The defendant is not required to prove consent in a sexual assault case. The defense is not required to prove consent in a sexual assault case.

Potential backfire on victims

Many of the laws criminalize sexual expression, labeling it as obscenity and sexual immorality. The individual(s) consented are not regarded as victims of the crime. The laws do not provide mechanisms to ensure that the consent of the victim is not presumed against. The laws lack any notion of consent and criminalize sexual expression.