

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—Right to Privacy, Freedom of Expression and Freedom from Violence—are 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 can use to seek justice, additional clauses have the potential to be misused 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 court order or legal aid for person being searched. Who is suspected (as grounds for a search) is left to the discretion of the Controller. Those in power can use this law to violate privacy of critics and stifle dissent.

Problems gathering evidence

Perpetrators are unlikely to give consent to victims to record communications between them. Where victims are harassed through online communication, this law may make it possible to criminalize the victims themselves for recording evidence.

How to read this chart:

Each solid box represents a bill or law.
Inside each box are summarized versions of relevant sections.

Yellow highlights identify ambiguous words.
Light blue identifies mentions of intent.

Exterior text...
...elaborates pitfalls in the laws.

Where applicable, arrows connect specific laws and sections to the pitfalls identified in them.

Constitution 2015

Article 28
The privacy of a person, house, property, document, correspondence, information, or material regarding their character is inviolable except as provided by law.

Article 27
No one will be forced to disclose anything that is legally mandated to be private (people can inquire regarding their own personal details or anything of public interest).

Article 17 Article 19
No publication and broadcasting or printing of any news items, articles, editorials or other reading materials or audio visual materials shall be subjected to censorship. But restrictions put on expressions undermining national integrity and social harmony.

Article 38
Criminalization of violence against women and provision of compensation.

Article 39
Criminalization of violence against minors and provision of compensation.

Article 21
Victims of any crime to have right to information on their case, and the right to justice, rehabilitation and compensation.

Privacy

Freedom of expression

Freedom from Violence

Electronic Transaction Act 2008

Section 28.1
Authority can access our devices, materials and data if found suspect.

Section 38.1
Authority can access our private key if found threatening the sovereignty or integrity of the country, to maintain law and to maintain friendly relations with friendly countries.

Section 47
Publishing or displaying of any materials in electronic media contrary to public morality is punishable.

Section 47
Publishing or displaying of any materials in electronic media contrary to public morality, decent behaviour, to spread hate or jealousy, to jeopardise social harmony is punishable

Section 46
Criminalizes destruction, damage, deletion, alteration or disruption of information on any computer source, or intentionally causing any person to carry out such an act.

Section 47
Publishing or displaying of any materials in electronic media contrary to public morality, decent behaviour, to spread hate or jealousy, to jeopardise social harmony is punishable

Criminal Code 2017

Section 122
Restriction in showing private parts or acting 'obscenely' or talking 'vulgar' in public.

Section 294
Prohibits disclosing private information without permission, including private information on public figures unless compelled by law.

Section 298
Obtaining and transferring any notice, information or correspondence restricted unless authorized.

Section 121
Production, sale, publication, promotion (through electronic medium), purchase, rent, display or keeping of obscene books and brochures promoting immorality, eroticism is prohibited.

Section 306
Criminalizes defamation through any medium, that harms reputation of living or deceased person or hurts feelings of their family/relatives. However, exceptions are made for any expression done with evidence, for public good, to caution concerned person, to criticize those with authority, or as part of investigation.

Section 293
Prohibits listening or recording of other's conversation without the permission of the competent authority or consent of involved persons, unless for any statement that is publicly made.

Section 294
Prohibits disclosing private information without permission, including private information on public figures unless compelled by law.

Section 122
Restriction in showing private parts or acting 'obscenely' or talking 'vulgar' in public.

Section 295
Taking or morphing pictures without consent criminalized.

Section 300
Prohibits threats, harassment, improper behavior to harm or defame others through electronic media.

Section 305
Criminalizes slander through verbal or written form that intends to undermine another person or their reputation.

Section 224
Sexual harassment is touching or trying to touch others' private parts without consent or due intention of rape, or directing another person towards private space, making them touch their sexual organs, communicating obscene matters verbally, written or any other form.

Section 306
Criminalizes defamation through any medium, that harms reputation of living or deceased person or hurts feelings of their family/relatives. However, exceptions are made for any expression done with evidence, for public good, to caution concerned person, to criticize those with authority, or as part of investigation.

IT Bill 2019 ★

Section 76.1
Restriction in acquiring individual's data unless provided by law.

Section 76.2
Privacy of conversation between two or more parties held through electronic medium assured unless consent given to record, listen or (de)encrypt.

Section 83
Cyber bullying is defined as continually harassing, teasing, demeaning, discouraging, insulting or scolding someone.

Section 86
Production, collection, distribution, publication, exhibition, transmission or purchase/sale of pornographic materials is punishable.

Section 83
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Section 86
Production, collection, distribution, publication, exhibition, transmission or purchase/sale of pornographic materials is punishable.

Section 87
No one shall use electronic medium or establish online relation with an intention of sexually exploiting or carrying out illegal activities.

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Cyber bullying is defined as continually harassing, teasing, demeaning, discouraging, insulting or scolding someone.

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Production, collection, distribution, publication, exhibition, transmission or purchase/sale of pornographic materials is punishable.

Section 87
No one shall use electronic medium or establish online relation with an intention of sexually exploiting or carrying out illegal activities.

Privacy Act 2018

Section 4.2
Privacy between husband and wife inviolable except where necessary if case ongoing between husband and wife.

Section 12.6
Authorized official may make inquiries into issues such as age, qualification, character, sexuality, disability of any person; concerned person must oblige.

Section 15.2
No person shall make any comments on the character of any person except when law is required to inquire.

Section 88.1
Restriction of electronic media usage that attacks national sovereignty, integrity, nationality and brings hatred, mistrust among communities.

Section 88.2
Restriction of electronic media usage that incites discrimination or is against public conduct or morality.

Section 87
No one shall use electronic medium or establish online relation with an intention of sexually exploiting or carrying out illegal activities.

Section 4.2
Privacy between husband and wife inviolable except where necessary if case ongoing between husband and wife.

Section 12.6
Authorized official may make inquiries into issues such as age, qualification, character, sexuality, disability of any person; concerned person must oblige.

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No person shall make any comments on the character of any person except when law is required to inquire.

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Act Against Domestic Violence, 2009

"Domestic Violence" is physical, mental, sexual and economic harm perpetrated by a person on another with whom he/she has a family relationship.

Sexual harassment at workplace prevention act, 2015

Section 4.b
Using or displaying obscene or sexual content or expressing obscene thoughts by speaking, writing or through body language is form of violence.

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Consent loopholes

The term "character" is a vague and loaded term often used to control and question the sexuality of women and queer persons. This law also provides information pertaining to reproductive health and pregnancy to their husband and family, which can further put them at risk of violence. The law is ageist and ableist and does not respect autonomy of individuals to understand their bodies.

Ambiguity

"obscenity" "social harmony"
"vulgar" "public morality"
"dececy" "public conduct"
"integrity" "national sovereignty"

The laws contain terms such as these, which are then left undefined. This ambiguity gives those in power ample space for interpretation when using these laws against the marginalised, further putting them at risk and curbing dissent. Many of these are also morally loaded terms that promote moral policing rather than unbiased prosecution of crime.

Proving Intent

The Criminal Code and the IT Bill have articles that hinge criminality on the intent of the perpetrator. This provides a loophole for perpetrators to get away by claiming the harm caused was not their intent. Burden of proof is also generally placed on victims. The law is unclear on how to prove intent. It allows authorities to decide the purpose of certain actions, leaving space for abuse of power.

Freedom of Expression

Right to freedom of expression is curtailed in the name of national security and social harmony. Political satire and voices that oppose power could be restricted. This poses a risk for activism. Sexual expression is also curbed under the premise of public morality or decency. Asides from direct curbing of rights, loopholes in privacy mean that citizens feel greater surveillance from the state, and thus are not able to express their opinion freely.

Consent missing

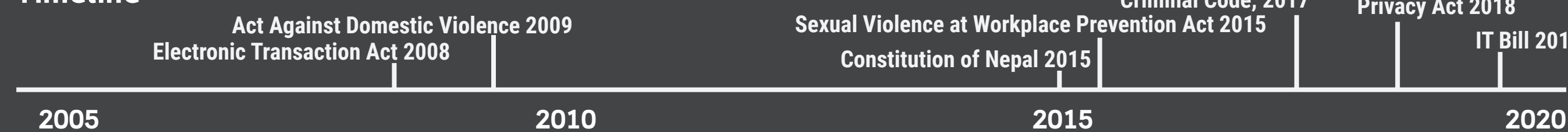
Consent between and of the individual(s) involved are not regarded in framing of the law and its implementation. It implies (all) sexual content to be 'obscene' and does not respect the agency of an individual over their own bodies and criminalises sexual expression.

Potential backfire on victims

Many of the laws criminalize sexual expression, labelling it obscene or immoral even if created through the individual's choice. By not acknowledging consent, the laws create a blanket rule that can be misused to punish victims if their privacy is violated online and their private expressions exposed. The laws may harm the victim instead of punishing the perpetrator.

★ While the IT Bill is a proposed document, we have included it here because of its importance in public discussion on legal measures for online violence.

Timeline



Body & Data is a digital rights organization in Nepal that aims to increase women and queer persons' engagement in digital spaces through suitable strategies for expression, autonomy and agency.

Find the full report on our website: <https://bodyanddata.org/>