

Mapping

Laws

**Relevant to
Online Violence**

in Nepal

**A report by Body & Data
2021**



Mapping Laws relevant to online violence in Nepal: A study

Body & Data, 2021

Authors: Shubha Kayastha, Rita Baramu

Editing and design: Supriya Manandhar

Published by: Body & Data

Supported by: Vision for Change

All rights reserved Body & Data



Contents

Acronyms	4
Acknowledgments	5
Summary	6
Introduction	9
Background of the study	9
Objectives of the research	11
Scope and methodology	11
Freedom of Expression	14
Legal measures and analysis	16
Conclusion	18
Case Study	20
Privacy	22
Legal measures and analysis	23
Conclusion	26
Case Study	27
Freedom from Violence	29
Legal Measures and analysis	30
Conclusion	32
Case studies	34
Conclusion	36
Problems within the existing justice system	37
Analysis of reviewed cases	39
Recommendations	41
Annex	42
Data analysis of cases collected	42
Law Analysis	44
Domestic Violence (Crime and Punishment) Act, 2066 (2009)	44
The Sexual Harassment at Workplace Prevention Act, 2015 (2071)	45
Electronic Transaction Act, 2063 (2007)	46
Policy Mapping Chart	47

Acronyms

CEDAW	Committee on the Elimination of Discrimination against Women
ETA	Electronic Transaction Act
FOE	Freedom Of Expression
HRC	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICT	Information and Communication Technology
LGBTIQ	Lesbian Gay Bisexual Transgender Intersex Queer
NDHS	Nepal Demographic and Health Survey
UDHR	Universal Declaration of Human Rights
UNGA	United Nations General Assembly

Acknowledgments

This research has been put together with work and support of many individuals and we would like to acknowledge everyone involved. Firstly, the key informants, including lawyers and government attorneys and activists who were interviewed and responded to our queries regarding laws that govern digital platforms and online gender based violence. Our thanks go to Jevina Pradhan and Sukirti Manandhar who first initiated the desk study and data collection process in 2019 and Rita Baramu who took over the data analysis and compilation for the report after Jevina and Sukirti. Our acknowledgement also goes to Supriya Manandhar for her input in framing, editing and layout of the reports and the chart “Mapping laws related to online gender based violence in Nepal”. We would also like to thank Dikshya Khadgi for the in citation works including each and every one who was directly or indirectly involved in the research process.

Shubha Kayastha

Summary

The Internet and technology have provided people with various opportunities in their personal and public spaces. However there are also many instances of their design having enabled structural violence against women and marginalized communities online.

Such online violence against women and marginalized communities stems from pre-existing socio-cultural factors offline. This online violence affects people across caste, class, profession, geography, disability status, gender identity and sexuality. Due to the nature of ICT infrastructure and how it functions in terms of physicality, anonymity or intractability, etc, it has particular effects and consequences on the lives of the victims and survivors¹. For example, online violence can affect women's psychological, mental and even economic well-being, bringing with it a sense of isolation, distress, depression and difficulties in their relationships and personal lives.² Denying women the right to express, the right to privacy and the right to a dignified life is a violation of their human rights. It is also denial of their autonomy, agency and human existence. To fully address such violence, we have to look at entrenched heteronormative patriarchy in our society, its functions and harms and seek structural changes for the system.

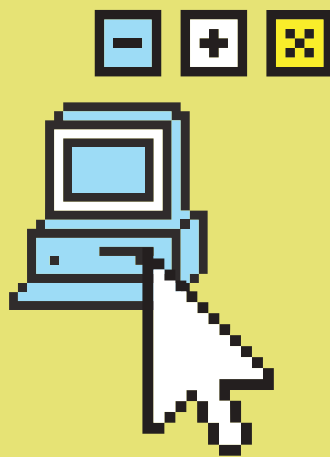
Laws and policies related to the internet, technology and online gender based violence would also be instrumental in regulating and addressing such issues. Body & Data has analyzed Nepal's existing laws surrounding online gender based violence to assess their sufficiency/effectiveness in addressing the issue. We have analyzed these laws from the

1 Maskey, J. & Karmacharya, S. (2018). *Online Violence Against Women*. Loom <https://taannepal.org.np/wp-content/uploads/2020/09/Online-Violence-Against-Women-2018.pdf>

2 Kee, J. S. (2017, August 20). End Violence: Women's rights and safety online. *Association for Progressive Communication*. <https://www.apc.org/en/project/end-violence-womens-rights-and-safety-online>

perspective of digital rights³ with a focus on gender and sexuality. We have also explored how the laws could impact or benefit women and other marginalized communities when they face online violence. We have used freedom of expression, right to privacy and the right to be free from violence as three human rights lenses to put these laws into a framework of study. We conclude with some recommendations for concerned stakeholders in order to make the implementation of these laws more effective.

3 For the purpose of this research: “Digital rights” describe human rights—established by the UDHR, UN resolutions, international conventions, regional charters, domestic law, and human rights case law—as they are invoked in digitally networked spaces. Those spaces may be physically constructed, as in the creation of infrastructure, protocols, and devices. Or, they may be virtually constructed, as in the creation of online identities and communities and other forms of expression, as well as the agency exercised over that expression, for example, management of personally identifiable data, pseudonymity, anonymity, and encryption. Such spaces include but aren’t necessarily limited to the Internet and mobile networks and related devices and practices.” (Source: APC, Unshackling Expression.....)



Introduction

Background of the study

The patriarchal construct of our families, society and state subjugates women and minorities and limits their rights and freedom.⁴ The rigid hierarchies and systemic discrimination of such systems compromise the fundamental rights of women and minorities. This structural inequality is generally further perpetuated as the norm, which in turn harms the quest for a fairer society.

According to the Nepal Demographic and Health Survey (NDHS) 2011, 21 percent of women between the ages of 15-48 had experienced physical violence at least once since age 15, and 20 percent of the same sample had experienced sexual violence at least once in their lifetime. Data from Nepal Police Crime Investigation Bureau⁵ shows that a total 2144 cases of rape, 687 rape attempts, 34 cases of witch-craft accusations, and 11738 cases of domestic violence were registered during the fiscal year 2076/77. These registered cases (which include cases related to abuse of children) are limited cases of physical harm and do not cover other forms of violence such as psychological, emotional abuse that

women and minorities often have to face within their households. The bureaucracy, lawmakers, and even the public themselves tend to have a very narrow understanding of violence that only concerns extreme physical violence.

"If we see court practice, they have only provided the minimum punishment in online harassment cases no matter how grievous the crime is. The maximum punishment so far must be around one year only." (Government Attorney)

Despite the statistics, we still need to consider that even the numbers only represent a small sample; most physical violence goes unreported or they are suppressed or condoned within the family or society. Non-physical forms of violence have an even greater chance of being ignored, because people have a tendency of perceiving violence as serious only when there is evidence of physical harm. Physical violence is but the tip of the iceberg within a framework of socio-cultural and psychological violence.

We can take online violence as an extension

4 WOREC. (2001, November 30). Violence Against Women Campaign. <https://www.worecnepal.org/camp/1>

5 Crime Investigation Department. *Women, Children and Senior Citizen Directorate*. Retrieved from <https://cid.nepalpolice.gov.np/index.php/cid-wings/women-children-service-directorate>

of offline violence into digital platforms.⁶ The mainstream understanding of the violence that takes place in online spaces echoes the general trivializing of non-physical forms of harm. There is a social normalization of the assumption that women and marginalized communities expressing themselves in virtual spaces entails receiving online abuse and harassment, that this is something of an “occupational hazard”. Often, those in positions of authority prescribe reductive solutions along the lines of victims simply restraining themselves from the internet. Within such a subjugated status, women are expected to not have opinions and express themselves openly. And if, by any chance, they go against this customary expectation, they are silenced or threatened, offline or online. Our culture of silence further curtails women’s freedom to express, whether it be a political opinion or their sexual expression. Women and marginalized groups, especially queer individuals, are targeted online simply because of their expression.

In general, women and marginalized communities are denied the right to access, privacy, and to participate in digital governance⁷. Women and marginalized groups are under-represented throughout governance system from civil administration, to media, industries, academia and so on. The sharp divide between those in power and those left behind is reflected within digital governance as well.

The international community has universalized treaties such as the UDHR and CEDAW in order to secure the rights of all, including the marginalized. Nepal is also a signatory to these treaties. These treaties are globally accepted and recognized, and used as a reference point to advocate for human rights, especially where the national laws themselves may be regressive. However, these frameworks themselves are also not above question when it comes to protecting the human rights of women or marginalized communities. The law-making process is influenced by the framework of nation-states (itself a loaded concept, often built on exclusionary principles) and ensuing geo-politics. And where they are to be implemented, the country’s own nationalism, gender politics and geo-political context can create further hurdles.⁸ The universalization of rights also means that the laws see people as a homogeneous group. And when such laws are made for women, they might not take intersectionalities of class, gender, religion, nationality, race and sexuality into account. Whereas in reality, violence against women is contextual to social, economic, state, political and cultural formation.⁹

Violation of privacy is another part of gender based violence. The UN Special Rapporteur on violence against women, its causes and consequences emphasizes this aspect:

"In 2016, the General Assembly, in its resolution

6 Maskey, J., & Karmacharya, S. (2018). Online violence against women: a continuum of offline discrimination. *LOOM*.

7 Nepal, I., Maskey, J., & Karmacharya, S. (2017). Exploring the use of the internet among gender equality and sexual right advocates in Nepal : Erotics South Asia exploratory research. *APC*

8 Grewal, I., (1999). ‘Women’s rights as human rights’: Feminist practices, global feminism, and human rights regimes in transnationality , *Citizenship Studies*, 3:3, 337-354, <https://doi.org/10.1080/13621029908420719>

9 Grewal, I., (1999). ‘Women’s rights as human rights’: Feminist practices, global feminism, and human rights regimes in transnationality , *Citizenship Studies*, 3:3, 337-354, <https://doi.org/10.1080/13621029908420719>

*71/199, recognized that women were particularly affected by violations of the right to privacy in the digital age, and called upon all States to further develop preventive measures and remedies. In 2017, the Human Rights Council, in its resolution 34/7, reaffirmed this call, noting that abuses of the right to privacy in the digital age may affect all individuals, including with particular effects on women, as well as children and persons in vulnerable situations, or marginalized groups.*¹⁰

The human rights frameworks need reexamining in terms of the lived experiences of women and the marginalized communities who have been affected by violations to their privacy. If we look into the generally used “public” and “private” dichotomy of society, domestic violence is viewed as a “private matter”, and therefore less receiving of police or institutional intervention.

Which implies that women’s reasonable expectations of privacy are often infringed upon differently than those of men. Their privacy is often controlled and taken as a right of men instead.¹¹

There are also many forms of online gender based violence such as publication of intimate pictures without consent, or photoshopping of images, in order to shame or humiliate women and girls. These would constitute a violation of their right to dignity and freedom from violence¹². All these gender based privacy breaches are products of systemic violence and inequality that denies women and minorities their fundamental rights.

The right to privacy, the right to expression and freedom from violence are all interconnected to each other, as violation of one right affects the others.

Objectives of the research

- To identify the legal frameworks in Nepal that can be used to respond to online violence against women and queers.
- To analyze cases of online violence and harassment that women and minorities have experienced.
- To map relevant laws within the scope of digital rights , arranged into the framework of privacy, freedom of expression and living free of violence.
- To prepare an assistive documentation for women’s rights groups in the country to understand the intersection of VAW and online violence.

10 UN Human Rights Council. (2018). Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from human rights perspectives.

11 Privacy International. (November, 2018). From Oppression to Liberation: Reclaiming the Right to Privacy. Privacy International. <https://privacyinternational.org/sites/default/files/2018-11/From%20oppression%20to%20liberation-reclaiming%20the%20right%20to%20privacy.pdf>

12 UN Human Rights Council. (2018). Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from human rights perspectives.

Scope and methodology

For the purpose of this exploratory research, selected national laws and policies were reviewed and analyzed through a gender lens (as women and queer persons' experiences of fighting for justice against gender based violence is different from men's). The laws that we reviewed are:

Electronic Transaction Act (2007),
Information Technology Bill (2018),
[WU1] Civil Code of Nepal (2018),
The Sexual Harassment at Workplace Prevention Act (2071),
Individual Privacy Bill (2018) and
Domestic Violence (Crime and Punishment) Act (2009).

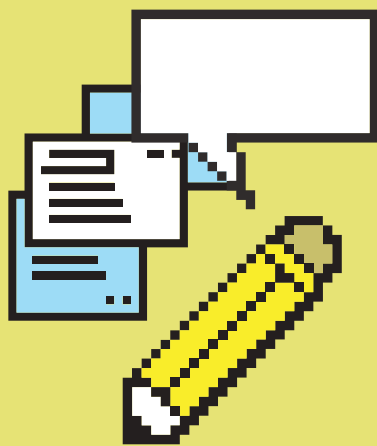
As part of the data collection, we conducted four key informant interviews among attorneys within and outside of the government bodies and with Cyber Crime Unit of Nepal Police in May- June 2018. Similarly, we also collected and reviewed 15 legal cases related to online or technology related violence courts and offices of government attorneys along with testimonies, such as reports, evidences, statements, hearings from the court. Out of the reviewed 15 cases, 8 had hearings while the rest were pending. Our review included identifying of the type(s) of online violence within cyber crime, the list of evidence mentioned in the case file or attached, the relationship between the perpetrator and the victim, and the decision from the court (if available).

We analyzed the language concerning women's bodies in the policy documents and the hearings/ decisions from a feminist lens to understand how state authority perceives violence against women. Generally the court punished perpetrators not for violating women's right to privacy or self-autonomy, but for violating a patriarchal notion of 'honor' as prescribed by society, which even the court associates with women's bodies and sexuality. Our analysis

also sheds light on how women's worth is often limited to their sexuality, and women are seen as 'victims' whose value and dignity need protection from the law.

We also referenced documents from international treaties and conventions in writing this report. We critically examined the treaties and conventions from a feminist lens and also compared with national laws in order to gauge how the national laws have included the international framework of human rights (specifically the right to expression, privacy and free from violence). The notes from the key informant interviews were helpful in analyzing how concerned individuals took on a protectionist lens in matters of online gender based violence as well.

We've ordered the discussion on laws and policies based on their time of emergence and significance within relevant issues of digital rights. Also interspersed through the report are case analyses key informant remarks. Each chapter on the three human rights frameworks are concluded along thematic areas drawn from the analysis itself. We conclude the report with recommendations for stakeholders.



Freedom of Expression

Individuals being able to express their opinions without fear of retribution is vital in establishing democracy, human rights, liberty and good governance. The United Nations Human Rights Council (HRC) and the General Assembly (GA) have recognized freedom of expression as one of the essential foundations of a democratic society. They also emphasize the importance of free media to build inclusive knowledge societies and democracies and foster intercultural dialogue, peace and good governance.¹³

In today's digital era, the internet has become an important space to exercise one's right to freedom of expression and is tied to the right to information and right to assembly and association, as guaranteed by the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). People are using social media and online platforms to share their opinions, all

the more valuable in contexts where they are underrepresented in mainstream media and publication.

Alongside this profusion of internet-usage, we see states introducing policies to regulate the internet and its content. These laws are brought in place with the expressed intent to safeguard the rights of individuals online and to protect the national integrity and security of the state. However, many of these regulations have also been restricting, controlling, manipulating and censoring content disseminated through the internet without prior public debate, often using broad and ambiguous laws.¹⁴ There have been many incidents where governments have disrupted the internet and telecommunications services and detained online journalists and bloggers in the name of national security or public order.¹⁵ In 2019, there were a total record of 95 internet shutdowns in India for several

13 United Nations Human Rights Council (2016) Report of the Special Rappouter on the promotion and protection of freedom of opinion and expression. United Nations General Assembly. <https://www.undocs.org/A/71/373>

14 Sigdel,S, Aryal.T.R. & Maharajan. R. (2001). Freedom of Expression on the Internet in Nepal. Internet Society Nepal. https://internetsociety.org.np/wp-content/uploads/2018/05/FoE-on-Internet_Publication.pdf

15 United Nations Human Rights Council (2016) Report of the Special Rappouter on the promotion and protection of freedom of opinion and expression. United Nations General Assembly <https://www.undocs.org/A/71/373>

political reasons, including attempts by the government to silence the citizen's voices against the Citizen's Amendment Bill.¹⁶ Besides from India, governments of Bangladesh, Congo, Egypt, Indonesia, Iran, Iraq, Sudan, Myanmar, and Zimbabwe also shut down the internet under the pretext of public safety or preventing the spreading of misinformation.¹⁷

The United Nations report on the promotion and protection of the right to freedom of opinion and expression has also expressed concern regarding the increasing number of incidents curtailing freedom of expression across countries. The report highlighted that policies and laws against terrorism and other criminal activity are being used to undermine the media, critical voices, and activists. Such measures pose a threat to an open and secure internet.

Freedom Forum Nepal (an organization working for press freedom) has listed a total 104 cases of press freedom violations that took place during April 2018 - 2019.¹⁸ Similarly, 106 cases were recorded in the cyber crime unit in Kathmandu for their "improper social media posts" under the Electronic Transaction Act (ETA) 2008.¹⁹ Going

further back, Nepal has had a history of the state sporadically blocking or filtering the Internet without a transparent mechanism, whether during the 2005 royal coup, during the 1996-2006 civil war, or the 2010 government order against explicit content.²⁰

In contemporary times, the ETA has been frequently used to curb dissenting voices online. Arjun Thapaliya, editor of the *Anukalpa* newspaper, was arrested without a warrant for a comment on facebook . He was arrested under the ETA's provisions.²¹ more recently, Toranraj Poudel was arrested on May 14th, 2020, for posting morphed photographs of politicians on his Facebook page, including that of the Prime Minister.²² He was accused of disturbing public morality and spreading a hoax on social media, and charged under the same act. Earlier, on 28th April, 2020, Rita Rijal, a student leader, was arrested under the charge of cybercrime.²³ She had written a Facebook post against a former police officer referring to his alleged kidnapping of a parliament member, a matter which had widely been in public discussion at the time.

Asides from conflicts regarding national and

16 Nazmi,S. (2019, December 19). *Why India shuts down the Internet more than any other Democracy?* BBC. <https://www.bbc.com/news/world-asia-india-50819905>

17 Human Rights Watch. (2020). Shutting down the internet to shut down critics. *World Report 2020*. <https://www.hrw.org/world-report/2020/country-chapters/global-5>

18 Freedom Forum. (2019) *Regressive laws, Mounting Violations*. <http://freedomforum.org.np/wp-content/uploads/2019/05/May-3-Report-2019.pdf>

19 *Nepal Government's new Information Technology bill draws battle lines against free speech*. The Kathmandu post, Feb.15,2019. <https://kathmandupost.com/national/2019/02/15/nepal-governments-new-information-technology-bill-draws-battle-lines-against-free-speech>

20 Sigdel, S et al. (2018). Freedom Of Expression on the Internet in Nepal. Internet Society Nepal, 2018, pp. 23.

21 Incident Reports. (2016). Newspaper editor arrested. *Nepal Monitor*. <https://nepalmonitor.org/reports/view/12356>

22 Freedom Forum. (2020, May 14). *Police arrested citizen for sharing image on facebook*. <http://nepalpressfreedom.org/main/issue-single/1174>

23 Freedom Forum (2020, April 29). *Rita Rijal: A student leader arrested for writing in social media under cyber crime*. <http://nepalpressfreedom.org/main/issue-single/1165>

partisan politics (e.g. citizens versus state authorities), other forms of expression are also targeted. In this analysis, it's important to consider that freedom of expression must be observed through an intersectional lens; the expressions of minorities tend to come under the most scrutiny and attack. And within this, sexual expression remains an important dimension that state and non-state actors have sought to control. Feminist and queer expressions, or sexual expressions of marginalized groups such as sex workers and LGBTIQ communities

are surveilled, regulated and restricted. Nepal banned pornography in 2018 and this can be taken as an example where the state, under the pretext of mitigating sexual violence among girls and women, curbed access to free and open internet. Such restrictions are linked to larger questions of moral policing, censorship, and unequal citizenship and rights.

The following sections will discuss how Nepal's legal provisions address freedom of expression, sexual expression of individuals, and online gender based violence.

Legal measures and analysis

Constitution

The constitution of Nepal provides the right to freedom of expression and opinion as a fundamental right under article 17 (2) (a). Article 19 of the Constitution also guarantees freedom of expression for the press, publication and broadcasting. The constitution goes on to state that 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.²⁴

However, the constitution also places restrictions on FoE, generally in the name of protecting national interests.

Electronic Transaction Act (ETA)

The Electronic Transaction Act 2008, Article 47 (1) prohibits the publication or display of any materials through a computer or the internet that

“is contrary to public morality or decency” and “social harmony” or “spreads hate and jealousy”. It also tends to criminalize online expressions under stated pretext of deterring harm to “social harmony”. This act follows a blanket approach to address online violence and does not consider the question of individual’s own consent in producing sexual/ erotic content, and therefore the clauses around “obscenity” may be used to curtail sexual expression regardless of consent.

Criminal Code

The Criminal Code chapter on crime against public benefit, health, security, facility and morality of country section 121 restricts the production, sale, publication, promotion (through electronic medium), purchase, rent, display, advertising or keeping of “obscene” books and brochures that promote immorality and eroticism. This provision does not take into account the possibility of consent among individuals undertaking such an exchange and thus can potentially criminalize

24 Constitution of Nepal. 2015. <http://extwprlegs1.fao.org/docs/pdf/nep155698b.pdf>

self expression and sexual expressions.

Section 293 of the criminal code prohibits the listening to or recording other's conversations without the permission of a "competent authority" or consent of involved persons, unless for any publicly made statement. Section 294 of the code prohibits disclosing private information without permission, including private information on public figures, unless compelled by law. While these two provisions acknowledge consent, they still have the potential to restrict FoE, and especially press freedom.

Section 306 criminalizes defamation through any medium that harms the reputation of a living or deceased person or hurts the feelings of their family/relatives. However, exceptions are made for: any expression supported with evidence, or done for public good, done to "caution the concerned person", or to criticize those with authority, or as part of an investigation. While this provision provides leeway for certain expressions, the clauses are vague and have the potential to criminalize legitimate expression, including sexual expression on the internet.

Section 122 restricts showing of private parts, or acting 'obscenely' or talking 'vulgar' things in public. The ambiguity of the words such as 'obscene' and 'vulgar' is generally extended to erotic content or material that has sexual connotations. This provision may still curtail freedom of sexual expression. Authorities can use these for moral policing both online and offline. Furthermore, surveillance of individuals in order to identify such behavior compromises the privacy of people, and this can adversely affect communities such as sex workers, transgender individuals, young girls and women.

Individual Privacy Act

Article 15.2 of Individual Privacy Act 2018 prohibits making any comments on the character of any person except when it is legally required to make inquiries on their character, conduct or behavior. This provision may be used to address forms of violence online such as slut-shaming and harassment of women and marginalized communities. However, "character" is a vague term and has gendered and political connotations. There is potential for this provision to be misused, especially in circumstances where the person criticized has state authority.

Information Technology (IT) Bill

There are several provisions proposed under the Information Technology (IT) Bill 2019 that are concerned with online violence and freedom of expression. Article 83 of the IT bill prohibits cyber bullying and defines it as "continually harassing, teasing, demeaning, discouraging, insulting, or scolding" someone. However it is unclear what frame of time constitutes "continually".

Article 86 of the bill prohibits production, collection, distribution, publication, exhibition, transmission or purchase of pornographic materials using any electronic system. Article 87 of the bill prohibits anyone from using electronic medium to establish online relation with an intention of sexually exploiting or carrying out illegal activities. Within these provisions, the consent of the concerned persons is not acknowledged, leading to the possibility of consensual activity also being prosecuted. Sex workers also stand to be heavily affected by this bill.

Article 88 (1) & (2) prohibits the use of electronic media in attacking Nepal's sovereignty and national unity, bringing communal disharmony, inciting discrimination, or acting against public conduct and morality.

Article 91 of the same bill mentions banning social network sites if they are not registered at the Department of Information Technology.

Article 92 then goes on to make provisions for the arbitrary removal of content on social sites by the Department of Information and Technology on the basis of expansive terms such as "offensive content".

These provisions give sweeping powers to authorities.

Conclusion

The state's policies to regulate online platforms have the potential to curb individual's rights in digital spaces, although the policies are often made with the expressed intent to safeguard those rights in the first place. Online rights may be infringed in the following major areas:

Ambiguity in the law

The various legal restrictions on FoE in the name of public morality, indecency, obscenity, public conduct, etc are vague in meaning. These terms are very subjective and open to interpretation. The articles where these terms are used do not clearly define them. This ambiguity leaves room for those in power to define them as fits their interests, posing a risk to individual's free expressions.

It is important to note here that some types of information may be legitimately restricted such as: child pornography, defamation, direct and public incitement to commit genocide and advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. However, the terms used in the articles are not explicitly defined as such, because of which there is risk of this law being abused to criminalize legitimate expressions.

Giving legitimacy to restrictions on expression

The articles described in the previous section open up the possibility of limiting and controlling the right to express. These restrictions are applied to acts which are often vaguely described as undermining sovereignty, territorial integrity, nationality, spreading hate and jeopardizing socio-cultural and geopolitical harmony of Nepal. These restrictions are so expansive that it may be possible to prosecute many kinds of political dissent. Given Nepal socio-political inequalities, it may be possible for those in power to misconstrue criticism of the state or of social discrimination as an attack on "public harmony" or national sovereignty.

This blanket approach to address online violence makes dissenting and marginalized voices more vulnerable. Even talking about issues that are of grave concern to their own communities, such as state violence, disenfranchisement or social discrimination can carry the risk of legal repercussions.

Clauses around "contempt of court" are also debatable, given that individuals in Nepal's judiciary have been involved in various

controversial cases inviting public scrutiny.

Another premise for restriction is content that contradicts “public decency or morality”. Considering the sexually conservative and heteronormative landscape of Nepali society, sexual expressions by gender and sexual minorities and other groups may come under further scrutiny for disturbing “public decency”. Many of the acts also do not consider individual consent, meaning that acts between consenting adults may also end up being prosecuted upon the intervention of a third party.

Activism surrounding LGBTQIA advocacy which seeks to normalize non-heteronormative expressions of intimacy online may also come under threat under such clauses.

Arbitrary powers to authority

The vague terminologies used in the legal articles provide space to misconstrue legitimate expressions as attacks on national and social unity and harmony. Interpreting what falls under public decency and morality, or what is an attack on national integrity ultimately falls on the state. This runs the risk of authorities interpreting them arbitrarily to fit their own interests.

Moreover, any legislation restricting the right to freedom of expression must be applied by a body which is independent of any political, commercial, or other unwarranted influences. It should be done in a manner that is neither arbitrary nor discriminatory and with adequate safeguards against abuse, including the possibility of challenge and remedy against

potentially abusive applications.²⁵

States and private actors use different methods to limit free expressions online. One route is through using criminal laws to stifle online expressions. Another is using tech-based measures to prevent access to content, such as by blocking and filtering. Nepal’s porn ban is an example. Such curtailments are often justified on the basis of protecting an individual’s reputation, national security or countering terrorism, safeguarding women and minorities from violence, but in reality are used to censor content that the government and other powerful entities do not like or agree with. These measures belie a reactive, quick-fix approach to social issues, and often stem from a protectionist lens and a savior complex towards the population. A better approach to addressing sexual violence would be to empower people and respect their sexual agency, and punish the perpetrators of sex crimes, rather than censoring materials on the internet.²⁶

However, in many cases, states restrict, control, censor and manipulate content disseminated via internet without any legal basis, or on the basis of broad and ambiguous laws, without justifying the purpose of such actions; and/or in the manner that is unnecessary and/or disproportionate to achieving the intended aim. Such actions are incompatible with states’ obligations under international human rights law, and often create a broader “chilling effect” on the right to freedom of opinion and expression.

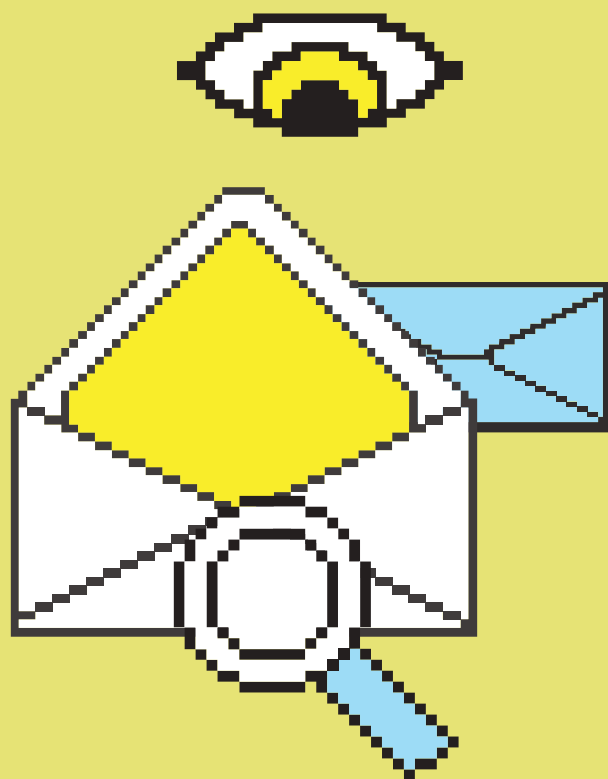
25 Sigdel, S et al. (2018). Freedom Of Expression on the Internet in Nepal. Internet Society Nepal, 2018, pp. 5.

26 Kayastha, S. (2018, October 1) The problem with Nepal’s Porn Ban. The Record. <https://www.recordnepal.com/perspective/policing-sexuality-porn-ban-in-nepal/>

Case study

Robert Penner, a Canadian citizen working for a technology company in Nepal, wrote frequent commentary on political issues on social media, including issues related to rights of marginalized groups in Nepal and the discriminatory provisions in the Nepali constitution regarding Nepali women's right to confer citizenship. He was detained in custody for 26 hours in 2016 after accusations of "posting a provocative message on Twitter aimed at spreading social discord" and was deported by department of Immigration (DOI).²⁷ State authorities claimed Robert Penner had been "spreading unnecessary messages about Nepal" on social media, but did not clarify who had made the complaint. Robert Penner's deportation was the first such case of a foreign national being removed from the country for posts on social media. While the stances taken by Robert Penner were not original in themselves and merely echoed the existing advocacy of many minority rights and women's rights activists in Nepal, his arrest and deportation led to a chilling effect in the wider activism community and further emboldened conservative leaning politics in Nepal.

²⁷ Sha, S., and Quet, M. From Expression to Expulsion: Digital Public Spaces as Theatres of Operations in Nepal. *Science, Technology and Society*, 2020, pp. 386-403.



Privacy

Privacy is a phenomenon which helps us manage our boundaries while interacting with the outer world and protecting us from unwanted interference²⁸. It is directly related to personal autonomy of individuals and has been established as an absolute right as per international human rights treaties. The right to privacy is guaranteed by Article 12 of UDHR and Article 17 of ICCPR, which state that there shall be “no arbitrary and unlawful interference” to anyone’s privacy and attack upon their honor. As a signatory to both these international frameworks, Nepal is obligated to protect its citizens against such interference to privacy. Infringement on privacy directly affects personal autonomy and is linked to other civil liberties in ICCPR including right to self-determination (Article 1.1), right to freedom of movement (Article 12), right to freedom of association (Article 22), the right to freedom of religion (Article 17), the right to freedom of expression (Article 19) and the right to privacy (Article 17).²⁹ Nepal’s constitution also ensures the right to privacy of its citizens via Article 28.

Policies around privacy tend to emphasize on the protection of information related to private life without considering gray area between what is considered ‘private’ and ‘public’. This ambiguity between what is private and what is public depends on who the information belongs to, their socio-political context and what impact the violation of privacy has on them.

“When we treat the right to privacy as an absolute or inalienable right, we sometimes end up not able to grapple with the complexities and the ways that concept gets appropriated or abused.”³⁰

We have to take this discussion beyond the public/private dichotomy . The law has historically seen “domestic matters” or “matters inside the home” of individuals as private affairs, and by implication not addressing violations within those spaces as under the jurisdiction of the law or worthy of taking action. In addition, women are usually asked to stay within the “private sphere”, even when they are homeless. Thus the laws around privacy might not protect women from being exploited and it becomes difficult to politicize the

28 Privacy International. (2017, October 23). *What is Privacy?* <https://www.privacyinternational.org/explainer/56/what-privacy>

29 A/HRC/40/63, pp. 4, adopted by consensus on 27 February 2019, 40th Session of the Human Rights Council.

30 Privacy International (November, 2018). *From Oppression to Liberation: Reclaiming the Right to Privacy.* <https://privacyinternational.org/sites/default/files/2018-11/From%20oppression%20to%20liberation-reclaiming%20the%20right%20to%20privacy.pdf>

right to privacy to access justice.³¹

While new digital technologies have made it more convenient to access information and exercise self expression, these technologies are also vulnerable to electronic surveillance and interception. States around the world are creating surveillance policies and practices that compromise citizens' right to privacy.³² State and non-state actors, including business enterprises, have been collecting an abundance of data, and this collection is taking place without meaningful and informed consent. Besides surveillance systems actively compromising privacy of individuals in real-time, even retrospective data collection on individuals has the potential to be harmful, especially when they lose control and agency over information that should remain private. States have also been weakening encryption technologies and are limiting access to anonymity tools, thus threatening the security and confidentiality of activities online.³³

The report by Special rapporteur on Right to

privacy to the HRC mentions:

"Individuals' experience of digital technologies and privacy is affected by their gender, along with factors such as ethnicity, culture, race, age, social origin, wealth, economic self-sufficiency, education, legal and political frameworks."

There might be distinct concerns around privacy in digital spaces in comparison to that of physical spaces. However the conversations around protecting individuals' privacy in both of these spaces is necessary to emphasize the value of protecting of human dignity. A compromised right to privacy has greater adverse effects on women, children, LGBTIQ individuals, and other vulnerable and marginalized communities and this limits the benefits they can receive out of digital technology. In addition, women, girls and marginalized communities are constantly being surveilled by their families, society and the state using social norms and practices sanctioned on them, and these extend into both the digital and the physical world.

Legal measures and analysis

Constitution

The Constitution of Nepal 2015 guarantees the right to privacy as a fundamental right through article 28, which protects "the privacy of a person, house, property, document, correspondence, or

information, of anyone", however with exception to where provided by law.

Along with the constitution of Nepal, there are several legal policies in place that cover the wider discourse on privacy and digital privacy.

31 Lever, A.(2005). Feminism, Democracy and Right to Privacy. *An Internet Journal of Philosophy* Vol. 9. <http://www.minerva.mic.ul.ie/vol9/Feminism.html>

32 United Nations Human Rights Office of the high commissioner (UNHCR). (2018). Expert workshop with the purpose of identifying and clarifying principles, standards and best practices regarding the promotion and protection of the right to privacy in the digital age, including the responsibility of business enterprises in this regard. {Concept Note} <https://www.ohchr.org/Documents/Issues/DigitalAge/ConceptNote.pdf>

33 OHCHR. (2018). *The right to privacy in the digital age*. <https://www.ohchr.org/EN/Issues/DigitalAge/Pages/ReportDigitalAge.aspx>

Electronic Transaction Act (ETA) 2008

According to the Article 28 (1) and 38 (1) of the ETA, authorities can access devices, materials and data on citizens if they are found suspect. Here, what is deemed suspect and what is not depends on the authorities' discretion. This provision places the privacy of marginalized communities and their rights to autonomy in a more vulnerable position. Article 47 of the ETA then touches on digital privacy and punishes anyone for publishing or displaying any materials through electronic media that may be deemed to cross certain restrictions, such as being "contrary to public morality and decency" or spreading hateful content that could jeopardize "social harmony". Expressions of a sexual nature carried out through electronic media, but privately and in consent with another person, or even just storing and recording of any content that might be deemed 'obscene' still run the risk of being criminalized through the ETA.

Criminal Code 2017

The Criminal Code 2017 has many provisions that are related to privacy of individuals and groups. Section 293 prohibits listening or recording of others' conversations unless authorized or consented to. However any statement that is publicly made can be recorded. Section 294 prohibits the disclosure of private information of anyone without their permission (including private information on public figures) unless compelled by law. Section 298 of the Code also restricts one from obtaining and transferring any notice, information or correspondence through electronic means, or breaching anyone's privacy, unless authorized. Given the prevalent

discriminations in the bureaucratic and legal systems in Nepal, this law can be further used to compromise the privacy of activists, journalists and marginalized communities, and could increase state surveillance on these groups.

Section 295 prohibits photographing a person outside of a public space or disfiguring their photographs without their consent. While this provision can be useful in prosecuting attempts to libel or harass using photos and photo manipulation, it may also be used to restrict artistic freedom, and especially in examples of satire towards public figures like political leaders.

Privacy Act 2018

The Privacy Act 2018 is enacted to ensure the right to privacy relating to body, residence, property, document, data, correspondence and character of every person, to manage the protection and safe use of personal information remained in any public body or institution, and to prevent encroachment on the privacy of every person.

However, there are a few caveats. Section 3.2 of the Act states that anyone's privacy shall be inviolable without the consent of the person concerned, except for health treatment or relief work.

After the 2020 pandemic, there were incidents where information about COVID-19 patients and international travelers had been shared online under the rationale that it was an emergency scenario. Individuals, especially people from marginalized communities, had to face an added layer of discrimination and stigma. For example, Muslim communities in Janakpur were targeted with hate speech, death threats and online abuse because of misinformation shared online wrongly

accusing them of being a spreader group. It is important to maintain the privacy of individuals and groups even during the emergency cases or health examinations.

Similarly, section 4.2 takes the stance that private matters between a heterosexual married couple should be inviolable except where necessary in the context of any legal case running between the husband and wife. This section considers matters between husband and wife as a “private affair” by default, and this privileged secluding of married heterosexual relations risk making issues of intimate partner violence or abuse being all the more difficult to expose and prosecute.

Section 6 of the Act is related to privacy and explicitly mentions that matters relating to reproductive health and pregnancy of every woman shall be inviolable and shall not be given to anyone or made public without her consent. However, such matters can be discussed between the concerned specialists during the health treatment, and if the person is under the age of eighteen years or of ‘unsound mind’ it can be provided to the family or his/her guardian. These loopholes can however, risk the agency of the person concerned and create more vulnerabilities.

Section 12.6 allows authorized officials to make inquiries into issues such as age, qualification, character, sexuality, disability of any person, and the concerned person must oblige as per this law. The compulsion of providing such details whenever an authority demands (rather than specifying what cases these details must be furnished for) infringes on the dignity of the person, and is also against principle of the right to privacy. Similarly, Section 15(2) of the Act mentions that no person shall make any

comments on the character of any other person except as required during a legal inquiry. It should be mentioned that the word “character” here is vague; in a Nepali context it is often used synonymous with “virtue” to sanction unspoken social-cultural norms.

Section 16.1 prohibits taking photographs without consent, with the intention to damage a person’s character or prestige, or the manipulation of photos with intent to defame, or the publicizing of any such materials. Similarly Section 16.3 prohibits publishing, sharing and trading pictures taken without consent, with the intention to annoy, distress or take any improper advantage, or gain profit. These provisions can be helpful to protect women, children and marginalized communities against online violence such as photo-morphing and non-consensual sharing of intimate images and videos. However they could also be used to curtail press freedom and artistic expression, protecting those in power.

Information Technology Bill 2019

The Information technology bill has been drafted and is in the process of being sanctioned to regulate and address the concerns related to many technology related matters including e-commerce, tech-innovation, cyber security and cyber bullying. The Bill is meant to replace the Electronic Transaction Act (ETA) of 2008.

Section 76.1 of the bill prohibits acquiring any individual’s personal information, notice and communication through electronic means unless provided by law. Here the section isn’t clear if the restriction applies to institutions and private companies or just to the citizens. Section 76.2

protects privacy of conversation between two or more parties held through electronic medium unless given the consent to record, listen or decrypt.

The bill is silent in terms of protection of data that already exist in public institutions or those that would be collected. It is also silent on matters related to data privacy when private companies have access to the data from public institutions.

Conclusion

A recurring theme across most of the laws cited here is that many of them have a dual framing: the benefits of many of these laws appear to come with strings attached. The laws uphold privacy while potentially infringing on freedom to express. 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. Similarly, certain laws only provide the semblance of securing privacy, when in reality they come with loopholes that allow for arbitrary infringement of privacy. The broad areas of discussion are identified below:

Sweeping powers to the government

The laws in this section shows how the government and authorities have power to surveil and monitor behavior of citizens and search their devices if they are found to be 'suspicious'. Those in power can use this law to violate the privacy of critics and stifle dissent. Groups such as activists and journalists could be at further risk of surveillance.

Problems gathering evidence

The law prohibits recording of communication which could potentially make it difficult for victims of violence to gather 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.

Consent loopholes

For minors, or for women where they may be deemed of "unsound mind" or unable to give consent, this law allows information on their reproductive health and pregnancy to be retrieved by their husband or family, which may put them at risk of violence. These laws by implication trivialize the decision making capacity of minors or those with intellectual disabilities with regards to their own bodies, and can curb their right to privacy as well.

Certain laws around privacy also assume there cannot be anything private between persons in a heterosexual marital relationship, assuming that family and guardians are always protective to the girls and women in the family. Such a narrative is flawed, as statistics routinely show that partners and families themselves also commit many cases of domestic violence. In Nepal's patriarchal context, the social institutions of marriage and family may actually protect the abusers instead of the victims.

It is also women's reproductive health that is put under scrutiny. There are no such provisions that apply to men. Further, the law has an ageist and ableist subtext; by not considering the possibility of consent for certain groups, it

fails to respect the autonomy of individuals to understand their own bodies. Decisions for them are made by others who are arbitrarily deemed to have guardianship. These suggest the state is functioning under a protectionist approach rather than a rights-based model.

Through the use of moralized terms such as “obscenity” or “immorality”, these laws run the risk of criminalizing sexual expression, even when the material is made through an individual’s own consent. By not acknowledging consent, the laws create a blanket rule that can be misused to punish victims if their privacy happens to be violated online and their private expressions exposed. The laws may harm the victim instead of punishing the perpetrator. These circumstances could also make victims less willing to come forward to expose their abuser or undertake litigation.

Ambiguity

The laws routinely contain terms such as “obscenity”, “vulgar”, “public morality”, “decency”, “social harmony”, “integrity”, “national sovereignty”, “public conduct”, “suspicious”, “intention”, which are left undefined within the law. This ambiguity gives those in power ample space for interpretation when using these laws against marginalized people, further putting them at risk and curbing dissent. Many of these terms are also morally loaded and promote moral policing rather than impartial prosecution of crime.

The term “character” mentioned in the policies is also vague and in Nepali is generally used to question and control the sexuality of women and queer persons.

Case study

Case Study (002)

A sex video of victim “Di” (pseudonym) and defendant Pravin Prajapati was leaked by the defendant without the consent of Di. The video showed sexual activities between them that had happened at different times. The victim claimed they had been in a relationship for a certain period of time and that they had a sexual relationship with consent then, but she did not know the defendant was video recording the activities. The defendant threatened to leak the video after she decided to end the relationship; further, the defendant even blackmailed her for money. When the victim ignored the threat, the defendant sent a copy of CD with the video to the victim’s brother. The video was also leaked through other communication mediums and shared widely.

The court sentenced the defendant to 6 months imprisonment and Rs 10,000 fine.



Freedom from Violence

Gender based violence, including sexual and domestic violence, is a widespread problem in Nepal. A total of 11738 cases of domestic violence were recorded for the fiscal year 2076/77 at the Crime Investigation Department of Nepal Police.³⁴ These numbers only account for recorded cases; in many instances the cases are not registered at all. Nepal's deep-set patriarchy is evident in the lack of accountability for perpetrators of such violence and lack of support for victims to come forward.

An array of factors— cultural, economic and religious, perpetuate patriarchy in Nepal. Women's dependence is also reinforced by the Nepali state through embedded customary practices within laws, in which (cis-het) men hold the power to inherit and control most property, take decisions for families with the concomitant responsibility to support parents, wives and children.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) defines violence against women as: *"violence directed against a woman because she is a woman or which affects a woman disproportionately. It includes physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty."*

Gender based violence exists within the digital paradigm as well, and is spreading online alongside the expansion of the internet and technology. The report by the UN Special Rapporteur on Online Violence Against Women and Girls to the HRC acknowledges the role of Information and Communication Technology (ICT) in the promotion and protection of women's right to live a life free of violence, have access to information, have freedom of expression, have the right to privacy, and so on. However, the report also warns against potential harms and violence against women and girls on online platforms. This violence is gendered, and its perpetuation of negative gender stereotypes results in victims facing social isolation, self limitation with regards to online presence, as well as their families placing restrictions on their mobility.

Online violence with its mental and psychological harms could also bring physical and economic harm. Online threats could become reality and bring unwanted attention into the private and personal lives of the victims, for example if their intimate pictures are published on websites without consent. There is also the prospect of job loss due to mental trauma from online violence, or even victims refraining from applying to

34 Crime Investigation Department. Women, Children and Senior Citizen Directorate. Retrieved from <https://cid.nepalpolice.gov.np/index.php/cid-wings/women-children-service-directorate>

jobs in the first place due to feelings of shame associated with such incidents.

The Cyber Crime Unit of the Crime Division at the Metropolitan Police of Nepal records that in more than 90% of the registered cases of online violence, the victims are women between the age of 16-25.³⁵ The authority also stated that only around half of the cases actually come into contact with the unit. Furthermore, the Cyber-crime Unit's own stance on the matter appeared to trivialize the harm done by online violence; they stated that they attempted to mitigate such cases when they received them, rather than push for prosecution, as their aim "[was] not to create more criminals but to minimize the crime

rates".

In a recent quantitative study conducted by Body & Data among 196 individuals, 86% of the respondents have had experienced online violence of some sort. The type of violence that was most commonly mentioned was receiving unwanted sexually explicit messages (52%), the second highest experience (46%) was of abusive comments, 45% was for name calling, 39% had experienced hate speech on the Internet, and 36% had experienced abuse and/or shaming a woman for expressing views that are not normative, for disagreeing with people and also for refusing sexual advances, while 13% had received direct threats of physical or sexual violence.³⁶

Legal Measures and analysis

Constitution

According to Article 21 of the constitution of Nepal, victims of any crime have the right to information on their case and the right to justice, rehabilitation and compensation. Article 38 and 39 of the constitution criminalize any physical, mental, sexual, psychological or any other kind of violence against women and minors, or any kind of oppression based on religious, social and cultural traditions. Such an act is punishable by law and the victims have the right to be compensated.

As online violence can cause direct mental, psycho-social and sexual harm and in some cases physical harm, these laws in the constitution can be used to establish the fact that online violence

is a type of violence.

Electronic Transaction Act

Electronic Transaction Act 2008, section 46 mentions that destroying or damaging any information on any computer, causing it to diminish in value or utility, or causing any person to carry out such an act, with ill intent, is punishable by law. Article 47 of the Act mentions that publishing or displaying any materials through electronic media that is contrary to public morality, decency, or spreads hate or jealousy, or jeopardizes social harmony is punishable.

The article prohibits bullying, teasing, insults or immoral activities against women through

35 Interview with cyber crime unit, crime division at Metropolitan Police of Nepal

36 Body & Data. (2020). *EROTICS South Asia Regional Monitoring Survey: Nepal Country Report*. (<https://files.bodyanddata.org/nextcloud/index.php/s/jsnQBzfGyDso4Kj>)

electronic media, along with publishing and displaying material that “spreads hatred”. This additional clause addressing violence against women was added after the amendment to the original text of the act in 2018, using the *Act to Amend Some Nepal Acts for Maintaining Gender Equality*.

This is the only act which explicitly describes online violence and criminalizes it in Nepal. However this Act does not address all forms of online violence; it covers the issues of trolling, bullying, harassment, and sharing private images, but it does not address violence such as impersonation, doxing, sextortion etc. Moreover, it has the potential to restrict sexual expression online.

Domestic Violence (Offense & Punishment) Act

Domestic Violence (Offense & Punishment) Act 2009 is the only act that has been made to address domestic violence against individuals. The preamble mentions its purpose as an attempt to assure dignified and secured life of any individual by preventing, controlling and criminalizing domestic violence and protecting and providing justice to the victims.

Domestic Violence (Crime and Punishment) Act defines domestic violence as “any form of physical, mental, sexual and economic harm perpetrated by a person to a person with whom he/she has a family relationship and this includes any acts of reprimand or emotional harm.” This act defines domestic violence as mental and emotional harm as well i.e. going beyond purely physical definitions of violence. This suggests it can be used to prosecute online violence. However, it should be noted that to date, no

court cases have been successfully prosecuted under such a non-physical clause alone.

Sexual Harassment at Workplace Act

Sexual Harassment at workplace Act 2014, 4(a) has defined sexual violence against individuals at a “work place” defined to include any place used by:

- (a) government entities,
- (b) entities owned (fully or partly) by government,
- (c) corporate bodies or institutions established in accordance with the prevailing laws; and
- (d) any firm, institution or corporate body registered or licensed to carry out any business, trade, or provide services (together the “Entities”),

in the course of conducting their business. The Act criminalizes physical contact, showing or displaying of pornographic material, expressing sexual motives by way of written, verbal, or non-verbal means, demand or proposal for sexual favors; and flirting or harassing with sexual motive by someone in power. It states that using or displaying obscene or sexual contents or expressing obscene thoughts by speaking, writing, or through body language is a form of violence. Hence we can understand this to indirectly include online space and platforms.

Criminal Code

Section 122 of Criminal Code of Nepal restricts showing private parts (unless for medical treatment) or acting obscenely or talking vulgarly in public. Showing one’s genitals to another party without their consent is punishable and the law is no different in addressing online or offline

violence. However, acting “obscene” or “vulgar” is subjective and open to interpretation; those in power can misconstrue sexual expression into forms of violence and make it punishable, especially for marginalized demographics.

Section 224, Chapter on Rape defines sexual harassment as the act of touching or trying to touch others’ private parts without consent or due intention of rape; undressing or trying to undress, or directing others towards private space, making them touch their sexual organs, or communicating obscene issues in verbal, written or any other form. As before, the concept of obscene communication is subjective and could be misused to curb one’s sexual expression.

Similarly, Section 300 of the same prohibits threats, harassment, or improper behavior to harm or defame others through electronic media. Similarly, Section 305 criminalizes slander through verbal or written form that intends to undermine another person or their reputation.

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

Section 295 has criminalized taking or morphing pictures without consent. However, capturing a person’s picture while taking pictures at any public space is allowed. However, the law here

has not defined what counts as a public place.

Individual Privacy Act

Individual Privacy Act 2018, 16.1 prohibits photography without consent done to damage a person’s character or prestige, or photo manipulation with intent to defame, or the publicizing of such materials. Section 16.3 of the act also prohibits publishing, sharing and trading pictures taken without consent, with the intention to annoy, distress or take any improper advantage, or gain profit. These provisions, while intended to safeguard from possible violence, also has the potential to be misused to prosecute satire or criticism (such as meme, sketches etc) made at people in power; such expressions are also a form of free speech from the public.

Information Technology Bill

In Section 83 of the Information Technology (IT) Bill 2019, cyberbullying is defined as continually harassing, teasing, demeaning, discouraging, insulting, or scolding someone. However it is unclear how many attempts of cyberbullying would be regarded as “continuous” .

Section 86 of the IT bill states that production, collection, distribution, publication, exhibition, transmission or purchase/sale of pornographic materials is punishable. While the law was made under the premise of safeguarding women and minorities from online violence, the lack of acknowledgment regarding the consent backfire on victims even if their materials are created and published with consent.

Conclusion

Individuals and communities are trolled, harassed, threatened, ridiculed or made subject

of hate speech based on their gender and sexuality.³⁷ However, violence against women on online platforms is not explicitly recognized in our laws in the same way as violence against women in offline spaces and interactions. Acts such as the Domestic Violence Offense and Punishment Act and Sexual Harassment Prevention at Workplace Act were made to address offline violence first and foremost. However, due to the way these laws define violence, they it's possible to apply them to address online violence too. If these laws are implemented effectively, we do not require separate sets of laws for online and offline violence. The ETA on the other hand, is the only act that explicitly mentions online violence. However, the provisions across ETA are insufficient and do not address all forms of online violence, and hence need to be amended.

Moreover, various loopholes and ambiguities in the laws could punish the victims instead. The problems present in laws can be summarized as:

Ambiguity:

Words used frequently in the laws, such as 'obscenity', 'vulgarity', 'indecent' or 'improper behavior', are subjective and ambiguous. Given our heteronormative patriarchal structures, sexuality and sexual expressions of women or queer people are regarded as deviant and therefore more likely to have such labels applied on them. These laws have the potential to curb sexual expression online. Even the courts' decisions regarding online violence are based on patriarchal narratives that women's sexuality has to do something with their dignity or honor.

In the case studies collected (Case no. 002 and 007), where sexual content was shared online without consent, infringing on the dignity and right to privacy of the victim, the perpetrators were punished by the court for attacking the 'honor,' 'dignity' and 'reputation' of the women, rather than violating their privacy and right to a dignified life as an individual granted by the constitution and human rights frameworks. Looking at the violation of rights of women or marginalized communities through the lens of morality is reductive when one is to seek justice. There is also the question of what kind of victims are seen as 'dignified' and having a 'reputation'—a concept that is exclusionary to begin with.

Problems in gathering evidence and proving intent:

Certain provisions of ETA, Criminal code and IT bill mention that the intentional action of the perpetrator that harms the victim is a crime and hence punishable by law. The law is unclear on how to prove intent. The burden of proving intent is generally placed on victims. On the other hand, the intention of a person is hard to prove as they can claim that the harm was unintended. Perpetrators can go unpunished due to such loopholes.

Missing consent

One of the major flaws within these laws is the absence of consent. The law is made with a blanket approach which overlooks consent between individuals engaged in online communication. Any sexual content shared

37 Kee, J.S & Jaafar, J. *Narrating and challenging gender norms on social media in Asia*. Oxfam. <https://www.scrible.com/view/source/AMQA041KH2440J3G3043GBR08A682K23?viewer=download>

between individuals, even with consent, can still fall under this broad umbrella of obscene and immoral activity. The law doesn't acknowledge the agency and autonomy of individuals over their own bodies and instead can criminalize their sexual expression online.

"In most of the cybercrime cases, if the people were in a relationship, the judge questions the girl (victim) why she 'betrayed' him (perpetrator) by leaving him and framing this as being the reason why the perpetrator committed those crimes." (as stated by Government Attorney)

Potential backfire on victims

The prevalence of victim blaming after the occurrence of online violence is another obstacle to victims receiving justice.

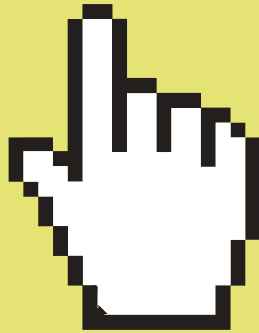
Victims could be further punished where laws impose blanket rules regardless of consent between individuals.

Case studies

Case 003: The victim and defendant had been casual friends. The defendant created a fake ID online in the victim's name and posted libelous messages about her. The defendant also threatened to rape victim's mother and sister if she went to the police. The court sentenced him to a year's imprisonment and Rs 5000 fine. The victim was awarded compensation of Rs 75,000. When the case went to the Appellate court, the decision of the District Court was upheld, with the addition that the mobile phone of the accused was confiscated.

Case 007: The defendant and victim were husband and wife. The defendant made a fake profile of the victim and posted libelous material. The court found the defendant guilty as per Section 47 of the ETA and defendant was fined Rs. 2000. The Appellate court upheld this decision of the District Court.

Case 008: The victim was sent unsolicited pictures by the perpetrator. During the hearing of the case, neither the victim nor her lawyers could determine or present the evidence to prove the intention of harm or the gravity of harm caused on the victim. The perpetrator was imprisoned for 21 days. The victim was also denied compensation on the grounds that the victim's side did not gather proof of harm caused to the victim.



Conclusion

While Nepal has only a few provisions that explicitly address some forms of online violence, there are sections within various laws that encompass more abstract and non-physical dimensions of violence, which victims of online violence can use to seek justice. There is scope to address online violence within Nepal's existing legal framework without the need to formulate another set of laws specifically for it. However, there are caveats to the laws that exist: many laws are ambiguous, or criminalize sexual expression, or have the potential to curb free speech, all of which warrant an amendment in the laws. The cases we reviewed also show that these laws are not properly implemented.

Legal interventions alone are never sufficient to secure women's right to live free of violence, as evidenced by the number of daily attacks online that women and marginalized communities face. Legal protection that doesn't take into account caste, class, sexuality, gender, religion and other factors will always fall short of delivering justice to communities facing these intersections.

"Justice is not mathematics and one cannot write down how much punishment and compensation might be appropriate for a certain crime. The main basis for the compensation is the loss suffered by the victim but unfortunately there is no device to measure the mental and psychological harm

suffered by the victim."³⁸ (Government Attorney)

Our general understanding of violence is also centered around the physical and mental harm on the victims; violence is less often conceptualized as the deprivation of someone's human rights. In most discussions of gender based violence, people tend to have a solution oriented conversation and try to direct it through a legal perspective instead of looking beyond to the entire socio-cultural and economic inequalities happening against women and marginalized communities.

Laws around gender based violence are often ambiguous and made from a protectionist lens. Nepali society also places emphasis on 'morality' and 'decency' as the basis to criminalize any act. The legal sanctions are focused on the act alone and do not take into consideration consent and boundaries within which the act taking place. The existing laws excludes the agency and autonomy of individuals and tries to reinforce a monolithic idea of what it is to be a Nepali citizen. The ambiguity in the laws also provides asymmetrical power to decision makers in the justice system, making rights holders further vulnerable.

Therefore, the laws around gender based violence need reform. Existing loopholes in

38 Neupane, Maniram (Government Attorney). As stated during a personal interview with Body & Data.

the laws that do not serve the benefit of rights holders and which instead could criminalize their partaking of those rights should be amended. The protectionist nature of laws around women and girls also does further harm because they assume women and girls to have no agency and autonomy. The laws need to be inclusive of the idea of individual's agency and take into account consent and boundaries.

The instruments of universal human rights may

appear attractive in a scenario where national laws are not ideal, but they too are themselves not without flaws. The question remains as to how useful international human rights treaties are for women in poor countries, or women from marginalized communities; while the instruments apply a universalization and simplification of gender justice narratives, they disregard national level geo-politics, gender politics and socio-economic and cultural realities.

Problems within the existing justice system

Legal measures remain generally interpreted along the lines of privilege in Nepali society, making it challenging for those without access to have justice. Further, mediation between the victim and perpetrator is seen as the first step towards 'resolving' the problem, rather than addressing the needs of the victim. The police also pressurize people to negotiate and arrive at a settlement, and generally this entails victims being either silenced or receiving an unfair resolution.

"We emphasized that they (the victim) should not file the case, as the main reason of the law is not to produce criminals but to minimize such crimes. So we do counseling and make them (the perpetrator) say they wouldn't repeat the mistake again. We focus on reconciliation." (Representative, Cyber Crime Unit, Teku, Kathmandu)³⁹

Victims are further exposed to trauma when they go through registering their case because there is no privacy (eg. no separate room) and they have to share details about the incident in front of many people. To report a cyber crime

case, the victim needs to present evidence to the Cyber Crime Unit while filing the case, e.g., nude photos that are leaked, and the unit keeps records of the evidence on computers and in paper folders. During our interview with the Cyber Crime Unit representative, our researcher noticed that the folders with evidence were kept in a drawer without a locker. On top of this, the unit's office room was inside a temporary tent at the time of the interview as they didn't have a proper office. The tent was also a shared working space for both the Cyber Crime Unit and the Organized Crime Unit. Hence, there was no guarantee of privacy for the evidence collected from victims, and neither was the physical setup of the department one that would reassure victims coming in to file a case.

The statute of limitations is another barrier preventing some victims from accessing justice. We observed that the statute of limitations varied from 3 months to 1 year depending on the nature of the crime. The limitation is the same for various offenses regardless of the victim's background or context. For eg. the complaint should be

filed within 90 days for domestic violence, or sexual harassment at the workplace, or breach of privacy, or defamation, or slander. Advocate Subin Mulmi, in a personal interview with Body & Data, stated that such statute of limitations are based on the provision and principles of evidence law in which time limitations are fixed so that the complaints are filed before evidences are destroyed or damaged. However, he believes such limitations could restrain the victims from filing the complaint if the victims have gone through psychological harms and are not able to take action within the time limit.

The trauma caused by such violence is not recognized by the law when it comes to setting the statute of limitations. The civil code has certain conditions where the victim is given a chance to file the complaint after the time limit but only in the event of natural calamities, accident, pregnancy, etc and this doesn't cover many possible psychological conditions of the victim. By implication, lawmakers are not acknowledging such psychological trauma is real and could hinder victim's from acquiring justice. Besides from logistical challenges, we encountered justice system authorities' own socio-cultural biases. During interviews, various representatives had a common refrain of how national laws benefit women and are victimizing men, as per their perception.

"Women have many laws protecting them, thus male could be victim of violence." ('ketako peeda dekhera afai lai maya lagcha') (representative, Cyber Crime Unit, Teku, Kathmandu) ⁴⁰

"I always respect females and most of my

colleagues are also feminists and I have also taken CEDAW training but I think there are too many acts protecting women. In this kind of situation how can a man defend?" (A senior lawyer) ⁴¹

Such stances perpetuate gender binaries and thereby limit our understanding of the spectrum of people and their access to justice. Furthermore, by taking the concept of legal provisions as a zero sum game (i.e. by assuming more legal securities for women means less for men), these notions make it more difficult for victims to access justice. Rampant victim blaming and moral policing by those holding power in the justice system prevents victims from making full use of the legal provisions available to them.

"Most people in the justice system are sensitive, but due to lack of proper acts and with discretionary power to the judge, the justice system is weak." (Government Attorney) ⁴²

"Most of the cases (of online violence) are of the former partners who share their (intimate) videos, photos and later when they are separated then those photos or videos are misused. Why do people need to make such videos? These factors may affect the decision of the court, and the judge will assume that when a girl herself sends her naked pictures then she must have consent." (Government Attorney)

The idea of the 'genuine victim' also presents a hurdle; if the victim does not fit into the stereotypical notions of who is an innocent victim, then it becomes difficult for them to receive protection from the law.

"Mostly people sympathize with the innocent

40 Interview note. May 2018

41 Interview note. June 2018

42 Interview note. June 2018

women from rural areas. But still people will judge the character of the girl (victim) insensitively. Cases are not always decided according to the

gravity of the case but according to the position of the victim.” (Government Attorney)⁴³

Analysis of reviewed cases

Upon analyzing the cases gathered from the cyber bureau and relevant courts, we can see that a high number of victims are women, and victimized mostly by men who are either current or were previous intimate partners, friends, colleagues, an acquaintance, or strangers who were encountered through social networkings. The online violence took the form of non-consensual sharing of images or videos, cyber stalking, identity theft, doxing, and blackmailing, among others. The perpetrators generally attacked the bodily autonomy and dignity of the victims/survivors and violated their privacy. General Nepali society ties the concept of women’s shame and dignity to their sexuality and hence perpetrators, usually men, attacked women’s sexuality as an easy target.

The authorities within the legal system are guided by patriarchal values, and the system is not friendly to victims who are often women or gender non-conforming. Perpetrators are motivated to keep attacking the sexuality of vulnerable groups as they know the system is unlikely to hold them accountable. The decisions of courts on these cases also tells us a lot about the nature of our justice system. One of the loopholes we analyzed is the burden of proving intent or gathering evidence being placed on the victim; this is not a victim-friendly approach and rather supports the status quo of powerful perpetrators. Meanwhile, even when decisions

are made in favor of women victims, emphasis is placed on the ‘honor’ of the women, instead of the fact that such actions are a violation of their right to privacy, bodily autonomy and right to dignified life. Technical incompetence was also apparent on the part of the authorities, for example in cases where they were confiscating computers instead of other devices of the perpetrators, whereas the harassment had been done through mobile phones.

Litigation for online violence resulting in compensation for the victims is rare, and the punishment for perpetrators is also very low compared to other forms of violence. The ETA which directly addresses online violence, was brought up almost two decades ago and this could be why the amount of compensation it sets doesn’t seem comparable to today’s standards. Of course, greater punishment doesn’t entail less crime and more compensation will not lessen the harm caused, however, the law’s mismatch in keeping with current times needs to be taken into account.

It is also important to consider that the provisions and punishments for the same crime on different platforms i.e. online vs offline are different. The online related offenses actually have more punishment and compensation upto 1 lakh and 5 years of imprisonment. While for offline ones, it is only upto 10 thousands and one year of imprisonment. There is no clarity as to why this

43 Interview note. June 2018

asymmetry exists. Given the greater outreach of online expression, one implication is that such stringency for online cases reflects intent to curb freedom of expression, as opposed to it being a concerted effort to address online violence.⁴⁴The proposed IT bill has similar kinds of provisions for online crimes, which are already addressed in other laws governed for offline spaces, such as Criminal Code.

Rather than seeking new laws for the new paradigm of tech, the reality is that existing laws that address non-physical violence can be reformed and better implemented to address the issue of online violence. But it is evident that socio-cultural values steeped in patriarchy influence

both the making and the implementation of the legal system surrounding online violence. And the brunt of it is borne by women and minority groups. This violence is further facilitated by loopholes and incompetence within our justice system. There are provisions which victims can use to seek justice, but the framing of legal policies are such that they place civil society in a catch-22 situation: the same laws that may aid victims also contain enough ambiguity to be misused to suppress dissent. Overall, online violence continues to harm women and minorities in Nepal across multiple dimensions of physical, social, economic and mental well being.

44 Body & Data. (2020). *Unshackling Expression: A study on criminalization of Expression Online in Nepal*. Association of Progressive Communication. <https://news.cyrilla.org/wp-content/uploads/2020/12/UnshacklingExpressioNepal.pdf>

Recommendations

1. Our policy mapping and analysis shows that there are already existing legal frameworks in Nepal that can be used to seek legal remedies when faced with non-physical violence, including online violence. However the laws need to be amended to more explicitly recognize online violence as violence.
2. Online violence should be recognized by not just our legal system but also our socio-cultural system. Laws around online violence should secure people's rights to expression, rights to privacy and right to be safe from violence online.
3. The laws addressing freedom of expression and privacy such as ETA and IT bill must be amended in order to remove the broad and vague restrictions on freedom of expression online.
4. The authorities within the legal system, including the police and court, needs to be sensitized to address issues of mental harm on victims, such as through police arbitrarily facilitating "negotiations" between the victim and the perpetrator, or through moral policing and victim blaming.
5. Provisions outlawing consent on basis of being contrary to public morality, obscenity, spreading hate or jealousy or damaging the harmonious relations between groups must be amended to encompass a human rights approach and with consideration of historically oppressed groups: women, queer, marginalized and underprivileged communities.
6. To tackle gender based violence and online violence, resources and funds must be allocated towards women's economic empowerment and education, and not just in legal interventions and strengthening state law enforcement agencies like police and courts. Legal activism and legal literacy is important, but these are incomplete without interventions in the socio-economic and cultural areas.
7. Development and provision of immediate support mechanisms by state and non-state actors to support victims of online violence, including provision of shelter for physical safety, legal counseling, and digital safety and security.

Annex

Data analysis of cases collected

Case no	Location and relationship between victim and perpetrator	Brief description of crime/accusation; evidence collected (where available)	Court's decision and punishment (in the event of guilty verdict) (DC= District Court; AC= Appellate Court)
001	Kathmandu; colleagues	Obscene messages and photos sent through email.	
002	Bhaktapur; former couple	Recording sex tape without consent and leaking of the sex tape, attempt at blackmailing. Computer CPU, mobile phone and CDs were confiscated.	Defendant proven to have committed the crime. Court deems that "serious harm caused to the girl's honor, dignity, reputation due publication of illegal materials in electronic form". Punishment of 6 month imprisonment and fine of Rs. 10,000.
003	Kathmandu; casual friends	Creating fake ID online and posting material slandering the victim, online threats of rape against victim's sister and mother as well. The mobile and sim card which he had used to send the threats were confiscated by police.	DC: It was proven that the defendant had committed the crime, hence he is liable for Rs 5000 fine and imprisonment of one year. As the defendant had caused grievous harm on victim's life and reputation, victim is rewarded with the compensation of Rs. 75,000 from the accused. AC: The lower court had not confiscated the mobile phone of accused, the AC decides to confiscate the mobile phone of accused, while other decisions remain the same.
004	Kathmandu; college friends	Doxing, cyber stalking; victim's personal contact number and name attached with some obscene messages were posted on adult websites. Defendant's mobile, tablet and computer CPU were taken as evidence.	DC: on the basis of the confessional statement stating that he had sent those obscene messages and pictures to the victim, the court imposed fine of Rs. 5000 on the accused. The court did not order compensation for the victim. AC: The appellate court held that it was not necessary to confiscate computers or tablet of the defendant as the criminal activity had been done using the defendant's mobile phone (which was already confiscated). Citing that the compensation amount had not been mentioned by the victim on any of the documents, the court did not provide any compensation to the victim.
005	Kathmandu; mentioned as husband and wife (but sans proof, and not mentioned by victim in FIR)	Victim's Facebook ID had been hacked by the defendant, and through it the defendant sent obscene messages to other men. Defendant also sent obscene messages and calls to the victim. Defendant's mobile and sim card were confiscated.	DC: The district court held defendant liable for committing the crime and punished him with 15 days imprisonment, and fine of Rs. 5000. AC: Citing that the plaintiff had not mentioned a compensation amount, the court held that it could not order compensation for the victim.
006	Kathmandu; acquaintances	Defendant created a fake ID in the victim's name and posted images of her and other women through it without her consent. Mobile phone and sim card of the defendant were taken.	DC: As the involvement of defendant is clearly seen in this case from the presented evidences, the defendant is liable to fine of RS. 3000 as per section 47(1) of Electronic Transaction Act, 2063. AC: Appellate court also upheld the decision of the district court. It didn't provide victim any compensation on the ground that the fixed claim amount equivalent to the harm suffered by the victim has not been disclosed in any papers or documents or the testimonial presented by the victim.

007	Nawalparasi; married couple	The defendant made a fake ID in the victim's name and posted libelous material through it. Mobile phone, laptop and sim card of the defendant were confiscated.	DC: Defendant was held liable to a fine of Rs. 2000 as per the section 47 of ETA. AC: The court upheld the guilty verdict of the lower court and held the defendant liable for a fine of Rs. 2000.
008	Kathmandu; acquaintances	Online harassment through SMS. Mobile, sim card, call details and sms history were taken as evidence.	DC: Defendant given 21 days imprisonment. No compensation given to victim on account of neither victim nor lawyers determining compensation amount for harm caused to the victim. AC: Both decisions of the lower court upheld by the Appellate court.
009	Kathmandu; live-in relationship of 8 years	Harassment through obscene messages and death threats, through SMS Mobile, sim card, call details and sms history were taken as evidence	DC: The court upheld that the claims of harassment did not match with call records and message record details provided by the Nepal Telecom office, hence authenticity of the messages was not proven. According to the court, plaintiff has the burden of proof to prove that the message was sent from the accused's mobile number. The plaintiff also filed the case a year after the incident occurred, so it had crossed the statute of limitations. As a result, defendant was not held liable for any crime mentioned in charge sheet, and hence acquitted. AC: Upheld the decision of district court.
010	Kathmandu; married couple	Doxing, identity theft, fake Facebook ID, posted obscene photos and messages, non-consensual taping of sex videos, extortion. As per plaintiff, the defendant (her husband) was abusive, and therefore she returned to her parents' house and filed a divorce case against him. During this period, the defendant made a fake Facebook ID in her name, and posted her photos as well as libelous material. The defendant also approached others for sex under her assumed profile, and told people that the plaintiff was a sex worker. Plaintiff has also claimed that the defendant extorted women by making sex videos with them and later blackmailing them.	
011	Kathmandu; defendant was construction worker at plaintiff's house	Creating fake ID and posting victim's picture without consent, sextortion, blackmail As per the plaintiff, defendant made a Facebook account in the victim's name and posted pictures of the two of them kissing. He also sent obscene videos, which he had made without her consent when they were in relationship. Her relatives informed her about this matter. The defendant also started extorting her by threatening to post her photos and videos on YouTube if she did not have a physical relationship with him, and due to this, the victim obliged under duress.	
012	Chitwan and Pokhara; plaintiff is mother-in-law of defendant	Online harassment through photo manipulation, impersonation, doxxing. The defendant made a fake Facebook profile and posted photoshopped images where the plaintiff and plaintiff's family members' faces were put on nude imagery. The defendant also posted libelous content pretending to be plaintiff, posting her phone number and inviting others to have sex.	

013	Kathmandu; unknown (stranger)	Blackmail, obscene photos and messages, photo shopped images, Doxing Plaintiff filed an application requesting to arrest and punish an unknown person who had tried to blackmail her for money by threatening to post compromising pictures. Plaintiff later found out that images of her and her friends were Photoshopped onto nude imagery, and through a fake Facebook profile, the person asked them for recharge card.	
014	Kathmandu; defendant was ex-wife of plaintiff's husband	Sexual harassment and defamation. The plaintiff filed a case of cyber-crime against the defendant, for having caused her distress and harmed her security by posting libelous accusations on the plaintiff through her (defendant's) Facebook profile. The defendant also posted photos of the plaintiff, without consent.	
015	Siraha; ex-couples (as claimed by defendant)	Defamation, leakage of photos without consent. Plaintiff and defendant were connected on Facebook. As per the plaintiff, defendant sent her a friend request from a fake profile using her photo. Defendant also caused her mental distress through messages and online defamation.	

Law Analysis

Domestic Violence (Crime and Punishment) Act, 2066 (2009)

Enforcing Agency: Nepal Women Commission, Police Office, Local body

Action: Police or local body shall produce the perpetrator within 24 hours of the complaint, excluding the time of travel and make arrest if he/she refuses to appear for the statement. However, "the complaint, for an offence committed pursuant to this Act, shall be filed within ninety days of the commission of the crime."

Article/ Clause	Language	Analysis
2 (a) Definition	"Domestic Violence" means any form of physical, mental, sexual and economic harm perpetrated by person to a person with whom he/she has a family relationship and this word also includes any acts of reprimand or emotional harm.	This also specifically mentions mental, sexual and emotional harm caused. In case of online violence if caused by someone within family ties, this clause can be used.
2 (d) Definition	"Mental harm" means any act of threatening the victim with physical torture, intimidation, reprimanding him/her, accusing him/her of false blame, forcefully evicting him/her from the house or otherwise causing injury or harm to the victim emotionally. This expression also includes any discrimination carried out on the basis of prejudice, religion or culture and customs and traditions.	Relevant to cases related to extortion, blackmailing, undue manipulation of someone online.
2 (c) Definition	"Sexual harm" means sexual behavior, humiliation, discouragement or harm in self respect of any person; or any other act that hampers safe sexual health.	Many cases of online violence involve harm to self-respect of the victim.
4 (9) Filing of Complaint	The assistance of a psychologist, sociologist, social activist and a family member trusted by the victim and any other witness as per necessity and availability may be taken while conducting reconciliation pursuant to sub-section (8). In the course of such reconciliation psychological and social effects on the victim, as well as his/her right to privacy shall be taken into consideration.	This is after the police or local body produces the perpetrator and finds reason to believe that an act of domestic violence has been committed. Giving power to the system to decide whether or not the act is violence.
4 (11)	If the perpetrator fails to appear pursuant to Sub-sections (4) and (5); or he/she cannot be made present; or the parties fail to settle their dispute through reconciliation, the police officer and local body, with the consent of the complainant shall, within fifteen days after the expiry of thirty days as per Sub-section (8) shall forward to the court, the complaint mentioning all details, along with evidence and other legal documents incidental thereto.	The stress in 'parties trying to settle their dispute through reconciliation' again is a pushback on access to justice, giving power to local authorities to mitigate the case before it reaches the court. Given the social positioning and lower bargaining power of women and queer persons in our society, many are pressured to compromise for monetary or other benefit, and further, there have been instances of intimidation and forceful mitigation.

The Sexual Harassment at Workplace Prevention Act, 2015 (2071)

Action: The Sexual Harassment Prevention Act envisages two internal and external complaint mechanisms. Under the internal complaint handling mechanism, it would be the employer, manager, HR department, and the external complaint handling mechanism is the Chief District Officer (CDO) of the district

Complaint to be filed within 15 days against the perpetrator in front of the management

Article/ Clause	Language	Analysis
4. Sexual harassment is considered to be taken place	Any of the following unsolicited acts committed by, or caused to be committed by, any person in abuse of his/her position, power or by imposition of any type of coercion, undue influence, or enticement would constitute sexual harassment: (a) Physical contact and advances; (b) Showing or displaying of pornographic material, (c) Expressing sexual motives by way of written, verbal, or non-verbal means, (d) Demand or proposal for sexual favours; and (e) Flirting or harassing with sexual motive.	

6 Complaint mechanism	Under the internal complaint handling mechanism, the employer / manger has the power to do any of the following in the course of handling of any complaint of occurrence of sexual harassment: (a) Reconciliation between the victim and the accused with mutual consent of the parties; (b) Require the perpetrator to apologize to the victim; (c) Warn the perpetrator not to repeat the act (d) Arrange for reasonable compensation from the perpetrator to the victim; and (d) Take departmental action against the perpetrator pursuant to the internal employee service rules.	In the context of internal complaint handling mechanism, the Act does not specifically require the employer to constitute a complaint handling committee within the entity, with the specific responsibility to handle the complaints. Formation of such committee would be important to ensure the streamlining of complaint handling process, quick handling of complaints, as also give clarity to victims as to who they should approach. Again 'reconciliation between the parties' is prioritised. In this case it is done by the internal mechanism. Given work place harassment takes place on someone with less power and privilege compared to the perpetrator, the victim's negotiating power is less. Action according to the internal employee service rule comes only at the end.
-----------------------	--	--

Electronic Transaction Act, 2063 (2007)

Enforcing Agency: Nepal Women Commission, Police Office, Local body

Action: Police shall or Local body shall produce the perpetrator within 24 hours of the complaint, excluding the time of travel and make arrest if he/she refuses to appear for the statement. However, "the complaint, for an offence committed pursuant to this Act, shall be filed within Ninety days of the commission of the crime."

Article/ Clause	Language	Analysis
47	If any person publishes or displays any materials in the electronic media including computer or internet which are prohibited from publicatoin or display by prevailing law or which may be contrary to the public morality or decent behaviour, or any type of material which may spread hate or jealousy against anyone or which may jeopardise the harmonious relations subsisting among the peoples of various castes, tribes and communities, or if anyone bullies, teases, insults or does any immoral activities against women the she/he shall be liable to the punishment with fine upto one hundred thousand or with imprisonment up to 5 years, or both.	

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.

Yellow highlights identify ambiguous words.

Light blue identifies mentions of intent.

Exterior text...

...elaborates pitfalls in the laws.

Inside each box are summarized versions of relevant sections.

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

Noone 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).

Privacy

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.

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 293

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

Section 295

Prohibits photographing or disfiguring photographs of a person outside of a public space without their consent.

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.

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 16.1

Prohibits photography without consent done to damage person's character or prestige, or photo manipulation with **intent** to defame, or the publicizing of such materials.

Section 16.3

Prohibits publishing, sharing and trading pictures taken without consent, with the **intention** to annoy, distress or take any improper advantage, or gain profit.

Section 3.2

Anyone's privacy shall be inviolable without the consent of the person concerned, except for health treatment or relief work.

Section 6

Information related to reproductive health and pregnancy of every woman shall be inviolable, except for underage person and those of "unsound" mind.

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"
"decency" "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.

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**.

Freedom of expression

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 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 83

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

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 91

Social network sites will be non-functional/banned in Nepal if they are not registered at Department of Information Technology.

Section 15.2

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

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.

Section 92

Arbitrary removal of content on social sites by Department of Information and Technology on the basis of vague limitations and expansive terms such as **"offensive content"**.

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.

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 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.

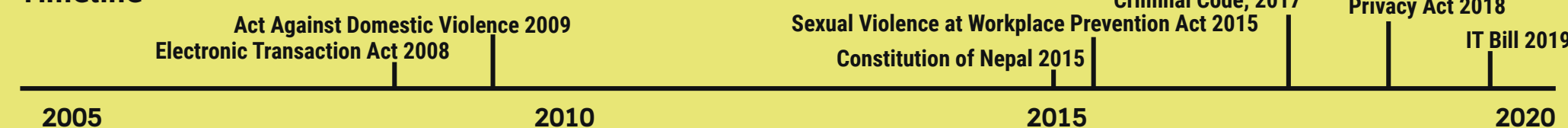
Section 224

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.

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/>

Mapping Laws Relevant to Online Violence in Nepal



Body & Data

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.

bodyanddata.org