



Growing wave of ONLINE CHILD SEXUAL ABUSE in Nepal: A Legal Analysis

**Deepesh Shrestha
Sadikshya Pradhan**

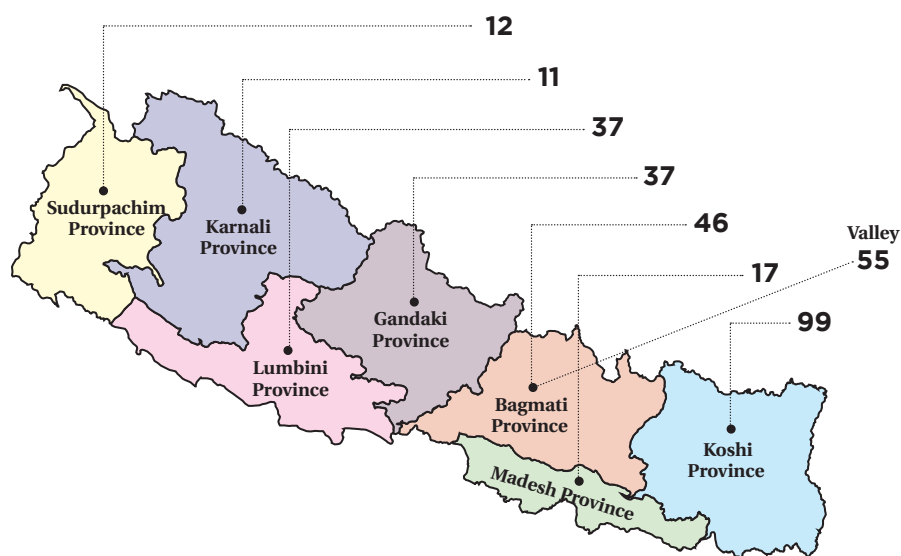
May 29, 2023

ABSTRACT

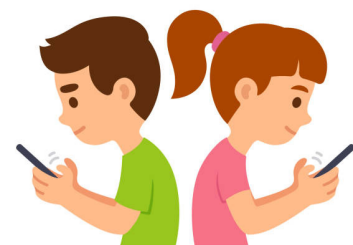
The capacity for and prevalence of online child sexual exploitation has grown tremendously over the past few decades, far outpacing present legal frameworks, law enforcement, and existing solutions. In 2021/22 a total of 314 cases of child sexual abuse have been registered as per the Nepal Police Headquarters' Annual Factsheet where 142 girls and 41 boys have experienced various forms of violence through electronic and online media. This analysis paper assesses the national legal frameworks and the international commitments that Nepal is a party to. Likewise, this paper also analyzes the legal provisions of India, United Kingdom (UK), South Africa, United States of America (USA) and Australia against online child sexual abuse and exploitation. Furthermore, this paper identifies the areas where national laws to address the justice for victims of online child sexual abuse and exploitation have challenges and prescribes the areas where several Nepalese legislations could have improvement.

CHILD abuse can be defined as any intentional or neglectful physical or emotional harm inflicted on a child including sexual molestation especially a parent's or caregiver's act or failure to act that results in a child's exploitation, serious physical or emotional injury, sexual abuse or death. It also refers to an act or failure to act that presents an imminent risk of serious harm to a child.¹ Child sexual abuse is a form of a child abuse which incorporate sexual activities with a minor. Some forms of child sexual abuse include exhibitionism, intercourse, pornography, sex trafficking and so on. These kind of sexual abuse on children can generate long term physical and psychological effect on the victim.

As per the Annual Factsheet on gender-based violence published by Nepal Police Headquarter, Nepal has registered a total of 314 cases of child sexual abuse (Koshi Province- 99, Madhesh Province-17, Bagmati Province (excluding valley)-46, Gandaki Province-37, Lumbini Province-37, Karnali Province-11, Sudurpachhim Province-12 and valley-55) in FY 2078/79.² The majority of perpetrators of child sexual abuse are someone known by the child or family known. Every time, the perpetrator cannot be a stranger, the perpetrator can also be a sibling, friend, family member, teacher, coach.



According to Nepal Telecom Authority (NTA), there are over 36 million internet users in Nepal. The number of internet users in Nepal has increased by 14.6 million in the past two years.³ Similarly, the report by Child Safe Net (CSN) and UNICEF Nepal states that 85.5% of children use the internet on mobile phones in Nepal.⁴ Therefore, children are amongst the group who are the target of violence with the use of internet and technology. As the technologies are going more advanced, the online child sexual abuse is also growing rapidly along with them.



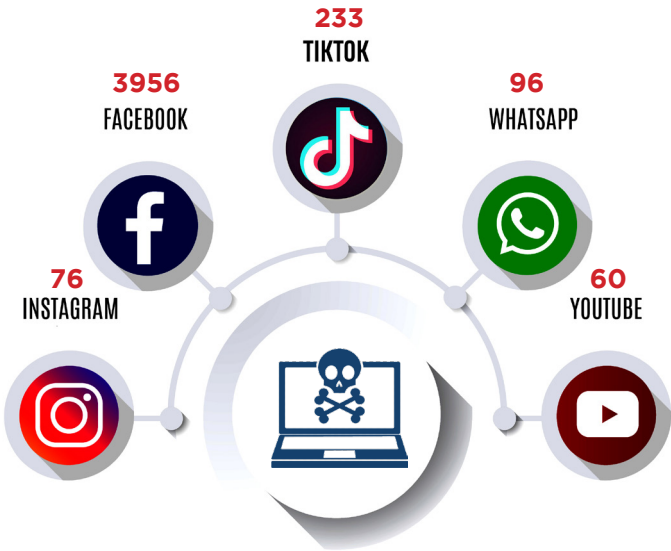
1. Black's Law Dictionary, 8th Edition
2. https://www.nepalpolice.gov.np/media/filer_public/bc/d0/bcd064f5-284a-492a-b424-def0a6800de2/fy-2078-79-annual-infographics-en.pdf
3. <https://english.onlinekhabar.com/nepal-internet-users-population.html>
4. [https://kathmandupost.com/national/2022/05/11/growing-up-in-a-hyper-connected-world#:~:text=A%20report%20by%20ChildSafeNet%20\(CSN\),either%20handheld%20devices%20or%20computers.](https://kathmandupost.com/national/2022/05/11/growing-up-in-a-hyper-connected-world#:~:text=A%20report%20by%20ChildSafeNet%20(CSN),either%20handheld%20devices%20or%20computers.)

The production and distribution of child sexual abuse material is floating all over the internet. Online child sexual abuse includes grooming, live online sexual abuse, pornography, sexting and many more. Online child sexual abuse often occurs when a person manipulates the children to take part in sexual activities. The youngsters are frequently persuaded to share their sexual experiences, sending sexual images and videos and perform sexual favors through gadgets such as smartphones, etc.

In 2016, the Internet Watch Foundation (IWF) identified over 57,000 URLs containing child abuse materials. However, as online child sexual abuse is a hidden crime, various victims and offenders remain anonymous. One of the reasons for this is that victims feel powerless, humiliated, ashamed of their situation and tend to hide it to the people.⁵ Therefore, it only extends the vicious cycle of abuse. In the first six months of 2022, approximately 20,000 reports of self-generated child abuse content were found by Internet Watch Foundation (IWF).⁶ Every day, the International Child Sexual Exploitation (ICSE) database helps investigators all around the globe to identify an average of seven child abuse victims.⁷

ONLINE CHILD SEXUAL ABUSE IN NEPAL

Nepal currently ranks 101st out of 160 countries on the National Cyber Security Index, and 94th on the Global Cyber Security Index. Nepal also ranks 140th on the Information and Communications Technology (ICT) Development Index.⁸ In Nepal, according to the research conducted by Nepal Police, girls are more likely to be the victim of cyber-crime than boys. The Annual Fact Sheet on Gender-Based Violence (July/ August, 2021 to June/ July 2022) reported that roundabout 142 girls and 41 boys are the victims of cyber-crime. The medium of cyber-crimes are Facebook and Messenger (3956), TikTok (233), WhatsApp (96), Youtube (60) and many more. Lumbini Province has registered the highest number of cyber-crime cases whereas Sudurpashchim Province has registered the lowest. 314 cases regarding child sexual abuse were registered.⁹ Similarly, 145 human trafficking,



5. <https://www.childsafenet.org/online-sexual-abuse-exploitation>
 6. <https://www.theguardian.com/technology/2022/aug/09/self-generated-sexual-abuse-of-children-aged-seven-to-10-rises-two-thirds>
 7. <https://www.interpol.int/en/News-and-Events/News/2022/INTERPOL-Secretary-General-Online-child-sexual-abuse-at-record-levels>
 8. <https://aag-it.com/the-latest-cyber-crime-statistics/>
 9. https://www.nepalpolice.gov.np/media/filer_public/bc/d0/bcd064f5-284a-492a-b424-def0a6800de2/fy-2078-79-annual-infographics-en.pdf

17,000 domestic violence, 72 abduction and rape, 2380 rape, etc. cases were registered. One of the roots of these cases is the internet. Through the internet, perpetrators can deftly change their identity and deceive naive children as well as adults. As a result, naive ones would be hounded to do activities which are illegal and agonizing.

Children are frequently victims of online abuse due to their innocence. Many perpetrators often easily hoodwink children and persuade them into illegitimate sexual activities. In the context of Nepal, many parents ignore the use of the internet by their children. Moreover, some children take advantage of their parents who are illiterate and do not care about the internet. Besides, in the 21st century, parents are too busy to look after their children which causes children to be on their phone all the time and discover new websites, applications and other digital platforms which contain illicit and obscene information, images, communication media, audios and many more.

In 2020, CWIN (Children Workers in Nepal) had conducted a study on online sexual exploitation where it was found that numerous children have dropped out of school after facing online sexual exploitation and that comparatively boys often face pressure to post nudes and to practice sexting rather than the girls.¹⁰ Furthermore, 63.36% males and 34.35% females have asked children to be naked in front of the camera. 58 males (62%), 47 females (34.31%) and 2 people (1.46%) from marginalized communities had to face pressure to get naked.¹¹ Online child sexual abuse has not only stopped children from attending school but also has created psychological and physical harm. Many victims often suffer from psychological trauma, anxiety, depression, insomnia, eating disorder, gastrointestinal issues, stress, trust issues and so on. Not only online sexual abuse victim but also physical sexual abuse victims, especially, females have been abhorred and contempt by the society which has led them to practice self-harm and ultimately suicide.

LAWS IN NEPAL RELATING TO ONLINE CHILD SEXUAL ABUSE



In Nepal, there is no any specific laws and regulations that is directly designed for tackling online child sexual abuse. Nevertheless, following laws have played a vital role in addressing online child sexual abuse in various forms.

The Constitution of Nepal in its Article 39 has mentioned the Right of Child as a fundamental right. The Sub-article 6 of the Constitution mentions that the children are not subjected to abuse of any form either physical, mental, sexual or other forms of exploitation by any means or in any manner.¹² This provision tries to protect the children from every possible way of abuse and exploitation.

The Act Relating to Children, 2018 was introduced to maintain the proper interest of children through respecting, promoting, protecting and fulfilling the rights of children. The act has guaranteed the children's right to privacy stating that any personal information, pictures, videos, etc. should not be sold or distributed which causes harm, shame or regret to the children.¹³ Similarly, the Act has also

10. <https://www.cwin.org.np/cwin-publications/research-reports>

11. <https://thehimalayantimes.com/kathmandu/children-becoming-victims-of-sexual-exploitation-due-to-internet-misuse>

12. Article 39, Constitution of Nepal

13. Section 11, Act relating to Children, 2018

addressed media to publish and transmit information related to children without harming the rights and psychology of the children, and without causing adverse effects on the interests of the children.¹⁴

Even though the Act has not specifically explained about the child sexual abuse that occurs through online or other medium of communication, the act covers some aspects of online child sexual exploitation. The Act has explained about the child pornography and other forms of abuses that takes place with the use of electronic means. The act has described child pornography as an act to take or make video or picture of children showing their sex organ or making them involve in imaginary sexual activities, to demonstrate vulgar picture through newspaper, poster, print, movie or other medium of communication. It also includes the activities like production, sale, import, export, collection and dissemination of such materials.¹⁵ Under the chapter of offenses against children, the act has also included child pornography and the act like showing obscene picture, audio-visual recording or other material of similar kind, displaying expression or gesture reflecting obscene or sexual conduct or behavior to the children and their distribution, storage and usage are termed as child sexual abuse.¹⁶ Such activities against children are considered as an offense against the child where a fine of up to seventy-five thousand rupees and imprisonment for up to three years is provisioned.¹⁷

The Electronic Transaction Act, 2008 was introduced for the proper security of electronic transactions and to control the unauthorized use of electronic records. The Act prohibits publishing and displaying any kind of materials that are contrary to the public morality and decent behavior in the electronic media like computer and internet which are prohibited to publish and display by the law. Such activities are liable to the punishment with the fine not exceeding one hundred thousand rupees or with the imprisonment not exceeding five years or with both.¹⁸

The National Penal Code, 2017 was brought in order to maintain morality, decency, etiquette, convenience, and the economic interest of the public by maintaining law, order and peace in the country. The code has clearly prohibited the child sexual abuse stating that it will be considered as child sexual abuse if the child is taken to a lonely place in an unusual manner with the motive of having sexual intercourse, holds or touches any sexual organ, gets his/her sexual organ to touched and makes any form of unusual sexual behavior with the child. Person committing such activities is liable to a sentence of imprisonment for a term not exceeding three years and a fine not exceeding thirty thousand rupees.¹⁹

The penal code has not directly addressed to the online child sexual abuse however it has prohibited certain acts and activities that are conducted with the use of electronic means and devices. The Act avers that the use of an electronic device while committing an offence can be one of the factors aggravating the gravity of offence.²⁰ Similarly, the Act proscribes individuals to produce, publish or print any kind of image, drawing, film, book or other items that is salacious or promotes libidinous interest. The person committing such offence is liable to a sentence of imprisonment for a term not exceeding one year or a fine not exceeding ten thousand rupees or both.²¹

The Code states that a person who has touched or attempted to touch sexual organs, undergarments or mislead the other person/child to go out somewhere alone in an unusual manner or show pornography to them through electronic media or any other media can face an imprisonment not exceeding three

14. Section 19, *ibid.*

15. Section 2(m), *ibid.*

16. Section 66(3)(a), (b) *ibid.*

17. Section 72 (3)(b) *ibid.*

18. Section 47(1), The Electronic Transaction Act, 2008

19. Section 225, National Penal Code, 2017

20. Section 38(I), *ibid.*

21. Section 121(a), *ibid.*

years and a fine not exceeding thirty thousand rupees.²² Likewise, the Act also punishes individuals who obtains the information, data, images, etc. of another person in unauthorized manner and without their permission via any electronic means. In this circumstance, the person can be imprisoned for a term not exceeding two years or a fine not exceeding twenty thousand.²³

INTERNATIONAL LEGAL INSTRUMENTS RELATING TO ONLINE CHILD SEXUAL ABUSE



The Universal Declaration of Human Rights (UDHR), 1948 is an international document which comprises human rights and the freedom of humans. UDHR not only includes the rights of adults, it also includes the rights of the children for their proper physical, mental and spiritual health. The declaration protects the human beings right of privacy and from the attacks upon one's honor and reputation. It further states that everyone has the right to protection of the law against such interferences and attacks.²⁴

In 1989, a substantial commitment was made regarding the children by adopting the **United Nations Convention on the Rights of Children (UNCRC)**. The convention has set standard for protecting the rights of children in various sectors. In regard to the online child sexual abuse, the convention states the protection of children from all forms of sexual exploitation and sexual abuse by the state parties, and for this purpose the state parties are to take all the appropriate national, bilateral and multilateral measures to prevent the forms of sexual abuse to children which includes inducement or coercion of child to engage in unlawful sexual activity, exploitative use of children in prostitution and in pornographic performances and materials.²⁵ The convention states that state parties should take appropriate legislative, administrative, social and educational measures to defend the children from all forms of sexual activities, sexual abuse, psychological violence, injury, etc.²⁶ Moreover, the sale of children, child prostitution and child pornography is encouraged to be criminalized.

In 2010, a global campaign was launched to promote the universal ratification of the Optional Protocols. There are three protocols; Optional Protocol to the Convention on the Rights of Child on the Sale of Children, Child prostitution and Child Pornography, Optional Protocol to the Convention on the Rights of Child on the Involvement of Children in Armed Conflict, and Optional Protocol

22. Section 224, *ibid.*

23. Section 298, *ibid.*

24. Article 12, Universal Declaration of Human Rights, 1948

25. Article 34, Convention on the Rights of the Child, 1989

26. Article 19, *ibid.*

on a Communication Procedure. However, in the context of Nepal, only Optional Protocol to the Convention on the Rights of Child on the Sale of Children, Child prostitution and Child Pornography and Optional Protocol to the Convention on the Rights of Child on the Involvement of Children in Armed Conflict have been endorsed.

The Optional Protocol to the Convention on the Rights of Child on the Sale of Children, Child Prostitution and Child Pornography aims to protect children from child trafficking, child prostitution and child pornography. It states that the child victim of sexual activity or any kind of activity should be provided with support services during the legal process by the State.²⁷ In addition, the identity and privacy of the victim child should not be publicized.²⁸ The Optional Protocol also requires state parties to cooperate with each other in order to prevent, detect, investigate and punish illegal activities such as child prostitution, child pornography and sale of children.²⁹

The Optional Protocol on a Communication Procedure, 2011 allows the United Nations Committee on the Rights of the Child to hear complaints when a child's right has been violated. The protocol provisions about an inquiry procedure for grave or systematic violation of child rights by the member State. It mentions that if the committee receives an information regarding the violation made by a state party in the convention, or in the Optional Protocol of on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict then the committee shall invite the State party to examine the information and submit observation concerning the information.³⁰ However, this optional protocol is yet to be ratified by Nepal.

LAWS OF FOREIGN COUNTRIES AGAINST ONLINE CHILD SEXUAL ABUSE

INDIA



The Protection of Children from Sexual Offences Act, 2012 (POCSO) protects children from offences of sexual assault, sexual harassment and pornography. The Act palpably prohibits individuals to produce, offer, transmit, publish and distribute pornographic materials of children through several forms of media and electronic medium. Moreover, individuals are also discouraged from using children in pornography.³¹ Anyone who uses a child or children for pornographic purposes will be punished with imprisonment of either description which may extend to five years and will have to pay a fine. In addition, in the case of second or succeeding conviction, the person can be imprisoned of either description can extend to seven years along with a fine.³² Pornography has been strictly criminalized by the Act. Furthermore, the Act does not allow people to make report comments on children in any forms of media which can harm the privacy and reputation of the children.³³

27. Article 8 (d), Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2000.

28. Article 8 (e), *ibid*.

29. https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Completed_Inquiries/jsct/11october2005/chapter3

30. Article 13(1), Optional Protocol on a Communication Procedure, 2011

31. The Protection of Children from Sexual Offences Act (POCSO), 2012, Chapter 3, Section 13

32. Chapter 3, Section 14 (1) *ibid*

33. Chapter 5, Section 23 (1) *ibid*

In a recent case of *Nipun Saxena vs. Union of India (2018)*, The Supreme Court of India observed that the publisher or owner of a media, studio, or photography facility is accountable for his act as the victim's privacy and identity was revealed to the general public.³⁴ In the mentioned case, a man had raped a female and killed her. The man was given capital punishment by the Bombay High Court. However, the reports consisting of the victim's name, identity and pictures were released in the public which lead to identification of the victim and exploitation by the public.³⁵

The Indian Penal Code, 1860 (IPC) is an official criminal code of India. The Act has not addressed online child abuse directly. However, the Act does cover a few areas of child pornography. The code has strictly banned the production of obscene books. Additionally, items like pamphlets, paper, drawing, writing, figures or objects, etc. which are vulgar are not allowed to be sold or distributed to children online or physically. Whoever is found committing the offence shall be imprisoned for a term which may extend to three years with a fine which may extend to two thousand. In the event of subsequent conviction, the imprisonment and fine for a term may extend to seven years and five thousand respectively. Fore by, anyone who performs obscene acts and songs can face imprisonment up to three months or pay a fine or both.³⁶

The Information Technology Act, 2000 was imposed to provide justice and equality to electronic commerce, transaction, e-governance and prevent cyber-crime. The Act is the main law related to child cyber bullying. The power to adjudicate the cyber related matters and attacks is given to 'Adjudicating Officer' (AO) which is appointed by the central government. Orders issued by an Adjudicating Officer can be referred to a higher court for review before Telecom Disputes Settlement and Appellate Tribunal (TDSAT). Before the TDSAT of 45 days of receiving an order, the party can appeal against the order of the Adjudicate Officer.³⁷

The Act deals also with violation of privacy. Any person illegally transmits, captures or publishes private pictures of people shall be punished with an imprisonment up to three years or fine up to two lakhs or both.³⁸ The Act forbids to publish, transmit or create text, images, promote, advertise, distribute or download any materials of children that are sexually explicit.³⁹ Along with the sexually explicit materials, cultivating, offering and pursuing children to get in an online sexual relationship is stringently forbidden.⁴⁰ Furthermore, anyone who facilitates abusing children online and records the abuse of the children in any electronic form can face imprisonment up to five years as well as a fine up to ten lakh. In the subsequent event, the term for imprisonment can extend up to seven years with a fine which can extend up to ten lakh rupees. The Information Technology Act, 2000 does not express the term "grooming" precisely. Nevertheless, it does help to initiate a case against such abusers.

UNITED KINGDOM (UK)

The Sexual Offences Act, 2003 was initiated to prevent and protect children from the harm of sexual offences and other sexual activities in the United Kingdom. The Act covers offences of rape, assault by penetration, sexual assault, and person engaging in sexual activities without consent. The Act has discouraged people to force children to watch a third person involved in a sexual activity

34. <https://blog.ipleaders.in/landmark-judgments-under-pocso-act-2012/>, <https://lawtimesjournal.in/nipun-saxena-anr-vs-union-of-india/>

35. <https://lawessential.com/all-blogs/f/nipun-saxena-vs-union-of-india-2018?blogcategory=Case+Comments>

36. The Indian Penal Code, 1860, Section 293

37. <https://www.ikigailaw.com/dispute-resolution-framework-under-the-information-technology-act-2000/#acceptLicense>

38. The Information Technology Act, 2000, Section 66(e)

39. Section 67B(a), (b) *ibid.*

40. Section 67B(c) *ibid.*



or look at an image of any person engaging in the sexual activity. Anyone who commits the offence on summary conviction has to face an imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both whereas on conviction on indictment the person can face imprisonment for a term not exceeding ten years.⁴¹ Correspondingly, arranging or facilitating child for prostitution or pornography in any part of the world is criminalized.

In this case, the violator can be imprisoned for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both on summary conviction. Nonetheless, on conviction on indictment, the violator can be imprisoned for a term not exceeding fourteen years.⁴² Moreover, the Act states that communicating with a child through electronic forms or any other forms and meeting the child intentionally for a sexual objective is illegal.⁴³

Communication Act, 2003 was introduced to create balance in the provision of electronic communications networks and services, broadcasting, provision of television and radio, etc. The Act came into action on 25th July, 2003. The Act explains that any individual should not send a message to other people which consists of offensive, indecent, obscene or menacing subject or character that can cause annoyance, inconvenience or anxiety to the people through the means of public electronic communication networks.⁴⁴ Whoever commits the crime can be imprisoned for almost six months or pay a fine not exceeding £5,000 or both on summary conviction.⁴⁵ For an appeal, the person requires the permission of the Tribunal or of the court which it is to be made. The appeal can be brought by a party to the proceedings before the Tribunal or any person who has an adequate interest in the matter.⁴⁶

The Malicious Communication, 1988 was brought in order to penalize those who send and deliver messages or articles to other people and cause stress or anxiety. The Act clearly elucidates that sending letters and articles that threatens or psychologically disturbs the people, creates false information or includes indecent or offensive messages is felonious.⁴⁷ Anyone caught doing this act shall pay a fine not exceeding level four on standard scale on summary conviction.⁴⁸

SOUTH AFRICA



The Criminal Law Amendment (Sexual Offences and Related Matters) Act Number 32 of 2007 was brought to protect people and children from sexual offences. The Act has criminalized any attempt, conspiracy or incitement to commit a sexual offence. The Act has especially focused on child pornography in the term of online child sexual abuse. Anyone who exposes/ displays or causes the exposure or display of child pornography with or without the consent is held guilty.⁴⁹ Similarly, manufacturing,

producing, possessing, distributing, supplying or promoting child pornography, grooming of children or any sexual act relating to children is against the law.⁵⁰ Moreover, communicating and meeting a

41. Sexual Offences Act, 2003, Section 12,4 (a) (b)

42. Section 50, 50 2(a), 2(b) *ibid*.

43. Section 15 *ibid*.

44. Communication Act, 2003, Section 127 (1)(2)

45. Section 127 (3) *ibid*.

46. Section 192 *ibid*.

47. The Malicious Communication, 1998, Section 1 (a)(i), (ii), (iii), (b)

48. Section 4 *ibid*.

49. Criminal Law Amendment (Sexual Offences and Related Matters) Act No.32 of 2007, Section 10

50. Section 18 (1)(a), (2)(c), *ibid*.

child through electronic medium, images, publication or pornography in any part of the world and seducing, persuading, enticing as well as inducing a child for sexual desire is illegal.⁵¹ The action of creating or producing any image, publication, description or any items related to child pornography for any financial or other reward is illicit.⁵²

The Film and Publication Act Number 65 of 1996 (as amended by Amendment Act Number 11 of 2019) intends to provide for the classification of certain films and publication. The Act averted people to expose sexual photographs in a film through any media such as internet and social media without the consent of the individual or with the intention of harming the individual.⁵³ Likewise, creating, producing or distributing in any medium, including internet and social media, any films or photograph which demonstrate sexual violence and violence against children is actionable.⁵⁴ In such case, the Internet Service Provider (ISP) shall be compelled to provide information regarding the identity of the person who published the film or photograph regarding sexual assault and violence of children to the South African Police Services.⁵⁵

The Cybercrimes Bill of 2017 aims to control the illegal act of receiving and gaining access to computers. The Bill declares that any person who intentionally broadcasts or distributes data which can harass, intimidate the other person or psychologically harm them through any means of a computer system is guilty of an offence.⁵⁶ Correspondingly, through the means of a computer system, broadcasting and distributing an intimate image of an identifiable person without his or her consent to making the image available can be held culpable.⁵⁷ The culprit will be liable to either pay a fine or to imprisonment for a period not exceeding three years or both.⁵⁸ The Cabinet member responsible for State Security or his or her representative must take relevant steps in order to settle the dispute by consensus within thirty days from the lodging period.⁵⁹ The Cabinet member responsible for a State Security company or person may appeal the decision of the arbitrator in the High Court.⁶⁰

UNITED STATES OF AMERICA (USA)



U.S Code Chapter 110- Sexual Exploitation and Other Abuse of Children aims to prevent sexual exploitation and abuse of children. The Chapter states that anyone who mails, transports through any means or facility of interstate or foreign commerce, including computers, the child pornography as well those people who receives and distributes them through any medium including computers will be fined and imprisoned not less than five years or more than twenty years.⁶¹ Moreover, intentionally advertising, promoting, presenting and distributing is also illegalized.⁶² Similarly, individuals using words and images in the website with an intent to deceive minors and make them view harmful materials can face imprisonment not more than twenty years.⁶³

51. Section 18 (2)(d), *ibid.*

52. Section 20 (1), *ibid.*

53. The Film and Publication Act No. 65 of 1996 (as amended by Amendment Act No. 11 of 2019), Section 18(f)

54. Section 18(g) (1), *ibid.*

55. Section 18(g) (7), *ibid.*

56. The Cybercrimes Bill of 2017, Section 17 1 (b), (c), (d)

57. Section 18 (1), *ibid.*

58. Section 22. *ibid.*

59. Section 57(7) (c), *ibid.*

60. Section 57, (f), (I), *ibid.*

61. 18 U.S Code Chapter 110- Sexual Exploitation and Other Abuse of Children, Code 2252A, a (1)(2)

62. Code 2252A, 3B, *ibid.*

63. Code 2252C, b, *ibid.*

The Code does not only punish violators who are in the US, it also punishes those violators who are outside the US or into waters 12 miles of the coast of the US which can affect the US. Anyone who is outside the US intentionally transports, ships, distributes, sells or possesses any visual depiction of a minor engaging sexually explicit act can face imprisonment for ten years.⁶⁴ Followingly, printing, publishing, making or receiving, exchanging or buying or forcing a minor to produce a visual depiction relating to sexual acts is strictly prohibited.⁶⁵ Any person caught doing this act can be fined and imprisoned not less than 15 years and more than 30 years.⁶⁶

Invest in Child Safety Act creates a new body to enforce and protect against the child sexual exploitation. Moreover, it establishes Child Exploitation Treatment, Support and Fund to prevent child sexual abuse, treat victims and raise fund. Additionally, the Bill has also made changes regarding electronic communication service providers and remote computing service providers who report crimes including sexual misuse of children. One of the changes is that the service providers should deliver information regarding the people who are involved in the sexual exploitation of children.⁶⁷

AUSTRALIA



Crimes Act 1900 No.40 (NSW) was introduced to stabilize statutes relating to criminal law. Crimes such as fraud, computer crime, murder and so on are dealt with in the Act. The Act also covers sexual assault to children. Furthermore, in most of the crimes related to children, the penalty is different regarding the age of the child victim. The Act has not directly but indirectly addressed child pornography.

The Act states that intentionally carrying out sexual acts or encouraging the child to carry out sexual act can cause the perpetrator to face imprisonment for maximum seven years or two years for child under ten year and child between ten and sixteen years respectively.⁶⁸ Moreover, anyone carrying out sexual act on a child or encouraging the child for a sexual act and recording it for a child abuse material will face an imprisonment for ten years.⁶⁹ Similarly, providing or exposing indecent materials is strictly forbidden.⁷⁰ The Act also discourages individuals to persuade or cause any children to take part in child prostitution through any means.⁷¹ Whoever is caught doing this crime can face a maximum imprisonment of fourteen years (for children under 14 years old) or ten years. The Act has also illegalized receiving money or any other material benefit from an act of prostitution.⁷² Followingly, anyone who uses child under 14 years old or above 14 years old for the production of child abuse material will face maximum imprisonment for fourteen years or ten years respectively.⁷³ Also, any person who produces, sends, supplies, transmits, exhibits or communicate to another person or possess child abuse material will be held guilty for his or her act.⁷⁴ In addition, an individual who administer or assists in the administration of digital platform or use digital platform

64. Code 2260, b, *ibid.*

65. Code 2251, d (A)(B), *ibid.*

66. Code 2251, e, *ibid.*

67. <https://www.congress.gov/bill/117th-congress/house-bill/807?q=%7B%22search%22%3A%5B%22hr+8%22%5D%7D&r=64&s=1>

68. Crimes Act, 1900 No.40 (NSW), Section 66DC(b)&66DD(b)

69. Section 66DF (1)(a), (b), *ibid.*

70. Section 66EB, 3(a), *ibid.*

71. Section 91D, 1(a), *ibid.*

72. Section 91E, *ibid.*

73. Section 91G,1(a), 2(a), *ibid.*

74. Section 91H (2), *ibid.*

to deal with child abuse material shall face imprisonment for fourteen years.⁷⁵ The Act has also explained that one person should not encourage other person to use digital platform to deal with child abuse material.⁷⁶ Besides, recording and distributing intimate images without the consent of the person is illegal.⁷⁷ Whoever found breaking this rule can face a maximum one hundred penalty units or imprisonment for three years or both. The Act also punishes individuals with one hundred penalty units (two hundred penalty units in the case of corporation) or twelve-month imprisonment or both if the individual has published any indecent materials such as information related to sexual exploitation, violence and many more.⁷⁸ Additionally, providing perpetrator information and knowledge in order to hide and avoid detection of child abuse material is strictly debarred.⁷⁹

Children (Care and Production) Act 1987 No. 54 was introduced to protect and care children from any kind of harm such as sexual abuse, violence and so on. The Act clearly states that children should not be employed or persuaded for pornographic purposes. The penalty for this crime will be a fine of \$5,000 or imprisonment for three years or both.⁸⁰ Moreover, allowing or causing children to take part in any entertainment and exhibition is rigorously forbidden.⁸¹

The Children's Court shall take measures that are reasonably practical to ensure that the child understands the proceedings, nature of assertions and legal implication of the assertions.⁸² If any person is disappointed with the decision made by the Children's Court in accordance with the rule of the District Court, appeal can be made to the District Court Against the decision.⁸³

ANALYSIS WITH NEPALESE LAWS

Constitution of Nepal, The Act Relating to Children, 2018, The Electronic Transaction Act, 2008 and The National Penal code 2074 has not clearly mentioned online child sexual abuse, however; it has provided area to fight against online child sexual abuse. These Acts have clearly prohibited people from carrying out illicit sexual behaviors, abuse and actions. Regarding online child sexual abuse, the laws have mainly covered production and distribution of pornography, invasion of privacy and promotion of illicit images, drawings, books etc. Anyone committing illegal behaviors, actions and abuse are punished by the law. The laws of Nepal have been explained to provide justice and equity to victims. Nevertheless, there should be laws which provides various support to the victims, especially for the females as females are often looked down and discriminated when they are the victim of sexual abuse.

Australia has the provision of Children's Court. Any cases regarding children are dealt with in the children's court. Nepal does have the provision of Children's Court (Juvenile Court) as mentioned in Section 30 of The Act relating to Children, 2018. However, it still has not come into the action yet. Establishing a Juvenile Court in Nepal would solve any cases related to children easily, efficiently and in a fair manner. Likewise, Australia also consists a law which punishes individuals who inspires and provides knowledge to abusers to hide online sexual abuse. Nepal as well should make effort to bring strict law for those people who aid and support online sexual abuse.

75. Section 91H 1(a) (b), *ibid.*

76. Section 91HAB (2) *ibid.*

77. Section 91P and 91 Q, *ibid.*

78. Section 578C (2) *ibid.*

79. Section 91HAC (1), *ibid.*

80. Children (Care and Protection) Act, 1987 No.54, Section 51

81. Section 51 (1), *ibid.*

82. Section 69 (a), (b), *ibid.*

83. Section 81, *ibid.*

Moreover, in South Africa when online child sexual abuse is reported, the Internet Service Provider (ISP) has to immediately extract information and identity of the violator. Similarly, Nepal should have a practice of identifying the violator as soon as possible when online sexual abuse is reported. Unlike the USA, Nepal does not have an Act or chapter in an Act relating to child sexual exploitation and abuses. Introducing such kind of Act or chapter would help Nepal to tackle online child sexual abuse in a simpler form. In India, there is a provision of separate punishment for subsequent conviction. In most of the scenarios, Nepal provides the same term of imprisonment and fine of the first conviction for subsequent or second conviction. Nepal adapting different terms for imprisonment and fine regarding subsequent conviction could help reduce the crime and increase fear of the perpetrator to commit the same crime again. Furthermore, rectifying The Optional Protocol on a Communication Procedure in Nepal could succor child victims. If the state cannot listen or provide justice to the victim, the United Nations Committee of the Rights of the Child would listen to the child when his or her right has been violated.

Overall Nepal has good and acceptable laws regarding online child sexual abuse. Nonetheless, there are still various victims of online child sexual abuse that still have not obtain their justice. The hectic legal procedure and limited jurisdiction regarding the judicial mechanism in Nepal have created obstacles for victims to acquire their justice. Moreover, having good and acceptable laws is also insufficient. There should be proper review of existing laws as per the development in science and technology along with their strong implementation without any discrimination as well as favors.

OUR CONCERNS

- The Government of Nepal proposed the Information Technology (IT) Bill in 2017 in order to regulate and address the concerns of E-commerce, tech innovation, cyber security, cyber bullyings etc. Hence, the Information Technology (IT) Act should be made and implemented spelling out the international standards in a manner that consists of provisions against growing and dynamic forms of online sexual abuse and exploitation of children.
- A comprehensive procedure to register complaints of cyber-crime/online violence should be made.
- In order to initiate the proceedings and adjudicate offences concerning cyber related crimes the tribunal as per Section 60 of Electronic Transaction Act, 2008 should be formed (at least one) in every province of Nepal. The case procedure through E-system could play a significant role to accelerate access to justice in such cases.
- Provision in all the relevant laws and acts regarding the offence committed with the use of online platforms or cyber should be made.
- A separate Juvenile Court should be established as per the provision mentioned in the Section 30 of Act relating to Children, 2018 that would hear the case related to children, also the online related abuse and exploitation committed against children.
- Instead of solely focusing on interventions that target the victims, the concerned stakeholders for child protection should work on primary preventive activities including those targeted towards potential perpetrators.
- The confidentiality should be maintained strictly to protect the rights of dignified life of victims of such crimes against children.
- The 35-days' time limitation to file a complaint as mentioned in the Section 74 of Electronic Transaction Act, 2008 in regard to the nature and sensitivity of the case related to online sexual exploitation is very low. Likewise, the statute of limitation as per the Act relating to the Children, 2018 should also be removed with no limitation on complaining for such crimes against children.
- Proper and strong implementation of the laws without any discrimination as well as favors.

