



Inappropriate *approach* to Cybercrime

(A CRITICAL REVIEW ON INVESTIGATION, PROSECUTION
AND ADJUDICATION OF 100 CYBERCRIME CASES IN NEPAL)



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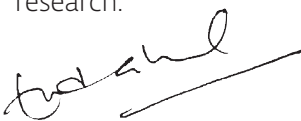
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FOREWORD

Safety and crimes on cyberspace are emerging issues in Nepal in the wake of the augmented ICT use and absence of proper regulatory mechanism. Currently, the Electronic Transaction Act, 2008 promulgated to regulate electronic transaction, has however been regarded as major law governing internet space in Nepal. The Act has several problematic provisions, among which, section 47 is widely decried. Several suits are filed at the Kathmandu District Court as cybercrime. But, sheer lack of common and proper understanding on cybercrimes is a nagging problem in this regard. It has resulted into the cyber justice slow off the mark, warranting proper and adequate knowledge on it among police, attorney and judges- which directly involve the in delivering cyber justice. Police and attorney have established the trend to prosecute every cases under cybercrimes while the judgments do not reflect any expertise. It further points out the need for proper laws, institutions and knowledge on this pressing issue.

In this context, this study has been made by analyzing 100 judgments on cybercrimes made by the KDC (85 cases) and Appellate Court Patan (15 cases). The lack of proper record and documentation of cybercrimes related cases is a challenge to this study. The findings of the study present a grim picture of cyberspace and cyber justice in Nepal. It warrants reforms in policy, laws and institutions to pragmatically regulate cybercrimes and develop safe cyberspace.

I would like to thank my colleagues at Freedom Forum who collected and compiled the judgments. My special thanks to Mr. Suraj Ray for conducting this research and writing report, and Narayan Ghimire for reviewing it. I also thank Krishna Sapkota, Nanu Maiya Khadka, Ashmita Pokhrel, and Aditya Dahal for their contribution in this research.



Taranath Dahal

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ACRONYMS

- ETA – Electronic Transaction Act, 2008
- FIR – First Information Report
- GoN – Government of Nepal
- IT – Information Technology
- ICT – Information Communication Technology
- KDC – Kathmandu District Court
- NHRC – National Human Rights Commission
- OAG – Office of the Attorney General

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EXECUTIVE SUMMARY

Prevalence of ICT has tremendous benefits to human life. However, it is not always safe. Threats of cybercrimes have been commonplace. The issue of cyber safety is therefore an emerging need along with proper law for regulation. The Electronic Transaction Act (ETA), as a major law governing cyberspace of Nepal at present, is inadequate to deal with the existing as well as emerging cyber crimes in Nepal. In this context, the study has been conducted with an objective to analyze the crimes prevalent on cyber space of Nepal; to examine the use of section 47 of the ETA; to identify some critical issues on cyber space related laws and advocate for the formulation of appropriate cyber law to govern cyberspace and related security in Nepal.

The study has been conducted by analyzing 100 judgments on cybercrime cases - 85 from Kathmandu District Court and 15 from the Appellate Court, Patan. It is a qualitative research following case study method. The data are collected from judgments gathered through random sampling method. The data were then categorized under different levels for analysis. They were interpreted under three major themes, i.e. nature of cybercrimes, adjudication of thereof, and punishment and compensation provided by the court to draw conclusion. The judgments from Appellate Court, Patan were analyzed separately.

The major findings of the study, among others are, women are more vulnerable to cybercrimes. Men are mostly involved as perpetrators of such offense. Cyber-enabled crimes are mostly prosecuted under ETA as cybercrime; it basically involves defamation, privacy breach, annoyance, fraud, etc. The guarantee deposits asked by the court for bailment are up to Rs. 150,000. In majority cases (31 cases), it ranged from Rs. 0 – Rs 25,000. Similarly, among 60 cases, in which the accused were convicted, the penalty was sentenced in 54 cases while imprisonment in 40 cases. In 47 cases, the penalty ranged from Rs. 0 to 25, 000. Further, imprisonment up to one month was sentenced in 20 cases. Only in 3 cases, the maximum imprisonment of 2 years was sentenced. The sentencing trend of the court rebukes the need for hefty punishment under the IT Bill.

The Appeal over judgments of KDC is mostly filed by the prosecution side. The exclusive jurisdiction of KDC to try cybercrime cases is a major challenge for the victims and accused.

The study has found that section 47 of the ETA is misused by law enforcing authorities to suppress criticism of public personalities and institutions. The said provision has been used to initiate malicious prosecution against offenses other than relevant law. These prosecutions have effect of punishing through the process. There is poor investigation of cybercrimes by police and prosecution based on fragile evidence by the prosecutors. The court is reluctant to provide proper compensation to the victims.

Based on the findings, this study provides a number of recommendations to government, court prosecutor, police and public. The government has been urged to promulgate a comprehensive cyber law criminalizing cyber-dependent crimes in accordance with international cyber jurisprudence, while the court to adjudicate the cases as per relevant laws, and not to use ETA haphazardly; the prosecutor to prevent malicious prosecution under ETA. Similarly, the police have been recommended to file complaints against an individual as per relevant laws, and the public to stay aware about cybercrimes and adopt safety measures.

CHAPTER 1: INTRODUCTION

1.1. Background

The development in the field of information technology (IT) and internet has opened up numerous avenues of opportunities. In every aspect, the influence of IT has made our life easier and comfortable. However, the advancement is not essentially a safe zone—threat of cybercrimes has been a commonplace. Cybercrimes are the crimes committed online or via or electronic communications networks and information systems, including computer. These crimes are divided in two categories: cyber-dependent crime and cyber-enabled crime. The crime that has been committed by the use of cyber and never existed earlier is cyber-dependent crime, while the crime that existed earlier but is enabled by cyber space refers to cyber-enabled crime. Various countries have framed their respective domestic laws and even made regional co-operation and framed international obligation to combat cybercrime, domestically, regionally and globally.

Nepal brought ETA in 2008 with an objective to regulate electronic transactions. The Act, unlike international cyber jurisprudence, has criminalized both cyber-dependent crimes as well as cyber-enabled crimes. The Budapest Convention 2001 (Convention on Cybercrime) only recognizes cyber-dependent crimes as cybercrime. The international practice is also similar. The USA has Federal Computer Fraud and Abuse Act, 1986, and Electronic Communications Protection Act, 1986, which deals with cyber-dependent crimes. The cyber-enabled crimes are prosecuted under other laws like, Communications Decency Act, 1995, Child Online Protection Act, 1998, etc. The United Kingdom has the Computer Misuse Act, 1990 to deal with cyber-dependent crimes, and other legislations like the Fraud Act, 2006, Forgery and Counterfeiting Act, 1981, Crime Act, 2002 etc. to cover cyber-enabled crimes. These international practices show that cyber law is made to deal with cyber-dependent crimes, while cyber-enabled crimes are regulated by the general or other specific laws. In this sense, Section 47 of the ETA is problematic as the over-breadth and vague terminologies of the Act, like: 'publication that disturbs public morality or decent behavior, spread hate or jealousy toward individuals, and jeopardize harmonious relation among communities; act that bullies, harass, defame, or other inappropriate activities against women' are grossly used by the state in a way that punishes the accused as well as victims with the trial process and the victims on the another hand are not receiving proper justice and compensation.

The said provision of the Act has also been used to prosecute media persons, artists, and general public for their critical statement on the state or public personalities and institutions, resulting into curtailment of the right to freedom of expression. The advocates of free speech, human rights activists and civil society have been asking

the State and agencies concerned for long to repeal this law.¹ On the other hand, it is defended as a sole law available for dealing with cybercrimes. Nepal police says that the law is not enough to deal with it.² Need of a comprehensive law has continuously been pointed out to address the prevalent crimes.

The increased internet penetration³ in Nepal might have facilitated the wrongdoers on cyber space. Even the Information Technology Bill, which is meant to be a comprehensive law to regulate cyberspace, has the provision of hefty punishment for minor cyber-enabled crime. It undoubtedly results in a chilling effect on freedom of expression as well as excessive authority and influence on law enforcing agencies. In this context, Freedom Forum has conducted this research to understand the nature of cybercrimes, and how it is prosecuted and adjudicated in Nepal's justice system. In absence of clear data on number of prosecutions made under Section 47 of the ETA in Police and Government Attorney Offices, and number of cases adjudicated by the KDC, the study has analyzed 100 judgments to reach the findings. It mainly focuses on the implementation of Section 47 of ETA and examines its relevance to deal with cybercrimes

1.2. Objective

The broad objective of the study is to find the relevance of ETA Section 47. Along with that, specific objectives are,

- i. To analyze the crimes prevalent on cyber space of Nepal,
- ii. To examine the use of ETA Section 47,
- iii. To identify some critical issues on cyber space related laws and contribute to the formulation of appropriate cyber law to govern cyberspace and security in Nepal.

1.3. Limitations

The study has been subject to a number of limitations; first, it is based on only 100 judgments of cases prosecuted under the ETA; second, the cases were selected randomly as per the availability of judgments; third, most of the cases selected were prosecuted under section 47 (1) of the ETA. Similarly, some of the judgments had unclear data which also affected the study – in some cases the details like date of arrest, duration of custody, detail of offenses, etc. are not disclosed. The data, findings and recommendations of the study are based on the judgment analysis.

1 National News Agency, 'Press Federation demands to expel two sections of Electronic Transaction Act' Online Khabar, April 18th April 2019, [विद्युतीय कारोबार ऐनका दुई दफा खारेज गर्न पत्रकार महाघको माग – Online Khabar](#). (Accessed on December 25th, 2021).

2 Ratopati, 'Nepal Police demands amendment in Electronic Transaction Act', February 21, 2018, [विद्युतीय कारोबार ऐन परिवर्तन गर्न नेपाल प्रहरीको माग | Ratopati](#), (Accessed on December 24th, 2021).

3 Internet penetration in Nepal has reached around 119 percent by November/December, 2021. MIS Report, Mangsir, 2078 (17 November 2021– 15 December 2021) Nepal Telecom Authority. p.5 (MIS-Mangsir-2078.pdf (nta.gov.np)).

CHAPTER 2: METHODOLOGY

2.1. Methodology

The study adopts qualitative research, employing case study method. The primary data for the study was based on the 100 judgments of KDC and Appellate Court Patan on cybercrimes cases. The study was structured in three phases. In the preliminary stage, judgments from KDC and Appellate Court Patan were collected. The study focused on the judgments of the KDC and Appellate Court Patan, as the KDC has the exclusive trial jurisdiction on cyber cases, while Appellate Court Patan has appeal jurisdiction over the judgments of KDC. In the second stage, the judgments were studied and changed into qualitative data. In the final stage, the data derived from the judgments were analyzed.

2.1.1. Sampling and Data Collection:

The study employed random and convenience sampling methods for judgment selection. The judgments were selected randomly as per convenience - accessibility and availability of the judgments on the cases registered in the period of a decade, i.e. from 2067 to 2077 BS (2010/11 to 2020/21 AD). In the period, according to the annual reports of the Office of Attorney General (OAG)⁴, total 729 cases were registered at KDC and 93 appeal cases were registered at Appellate Court Patan under ETA. Among which 85 cases from the KDC and 15 cases from Appellate Court Patan were sample for the study. The 72 judgments of the KDC and Appellate Court Patan were collected from KDC, while 28 judgments were downloaded from the website of the Supreme Court⁵. The data were collected by studying these judgments.

Judgments from KDC

Year	2067	2068	2069	2070	2071	2072	2073	2074	2075	2076	2077
No of Judgments	4	4	4	6	8	15	13	3	17	10	1

Judgments from Appellate Court Patan

Year	2068	2069	2070	2071	2072	2073
No of Judgments	1	4	2	4	3	1

2.1.2. Data Analysis:

The data from each judgment is coded with its specific case number. The data collected from the judgments of the KDC were categorized under different levels for analysis in excel file in the given format.

⁴ Accessed from: https://ag.gov.np/publication?pub_type=26. The annual report of year 2068/69 was accessed from OAG library

⁵ फैसला / आदेश को पुर्ण पाठ (supremecourt.gov.np)

S. N.	Particulars
1.	Case Number
2.	Name of Case
3.	Gender of Victim
4.	Age of Victim
5.	Gender of Accused
6.	Age of Accused
7.	Nature of Case
8.	Brief Description of Case
9.	Bailment
10.	Deposit Amount
11.	Jail during Prosecution
12.	Decision Date
13.	Decision
14.	Fine
15.	Imprisonment
16.	Compensation
17.	Reason for Decision

Upon the classification of data, it has been further sub-categorized in three themes: (i) the cybercrime prevalent in Nepali society; (ii) adjudication of the cases, and (iii) punishment and compensation to draw conclusions. The data were analyzed independently and dependently with the use of pivot tables in excel file. The findings and analysis presented in the report is based on the data.

Similarly, the data collected from the Appellate Court Patan were coded with specific case number and categorized under different level for analysis in excel file in the given format.

S. N.	Particulars
1.	Case Number
2.	Name of Case
3.	Applicant Name
4.	Respondent Name
5.	Issue of Appeal
6.	Decision
7.	Reason for Decision

2.1.3. Operational Definitions:

The crimes commissioned in each case were categorized under the offense of annoyance, sexual abuse, defamation, fraud and breach of privacy in accordance with the Criminal Code, 2017. These offenses should be understood in following ways:

- i. Annoyance:** The offense of causing fear, threat, or pain or annoyance to any one, insult or defame any person make an improper behavior by writing or causing to be written any letter, correspondence or pamphlet or document of any other type or threatening, annoying, teasing through electronic means or otherwise, pursuant to section 300 of Criminal Code, 2017.
- ii. Sexual Abuse:** The offense of sending nude or obscene pictures without consent pursuant to section 224, Criminal Code, 2017.
- iii. Defamation:** The offense of libel or slander against anyone under the chapter of Libel and Slander in section 305 & 306, Criminal Code, 2017
- iv. Fraud:** The offense of inducing, persuading, misrepresenting or deceiving a person on internet by faking identity pursuant to section 249, Criminal Code, 2017. It basically involves making fake accounts on social media.
- v. Privacy Related Offense:** The offense of taking photograph, sharing it with others, makes another photograph by mixing some part of one photograph with others photograph pursuant to chapter on offenses against privacy.

CHAPTER 3: FINDINGS AND ANALYSIS

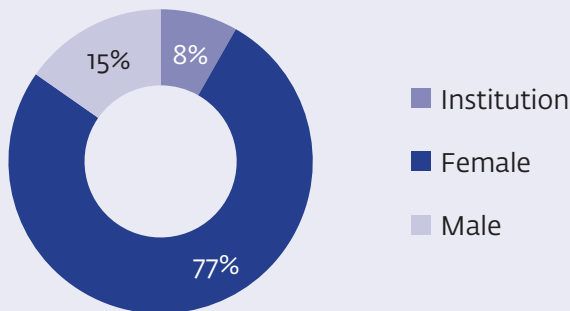
3.1. Nature of Cases

In this section, the nature of cases is discussed. It presents gender and age group of victims and accused, the medium of crime, and types of crimes.

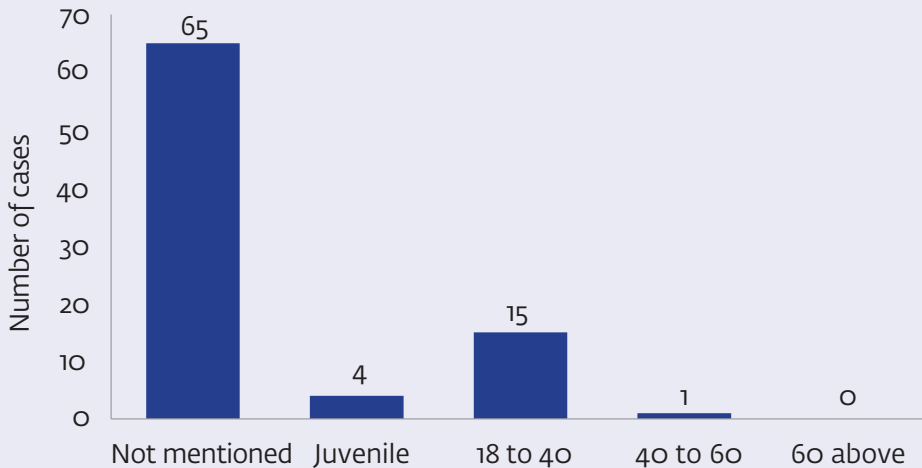
3.1.1. Victim

The study found that women are victim in most of the cybercrime cases in Nepal. Among the 85 judgments of the KDC, women were victims in 77 percent of cases while men were victim in 15 percent of the cases. Similarly, institutions were targeted in eight percent of the cases.

Chart 1: Gender of Victims

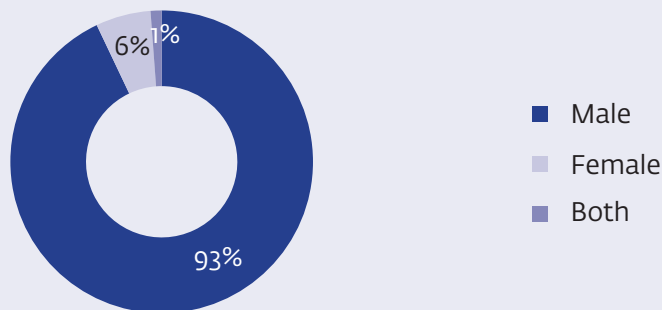


The judgments have not mentioned age of most of the victims. In 76 percent of the judgments of KDC, the age of the victim was not mentioned. In 18 percent of the judgments, the victims belonged to the age group of 18 to 40; among which, 80 percent were below 30 years. Similarly, in five percent of the total cases, the victims were juvenile. In addition to that, there was only one case where the victim belonged to the age group of 40 to 60 year. Though the age group of most of the victims was not disclosed, the nature of cases shows that the victims were mostly adults.

Chart 2: Age Group of Victims

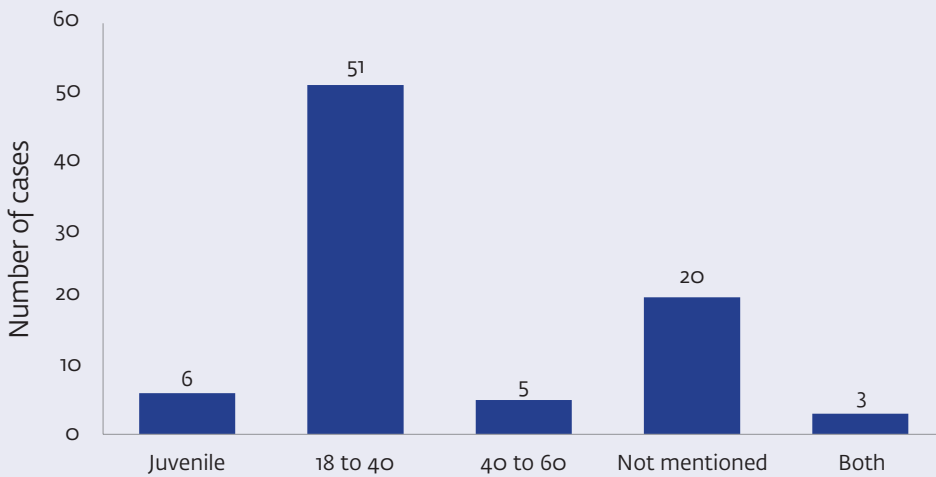
3.1.2. Accused

The result of the study shows that men are mostly accused of cybercrime. In 93 percent of the cases, the accused were men (79 cases), while women (5 cases) were accused only in six percent of the total cases. However, in one case, both man and woman were accused of the crime.

Chart 3: Gender of Accused

Among total 85 accused, 60 percent belong to the age group 18 to 40, while seven percent were juvenile and six percent from the age group 40 to 60 year. Similarly, four percent of the cases constitute the accused from both 18 to 40 year and 40 to 60 age groups.

Chart 4: Age Group of Accused



3.1.3. Medium for Crime

The study reveals that in around 73 percent cases, the offenses were committed via internet. In 9 percent of the cases, the offenses were committed through other mediums, which included mobile phone, camera, CD etc. Similarly, in 15 percent cases- both internet and other medium were used for commission of the crime. However, in two percent of the cases, the judgment did not disclose the medium for crime.

Among the offenses commissioned through internet, Facebook was used in 66 percent cases (56 cases) – being the most used medium for crime. It was followed by email and adult sites each being used in four cases. Further, one case each were committed using Instagram, Twitter, Viber, IMO, and e-banking. It shows that offenses in cyberspace are mostly associated with social media.

Similarly, among the 13 cases involving both medium, Facebook was a common medium in four cases, while, in 9 cases, other medium were used.

Table 7: Medium for Crime

Medium	No. of Cases
Internet	62
Others	8
Both	13
NA	2
Total	85

3.1.4. Types of Offenses

The cybercrimes in Nepal are of different nature. Among the cases studied, 23 were under single criminal activity, while 60 cases were related to two or more than two criminal acts. The details of the two adjourned cases were not disclosed in the judgments. Defamation and annoyance were the most committed criminal acts in the cyber space with eight and six cases, respectively. There were four cases of criticism of public personalities and institutions.

Among the cases involving multiple criminal acts, defamation was an element in 62 cases, followed by breach of privacy as an element in 42 cases. Fake news (1 case) and hacking (3 cases) were the least committed offenses with presence in one and three cases respectively.

In five cases, the accused were not arrested and thus adjourned by the court. These judgments had no detail about the matter.

The offenses against women are mostly associated with their sexuality, such as defamation by writing inappropriate comments on social media (8 cases), sending defaming messages to families and relatives (3 cases), disseminating nude and intimate pictures without consent (25 cases), morphing obscene pictures (12 cases) and sending obscene and threatening messages (10 cases), etc. Facebook, among other social media, is used to commit such offenses (45 cases). Similarly, the offenses against men are annoyance, defamation, hacking, privacy breach, etc.

Table 8: Elements of Crime in Cases

Element	No of Cases
Annoyance	22
Criticism of public personality and institution	4
Defamation	62
Fake news	1
Fraud	16
Hacking	3
Others	2
Privacy	42
Sexual abuse	7
Total	85

Section 47 of the ETA: Tool to Silence Criticism

In *GoN v. Abdul Rehman, Rehman* (2070-CR-2079) was arrested and prosecuted under Section 47 of Electronic Transaction Act for his comment on a Facebook post sharing news published by the Nagrik daily. The news was titled, roughly translated, as "Reforming security order in Saptari". On which, Rehman commented, "keko sudhrinu aafnai chori vako bike farkauna paisa tirnu parne tyo pani 50,000." roughly translated as, "What reformation? We have to pay Rs. 50,000 to get back our own stolen bike". The comment was based on a real experience of his neighbor. Police arrested him and kept in custody for 20 days.

He was released on a guarantee deposit of Rs. 5,000 as per the order of KDC. The KDC condemned the prosecution of Rehman. In the judgment, it held that the time and resources of police should be used in optimum way to maintain peace, security and order in society. This form of malicious prosecution defames police as an institution. In addition to that, acquitting Rehman from the charge, the court held that the criticism falls within the right to freedom of opinion and expression. The judgment was further challenged by the Police in Appellate Court Patan, however, the court upheld the decision of the trial court.

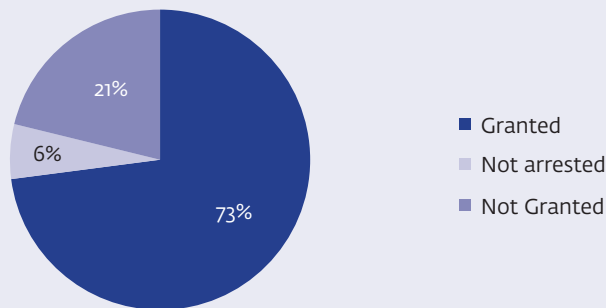
3.2. Adjudication of Cases

In this part, orders and decisions of the court while hearing the cases, are being discussed. It discusses the interim order offered by the court, guarantee deposit, and final judgment issued by the court.

3.2.1. Bailment

The court issued the order of bailment in most of the cases. In 73 percent (62 cases) of the cases, bail was granted, while it was refused in 21 percent (18 cases) of the cases. Moreover, in five cases, the accused were not arrested.

Chart 5: Bailment Order Issued



3.2.2. Guarantee Deposit for Bailment

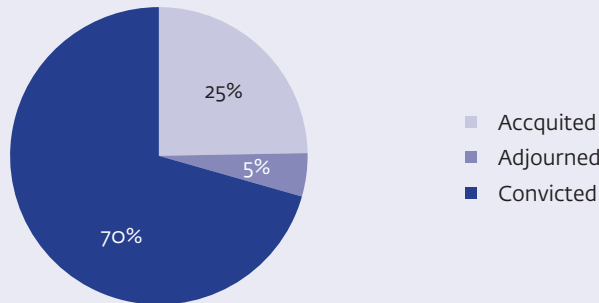
The guarantee deposit for bailment varied upon cases. In around 36 percent cases (31 cases), the guarantee deposit for bailment was from Rs 0 – 25,000. The court asked for guarantee deposit of Rs 50,000 – 75,000 in around five percent cases (4 cases). Similarly, guarantee deposit from Rs 75,000 to 1, 50,000 were asked in around 13 percent cases (11 cases). However, in a case involving juvenile accused, no guarantee deposit was asked. The accused was handed over to parents.

Guarantee Deposit	No of Cases
Handover to guardian	1
Unclear	2
Rs 0 - 25,000	31
Rs 25,000-50,000	13
Rs 50,000 - 75,000	4
Rs 75,000 - 1,00,000	6
Rs 1,00,000 - 1,50,000	5
Total Cases	62

3.2.3. Decision

The court acquitted the accused in 25 percent of the cases. Among others, five percent cases were adjourned and in 70 percent cases the accused were convicted. The cases were said to be adjourned as the accused were not found and arrested.

Chart 6: Court Decisions



The court has been considering evidences, statement of victims, witness and forensic report to reach a decision. The court has also accepted confession of the accused for conviction.

Prosecution based on fragile evidence

Several prosecutions were made on the basis of fragile evidence. In *GoN v. Bikas Thapa* (2068-CR-1150), the accused was prosecuted for sending inappropriate messages to the victim. The messages, "Sweetheart" and "Darling" were found in the mobile phone of the accused. Forensic experts said any one with computer knowledge can enter into the system and forward such messages. The court acquitted the accused on the ground of lack of evidence. However, the accused had to stay in judicial custody for more than one month and eight days.

In *GoN v. Basuram Shrestha* (2071-CR-0543), the accused was prosecuted on the ground of a message "I Love U too much". Though the victim claimed that her Facebook Id was hacked and she received several obscene messages from accused, prosecution was unable to present evidence for that.

Poor Investigation of cybercrimes

The investigation of police in cybercrimes is not satisfactory in some cases. In *GoN v. Keshav Gautam et.al* (2072-CR-3327), a complaint was filed against the accused for hacking and transferring funds from his account. Court, in the case, held that the accused cannot be convicted merely on the ground that the IP address used for crime was similar to that of the company owned by the accused. The forensic report shows that the devices of the accused were not used for commission of crime. The police investigation neither shows the total balance in the account, nor details of the transaction. The court held that investigation had not established the amount was transferred from the account of the complainant and it was commissioned by the accused.

Similarly, in *GoN v. Ram Kumar Syangba* (071-CR-0429), a complaint was filed against the accused for sending obscene pictures and messages to the victim. The accused stated that the Facebook account used to forward inappropriate messages to the victim didn't belong to him. The prosecution has failed to substantially establish that the accused committed the offense. There was no proper investigation and forensic examination of evidence to prove the crime. The court acquitted the accused.

Misuse of section 47 of the ETA

In *GoN v. Bikas Maharjan* (2073-CR-0078), the court held that though there are some inappropriate words, conversation between two individuals can't be defamation under section 47 of ETA. Court ordered the trial under the Libel and Slander Act, 1959. In this case, the accused had harassed the complainant through threat text messages.

In *GoN v. Dambar Bd. Katuwal* (2067-CR-1272), the accused had threatened to kidnap him and his sons, rape his daughter, and asked for ransom through message. The court held that the messages were not disseminated publicly; hence it falls under the act of libel. Thus, the court held that Case should be trialed under Libel and Slander Act, 1959.

Lack of coherence in the cases involving freedom of expression

There is no coherence in the perception of the court in the cases involving freedom of expression. Though the court finely upheld the right to freedom of expression by condemning malicious prosecution of criticism against police in *GoN v. Abdul Rehman*, the shift in court's perception can be seen in the subsequent decisions. In *GoN v. Koshraj Neupane et.al. (2075-CR-1444)*, accused Koshraj Neupane and Bhavanath were the former employees of the National Human Right Council (NHRC). Neupane posted status on Facebook calling the Chairperson and Members of NHRC, "अराजक, कुशासक, र देश विभाजन गर्ने षड्यन्त्रकारी" roughly translated as "....., bad governor, and conspirator for cessation". Similarly, Bhavanath made following comments on the status: "अनुपराज शर्मा विपी कोइरालाका पिएका छोरा भएकोले जे गरेनी हुने, कित्ते गरेको मान्छेको संरक्षण गर्ने भनी आयोगका माननीय अध्यक्षज्यूको नामै उल्लेखगरी प्रकाशित गरेको" roughly translated as "Anup Raj Sharma is son of P.A. of B.P. Koirala, therefore he can do anything. The report is published with the honourable chairperson has himself ensured protection of the person who has commissioned forgery..." and "आफ्नो ज्वाईं मारिएको घटनाले पनि छुदैन, निरन्तर अन्याय गरीरहन्छ" roughly translated as, "even the death of own son-in-law has not melt his heart, he continuously does injustice". Bed Prakash Bhattarai, the secretary of NHRC filed a complaint against Neupane and Bhavanath for defaming the chairperson and the members of NHRC.

The court in this case held that every individual has the right to comment and criticize the work of NHRC and its officials. The right is protected under freedom of expression; however, such criticism should be made within the boundaries of public decency, morality and norms. It should not be made in a way to defame, spread hate, or cause mental distress. The court convicted the accused for their comments inappropriate to public decency and norms. However, while sentencing, the court held that, though the comments are inappropriate it didn't have the potential to cause any loss to the victims.

In the Rahman case, the verdict came with broader perception and upholding of freedom of expression while in the later, it lacked.

3.3. Punishment and Compensation

In this part, the punishment and compensation given by the court in different cases are discussed. The ETA, 2008 has provisioned fine, imprisonment or both as penalty for cybercrime under the Act. The Act has prescribed fines up to Rs. 100,000, imprisonment up to five years or both. The sentencing power is exercised by judges on their discretion as per gravity of offense.

3.3.1. Penalty

Among total 85 cases, penalty was sentenced in 63.5 percent cases (54 cases). The court sentenced penalty from Rs 500 to Rs 100 thousand. Penalty worth up to Rs 5,000 was sentenced in around 19 percent cases (16 cases). It was the most sentenced punishment. The maximum penalty ordered by the court was Rs. 100,000 in one of the cases. In around 31 percent cases (26 cases), the penalty was less than Rs 10,000. Similarly, in 55 percent of the total cases (47 cases), the penalty was less than Rs 25,000.

Table 9: Penalty

Penalty	No of Cases
Upto Rs 5,000	16
Rs 5,000 to 10,000	10
Rs 10,000 to 15,000	4
Rs 20,000	4
Rs 25,000	13
Rs 30,000 to 35,000	1
Rs 40,000	1
Rs 50,000	3
Rs 75,000	1
Rs 1,00,000	1
Total	54

3.3.2. Imprisonment

The case report states that the court has not been strict in sentencing imprisonment to the culprits. The 60 cases among 85, in which the court convicted, were accused for cybercrime, only in 40 cases, the accused were sentenced to imprisonment.

The maximum imprisonment sentence was of two years issued in three cases, while the minimum was 10 days, sentenced in two cases.

The convicts in nine cases were only sentenced to penalty. The five convicts received imprisonment less than 15 days, while 15 convicts were sentenced to imprisonment from 15 days to a month. Only 11 convicts were sentenced imprisonment more than three months up to two years. The quantum of sentences given by the court questions the relevance of hefty punishment up to one and half million penalty, or 15 years of imprisonment or both for cyber-enabled crimes under the Information Technology Bill.

Table 10: Imprisonment

Imprisonment	No. of Cases
No Imprisonment	20
Up to 15 days	5
15 days to 1 months	15
1 to 3 months	8
3 to 6 months	7
1 years	1
2 Years	3
Prosecution duration	1
Total	60

3.3.3. Compensation

The section 76 of the ETA has provisioned compensation for the victim to be recovered from the offender. Among the 60 cases in which accused were convicted, the court provided compensation to the victims of 57 percent cases (34 cases). In 39 percent cases (34 cases), the compensation was provided. The court refused to provide compensation in 27 percent cases (16 cases), among which, it explicitly held that

Lamentation as a ground for less punishment

In *GoN v. Prakash Lamichhane* (2072-CR-2745), the accused was prosecuted under section 47 of the ETA for creating a fake facebook profile of the victim and posting a nude picture naming her. The accused confessed the crime and lamented over his deeds. The court, while sentencing the accused, considered that the culprit was handicap and had already lost his job. He was sentenced: Rs 5,000 as penalty and Rs 10,000 as compensation, which was equal to the guarantee deposit for bail, and 10 days of imprisonment which he had already spent during prosecution.

Similarly, in *GoN v. Ishwori Regmi* (2073-CR-0415), the accused created fake Facebook profile (Nepali Sex Story & Nepali Mall Photos) and posted nude pictures of victim with inappropriate words. While sentencing the court considered the confession of accused, apology asked, lamentation over the offense as well as the fact that he was a student of Grade 11. He was sentenced Rs 3,000 as penalty, Rs 5,000 as compensation, and imprisonment of 17 days - which he had already spent during prosecution.

Punishing through the process

In *GoN v. Vajan* (2076-C1-0072), the accused influenced juvenile to commit the crime of online defamation. During prosecution, he was not granted bail by the court. Later he was acquitted by the KDC after spending six months and eight days in custody. The court held that the messages are not of the nature to libel someone or disgrace to morality.

Similarly, among the 34 judgments, where culprit was sentenced imprisonments (imprisonment was sentenced in 54 cases however, duration of custody was unclear in 20 cases), in 16 cases, the accused were sentenced to imprisonment for the period more than they stayed in judicial custody during prosecution of the case. While in eight cases imprisonment, the sentences was less than the period the accused was held in custody. Similarly, in 10 cases, the court sentenced imprisonment equal to the period the accused were in custody.

Furthermore, among the 21 cases in which the accused were acquitted, in 10 cases, the accused was in police custody for more than 15 days, and up to six months. But, in 10 cases, the data was unclear. (The judgments neither mentioned the duration of custody nor the date on which accused was arrested. Therefore, it was unclear to find out the period for which accused was in custody) This depicts that the accused are unnecessarily punished by the process of prosecution under ETA. And the judiciary is covering up inappropriate prosecution and investigation. This trend of punishing through the process is punishing individuals irrespective of the judgment, whether the accused is convicted or acquitted. It is worrying in deed.

there is no need for compensation in five cases. The compensation provided to the victims was Rs 100 thousand in maximum and Rs 5,000 in minimum. In 38 percent of cases (23 cases), victims received compensation up to Rs 25,000, among which, 26 percent (6 cases) and 30 percent (7 cases) victims received Rs 5,000 and Rs 10,000 respectively.

Table 11: Compensation

Compensation	No of Cases
Compensation	34
Not asked	10
No need of compensation	5
Not provided	11
Total	60

Several challenges to victim for compensation

There is a dichotomy in the attitude of the KDC to provide compensation to the victims. Out of 60 cases in which the accused were convicted, the victims received compensation only in 34 cases. The court denied compensation in 11 cases based on several grounds, i.e. for giving statement in court contradictory to the F.I.R. (GoN v. Guddu Kumar Sah, 2073-CR-0616), no estimate of loss mentioned in the charge sheet (GoN v. Kedar Bhatta, 2075-C1-0805). In GoN v. Changed (2075-C1-1416) the court held that the victim was not present in the court to disclose the estimate of loss faced by them. The same rationale for denying compensation is also upheld by the Appellate Court Patan in five appeal cases filed – seeking compensation. However, in some cases, without any disclosure of estimated loss, the court provided compensation to the victim.

The ignorant role of prosecution has also deprived victims of their right to compensation they are entitled to. Despite continuous refusal to provide compensation on the ground of non-disclosure of estimate of loss by the court, the prosecution has not disclosed the estimate of loss in the charge-sheet in many cases.

Similarly, prosecution has not asked for compensation in 10 cases. In the cases involving cyber-enabled crimes – most of which were related to privacy and integrity of the victim – compensation was essential to provide relief to the victims. While in five cases, the court held that there is no need to provide compensation to the victims.

It shows that the state and court have not prioritized the guarantee of relief to the victims via compensation. Compensation provided by court ranged from Rs 5,000 to Rs 100 thousand. In 38 percent of cases (23 cases), victims received compensation up to Rs 25,000, among which, 26 percent (6 cases) and 30 percent (7 cases) victims received Rs 5,000 and Rs 10,000 respectively. This compensation is not enough to even cover the expense of participating in a trial, which is essential to get justice. As a result, justice is getting expensive, and victims getting demotivated to file complaints against criminal offenses.

3.3.4. Confiscation of Device

The court has been ordering to confiscate the electronic device used for commission of cybercrimes in accordance with section 56 of the ETA.

3.4. Appeal

The Appellate Court Patan's decisions in 15 appeal cases were studied. Among those cases, 14 were filed by the Government of Nepal on behalf of the victim. In a remaining case, both the Government of Nepal and the accused filed an appeal for the decision. Among 14 appeals filed by the Government, five had asked for compensation but the Appellate Court Patan upheld the decision of the KDC to not provide compensation in nine cases. The Appellate Court reasoned that without presenting the actual amount of loss, the court can not evaluate it on its own. The aggrieved party should present an estimation of their loss to the court to get compensation. In addition to that, the court has also considered the absence of victim during trial to make her statement and nondisclosure of estimated loss a ground refusal.

Two appeals were filed against two decisions of the Kathmandu District Court, claiming the act of the accused does not fall under section 47(1) of Electronic Transaction Act, 2008. Thereafter, Appellate Court Patan upheld the decision of the KDC.

Again, two other appeals were made on the ground that the court did not evaluate evidence properly. Both these appeals were rejected by the court.

Similarly, an appeal was made against the decision of KDC, in which the device of the accused was not confiscated as per section 56 of the Act. The appeal was granted by the court, stating that the law provisioned confiscation of the device used for committing crime. KDC had sentenced the accused with fine and imprisonment.

Next, four appeals were made by the Government of Nepal on behalf of victims, being unsatisfied with the decision of the KDC. All four appeals were rejected.

In a case, appeal was made by both the victim as well as the accused. The accused appealed against the decision convicting him, while the victim side appealed asking for compensation. The court refused to accept the appeal from both, and thus upheld the decision of KDC.

CHAPTER 4: CONCLUSION AND RECOMMENDATION

4.1. Conclusion

The case study reveals that women are more vulnerable to cybercrimes while men are perpetrators in most of the cases. The result shows that women are victim in around 77 percent of cases while men are perpetrator in 93 percent cases. Adult (18-40 age group) is both the victim as well as perpetrator of such crimes.

Further, the results of study show that cyber-enabled crimes are mostly prosecuted under ETA as cybercrimes. These crimes are mostly defamation, and breach of privacy. There are general law i.e. Muluki Criminal Code, 2017 as well as specific laws to deal with these offenses. However, on the ground that electronic device or internet is used for commission of crime, these offenses are booked under ETA. The vague and over-broad provision in Section 47 of the ETA is broadly interpreted to prosecute such offenses. Complainants, police officials, and prosecutors are enticed by the high punishment provision under ETA.

Similarly, the investigation and prosecution by law enforcing agencies for crimes under section 47 of the ETA is inappropriate. The court has observed that offenses are unnecessarily prosecuted under ETA; the investigation is not satisfactory, and prosecutions are made on the basis of fragile evidences. The cases also present how law enforcing agencies misuse the provision to muzzle criticism of public personality and institutions. The finding of the study tends to question the relevance of the section 47 of ETA.

If we look at the trend of adjudication and sentencing, out of 60 cases in which court convicted the accused, it sentenced penalty in 54 cases while handed imprisonment in 40 cases. Similarly, among the 34 judgments, where culprit was sentenced imprisonments, in 16 cases, the accused were sentenced to imprisonment for the period more than they stayed in judicial custody during prosecution of the case. While in eight cases the sentences were less than the period the accused was held in custody. Further, in 10 cases, the court sentenced imprisonment equal to the period the accused were in custody. The punishments range from penalty of Rs. 500 to 100 thousand, and imprisonment up to two years – the punishment more than one year was sentenced in total four cases. This trend invalidates the need of high punishment to deal with cybercrimes – as argued by the State to defend the draconian provisions under IT Bill.

Similarly, the KDC holds exclusive jurisdiction over the cases prosecuted under ETA. It has created burden on the court, and the trials are consuming much time, thereby further victimizing the victims. Needless to reiterate, justice delayed is justice denied. The data shows that 57 percent of the cases (36 cases) in which place of incident was disclosed were from Kathmandu valley. The appeal jurisdiction is also exclusive. The result of the study shows that most of the appeals are made by the government side. The accused ones hardly exercise their appeal jurisdiction. Out of 15 appeal cases, in 14 cases appeal was made by prosecution while in one case both prosecution and defendant appealed.

The victims of cybercrimes are not getting proper compensation from the court. Court has denied the request for compensation on several cases on the ground that no estimate of loss was disclosed in the charge sheet. However, the same court has given compensation to victims despite the absence of such disclosure. It reflects the ignorance of prosecution to ensure compensation to the victim, as well as inconsistency in the judgment. Furthermore, the court has not provided reasonable compensation to the victims in most of the cases.

Hence, the study can further conclude that there is lack of clear understanding about the concept of cybercrime among the law enforcing authorities as well as the court. In the era dominated by the IT, every act of individual is getting associated with use of IT, and if the same are regarded as offenses, it is not possible to prosecute every crime under cyber law. The existing ETA as well as the proposed IT Bill has re-criminalized several offenses already addressed by general law i.e. Criminal Code, and other special laws like, Individual Privacy Act, 2018. Such re-criminalization with hefty punishment magnifies the chances for miscarriage of justice. The investigation, prosecution and adjudication of cybercrimes cases in Nepal also reflect that misuse of law. Therefore, all the concerned institutions, i.e. law making, implementing and adjudicating, everyone needs to own the onus to ensure safe cyberspace and ensure justice. For that, re-criminalization of cyber-enabled crimes should be refrained and investigation as well as prosecution should be conducted only as per relevant law.

4.2. Recommendations

To state

- i. Reconsider the provision with hefty punishment in different laws as it serves no purpose of justice other than chilling effect on right to freedom of expression of citizens.
- ii. Promulgate a comprehensive cyber law criminalizing cyber-dependent crimes in accordance with international cyber jurisprudence.
- iii. Build capacity of district courts to look after the cases of cybercrimes occurred in the respective districts
- iv. Promote digital literacy among public.
- v. Promote tolerance against criticism of public personalities and institution.

To Court

- i. Adjudicate the cases as per relevant laws, not use ETA haphazardly.
- ii. Present tolerant approach toward cases involving criticism of public personalities and institution, and protect and promote right to freedom of expression online.
- iii. Provide reasonable compensation to the victims.
- iv. Strengthen the capacity of judges on the issues of cybercrimes.

To Police

- i. The complaint against an individual should be filed as per relevant laws.
- ii. Investigation of cybercrimes needs to be done in a proper manner.
- iii. Tolerant approach must be adopted while registering or initiating criminal charge against individual for criticism of public personalities and institution.

To Public Prosecutors

- i. The prosecution of accused should be made as per relevant laws.
- ii. The prosecution should play active role to ensure compensation to the victims of cybercrimes.
- iii. In the cases involving defamation of public personality and individual, freedom of expression needs to be promoted.
- iv. Public prosecutors should prevent malicious prosecution under ETA.

To public

- i. Stay aware about cybercrimes and adopt safety measures.
- ii. Avoid misuse of social media and internet platforms.
- iii. Exercise right to freedom of expression in appropriate manner.

ANNEX - 1

Detail of judgements from Kathmandu District Court

S. N.	Decision Detail	Name of Case	Gender of Victim	Gender of Accused	Place of Incident	About Case	Jail during Prosecution	Decision	Fine	Imprisonment	Compensation	Reason for Decision
1	2073-CR-1726	GoN v. Hari Adhikari	Female	Male	Phidim/Kathmandu	Affair established by imposter used to fraud.	22 days	Convicted	25,000	23 days	5,000	Confession
2	2067-CR-1430	GoN v. Bhojraj Lingden	Female	Male	Kathmandu	Obscene picture of victim published.	more than 3 months 5 days	Acquitted	NA	NA	Not asked	Evidence doesn't satisfy
3	2070-CR-1157	GoN v. Yasodha Chaudhary	Female	Female	Sunsari	Threatening text messages	NA	Convicted	5,000	0	Not asked	Evidence satisfies
4	2073-CR-1270	GoN v. Be-nupraj Kuikel	Female	Male	Kathmandu	Nude picture published to stop girlfriend's marriage.	18 days	Convicted	10,000	19 days	25,000	Confession
5	2073-CR-0263	GoN v. Dimesh Kharel	Female	Female	NA	Nude photo published to revenge girlfriend's marriage.	1 month 10 days	Convicted	50,000	10 days	25,000	Confession
6	2074-CR-0532	GoN v. Prakash Bd. Rawal	Female	Male	NA	Threat to release intimate video.	20 days	Acquitted	NA	NA	NA	Evidence doesn't satisfy
7	2073-CR-1345	GoN v. Raj Bd. Bohora	Female	Male	Kailali	Dissimination of intimate video	6 months 25 days	Convicted	25,000	6 months	50,000	Statement of accused and evidences satisfy
8	2069-CR-2550	GoN v. Suresh Sharma Adhikari	Female	Male	Kathmandu	Email misused to leak secret information	Unclear	Acquitted	NA	NA	NA	Evidence doesn't satisfy
9	2069-CR-2771	GoN v. Tika Bd. Magar et. al.	Female	Male	Udayapur	Nude pictures of victim disseminated	Unclear	Acquitted	NA	NA	NA	Evidence doesn't satisfy
10	2067-CR-1472	GoN v. Nigel John Pogmore et.al.	Company	Male	NA	Sacked employee misuse email and website to make loss worth Rs 30 million	NA	Adjourned	NA	NA	NA	NA

S. N.	Decision Detail	Name of Case	Gender of Victim	Gender of Accused	Place of Incident	About Case	Jail during Prosecution	Decision	Fine	Imprisonment	Compensation	Reason for Decision
11	2068/69-CR-2642	GoN v. Meghraj Timilsina	Female	Male	Kathmandu	Obscene contents and nude pictures of victim posted through fake profile.	28 days	Convicted	25,000	3 months	Not provided	Evidence satisfies
12	2068-CR-1150	GoN v. Bikas Thapa	Female	Male	NA	Inappropriate messages forwarded to victim	more than 1 month 8 days	Acquitted	NA	NA	NA	Evidence doesn't satisfy
13	2069-CR-1456	GoN v. Bidur Prakash Bhatta	Female	Male	Kathmandu	Obscene messages sent to victim	0	Acquitted	NA	NA	NA	Evidence doesn't satisfy
14	2073-CR-0078	GoN v. Bikas Maharjan	Male	Male	Lalitpur	Harassment and threats to abduct and murder.	Unclear	Acquitted	NA	NA	NA	Inappropriate prosecution
15	2072-CR-0743	GoN v. Ram Kumar Shrestha et.al.	Male	Male	Sindhupalchowk	Condolence message for victim posted on Facebook. Another commented on the same post.	Unclear	Convicted	10,000	0	10,000	Evidence satisfies
16	2070-CR-2079	GoN v. Abdul Rehman	Male	Male	Saptari	Critical comment posted on Facebook	20 days	Acquitted	NA	NA	NA	Evidence doesn't satisfy
17	2071-CR-1188	GoN v. Prahallad Adhikari	Female	Male	Kathmandu	Indecent contents including nude pictures published with fake profile.	Unclear	Convicted	10,000	1 month	Not provided	Evidence satisfies
18	2070-CR-01367	GoN v. Charina Cabrido	Male	Female	Kathmandu	Harassment and attempts of defamation made upon refusal to marry.	Unclear	Acquitted	NA	NA	NA	Evidence doesn't satisfy
19	2072-CR-2342	GoN v. Khimananand KC	Institution	Male	Lalitpur	Morphed obscene pictures of the Prime Minister and the President uploaded on Twitter.	30 days	Convicted	75,000	0	Not provided	Confession
20	2067-CR-1809	GoN v. Saroj Khatri K.C.	Female	Male	Lalitpur	Morphed obscene picture posted on internet.	23 days	Convicted	20,000	0	25,000	Evidence satisfies
21	2070-CR-1623	GoN v. Suddendra Raut	Female	Male	NA	Inappropriate comments and message on Facebook.	Unclear	Convicted	5,000	1 year	75,000	Statement of accused and evidences satisfy

S. N.	Decision Detail	Name of Case	Gender of Victim	Gender of Accused	Place of Incident	About Case	Jail during Prosecution	Decision	Fine	Imprisonment	Compensation	Reason for Decision
22	2073-CR-0619	GoN v. Kumar Koirala	Female	Male	Kathmandu	Dissemination of nude pictures and obscene messages.	21 days	Convicted	25,000	1 month	10,000	Statement of accused and evidences satisfy
23	2071-CR-2031	GoN v. Samir Khanal	Female	Male	Kapilbastu	Nude pictures disseminated and posted on Facebook	25 days	Convicted	10,000	25 days	Not asked	Evidences satisfy
24	2073-CR-0367	GoN v. Sabin Rijal	Female	Male	Lalitpur	Obscene messages sent causing annoyance	22 days	Convicted	8,000	15 days	Not asked	Statement of the accused.
25	2072-CR-0214	GoN v. Deven-dra Khatri	Female	Male	Kathmandu	Obscene and threatening messages to victim.	Unclear	Convicted	25,000	6 months	50,000	Evidence satisfies
26	2074-CR-1247	GoN v. Appu Basnet	Female	Male	Sarlahi	Inappropriate messages sent to relatives through fake profile of victim.	13 days	Convicted	5,000	15 days	5,000	Confession
27	2073-CP-0065	GoN v. Suman Rai	Male	Male	NA	Threat and defamation via social media for being critical.	0	Adjourned	NA	NA	NA	NA
28	2072-CR-3094	GoN v. 3094	Female	Male	Lalitpur	Obscene messages sent to girlfriend causing annoyance.	22 days	Convicted	25,000	0	Not provided	Confession
29	2073-CR-0616	GoN v. Guddu Kumar Sah	Female	Male	Kathmandu	Messages sent causing sexual abuse, annoyance and defamation	2 months 10 days	Convicted	15,000	5 months	Not provided	Evidence satisfies
30	2073-CR-0089	GoN v. Padma Khadka	Female	Male	NA	Picture with obscene words uploaded on fake profile of victim to revenge betrayal.	15 days	Convicted	15,000	0	5,000	Confession
31	2072-CR-1840	GoN v. Nikhil Govinda	Female	Male	Lalitpur	Obscene pictures and inappropriate message sent.	15 days	Convicted	5,000	0	15,000	Evidences satisfies
32	2070-CR-1292	GoN v. Bijay Basnet et.al.	Female	Male	Kathmandu	Threatening messages and obscene pictures sent via Facebook	27 days	Convicted	1,000	0	Not granted	Evidence satisfies
33	2067-CR-1272	GoN v. Dambhar Bd. Katurwal	Male	Male	Dolkha	Threat to abduct son and rape daughter, asked for ransom.	Unclear	Acquitted	NA	NA	NA	Inappropriate prosecution

S. N.	Decision Detail	Name of Case	Gender of Victim	Gender of Accused	Place of Incident	About Case	Jail during Prosecution	Decision	Fine	Imprisonment	Compensation	Reason for Decision
34	2077-CZ-0014	GoN v. Changed et.al.	Female	Male	Dhading	Nude picture posted on social media facebook, due to which victim committed suicide. Accused 1 sent to accused 2 who published it.	8 months 6 days	Convicted	4,000	4 months	17000	NA
35	2072-CR-0066	GoN v. Subas Kumar Rai	Male	Male	NA		0	Adjourned	NA	NA	NA	NA
36	2073-CR-0100	GoN v. Ganga Singh Chand Thakuri	Female	Female		Fake Facebook profile used to publish morphed obscene pictures and videos.	27	Convicted	20,000	2 months	1,00,000	Statement of accused and evidences satisfy.
37	071-CR-0429	GoN v. Ram Kumar Syangba	Male	Male	NA	Obscene pictures posted on fake Facebook profile of victim.	22 days	Acquitted	NA	NA	NA	Evidence doesn't satisfy
38	2071-CR-0546	GoN v. Baburam Shrestha	Female	Male	Kathmandu	Facebook account was hacked to send inappropriate messages to boys.	9 days	Convicted	5,000	15 days	Not provided	Evidence doesn't satisfy
39	2071-CR-2229	GoN v. Sushant Shrestha	Female	Male	Kathmandu	Name and contact no of victim published with inappropriate words.	6 days	Convicted	5,000	0	Not provided	Confession
40	2071-CR-2089	GoN v. Bikram Gupta	Female	Male	Kathmandu	Obscene pictures of victim shared.	Unclear	Convicted	3,000	0	Not provided	Evidence satisfies
41	2072-CR-0109	GoN v. Akbar Bd. Bista et.al.	Female	Male	kanchanpur	Defamatory content posted on Facebook	Unclear	Convicted	25,000	0	10,000	Statement of accused and evidences satisfy.
42	2072-CR-2745	GoN v. Prakash Lamichhane	Female	Male	Dang	Nude pictures posted on name of victim on a fake Facebook ID.	12 days	Convicted	5,000	10 days	10,000	Confession
43	2073-CR-0415	GoN v. Ishwori Regmi	Female	Male	Kathmandu	Nude pictures of victim posted on fake Facebook ID.	17 days	Convicted	3,000	17 days	5,000	Confession
44	2074-CR-1228	GoN v. Sunita G.C.	Female	Female	Chitwan	Morphed nude pictures were posted on fake Facebook profile.	25 days	Convicted	15,000	45 days	5,000	Evidences satisfies

S. N.	Decision Detail	Name of Case	Gender of Victim	Gender of Accused	Place of Incident	About Case	Jail during Prosecution	Decision	Fine	Imprisonment	Compensation	Reason for Decision
45	2072-CR-0386	GoN v. Mahesh Kumar Sharma	Female	Male	Janakpur	Morphed obscene picture posted on fake Facebook ID.	Unclear	Convicted	50,000	0	Not asked	Confession
46	071-CR-1563	GoN v. Bikas Kumar Sah	Female	Male	NA	Morphed obscene pictures sent to victim's brother with threatening messages	more than 45 days	Acquitted	NA	NA	NA	Evidence doesn't satisfy
47	21-39-2069-2278	GoN v. Bhuvan Shrestah	Female	Male	Lalitpur	Intimate videos posted with indecent words on fake Facebook ID	Unclear	Convicted	1,00,000	2 years	1,00,000	Evidence satisfies
48	2072-CR-3671	GoN v. Bishal Karmjit	Female	Male	Kathmandu	Obscene messages sent from fake Facebook ID using victim's picture of victim.	Unclear	Acquitted	NA	NA	NA	Evidence doesn't satisfy
49	2070-CR-0546	GoN v. Roshan Gajurel	Female	Male	Kathmandu	Morphed obscene picture posted on fake Facebook profile with her contact number.	17 days	Acquitted	NA	NA	NA	Evidence doesn't satisfy
50	2072-CR-3327	GoN v. Keshav Gautam et. al.	Male	Male	NA	Account hacked to transfer fund.	16 days	Acquitted	NA	NA	NA	Evidence doesn't satisfy
51	2072-CR-3517	GoN v. Prem Bd. B.K.	Institution	Male	NA	Facebook page hacked and merged it with its own.	1 month 14 days	Convicted	0	23 days	1,00,000	Evidence satisfies
52	2068-CR-1556	GoN v. Dillinath Subedi	Female	Male	Kathmandu	Obscene pictures was taken without consent, and published on internet.	Unclear	Convicted	20,000	0	15,000	Statement/ Evidences satisfies
53	2068-CR-2188	GoN v. Prabin Prajapati	Female	Male	NA	Intimate video made without consent, and sent to victim.	6 months 10 days	Convicted	10,000	6 months	10,000	Statement of the accused.
54	2072-CR-1839	GoN v. Ram Chandra Bhattarai	Female	Male	NA	Morphed obscene pictures of victim disseminated on internet	21 days	Convicted	10,000	21 days	10,000	Evidence satisfies
55	2071-CR-1346	GoN v. Ranjit Pd Misra et.al.	Female	Male	Kathmandu	Asked for money with threat to release obscene pictures.	16 days	Convicted	25,000	0	Not asked	Evidence satisfies

S. N.	Decision Detail	Name of Case	Gender of Victim	Gender of Accused	Place of Incident	About Case	Jail during Prosecution	Decision	Fine	Imprisonment	Compensation	Reason for Decision
56	2072-CR-3473	GoN v. Rohan Shrestha	Female	Male	Kathmandu	Indecent picture and videos with accused published on instagram	Unclear	Convicted	25,000	0	5,000	Statement of accused and evidences satisfy
57	2072-CR-3676	GoN v. Shant Khatri KC	Male	Male	Dolkha	Status on Facebook - 'whoever brings the head of victim shall get Rs. 1 million prize'	8 days	Convicted	11,000	0	Not provided	Confession
58	2072-CR-0720	GoN v. Ram Saraf et.al.	Male	Male	Birjung	Published defamatory news about the victim.	More than 5 months	Convicted	500 each	0	Not asked	Confession
59	2075-C1-1393	GoN v. Anish Ratna Shrestha	Female	Male	Kathmandu	Pictures of victim posted on Pornhub.	16 days	Convicted	40,000	One month	50,000 each	Confession
60	2075-C1-1168	GoN v. Ajay Lama	Female	Male	Kathmandu	Picture of victim posted on social media with "Mero Life Vanekai Yaha Miss you Mishra"	21 days	Convicted	0	20 days	No substantial loss to get compensation	Evidence satisfies
61	2075-C1-0805	GoN v. Kedar Bhatta	Female	Male	Kailali	Facebook posts made and messages sent threatening victim not to marry other.	25 days	Convicted	5,000	25 days		statement and evidence satisfy
62	2075-C1-0890	GoN v. Pradip Paudel et.al	Female	Male	Tanahu	Firfined's nude pictures were posted on Facebook and sent to her father.	Unclear	Convicted	0	20 days/14 days	10,000	Evidence satisfies
63	2075-C1-0778	GoN v. Bhimraj Giri	Female	Male	Banka	Inappropriate words for victim posted Facebook.	21 days	Convicted	25,000	1 month	20,000	Confession
64	2075-C1-0639	GoN v. Hari Prasad Manandhar	Institution	Male	Kathmandu	Fake news - "Bad News: Prime Minister KP Oli died in hospital, heartfelt condolence".	41 days	Convicted	25,000	40 days	No need for compensation as victim is an institution	
65	2075-CR-1444	GoN v. Koshraj Neupane et.al	Institution	Male	Kathmandu	Chief office holders of NHRC criticised with harsh accusation	Unclear	Convicted	2,000	0	No need for compensation as victim is an institution	statement and evidence satisfy

S. N.	Decision Detail	Name of Case	Gender of Victim	Gender of Accused	Place of Incident	About Case	Jail during Prosecution	Decision	Fine	Imprisonment	Compensation	Reason for Decision
66	2075-C1-0037	GoN v. Ram Maharjan	Female	Male	Lalitpur	Nude pictures of victim published and disseminated on Facebook.	21 days	Convicted	25,000	21 days	25,000	Confession
67	2075-C1-1904	GoN v. Indra Kumar Yadav	Male	Male	Shirha	Inappropriate words for the victim.	2 months 6 days	Convicted	20,000	0	25,000	Evidence satisfies
68	2075-C1-1936	GoN v. Sambhu Bd. Khadka	Female	Male	Lalitpur	Deceived victim through fake Facebook profile and attempted to rape her.	Unclear	Acquitted	NA	NA	NA	Evidence doesn't satisfy
69	2075-C1-0333	GoN v. Sunita Thapa et.al.	Female	Female/ Male	Lalitpur	Victim harassed by sending different obscene messages, photos, videos.	11 days	Convicted	10,000/7000	2 months	Not asked	Evidence satisfies
70	2075-CR-0069	GoN v. Nagen-dra Gadal	Female	Male	Sunsari	Nude pictures uploaded on facebook	23 days	Convicted	33,000	33 days	50,000	Confession
71	2076-C1-0200	GoN v. Bhim Sundas	Female	Male	Sindhupal-chowk	Not arrested	Unclear	Adjourned	NA	NA	NA	NA
72	2075-C1-0066	GoN v. Manoj Kariki	Female	Male	Morang	Nude pictures of wife was disseminated and posted on Facebook with derogatory remarks	2 months 2 days	Convicted	10,000	6 months	50,000	Statement of accused and evidences satisfy.
73	2076-C2-0063	GoN v. Dibas Shrestha	Female	Male	NA	Inappropriate defamaotry status on fake Facebook profile.	Unclear	Acquitted	NA	NA	NA	NA
74	2075-C1-1574	GoN v. Rishi Pariyar	Female	Male	NA	Fake Facebook ID with victim's morphed obscene picture was created.	22 days	Convicted	25,000	2 months	50,000	Evidence satisfies
75	2076-C2-0081	GoN v. Bantava Rai et.al.	Institution	Male	NA	Troll on PM and President was posted.	Unclear	Acquitted	NA	NA	NA	Evidence doesn't satisfy
76	2075-CR-0194	GoN v. Durga Bd. Ramdam	Female	Male	NA	Morphed obscene pictures posted and disseminated to her relatives.	Unclear	Acquitted	NA	NA	NA	Evidence satisfies
77	2076-C2-0074	GoN v. Chandra	Institution	Male	Sunsari	Video of PM and President morphed - making it derogatory and defaming.	Unclear	Convicted	5,000	Prosecution duration	No need for compensation as victim is an institution	Confession

S. N.	Decision Detail	Name of Case	Gender of Victim	Gender of Accused	Place of Incident	About Case	Jail during Prosecution	Decision	Fine	Imprisonment	Compensation	Reason for Decision
78	2076-C1-0073	GoN v. Changed	Female	Male	Kathmandu	Fake Facebook account used to send defaming message to victim's husband.	20 days	Acquitted	NA	NA	NA	Evidence doesn't satisfy
79	2076-C1-0072	GoN v. Vajan	Female	Male	Kathmandu	Juvenile influenced to commit online defamation	6 months 8 days	Acquitted	NA	NA	NA	Evidence doesn't satisfy
80	2076-C1-0488	GoN v. Changed	Female	Male	Banke	Morphed obscene pictures of victim was posted on facebook.	3 months 20 days	Convicted	0	2 months	No need for compensation as both perpetrator and victim are juvenile	No reason for Decision
81	2075-C1-1416	GoN v. Changed	Female	Male	NA	Obscene messages to victim and shared her picture on fake facebook profile with derogatory remarks.	13 days	Convicted	2,000	10 days	The victim was not present to give her statement, hence claim doesn't meet.	Confession
82	2076-C2-0254	GoN v. Changed et.al.	Female	Male	Kavre	Victim raped and rape video posted on adult sites.	22 days	Convicted	0	2 years	Not asked	Evidence satisfies
83	2076-C2-0253	GoN v. Changed et.al.	Female	Male	Kavre	Victim raped and the video posted on adult sites.	22 days	Convicted	0	2 years	Not asked	Confession
84	2075-C1-1417	GoN v. Krishna Bd. Thing	Male	Male	NA	Threatening and indecent messages, and obscene video sent to victim.	8 days	Convicted	50,000	0	30,000	Evidences satisfies
85	2076-C2-0184	GoN v. Pradip KC	Female	Male	NA	Obscene pictures of victim morphed and pictures and contacts posted on pornhub.	2 months 28 days	Convicted	10,000	2 months	25,000	Evidence satisfies

ANNEX - 2

Detail of judgements from Appellate Court Patan

Name of Case	Issue of Appeal	Decision	Reason for Decision
GoN v. Basuram Shrestha	To provide compensation	Appeal Rejected	Estimate of loss not disclosed
GoN v. Pradip KC	Pradip - Email doesn't fall under publication or dessimination. GoN - for compensation.	Appeal Rejected (Acquitted)	Email doesn't fall under publication and dessimination.
Prabin Prajapati v. GoN	To provide compensation	Appeal Rejected	Crime is established by evidences
GoN v. Charina Cabrido	The act is an offense under section 47(1)	Appeal Rejected.	Sending email on issue relating fairly dispute can't be claimed a crime under ETA
GoN v. Dambar Bd. Katuwal	The act is offense under under section 47(1).	Appeal Rejected	Sending message privately can't be accepted as publication or dessimination.
GoN v. Bidur Prakash Bhatta	Evidences substantiate the crime	Appeal Rejected	The SMS doesn't prove that accused forwarded the obscene video and messages.
GoN v Suresh Sharma Adhikari	The accused misused the email to leak secret information of company	Appeal Rejected	No misuse as regisnation was not accepted. Cann't show what information were leaked and how much loss took place
GoN v. Surendra Raut	To confiscate the mobile used by accused to commit the crime.	Appeal Granted	Law has provision to confiscate the device used for crime.
GoN v. Sushant Shrestha	To revise the decision of KDC to return certain devices, and to provide compensation	Appeal Rejected	Devices were not used for crime and estimate of loss is not disclosed.
GoN v. Meghraj Timilsina	To provide compensation	Appeal Rejected	Estimate of loss is not disclosed and loss is not proved.
GoN v. Ram Kumar Syngba	Inappropriate evaluation of evidences	Appeal Rejected	Forensic report doesn't prove the claim. Can't be convicted on the basis of charge sheet.

Name of Case	Issue of Appeal	Decision	Reason for Decision
GoN v. Prahlad Adhikari	To provide compensation	Appeal Rejected	Court can't make party compensate by evaluating the loss.
GoN v. Bikas Thapa	Against the decision of KDC acquitting accused	Appeal Rejected	Unnecessary prosecution is loss of state's means and resources as well as causes harassment to public.
GoN v. Abdul Rehman	Against the decision of KDC acquitting accused	Appeal Rejected	To express concern on social media relating weak security system is exercise of FoE
Rajni Singh v. Bikas Kumar Singh	Not satisfied by the decision to acquit	Appeal Rejected	Evidence doesn't prove. Victim was not present in court to testify. Message not disseminated publicly.

Note: Complete judgment on the above cases are available at Freedom Forum's library.

Freedom Forum is an independent, non-governmental and not-for-profit civil society organization working for the cause of social accountability, democracy and human rights focused on press freedom, freedom of expression and right to information in Nepal. Incepted in 2005, Freedom Forum has emerged as a prominent national organization in promoting access to information and freedom of expression through dialogue, research, training, public advocacy and campaign and programme implementation. Currently, the organization is working on the issues of public finance management, budget transparency, open data and aid governance, political and parliamentary accountability, freedom of expression online, cybercrime, cyber policy and open government partnership (OGP) based on its on-hand experience and learning.



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