

Response of the Government of Nepal to Special Rapporteur on the protection of the right to freedom of opinion and expression

1. a) What barriers, challenges and threats do women in the public sphere face in exercising their freedom of opinion and expression online and offline?

The Government of Nepal (GoN) has not imposed any restrictions on freedom of opinion and expression to its citizen in Nepal. Nepal acknowledges the freedom of expression and opinion as one of the prerequisites of good governance. There is no obstacle or challenge with regard to freedom of speech.

In practice, Nepalese society is patriarchal. Mostly in remote areas, women are still considered as subordinates to men, and the existence of women is not fully accepted either in decision-making or while dealing with important matters inside the family and even outside. Although representation of women of urban areas in public, political, mass media, and business is commendable, many women still have shared their experience of being restricted for exercising their right to freedom of opinion and expression compared to the male counterparts. In particular, women are facing the following types of disruptions, difficulties, and challenges:

- **Political Sector:** In the political sector, women consist of 33 percent participation with 34.4 percent in the provinces, and 41 percent at the local levels. Nepal is considered a country with good participation of women in politics. However, some female parliamentarians have said that they are not able to express their opinions strongly due to a lack of information on the subject matter, educational level, and lack of confidence.

Whereas, for other female politicians exercising freedom of opinion and expression is seen as a family affair as they do not want to speak openly due to pressure from their family members. Particularly, the Madhesi female leaders in the Terai region have shared such thoughts in the women's empowerment programs organized by the National Women Commission. Female politicians and actors are also reluctant to speak in public since they are mostly questioned about their personal lives rather than professional ones.

- **Journalism Sector:** Around 24 percent of the total journalists in the country are female. Freedom of speech is not restricted in Nepal except in cases where the Constitution prohibits the expression of opinion against the State. However,

female journalists often face threats, harassment including sexual harassment, including safety matters during the coverage of news in the field in the odd hours.

- **Women Rights Activists and Feminists:** Women Human Right Defenders are free to express their thoughts fearlessly but sometimes they are threatened themselves and are also given threats of harming their families by various groups. Such threats occasionally trouble women activists to freely advocate for women rights.

In general, abuses, harassment, trolling, attacks on sexuality, surveillance, threats, and discrimination based on morality, cyber harassment, manipulation of images, nonconsensual distribution of personal online images through email, mobile phones, social platforms, etc. are the hurdles that women and girls experience in their journey towards freedom of expression and opinion.

(b) What are the distinct challenges faced by those who experience multiple and intersecting forms of discrimination?

As per the preamble of the Constitution, Nepalese society is multicultural, multi-ethnic, and multi-religious society. Our Constitution has ensured the right to social justice by ending gender discrimination and the rights of all citizens to live with dignity and the right against untouchability and discrimination as the fundamental rights. Despite constitutional and legal guarantees against discrimination, women particularly from the minority communities such as Dalit community, Muslim Community, and Madhesi community face prohibition from expressing their views freely in the name of culture and religion. In the remote areas of Nepal, women during menstruation and child-delivery are compelled to stay in a chhaupadi (shed) with a belief that if they don't do so the god will be upset, and bad omen will come to their family. Though many women and girls of remote areas are reluctant and have expressed their views that such practice should be stopped, they are bound to follow this harmful practice against their wish and their voices are not heard.

Less opportunities for women as speakers (listeners only); tendency to discourage women; lack of access and control over financial resources and threatening for expressing their views are some other challenges that women continue to face.

c) How have the pandemic, economic crises and recent political unrests affected women's ability to communicate, protest and access information online and offline?

Patriarchal society and socio-cultural stigma, such as fear of being discarded from their family and society, fear of disclosure of their identity, fear of shame, lack of education,

poverty, lack of awareness are some of the barriers that women and girls face while reporting and seeking justice. An exponential rise in the cases of violence against women and girls both online and offline has been reported. Limited access to mobile and internet, coupled with the fact that they were forced to live with the perpetrator, meant that they were at high risk but had no means to report the violence. This left a severe psychological impact on them. Women who had access to virtual means were able to express their views online and attend the virtual meetings, however, women who did not have access to online media were at the risk of violation.

Although, restriction on movement, disruption to public services was halted during the lockdown, which was to prevent the spread and transmission of COVID-19 pandemic, online communication, protest, and access to information online was not restricted. Even during the lockdown, online complaint registration and 24 hours helpline numbers were operated. Gender Responsive Guideline has been formulated and implemented to respond COVID-19 pandemic, awareness campaigns are aired on radio, television, newspaper, and digital platforms. The victims are provided psychosocial and legal counseling, shelter services by the National Women Commission and shelter homes. The hospital-based One-Stop Crisis Management Centers are designated to address the gender-based violation during COVID-19 in all the provinces. Nepal Police Cyber Crime Bureau has made it easier for the victim of the cyber-crime to file a complaint by sending an email to cyberbureau@nepalipolice.gov.np.

2. Can you provide examples or information on ways in which freedom of opinion and expression has been abused or appropriated to undermine women's human rights?

In Nepal, women in the power are subjected to various kinds of character assassination and such a trend is more prevalent against women in the political arena. Their words are manipulated, and extreme scrutiny is led in their private life rather than their work. Recent trend shows that women's social media is scoured for images that can be exploited and published to shame and embarrass, thus silencing their voice. Online content is also used to bully, blackmail, and send threats to women, making it a public question, the integrity of women.

3. What in your view are the key elements of a gendered perspective on the human right to freedom of opinion and expression? What would a feminist perspective add to the understanding of this right?

The key elements regarding the right to freedom of expression from a gendered perspective are:

- Equality and equity
- Freedom of speech and expression
- Personal safety
- Listening and recognizing women's opinions
- End of harassment including sexual harassment
- Equal access to opportunity
- Access to Justice

It ensures that women and sexual minorities will be able to practice the right to freedom of opinion and expression as any other. It will examine how women and sexual minorities can share their opinions freely or without any obstacles. It will also explore how more women can feel vocal or teach women to be thought leaders. For example, many women feel discomfort in sharing their thoughts as they have been taught to assess risk in doing so. Society, family, and reputation precede their voice. A feminist perspective examines what factors affect a woman in sharing her opinion and works to abolish that. In time, this will create a platform where people of all gender can share their thoughts equally.

4. **Do you see any legal gaps, inconsistencies or controversies that should be clarified in this report, e.g., between protecting the right to freedom of expression and protecting women from ICT violence? Please indicate any specific issues in the international legal framework that in your view would benefit from further analysis in this report.**

Nepal has enacted and implemented the legislation for preventing, prohibiting, and responding to all forms of abuse and violations against children and women online. However, women and children are seen at high risk of being abused online. The international community must work in solidarity to protect ICT violence against women. The international law should explicitly prohibit and criminalize child pornography, stigmatization, abuse harassment, trolling, attack on sexuality of women.

5. a) **What legislative, administrative, policy, regulatory or other measures exist in your State to promote and protect women's freedom of opinion and expression online and offline? To what extent do these measures take into account intersectionality?**

In order to protect and promote rights to freedom of opinion and expression of women, the GoN has taken several initiatives. Prevailing laws provide adequate safeguards to protect the right to freedom of opinion and expression of women. The legal safeguards apply to every person residing in the country including journalists, media workers, and human rights defenders.

The Constitution guarantees freedom of opinion and expression as a fundamental right to every citizen. A reasonable restriction can be imposed on this right only if any act undermines the sovereignty, territorial integrity, national and independence of Nepal or the harmonious relations between the Federal Units or the people of various castes, tribes, religions or communities or incite caste-based discrimination or untouchability or on any act of disrespect of labour, defamation, contempt of court, incitement to an offence or on any act which may be contrary to public decency or morality. Similarly, the protection of freedom of expression is also ensured in rights to communication under Article 19 of the Constitution.

The Act Relating to Press and Publication, 1991; Press Council Act, 1991; National Broadcasting Act, 1993; Act relating to Working Journalist, 1995; Media Council Act, 2020 and Information Technology Act, 2020; Right to Information Act, 2008; Electronic Transaction Act, 2007; Libel and Slander Act, 1959 are some of the important laws enacted for ensuring freedom of expression and opinion. Under Sec. 3 of Libel and Slander Act, 1959, of Nepal, if a person, by way of writing or words or signs or understandable symbols accuses another person or publishes the matter with intent to damage another person's character or knowingly or having reason to believe that it will make such a damage, the person shall be deemed to have libeled that other person. Section 47 (1) of the Electronic Transaction Act, 2008 provides that if any person publishes or displays any material in the electronic media including computer, internet which are prohibited to publish or display by the prevailing law or which may be contrary to the public morality or decent behaviour or any types of materials which may spread hate or jealousy against anyone or which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes and communities, or teasing, harassing, insulting women or any other kind of indecent act is liable to the punishment with the fine not exceeding One Hundred Thousand Rupees or with the imprisonment not exceeding five years or with both.

Section 15 of the National Broadcasting Act, 1993 also prohibits the broadcasting of advertisements or materials misinterpreting, disregarding, insulting, and devaluing any tribe, language, religion, or culture.

The Ministry of Home Affairs has also issued an Order on Security and Protection of Human Rights Defenders. Likewise, the Code of Conduct for Journalists covers provisions against sexual abuse; Communication Guideline, 2076 also encourages dignified communication and focuses that news and communications need to be

accountable, effective and result oriented. Similarly, the state has a policy of adhering to the principle of participatory inclusion to maintain social justice. The Constitution prohibits any form of discrimination on the basis of gender. The right to information is provided. The arrangement has been made for women to participate in all state bodies on the basis of the principle of proportional representation.

Thematic Ministries have been formulating various policies, plans, and programs for women empowerment every year. Ministry of Communication and Information Technology is the line ministry responsible for formulation and implementation of plans, policies, programs regarding rights to communication, right to information, full press freedom guaranteed by the Constitution. The National Planning Commission has prepared a report including the Gender Development Index and Gender Inequality Index in Nepal; Human Development Report 2020, giving priority to gender issues.

The GoN has not only ratified Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) but has also used it at the national level. Based on the same, various laws and regulations have been amended. The GoN is also implementing the recommendations made by the CEDAW Committee.

b) In your view how effective are they in supporting women's empowerment and public participation? Please provide statistical data and judicial decisions, where available.

The acts, policies, rules issued by the GoN have given priority for addressing and supporting women's empowerment and public participation regarding exercising the right to freedom of opinion and expression. Likewise, the Commissions, ministries, Nepal Police, concerned agencies all have been assigned responsibilities and duties for protection, promotion and supporting women's empowerment.

The judiciary of Nepal has made some important decisions to uphold gender justice as follows:

- His Majesty's Government against Sharmila Parajuli: - Directive Order issued to make a law against sexual harassment in the workplace 2060/11/29
- His Majesty's Government against Sapana Pradhan Malla: Directive order issued in the name of the government to maintain confidentiality on the issue of women and children. As per the directive order The Procedural Guidelines for Protecting the Privacy of the Parties in the Proceedings of Special Types of Cases, 2007 was enacted which provides for maintaining

confidentiality including code names of victims and in-camera hearing of the cases involving women such as rape, abortion, sexual abuse, trafficking in human beings, incest, and violence against women.

- Government of Nepal against Prakash Mani Sharma: - Directive order issued in the name of the government to make a law to control sexual harassment in the entertainment sector.
- Government of Nepal against Roshni Poudel also: - In the context of COVID 19, a directive order has been issued in the name of the government on the issue of women's security and access to justice.
- Government of Nepal vs. Bikash Thapa (Maina Dhital) The defendant was arrested, and a charge sheet was submitted at Kathmandu District Court under Section 47 of the ETA, 2008. The major charge that was filed by the applicant was that the defendant harassed the plaintiff sending sexually explicit pictures and words to her email ID and harassed her for a long time. But the accused was acquitted as there was no sufficient evidence to establish the charge.

6. What legal administrative, policy or other measures exist in your State to protect women from sexual and gender-based violence and harassment online? How effective are they? What impact have they had on women's empowerment and public participation, including freedom of expression?

Some measures in place are:

- Electronic Transaction Act, 2008
- Criminal Code, 2017
- Privacy Act, 2018
- Domestic Violence (Crime and Punishment) Act, 2009
- Prevention of Sexual Harassment in the Workplace Act, 2015
- The Anti-witchcraft (Crime and Punishment) Act, 2015
- Crime Victim Protection Act, 2018
- Act Relating to Press and Publication, 1991;
- Press Council Act, 1991;
- National Broadcasting Act, 1993;
- Act relating to Working Journalist, 1995;
- Media Council Act, 2020

- Information Technology Act, 2020;
- Right to Information Act, 2008;
- Electronic Transaction Act, 2007;
- Libel and Slander Act, 1959
- **Policy arrangements:** National Gender Policy 2020
- **Administrative arrangements: Annual programs of Federal, State and Local Level Governments:** Periodic Plans; Sustainable Development Goal; Government Policies and Programs; Gender Budget of the Central Government is 38.27 percent of the total budget of the year; Women, Children and Senior Citizens Service Centers; One-Stop Crisis Management Centers in 77 hospitals across the country; Sexual Violence Control Network Committee from Ward to Municipal.

7. What do you believe states should do to a) uphold women's right to freedom of opinion and expression b) protect women from violence, harassment, and intimidation online and offline and c) promote women's public participation?

Being self-reliant in every sphere of social life enables women to exercise their right to freedom of opinion and expression without hindrance. Thus, women should be economically, socially, and politically empowered.

A. Uphold women's right to freedom of opinion and expression

The state has power, resources, and means. There are political and administrative structures to implement the policy. Therefore, the state has a key role to play in empowering women by protecting and promoting their freedom of thought and expression, building capacity and promoting meaningful participation of women in all spheres.

B. Protect women from violence, harassment, and intimidation online and offline

Violence against women, abuse and sexual violence through online platforms have increased in recent times, according to police data. A cyber security policy draft has been prepared to protect women from online violence, abuse and sexual violence. Similarly, Electronic Transactions Act and Rules are being implemented. At present, cyber cell is available only at the central level. Thus, an extension of cyber cell needs to be made in other provinces and districts as well. Moreover, as the cyber crime in Nepal is addressed by the Electronic Transaction Act, there is a need to enact separate laws on cyber-crime.

C. Promote women's public participation

Social inclusion and social justice have been guaranteed by the Constitution. As provided by the Constitution, the GoN accords priority to the principle of proportional representation and inclusion, and positive discrimination in-order to ensure meaningful representation of women, *Dalits*, *Adibasi*, *Janajatis*, *Madhesis*, Muslims and Persons with Disabilities while formulating policies of social and economic development. Certain reservations are allocated to women in Civil Service, Army and other bodies as provided by the law. Women's participation in the political arena is 42 percent. Similarly, women's participation in the civil service is 26.7 percent. Women's participation in employment is 70 percent in urban areas and 30 percent in rural areas. Based on the above-mentioned facts, it is necessary for the state to give continuation to the principle of proportional inclusion to ensure an increase in the participation of women in the economic and administrative sectors equally.

8. a) What specific measures have platform providers and intermediaries taken to i) protect women's freedom of opinion and expression ii) protect women from online gender-based violence, harassment, intimidation, and disinformation, iii) promote women's equal access to the digital space, iv) address grievances and provide remedies to women users, v) ensure accountability of the intermediaries?

i. Protect women's freedom of opinion and expression:

Service providers such as media, newspapers, and social media platforms like YouTube channels provide opportunities for women working in the public sector as speakers in various contexts. Especially women in politics and women working in the field of entertainment seem to be the priority of the media. As a significant number of women have been involved in the field of journalism in Nepal in recent times, such platforms have helped in the development of women's freedom of speech.

ii. Protect women from online gender-based violence, harassment, intimidation, and disinformation:

Although the development of information technology is promoting and protecting women's right to ideas and expression, it also has some negative aspects. There is a growing tendency to make money by making fake videos of high-ranking women by misusing technology. Similarly, women journalists face challenges such as intimidation, discouragement, fear and sexual harassment

based on their coverage of news. The Cyber Cell of Nepal Police has tried to control such crimes to some extent.

iii. Promote women's equal access to the digital space:

Legally, women have been given equal opportunities in information technology, but in practice, there is a lack of women's access to technology, specially in remote parts of Nepal. Due to the lack of access to technology in remote villages of Nepal, women in those areas have not been able to acquire skills in information technology. The Nepal Telecom has been providing free Wi-Fi and an extra package of the internet to remote areas. However, these programs can be targeted specially for women in the remote areas for promoting women's access to the digital space.

iv. Address grievances and provide remedies to women users:

The Constitutional and legal measures have ensured a safe and confidential environment for reporting the incidents of violence against women and girls. The National Criminal Procedure Code provides that the incidence may be reported verbally or through electronic means in the nearest police office. In case the police office denies to registering the report, the complaint along with the report may be made to the office of the district attorney or higher police office. The court may issue necessary orders to the concerned authority to protect the witness or the victim.

Nepal Police Cyber Crime Bureau has made it easier for the victim of the cyber-crime to file a complaint by sending an email to cyberbureau@nepalipolice.gov.np. In the cyber cell of Nepal Police, there is a provision to lodge a complaint of online character assassination, abuse, and sexual violence against women. Violation of confidentiality is punishable by a fine of up to Rs. 100,000 and imprisonment for up to two years or both.

v. Ensure accountability of the intermediaries?

The Electronic Transactions Act, 2007 prohibits the publication and display of materials that are prohibited by the prevailing law in electronic media including computers and the Internet, or prohibits the publication of material against public morality, etiquette or spreading hatred against anyone or committing indecent acts against women.

- b) To what extent do you find these measures to be fair, transparent, adequate, and effective in protecting women's human rights and promoting women's empowerment?**

Legal, administrative and policy provisions at federal, provincial and local levels are developed in a way that promotes women's rights and interests. However, expected outcomes have not been achieved due to the lack of effective implementation of these plans, policies, and programs. Likewise, an existence of a patriarchal mindset, lack of targeted programs for women and girls, reluctance to change attitudes towards women in society are some of the lacunas.

- 9. What do you think internet intermediaries should do to protect women's right to freedom of opinion and expression and make the online space safe for women?**

With the development of information technologies, the number of its users has also increased. Although, the information technology has made our daily life easier and more convenient, it has also increased cyber-crimes including hacking, cyber bullying, theft etc. Specially, women and children are at high risk in the online space. Hence, internet intermediaries should adopt strong measures on online cyber security, data security and data privacy. Awareness should be raised about the possible threat of online space and measures to stay protected from it.

Online monitoring via responsible stakeholders is another step necessary to make the online space safe for women. Besides, resources to establish a safe online habit should be introduced. Schools and colleges should train youths on such issues. Stringent cyber-security laws should be placed to make people accountable. Lastly, more dialogues on what freedom of opinion and expression means should be carried out. To get a better idea of creating an online space safe for women. Internet intermediaries should hold regular discussions with women.

- 10. What role has legacy media played in aggravating or addressing the challenges women face in exercising their freedom of expression? What do you think the legacy media can do to empower women and make the public space safe for them especially for women journalists?**

While print media is predominated by males, online platforms have seen more female participation through more female journalists and writers. This has resulted in coverage

of issues of women and sexual minorities online. However, a negligible number of female editors in the print and online media indicates that more female participation is required in the decision-making role. Until there is a significant female participation in decision-making roles, legacy media will not be seen as an actor in addressing the challenges faced by women in exercising their freedom of expression. Many media houses still do not have a policy against sexual harassment at the workplace despite the Sexual Harassment at Workplace (Elimination) Act, was introduced in 2014. Often, the solution is simply not raising the issues that might aggravate people. This regressive practice discourages many female journalists to take journalism as a profession. As a result, a significant number of issues concerning women are not reported or an issue is devoid of female perspective.

Media houses can do the following to empower women and make the public space safe for female journalists:

At office:

- Train female journalists for leadership roles,
- Create and prepare female media persons for decision-making roles,
- Effectively implement laws against sexual harassment, have proper sexual harassment complaint hearing official and reporting mechanisms.
- Gender-sensitive training to all employees.

For reporting:

- Ensure honest reporting of GBV, VAW, and sexual harassment cases online and offline
- Introduce gender-sensitive reporting at all levels.

11. Please provide examples of good practices by states, internet intermediaries or other stakeholders to enhance women's right to freedom of opinion and expression and empowerment and public participation of women.

Though female participation in online activity is comparatively lower than male, wide social media criticism in trending issues is encouraging people to make \ decisions from gender perspectives. Public, private organization are also giving priority to female and sexual minorities in their organization, ensuring more economical opportunities for them.