

Right to Information in Nepal: Status, Challenges and Way Forward

(Point-wise discussion paper)

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Context

The Right to Information (RTI) in Nepal is in the verge of becoming ineffective amidst the two major challenges of implementation and policy reform. Nepal is the first country in South Asia to guarantee RTI as a fundamental right under the constitution. However, no law was made for its implementation for 17 years since the constitutional guarantee; as a result, Nepal failed to be the first nation to promulgate law on RTI. Nepal has an image of making laws and policies, but lax and weak in their implementation. RTI is suffering the same fate in Nepal.

Since the democratic awakening of 1990, Nepal has experienced three constitutions. In all those constitutions, RTI has been guaranteed as a fundamental right of citizens. Despite the awareness to ensure RTI for citizens, there is lack of willingness and determination among the political parties in its implementation. Therefore, RTI has been limited to showcase the progressive aspect of Nepali democracy. Citizens have not been able to exercise this right easily. It has been a matter of struggle.

Right to Information in Nepal and Its Status

- RTI is guaranteed under Article 27 of the Constitution of Nepal, 2015 as a fundamental right. In the preceding constitutions, the right was guaranteed under Article 27 of the Interim Constitution of Nepal, 2007 and Article 16 of the Constitution of Kingdom of Nepal, 1990.
- Citizens have the constitutional right to seek and receive information on the issues of their concern and public importance from public authorities.
- The constitution has set the limits to access the information mentioned as to be kept secret under law. The right to access information can also be considered as a fundamental right under Article 17 of the constitution which provisions the right to freedom of opinion and expression.
- As a state party to the International Convent on Civil and Political Rights (ICCPR), RTI under Article 19 has thereof binding obligation to Nepal. Its provision prevails over the domestic law of Nepal.
- The Act relating to RTI was made and promulgated after 17-year long struggle for implementation of the constitutional right

- There are Regulation relating RTI, 2065 (B.S.) and different directives framed in course of the implementation of the right.
- A three member National Information Commission was established in 2065 (B.S.) The commission is accountable to the parliament.
- The two-term office bearers of the NIC have completed their tenure. Currently, the third tenure of the NIC is active.
- In the last 13 years, the NIC has heard a total of 7,177 appeals.
- There is a high level coordination unit at the Office of Prime Minister and Council of Ministers, and there is also a directive as legal ground provisioning the formation of a monitoring and coordination unit under the Ministry of Communications and Information Technology.
- The progressive and liberal dimensions under RTI Act, 2064 (B.S.) have remained unchanged till now.
- RTI has been accepted as an important aspect of Nepali democracy at political and policy levels
- For the implementation of the law relating to RTI, public authorities are getting used to: appointment of information officer, disclosure of timely information, address requests for information, for the implementation of RTI law, etc. However, there are still some challenges in following such minimum practices.
- Most of the training centers at federal level have included training on RTI in their curriculum. The subject matter is covered in regular training programs of the center.
- School curriculum at the secondary level has also included the RTI, and it is being taught as an elective subject. As a subject of fundamental rights, it is also be included in the curriculum of social studies.
- The civic organizations are increasingly advocating and carrying out campaign relating to RTI.
- The civil society organizations involved in the RTI campaigns are strengthening the citizen network by forming the national level federation. Meanwhile, civil society organizations working to promote the values of good governance and open government seem to be carrying out activities with high priority on the issue.

- Province and local government have also shown their activism in promotion of RTI. Some of them are making legal arrangements. They have started allocating budget for training programs.
- There are also some initiatives towards academic research, teaching and publication of books on RTI. Some study research and regular monitoring activities can also be found.
- There is increase in number of activists dedicated to promoting RTI.
- There are limited good initiatives to solicit information of public interest and make citizens informed about it.
- However, there are limited campaigns and initiatives using the RTI Act, such as conducting investigative journalism, filing writ petition in courts on matter of public interest, filing complaints at the Commission for Investigation of Abuse of Authority and using it in political competition during elections.
- As the extension of RTI, open data, open parliament, open budget, and open government and various campaigns for creative promotion of information technology have been established and expanded.
- Three programs are held annually to promote RTI on three different days, i.e. September 28th is celebrated as the International Right to Know Day/Universal Access to information; Bhadra 3rd National Information Day; and the establishment day of National Information Commission. The practice of awarding activists as an incentive to those active in this field has also begun.
- NIC has been publishing an annual report. The report mentions the activities of the commission, the details of the complaints and appeals made without receiving the information, and the recommendations of the commission to the government regarding the implementation of RTI. Commission submits the report to the Prime Minister. However, the submitted report has not been discussed in the parliament. In addition, the Commission has been publishing 'RTI Audit', a report on the status of federal ministries.
- The collection of stories on the success of public services delivery, success against corruption; and the strengthening of human rights through the exercise of RTI have also been published by the NIC and Freedom Forum. Various materials spreading awareness about RTI are also published. Besides, mobile application as 'RTI Nepal App' is also in operation. Different organizations have published resource materials and modules related to training, which is used by various organizations.

- Nepal participates in various international and regional networks and forums related to the promotion of RTI.
- The subject matter of RTI is gaining interest among PhD scholars and researchers. The number of academic paper and research reports produced on the issue is increasing.
- District Post Office and Chief District Officer have been mobilized by the Commission through delegation of authorities time to time on different subject. But such structural arrangement is lacking at local and provincial levels.
- Attempts are being made to frame laws relating to this at the provincial and local levels.

What should have been done, but not?

- There is no consolidated data on RTI requests filed in the last 15 years. Due to lack of the data on how many applications were filed, in which public agencies they were filed, how many requests got responses, and the factual analysis of overall practice cannot be made.
- Similarly, there is no definite number of agencies and offices which falls under the definition of the RTI Act. The definition of public agency is not limited to government and state agencies, it cover other agencies as well. Therefore, it has been hard to monitor if information officers have not been designated or not, and whether there is practice of periodic self-disclosure or not.
- The concern on non-appointment of the second or third responsible officer, after the head of the office, as information officer in government authorities is seen in public as well as media report. The duplication of spokesperson and information officer has also worsened the problem. There is also a general tendency among information officer not being able to manage their work effectively.
- The annual report, 2020-21 of NIC has published a long detail of its recommendations and suggestions given every year but have not been implemented. The report points out that lack of interest in the government to take policy initiatives and other steps to implement the recommendations have added complication for implementation of the right. The report covers such unimplemented suggestions under 25 headings. These suggestions range from reform in Constitution, Act, and Regulation, to institutional mechanism, and their wider aspects. These suggestions should to be implemented.

The NIC suggestions left unimplemented

<ul style="list-style-type: none"> - Activate the coordination and monitoring mechanism of the state. - Provision for Information Officer, Information section and Budget. - Make an Easy Entry Information Desk at the gate of Singh Durbar, the central administrative complex of Nepal. - Implement the provisions relating to classification of information. - Use different languages to disseminate information. - Make implementation of decisions of Commission as a ground for evaluation of officers and employees during their promotion, transfer and appointment. - Concerned Parliamentary Committee should discuss the annual report of the Commission. - Amend the laws relating to privacy in line with the RTI law. - Update and publish records of applications filed for information and voluntary publication of information. - Establish liaison office of the Commission in each province. - Government should assist the NIC with adequate and skilled employees. 	<ul style="list-style-type: none"> - Timely amendment of the Article 27 of the Constitution. - Make amendments in 8 provisions under RTI Act, 2064 - Make amendment in the provisions relating to self disclosure as well as oral and electronic information under Right to Information Regulation, 2065. - Include the subject of RTI in the school and university curriculums - Make arraignments for oath of transparency - Arrange legal defense help to the Commission from the Office of Attorney General. - Amend, improve and repeal laws inconsistent to RTI. - Implement the action plan relating to Open Government Data. - Implement Sustainable Development Goals No. 16 (10) A.
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- The old laws inconsistent with RTI are still in force, while some new laws are framed in a way that it may affect citizens' rights. Similarly, the laws promulgated at Provincial and Local levels have challenged the exercise of the rights. Overall, province and local levels need to be reviewed and there is need of political willingness to review the law enacted at Provincial and Local levels, as well as initiatives to reform accordingly.
- In particular, the provisions under security laws, civil service laws, and individual privacy law related Acts, Information Technology, and Statistic and financial

administration as well as accountability related Acts have weakened RTI. However, there has been no careful monitoring and advocacy during the law making process.

- Despite Nepal's commitment to the Sustainable Development Goals 2030, Goal No. 16 as a whole, and Goal No. 16 (B) is thereof not included in national target and indicator. National Planning Commission, which is the national body coordinating sustainable development goals in Nepal, has not showed any interest to make universal access to information as a national target and indicator. The advocacy and initiatives in this regard have not yet turned meaningful. RTI is ignored at different initiatives of SDG.
- Nepal has not participated in open government partnership. Its initiatives have not succeeded. In order to institutionalize the practice of RTI, it is very necessary for Nepal to involve in the open government partnership campaign.
- The under-secretary of Nepal Government serves as the secretary of the National Information Commission. The decision of government to withhold the post of special class officer as a reform in the administrative structure of the Commission has made it weak. In addition, the challenges like: lack of transparency in the appointment of officers, the influence of the share in the selection of the commissioners and the lack of capacity of the commissioners, control and lack of budget given to the commission and administrative non-cooperation, has further enfeebled the commission. It is necessary to have a debate and discussions at the civic level on the reforms to be made in the commission and to exert pressure on the government and related agencies to this regard.
- The judicial role of the Information Commission to hear complaints and appeals, and give decisions is not timely as per the law. The commission does not receive support from the Office of Attorney General to resolve legal disputes. Similarly, there is the barrier to appoint competent lawyers for legal defense, and lack of support from decisions executing bodies which also has role to weaken NIC.
- Amendment of the Right to Information Act to make it federalism-friendly has not gained priority. Province and Local levels are supposed to frame law in accordance with federal Act, however, there is tendency to make law inconsistent with it. For example, the RTI Act passed by the Bagmati Province has neither been executed nor amended. Provincial and local levels cannot make laws regulating the subject of fundamental rights; however, such unclear laws are increasing the legal complexity.
- There is a lack of menu and manual to bring consistency to the websites of all public bodies to publish the details that should be published automatically according to the RTI Act. Likewise, there is lack of internal procedural arrangements within the relevant organizations and bodies regarding the functions and duties of the

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Information Officer. No initiation has been made with regard to reforms, such as the budget, in order to motivate the implementation of RTI through regular training and additional service concessions. The details about information officer are not updated time to time on websites. The name of past officials continues even after they are transferred or assigned to other responsibilities.

- There is no network of ministry-wise information officers, their regular meeting, experience sharing, etc which has increased the challenges for implementation of RTI. Similarly, the lack of access of information officer to information is another critical issue.
- Analyzing the number of application filed to access information; maximum applications are made at local level. This is obvious as well. Federalism has created 753 local administrative levels in Nepal with several powers. Citizens have showed their concern and interest to seek information from nearest government on budget and development programs, as well as documents and statistics.
- However, the demand for information at the province level and federal level is low. Fewer quests for information should not be deemed as higher transparency at these levels. Difficulty in access, lack of information and lack of interest and lack of courage to investigate national issues may have reduced the demand for information at that level. Therefore, it seems that there is a need to prepare a competent and strong demand side in the federal and the provinces.
- If the young generation is made aware of the RTI, and involved in campaign, aware, alert and positive thinking citizens can be produced in the society. For this, there is a need for a special campaign to mobilize youths, student organizations and educational and training institutions.
- RTI seems to be a nagging issue among the public employees. In order to eliminate this misunderstanding, administrative and political leaderships should present themselves as champions to solve the structural problem to improve the distressing environment. However, it seems that the administrative and political leaderships promote and protect the activities against transparency, rather than encourage thereof. As a result, it has fomented the culture of corruption, the arbitrary tendency to break law, and to present one selves as ruler with no accountability to the people. This trend has presented the obligation to RTI as an additional burden for public administration and suppressed RTI to be a basis for cultural change.
- The exercise of RTI has made a significant contribution to improve board examination conducted by government entities, universities and various examination systems, by setting them accountable. The right to get a copy of the answer sheets has been established in many examination bodies. The verdict of courts has positively contributed to this. However, the system is not endorsed by all

examination systems. To establish this system in examinations of Public Service Commission to all universities, there is need to improve these bodies with further policy exercise on the implementation of RTI. Some universities complicated the process by making internal laws and some by increasing fees.

- The incidents like taking revenge, threats of retribution, etc have been observed in response of demand for information. Safety of RTI activists has also emerged as a sensitive issue. The public authorities have the trend to unnecessary trouble, hassle and discourage the information seekers. It is the hostility against the information seekers.
- The applicants have experienced harassment from chief of the authority, arrest, fabricated law suits, harassment, expulsion from service, and defamation, among other challenges. It is worrying that some people have quitted their activism being discouraged and frustrated with constant struggle and suffering. However, there are some, who, despite these challenges, are still struggling to disclose the information of personal and public interest and concern. The movement for RTI is alive due to their unflinching dedication. Meanwhile, some claims about the misuse of the RTI merely for self-interest and malice.
- An important aspect of the RTI Act is the classification and protection of information. The public authorities have been complaining about 'implementation challenges' due to lack of proper implementation of provision under Section 27 of the Act. However, it is an irony that the Prime Minister's Office is unable to proceed with the classification process in accordance with the directive order given by the Supreme Court. Prior to this, the Apex Court has declared the previous two classification process and decisions void- reasoning that it was not in accordance with the law.
- The hassles like: no assent of head of the office on application for information, registration procedure full of hassle, delayed sharing of information, no convincing reason for denial of information request, and month long wait for information are yet persistent. There is a tendency to ignore the quest for information as much as possible. Regarding the application received via post office and email, there is a tendency to puzzle and avoid acknowledgment.
- Fee is an unsolved obstacle in the implementation of RTI. Some offices are still not furnishing information- that are supposed to be provided free of cost easily, so charging additional fee thereof ascertained by the law, compelling to receive information in hardcopy that could have been received in soft copy, etc are still the challenges.

- Information management, internal circulation of information, archive system, and statistics management, has made it complex to obtain information easily, and some important information are cannot be obtained.
- Barrier to easy access to some public officers is also a major challenge to receive information. Like, general public is prohibited in the premises of the Singh Durbar which consists of the Office of the Prime Minister and Council of Ministers, to all ministries, parliamentary secretariat, and other high level authorities. To enter inside, one needs to produce authorized permit from the concerned authority at the gate. As a result, there persists differences among citizen regarding their ability to access to information.
- Another major challenge in the implementation of RTI is the lack of ownership and willpower in political and policy level to solve the above-mentioned problems. Political parties and political figures have not prioritized the implementation of the right. It seems that champions should be developed to take initiatives at political level to create a transparent and accountable government.
- The exercise of RTI needs to be linked with anti-corruption initiatives, and good governance promotion and participatory governance processes. More initiatives are needed to mainstream RTI in governance reform planning programs.
- Civil society organizations and journalism /media have not yet been able to exercise RTI as a tool for their performance and activities. For this, further initiatives to strengthen the capacity of media house and civil society organizations are imperative, which would also raise awareness and develop skills on RTI.
- The constitutional and legal provisions on the RTI are not only an important achievement of democracy; it is also a powerful tool for the continuous improvement of democracy. Nepalese experience with RTI shows that legal guarantee of the right and formation of related mechanism is not enough to ensure its exercise. New challenges surface in course of its exercise. It has also been learning from the experience. Therefore, continuous study, research, advocacy and campaigns seem necessary.
- To expand the state's commitment to RTI, the associated sustainable development goals, open government partnership, international initiatives against corruption, and similar global platforms and initiatives to increase Nepal's participation and creative activism, should continuously prod the state agencies and government.

What should we do?

- Based on the above experience and learning, a national strategy can be formulated to improve the implementation of RTI.
- In which, policy reform, institutional reform, reform in perspective, reforms in resource management, managerial arrangements reform, strengthening of public awareness and active campaign initiatives, strengthening of knowledge and education systems and overall, as RTI is an important tool of political and civil freedom, increased political will and commitment and state responsibility are required. A national strategy with various action plans can be made for the responsible parties.
- For this, the practice of holding a national conference every year has to be revived. In the past, the Freedom Forum sought various conclusions through multi-stakeholders and high-level participation in the two national conferences (2011 and 2014) and in its follow-up. The National Information Commission (NIC) had also started the practice of national conferences. But, the government has not accepted such an initiative. And now, even after the epidemic subsided, such a large national conference has not been held.
- It has been necessary to integrate the multi-sector discussions at different levels and seek multi-sector agreement on the reform plans by identifying the obstacles and removing the existing distressing atmosphere of the implementation of RTI through the national conference.
- It is necessary to exert pressure on the thematic committees of the Parliament to schedule discussion on the annual report of the NIC to bring policy reforms and changes in managerial behavior by reviewing the implementation of RTI. Both government and parliament should pay attention to it.
- In particular, to institutionalize the culture of self-disclosure of information, and make conducive environment to address the request for information, there is need of cultural transformation to establish it as a general practice. It will strengthen overall democratization and openness of the society. In order to further ensure the journey of democracy, even simple and small reforms can make a very important contribution to the implementation of RTI. Civil society organizations should continue to advance facilitating such creative initiatives with commitment.
- The National Information Commission needs to be more active in order to prevent impunity and take strict action against the office heads, who do not provide information with wrong intentions. Commission should start taking action against the authorities who do not implement its orders in order to end the tendency of disregarding the commission. For this purpose, the Commission should increase its

monitoring. The existing law is insufficient for the commission for the monitoring. It is also necessary to work for its reform.

- Civil society organizations working in the promotion and protection of RTI need to further increase their capacity and activity. Continuous efforts should be made to strengthen the demand for good governance by enhancing the information and knowledge on RTI at all 753 local levels and their respective wards, at high schools and college level because only conscious citizen activists and their networks can build a strong group to seek information to fight against corruption and distortion. RTI is a powerful tool of citizens; however, a strong demand side must be nurtured to increase the ability and activity to utilize it.
- Let's think -what can be such civic initiatives? For example: monitor the activities of the National Information Commission, expand the areas where cooperation with the Commission can be done. Launch campaign and initiate to raise public awareness on RTI, run campaigns to seek information on issues of public concern, expand the areas of cooperation with media.
- Further, cooperation among RTI campaigners, solidarity to their works, collective efforts to face challenges, research initiatives on RTI to build common stand, preparation of alternative proposals for policy reform, and continuous advocacy for practice, protection and promotion of RTI should be equally focused.
- RTI is the foundation for open, transparent, accountable and responsible governance. Implementation of RTI and its continuous improvement is indispensable for a participatory democratic governance system. Therefore, civil society organizations and RTI campaigners should be active in order to fulfill the duties of aware citizens.

-The End-