

A Study on the Proactive Disclosure in Local Government Websites in Nepal

Nikhil Dongol *

Abstract

Access to Information of a citizen is an essential aspect of democracy. It is taken as a fundamental right of a citizen and a necessary precursor of a responsible, transparent and accountable government to maintain rule of law in a country both politically as well as economically. There are essentially three stakeholders in access to information viz. demand-side general peoples, supply-side public entity, and various organizations as facilitators. Realizing this crucial interplay between citizen, public entity, and access to information, this paper explores various laws, jurisprudence, and practices to enhance the general understanding on the demand side. This paper analyses the websites of 17 local governments (metropolitan and sub-metropolitan cities) of Nepal in relation to legally mandated 20 indicators of proactive disclosure of Access to Information. However, this paper does not attempt to provide a blueprint for implementation of the policies of Access to Information due to the diversity of situations in different governance rather would highlight the present condition of proactive disclosure, loopholes, and the ways that can enhance the disclosure practices in local governments in Nepal.

Keywords: Access to Information, Right to Information, Proactive Disclosure, Local Government websites

Background

Democracy dies in darkness: The importance of information.

The Access to Information of a citizen is an essential aspect of democracy. It is essential for good governance and very important to maintain a population that is engaged with the government and its activities. Provided that the sole duty/responsibility of the government is towards the people, information regarding government and its activities is a logical precursor. *Politically*, the sovereignty of the country lies with its citizens, and they have every sovereign right¹ to know the activities of the government especially in matters of services provided by them. *Economically*, citizens pay taxes to the government so that the government can conduct its administrative activities to offer services to the people. This notion can be found in the concept of the social contract (Hobbes, Locke

* Nikhil Dongol is a ILM candidate at the Kathmandu School of Law. He can be reached at nikhildongol91@gmail.com.

and Rousseau)² between the government and the people. Further, it is elucidated in the principal-Agent theory by Max Weber on "Theory of Bureaucracy".³ Due to this, access to information of a citizen is taken as a right of the people coined in the term "Right to Information" (hereinafter RTI).

This right has been one of the key tools for holding government or public bodies accountable and transparent in order to promote participatory democracy and good governance.⁴ It is also considered to be a foundation of democratic practices, as it is used as an indicator for measuring the extent to which democracy, freedom, and openness are realized in a country. RTI is also used as a tool to combat corruption and minimize irregularities or misconducts in public bodies as it makes public bodies more accountable to their citizens.⁵ To summarize it in a sentence, RTI is a fundamental right of the citizen in a democratic state to make the government accountable and maintain rule of law in the country.

There is an essential interplay between citizens, public entities, and access to information. Citizens pay tax to the government and in turn, the government serves the people. The nature of that service can range from administrative to basic rights like food, clothing, shelter, and security which extends even beyond borders. This process and interaction are lubricated by RTI. It is for this reason that citizens have every right to know every activity of the public institution and on the other side, those institutions have to provide that necessary information. Not only does RTI make a responsible and accountable government, but it is also an integral part of participatory democracy where citizens are aware of their rights, duties, and role to ultimately build trust between people and government. Moreover, this also helps in the access to justice as well as to fight corruption, ultimately, enhancing rule of law in the country.

RTI enables citizens to access information of public importance that is under the control of public authorities. Access to information can contribute to promoting transparency and accountability of public bodies, thereby, making them more responsive towards the demands of citizens. As a result, citizens will receive timely information from public bodies and the culture of practising proactive disclosure will be firmly institutionalized. Therefore, this area ought to be extensively researched and analyzed carefully in order that general people are aware of their rights.

RTI Stakeholders

The RTI laws define a wide range of organizations such as political parties and non-

² Manzoor Laskar, 'Summary of Social Contract Theory by Hobbes, Locke and Rousseau', SSRN, 2013 available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2410525 accessed on 23 August 2021; Musa El-Thani Muhammad & Titus Utibe Monday, 'Social Contract Theories of Hobbes, Locke, and Rousseau: An Extrapolation of Point of Harmony and Tensions', *Educational Resurgence Journal*, p.123, volume 2:4, 2020, p. 126.

³ Gary J. Miller, 'The Political Evolution of Principal-Agent models', *Annual Review of Political Science*, p. 203, volume 8, 2005; Glynn Cochrane, *Max Weber's Vision for Bureaucracy*, Palgrave Macmillan, Australia, 2018, p. 113.

⁴ Taranath Dahal & Pramod Bhattarai, *Handbook on Right to Information*, Freedom Forum, 2020.

⁵ Vinaya Kasajoo, 'Right to Information in Nepal', *GRM International*, December 2013 available at http://www.cmr.org.np/esp_rti_policy_brief.pdf accessed on 23 August 2021.

governmental organizations (NGOs) as public bodies, in addition to government agencies as one of the stakeholders. These public bodies have a very crucial role to play in the implementation of RTI. There are mainly three categories of stakeholders of RTI:

- (i) Information Seekers (demand side),
- (ii) Information Holders (supply side), and
- (iii) RTI Promoters/Supporters (facilitators).

While the demand side is not aware of the capacity of the supply side and use of RTI, the supply side, too, seems unaware of the RTI Act and the obligations that RTI places on public bodies. The 'public bodies' represent the supply side, the civil society represents the demand side, and NIC along with other organizations are promoters/supporters of RTI. For the same, the research aims to create to enhance the awareness of RTI among the demand and supply sides.

Although there had been tremendous cases and research on the said topic, the contemporary development on the Local Government has not been taken into consideration on the research such as the legal mandate to have a website and the information to be disclosed which have affected the daily lives of the common people. Had the commoner understood this provision, under this regime, it should have been easier to implement the provisions of RTI laws.

Research Methodology

In this study, the researcher adopted empirical research to know about the situation of proactive disclosure schemes in local government websites in Nepal. Purposive Judgmental Random Sampling has been followed for acquiring the primary data through accessing the websites⁶ of 17 local bodies. These bodies are selected based on their status as metropolitan and sub-metropolitan cities and with the assumption that they have a comparative better Information Technological Infrastructure. Both Quantitative and Qualitative data are employed to represent the research (wherever necessary) effectively and efficiently in the Stack Bar Graph. They are based on both primary and secondary data that were abstracted during this study.

Primary data in the form of information disseminated on websites were collected especially from the 17 local bodies. In legal research, laws and precedent were considered as primary sources of information therefore, 20 indicators as mandated by RTI Act and RTI Rule are also taken into consideration as primary sources of information in this

⁶ Kathmandu, Bharatpur, Biratnagar, Pokhara, Lalitpur, Birganj, Janakpur, Ghorahi, Hetauda, Dhangadhi, Tulsipur, Itahari, Nepalgunj, Butwal, Dharan, Kalaiya, Jitpur Simara Government of Nepal, 2021, available at <https://kathmandu.gov.np>, <https://bharatpurmun.gov.np/ne>, <https://biratnagarmun.gov.np/ne>, <https://www.pokharamun.gov.np>, <https://lalitpurmun.gov.np>, <https://birgunjmun.gov.np/ne>, <https://janakpurmun.gov.np/ne>, <https://ghorahimun.gov.np>, <https://www.hetaudamun.gov.np/ne>, <https://dhangadhimun.gov.np>, <https://tulsipurmun.gov.np/ne>, <https://itaharimun.gov.np/ne>, <https://nepalgunjmun.gov.np>, <https://butwalmun.gov.np>, <https://www.dharan.gov.np>, <https://kalaiyamun.gov.np/ne>, <https://jeetpursimaramun.gov.np/ne> accessed on 27 December 2020.

study.

Secondary data from the various books, articles, journals, research reports as well as news is made a part of this study. Information related to the indicators of (proactive disclosure) RTI is collected through the review of previous studies published and unpublished books, journals, research reports, periodicals, magazines, and newspapers. This study involved an extensive review of published and unpublished literature related to RTI in Nepal and other SAARC countries.

The data and information required are collected and analyzed on the subject was sought to make a descriptive study on the situation of proactive disclosure scheme through the self-made Online Information Accessibility Index (RTI Index).

Access to Information

Whenever the idea of Access to Information comes into our mind, there is a visualization of the right of every individual to seek and receive information held by public entities (except those concerning national security).⁷ Looking into the genus of the right, it can be drawn back to Resolution 59 of the UN General Assembly (adopted in 1946)⁸ and Article 19 of the Universal Declaration of Human Rights (UDHR)⁹ where the freedom to seek, receive, and impart information was compressed as part of the fundamental right of freedom of expression. Furthermore, RTI has been enshrined in the International Covenant on Civil and Political Rights (ICCPR).¹⁰ According to Article 19 of ICCPR, the right to freedom of expression or speech encompasses the right to be able to communicate and receive information and ideas freely through different forms, including any kind of media.¹¹

The Swedish Freedom of the Printing Press Act enacted in 1766¹² is considered the world's first information law. Two centuries later, Finland framed similar law. It is only in the 1990s, both the countries recognized access to information as the right of citizens in their constitutions. To date, 127 countries have adopted laws that ensure the people's right to information.¹³

Right to Information in South Asia

⁷ Hossain Supti, 'Right to access Information', *The Daily Star*, Bangladesh, 10 November 2020.

⁸ *Calling of an international conference of Freedom of information*, 14 December 1946, UNGA A/RES/59, Cl. no 59 (1) states that Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the UN is consecrated;

⁹ *International Bill of Human Rights*, 10 December 1948, UNGA A/RES/217A(III) ["UDHR"].

¹⁰ *International Covenant on Civil and Political Rights*, 23 March 1976, 999 UNTS 331, New York, 16 December 1966 ["ICCPR"]; Javaid Rehman, *International Human Rights Law ICCPR 1966*, Longman Pub Group, London, 2nd edition, 2010, p.106.

¹¹ Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary*, NP Engel Publisher, Germany, 2nd edition, 2005, p. 445.

¹² *Freedom of the Press Act*, 1766, Sweden.

¹³ 'Right to Information laws: Where do we stand', *DW Akademie*, 24 May 2019 available at <https://www.dw.com/en/right-to-information-laws-where-do-we-stand/a-48812029> accessed on 23 August 2021.

As we focus on the right of information on the part of the citizens, it is important to emphasize that the right includes all the freedom to seek, receive and impart information. The RTI has been recognised as part and parcel of freedom of speech and expression under the relevant fundamental right category under the constitution of most of the SAARC nations.¹⁴ Almost all countries of South Asia guarantee freedom of speech and expression.¹⁵ The freedom of speech and expression extends to all sorts of mediums, not just traditional media but also modern media, and is a cornerstone of democracy.¹⁶ Furthermore, there is a jurisprudence that the extent of the right to speech and expression was even wide to include¹⁷ the right to as well as the right to be educated, informed and entertained.

Though having the fundamental right to express an individual's views, such right cannot be contravened with the express provision entrusted under Articles¹⁸ of the Constitution and laws enacted by individual countries¹⁹ of South Asia. Therefore, access to information can fall within the ambit of freedom of speech and expression

¹⁴ For instance, the right to information is constitutionally protected by Article 27 of the Constitution of Nepal, 2015 in Nepal and by Article 19A of the Constitution, it is inserted *via* the 18th Amendment in 2010 in Pakistan. The Apex Court of India in a catena of its judgments has also recognised the right to information as an integral part of Article 19(1)(a) and Article 21 of the Constitution of India, 1950. In the Constitution Bench of the Apex Court of India in *State of Uttar Pradesh v. Raj Narain*, Justice Mathew has recognised the necessity of the right to know for good governance and freedom of speech and expression. The Apex Court of India held: "The people of this country have a right to know every public act, everything, that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security." In Bangladesh, the right to information is considered to be a part of freedom of thought, conscience, and speech guaranteed by Article 39(1) of the Constitution. The Afghan Constitution, 2004 under Article 50 has recognised access to information as an integral part of good governance. Afghanistan has also enacted the Access to Information Law in 2014 in consonance with Article 50 of the Constitution. The 19th Amendment to the Constitution of Sri Lanka, 2015 under Article 14A has recognised the right to information as a fundamental right of citizens with effect from May 15, 2015. The Constitution of Maldives, 2008 under Article 61(d) also stipulates that every citizen has the right to obtain all information possessed by the government. Article 7(3) of Bhutan's Constitution of 2008 provides that a Bhutanese citizen shall have the right to information.

¹⁵ *Constitution of People's Republic of Bangladesh*, Bangladesh, 1972, art. 39(2); *Nepal ko Sambidhan* (Constitution of Nepal), art. 17(2)(a); *The Constitution of India*, India, 1950, art. 19; *The Constitution of the Islamic Republic of Pakistan*, Pakistan, 1973, art.19; *Afghanistan's Constitution of 2004*, Afghanistan, 2004, art. 34; *Bhutan's Constitution of 2008*, Bhutan, 2008, art. 7(2); *Maldives's Constitution of 2008*, Maldives, 2008, art. 27; *The Constitution of the Democratic Socialist Republic of Sri Lanka*, Sri Lanka, 1978, art 14.

¹⁶ *Maneka Gandhi v Union of India*, Supreme Court of India, 1978, AIR 597; Democracy is based essentially on free debate and open discussion, for that is the only corrective of government action in a democratic set-up. If democracy means the government of the people by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his rights of making a choice, free & general discussion of public matters is absolutely essential.

¹⁷ *The Secretary, Ministry of Information and Broadcasting vs. Cricket Association of Bengal*, Supreme Court of India, 1995, SCC 161.

¹⁸ *Constitution of Bangladesh*, Bangladesh, 1972, art. 19(2); *Nepal ko Sambidhan* (Constitution of Nepal), art. 17(2)(f) explanatory clause (1)(2)(3)(4)(5)(6); *The Constitution of India*, India, 1950, art. 19(2).

¹⁹ The Penal Code of respective countries; *The Digital Security Act*, 2018, Bangladesh; *The Communicable Diseases (Prevention, Control and Eradication) Act*, 2018, Bangladesh and *the Disaster Management Act*, 2012, Bangladesh.

but is subject to certain reasonable restrictions²⁰ on the curtailing of the same.²¹

This guarantees the right to impart information, however, the fundamental right also covers the right to receive information. In order to be compliant with the constitutional mandate, various individual RTI act has been enacted.²² This right has been treated on a higher pedestal as compared to other statutory and constitutional rights because of its significance in promoting other rights.

As regards RTI, it mostly deals with the duties of the public bodies to disclose necessary information to the public, however, this paper focuses more on the public's right to get true trustful information proactively from the public bodies.

Proactive disclosure of Information

The RTI laws/bills in the SAARC nations contain comprehensive provisions on voluntary or proactive disclosure of information.²³ This includes disclosure of information related to the functions of an organization, powers and duties of officials, decision-making procedures, and norms, policies and schemes implemented. These laws specify how this information should be made public (including through their websites) and require that the information should be updated periodically (annually, quarterly, monthly etc.)

Proactive disclosure relies on 3 principles. Firstly, the principle of maximum disclosure which establishes a presumption that all information held by public bodies should be subject to disclosure. Secondly, the principle of proactive disclosure, that is, the public bodies provide information to the people prior to the request. Thirdly, the principle of public interest override. When there is a compelling public interest in disclosure that outweighs the purpose of the applicable exemption, the public institutions are supposed to disclose information.

If pro-active or *suo-moto* disclosure of the information is implemented meticulously, then 70% workload/burden of public information officers and information commission would be reduced and people would have entered into the matter and referred the

²⁰ *Nepal ko Sambidhan* (Constitution of Nepal), proviso; ICCPR (n 10), art. 3; *Suchanako Hak sambandhi Niyamawali* (Right to Information Rules 2065), Nepal, Rule 3(3).

²¹ It is on the public interest for the restriction of access to information. *Amar Nath Singh v. National Information Commission, Kathmandu and others*, DN 10474, NKP 2077.

²² *The Right to Information Act*, 2005, India; *the RTI Act*, 2014, Maldives; *the RTI Act*, 2016, Sri Lanka; *the RTI Act*, 2007, Nepal; *the RTI Act*, 2009, Bangladesh; the Access to Information Law, 2014, Afghanistan; *the Pakistan RTI Ordinance*, 2002, Pakistan and various provincial RTI laws; and *the RTI Bill*, 2013, Bhutan has been some of the initiatives in empowering citizens and other specified parties to secure the right to access information in the public governance.

²³ *RTI Act*, 2009, Bangladesh, s. 6; *the Right to Information Act*, 2005, India, s 4; *the RTI Act*, 2007, Nepal, ss. 3 and 5 ["RTI Act"]; *the Pakistan RTI Ordinance*, 2002, Pakistan, ss. 5; *Sri Lanka's Right to Information Act*, 2016, Sri Lanka (Cl 7-9 deal with the proactive disclosure of public information in the public domain); *Afghanistan's Access to Information Law*, 2014, Afghanistan (Arts 4 and 14 provide for *suo moto* disclosure), *Maldives RTI Act*, 2014, Maldives (s 37 provides for pro-active disclosure), *Bhutan's Right to Information Bill*, 2013, Bhutan (Cl 10-17 provides for proactive disclosure of information in the public domain); The Provincial Laws of Pakistan such as *the Punjab RTI Act*, 2013, Pakistan, s. 4; *the Baluchistan and Sindh Freedom of Information Laws*, 2006, Pakistan, s. 5.

government sites to get informed. This could be highly relevant to this pandemic where there is a dearth of information regards to the virus and the subsequent steps of the government.

However, there are various hurdles in realizing the obligations and subsequently the fundamental right to information in regards to proactive disclosure.

Firstly, there is no sanction in any of the RTI Laws/ Bills of the SAARC Nations for providing penalty or punishment for the breach of the pro-active disclosure scheme. It is to be noted that the strict compliance of the scheme on proactive disclosure is even in the interests of public authorities as it would undoubtedly reduce their workload related to RTI laws and its fulfilment of obligations arising out of legitimate expectation.

Secondly, the implementation mechanism like Information Commissions and Commissioners in almost all the SAARC nations do not have any power to enforce their order in case of disciplinary actions, or penalty or award of compensation, and also to recommend disciplinary actions against public officers in case of any violation of the respective RTI laws/bills.

Thirdly, there is no political will to bring about more remarkable changes in the powers statutorily granted to these bodies as even political parties in powers may have to comply with it.

Fourthly, the credibility crisis of the government is another problem in South Asia that could be mitigated through collaborative efforts.

Fifthly, general peoples are not aware of the proactive disclosure schemes. There are mainly 3 categories of stakeholders of RTI, viz., Information Seekers (demand-side peoples), Information Holders²⁴ (supply-side public bodies) and RTI Promoters (facilitators like Information Commission). Without the proper functioning of one, the other cannot work smoothly. With this situation prevails, it is important to get informed the general peoples about their rights as well as the indicators for the proactive disclosure of information.

Right to Information in Nepal

Nepal is the first country in South Asia to recognize RTI as a fundamental right of the people. Institutionalized in the Constitution of the Kingdom of Nepal 1990²⁵ for the first time, Right to Information (RTI) is a relatively new concept in Nepal. Mandated by international obligations,²⁶ principles²⁷, the current situation of RTI and

²⁴ The NIC also said it penalised 24 officials for their failure to implement its directives with regard to the dissemination of information, in 2019-20. Despite such legal provisions, 90 out of 120 offices were found not complying with the provision on the proactive disclosure of information during the study.

²⁵ *Nepal Adhirajya ko Sambidhan 2047* (Constitution of Kingdom of Nepal 1990), Nepal, art. 16.

²⁶ UDHR (n 9); ICCPR (n 10), art. 19; International Conference of Information Commissioners (ICIC); Budapest Declaration on the Right to Access to Information; Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters; Maputo Declaration Fostering Freedom of Expression, Access to Information and Empowerment of people; Freedom of Information Resolution, India, 2010.

²⁷ Principle of maximum disclosure, principle of proactive disclosure and principle of public interest

the legal provisions available for citizens was developed and institutionalized by the Right to Information Act, 2007 (2064).²⁸ This law is an outcome of enormous effort by the stakeholders and civil society. This act has provided for an independent National Information Commission (which is an independent statutory body established on 14 June 2008, for the protection, promotion and execution of Right to Information in Nepal.) Today, the Constitution of Nepal (2072) recognize RTI as a fundamental right of a citizen.²⁹ With the introduction of local governance, RTI is even more important in this level because:

Firstly, Local levels are the nearest to the people. With the local legislative, local executive and judicial committee³⁰ in the local level itself, there is an abundance of the interaction of people than in any level of government in Nepal, therefore, this level must maintain its record (personal and public) and provide information to the public to make them realize the presence of governance.

Secondly, the Local level is a platform to produce competent and effective leadership. It is the first level where an amateur leader is exposed to governance. Provided that these local representatives are made acquainted with matters of importance of RTI as well as accountability, it is highly probable that it is also replicated at the provincial and federal levels through them.

Thirdly, the local autonomy³¹ can only be realized through the culture of disclosing information, ultimately, maintaining good governance and rule of law. The implementation of the provision of RTI can be fully realized at the local level because local people can act as a watchdog to control and scrutinize, directly or indirectly, at the local level.

The world has witnessed considerable changes with the fast development of the internet and social networking sites. Nowadays, information flows rapidly and easily, enabling people to form their views and perceptions. This has created a greater challenge for the public bodies to respond quickly and transparently to the demands and concerns raised by members of the public. The young generation is more cautious and swifter in making decisions. Nepal is also experiencing such changes as the people have become more conscious of their democratic rights and duties. This requires that the government should be proactive and transparent in disclosing information about the issues having a direct bearing on the life of people. Furthermore, the websites of local government are the best medium to make information accessible because of the following reasons:

Firstly, Websites allow access to information released by local bodies to all possible stakeholders without a significant barrier to entry. This means that the bare minimum requirement of access to information is a device capable of web browsing and an internet connection. The author realizes this does, however, exclude a sizable chunk of the Nepali population (especially marginalized communities), the author is merely suggesting a focus on websites as the primary medium. Information organized for websites can be easily replicated and distributed physically as well.

overriding, ten principles of the Right to Know.

²⁸ *Suchanako Hak Sambandhi Ain 2064* (Right to Information Act 2007), Nepal, art. 3. ["RTI Act"]

²⁹ *Nepalko Sambidhan* (Constitution of Nepal), art. 27.

³⁰ *Ibid*, art. 217.

³¹ *Ibid*, Article 50(1) [Directive Principles of State]

Secondly, all local-level bodies are required to maintain a website and hence, a basic templated website is to be made available and accessible for all 753 local bodies which in turn does not leave out any particular region.

Thirdly, all local-level bodies are provided incentives to employ one technical officer who can be assigned the responsibility of maintaining the information on websites.

Therefore, the dissemination of information by the local bodies on their websites can be an efficient mechanism to ensure the fundamental right of Nepali citizens today. Besides above, the Supreme Court had developed various jurisprudence in relation to RTI. At one instance, SC has ordered for disclosure of marks obtained in the SLC and higher secondary level,³² as well as provide a photocopy of one's mark sheet (from TU) in the name of RTI.³³ The court incorporated a broader interpretation to extend the RTI of the citizen to private sectors,³⁴ government employees (work performance evaluation),³⁵ ration distribution from the COVID Relief Fund during the lockdown as well as the activities carried out by COVID-19 Crisis Management Centre (CCMC).³⁶

Problems of RTI in Nepal

According to the RTI rating developed by the Centre for Law and Democracy (Canada),³⁷ out of 131 countries, Nepal secured 22nd position.³⁸ This rating is based on the legal provisions available in the legislation of Nepal. However, the availability of legal provisions and the widespread implementation of legal provisions is a different matter altogether. Even though Nepal has the provisions in RTI Act that help it rank in the 22nd position, the implementation is very weak because:

The weak implementation resides in the accessibility of the information disclosed. Even though local bodies disclose information according to the legal provisions, the Act has failed to adequately specify or establish a structure or method to disclose information so that it can be accessed with ease. According to NIC,³⁹ in 2020, 29 offices have been running without information officers. This creates loopholes in our legal directives leading to the poor condition of RTI in Nepal.

Weak accessibility of information was realized after assessing the websites of six

³² *Bhim Raj Adbikari v. National Information Commission et al.*, DN 8594, NKP 2068.

³³ *Ibid.*

³⁴ *Amar Nath case* (n 21)

³⁵ *Nijamati Sewa Ain 2049* (Civil service act 1993), art 24(6)(c); *Sanghiye Nijamati Sewako gathan, sanchalan ra Sewaka sartsambandhi byabastha garna baneko bidbeyek 2076* (Federal Civil Service Act 2020). s.32 (13)

³⁶ *Kritinath Sharma et al. v. Office of PM and Council of Minister, Kathmandu*, DN 10524, NKP 2077; This information should be available on the websites as per *Lakshit Parivarlai Rabat Upalabda garaune Margadarshan, 2076* (Ration Distribution Guideline 2020)

³⁷ 'The RTI Rating: Nepal', *Centre for Law and Democracy*, 2018-19 available at <https://www.rti-rating.org/country-detail/?country=Nepal> accessed on 11 March 2021.

³⁸ Nepal got 113 marks out of 150.

³⁹ Himalayan News Services, 'Government offices told to abide by Right to Information Act', *The Himalayan Times*, 30 September 2020 available at <https://thehimalayantimes.com/kathmandu/govt-offices-told-to-abide-by-right-to-information-act> accessed on 11 March 2021.

metropolitan cities⁴⁰ in Nepal in a pilot study. Through an initial evaluation of the websites, a commonality was noticed. These metropolitans resorted to a dump of information specifically in regards to financial details where thousands of documents are uploaded but there is no organization to properly dissect the information published within a justifiable time period. Amid this backdrop, this research tries to assess the proactive discourse of 17 local bodies of Nepal against the legally mandated 20 indicators through the author-developed Online Information Accessibility Index.

All local bodies in Nepal are legally required to proactively disclose information every 3 months⁴¹ whether or not the information has been requested. RTI Act, 2007 (2064) and Rules, 2008 (2065) have provided the 20 indicators for the proactive disclosure of information by public bodies. For the study, these 20 indicators are consolidated into the 8 categories for the assessment of the local bodies (metropolitan and sub-metropolitan cities) of Nepal to find out the true situation of proactive disclosure in their websites through the RTI Index.

Online Information Accessibility Index

The Online Information Accessibility Index (RTI Index) is a methodology (that was used during the research) that comparatively assesses the proactive disclosure of information by local bodies of government in Nepal. At the heart of the methodology for applying the RTI Index are 44 sub-indicators, each corresponding to a particular 20 indicators mentioned in the RTI Act. For each Indicator, local bodies earn points within a set range of scores (0, 1, 2), depending on how well they have implemented the information in their primary (most accessible) information portal: their website for a possible total of 100 weighted points. The indicators as indicated above are divided into eight (8) different categories, namely City/Village Profile (10), Working Procedure/Citizen Charter (20), Legal Details (5), Annual Budget/Policy (25), Performed Project/Long Term Vision (10), ICT Policy (10), Transparency (15) and Miscellaneous (5). Each category was provided with a certain weight to make it a total of 100.

The indicators were developed by analyzing a wide range of international standards on the right to information, as well as a comparative study of the legal framework existing in Nepal along with various international frameworks. Furthermore, the baseline study of seven (7) metropolitan cities, as well as consultations with numerous professionals within both, the government sphere and non-government organizations, was a major aspect to derive those indicators.

⁴⁰ 6 metropolitan cities include: Kathmandu, Pokhara, Lalitpur, Bharatpur, Biratnagar and Birgunj.

⁴¹ RTI Rules (n 20), Rule 3(b).

⁴² RTI Act (n 23), ss. 5(3)(a) - 5(3)(d)

⁴³ Ibid, ss. 5(3)(e) - 5(3)(j)

⁴⁴ Ibid, s. 5(3)(k).

⁴⁵ Ibid, s. 5(3)(l).

⁴⁶ RTI Rule (n 20), Rules 3(a), 3(b1), 3(b2).

⁴⁷ Ibid, Rule 3(b).

Category	Legally mandated 20 indicators
City/Village Profile	Structure and nature; functions, duties, and powers (responsibilities assigned when work division manual, prevailing act and organization schedule was passed); numbers of employees and working details (description, name and position of the post); and services to be rendered by the body express in its Citizens Charter including the nature, process and department through which service is provided. ⁴²
Working Procedure/ Citizen Charter	Branch/department and responsible officer of the service providing body; fee and time limit required for service; decision-making process (step/workflow chart and list of decision-makers as well as complaint/ appeal process) and authority; authority to hear an appeal against the decision; description (details and magnitude) of functions performed; and name and designation of Chief and Information Officer including his/her name, post, contact details, email address, and photo. ⁴³
Legal Details	A list of acts, rules, bylaws, guidelines, working manual related to bodies' power and duties. ⁴⁴
Annual Budget/ Pol- icy	An updated description of income and expenditures and financial transactions (audit report) carried out by the body. It may include annual budget or policy, income from tax and revenue but not grants from provincial and federal governments, expenditure may it be capital, program and administrative, annual report as well as audit report or financial disclosure. ⁴⁵
Performed Project/ Long Term Vision	Details of program or project run by the Public Body in the previous fiscal year; Details of foreign assistance, loan, grants received by the public body as well as details of technical assistance and agreement; and Programs conducted by the public body and their progress reports (periodic progress report and completed report including financial, technical, inquiry, monitoring and evaluation report). ⁴⁶
ICT Policy	Details of the website including details of URL of the public body. ⁴⁷
Transparency	A List of information classified and protected by public body and period of time specified to preserve such information; Application received by the public body for a request of information and the information provided; and Details of information of the Public Body published or to be published elsewhere if any including the details of information flow, distributed, published and broadcasted and medium/date of flow. ⁴⁸
Miscellaneous	Other particulars as prescribed like the COVID-19 updates and the Disaster Management Information. ⁴⁹

It is important to note that this RTI Index is limited to assessing the implementation of Nepal’s legal framework through their website, and does not measure the quality of implementation in general terms.

Findings

Following the finalization of the methodology, it has been progressively applied to 17 metropolitan and sub-metropolitan cities in the country. The sample 17 local bodies were chosen with the belief that these bodies are comparatively in a better position to disclose information through their websites than their rural counterparts. To check these assessments, and to be sure that the wider legal context is taken into account, local experts are asked to review and comment on the original assessments. The data obtained are analyzed and presented in Stack Bar Graph below.

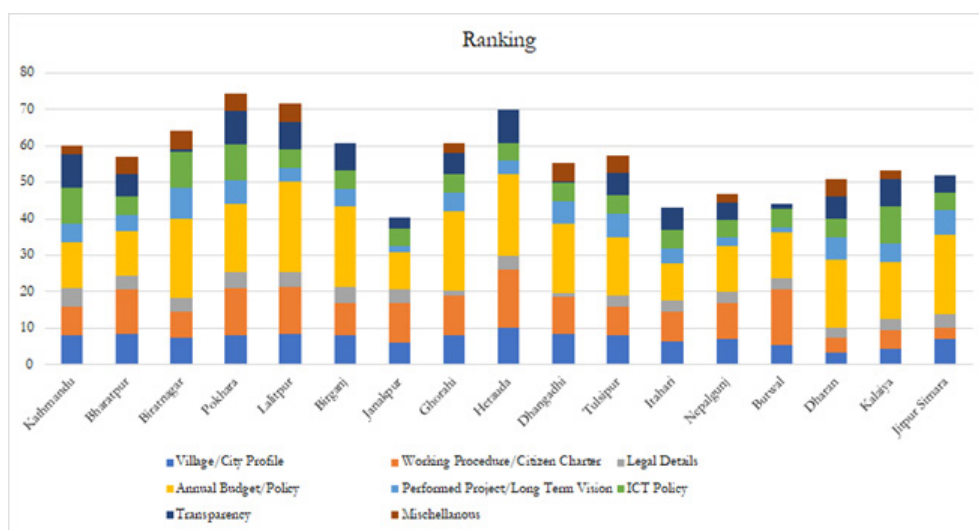


Figure 1: Situation of Proactive disclosure scheme in 17 local bodies of Nepal

This was the result of the assessment of the website of 17 local bodies⁵⁰ from the Online Assessment Index developed.⁵¹ From the chart, it can be seen that only 3 out of 17 local bodies crossed 70 out of 100, while the law mandated it to all the local bodies to be at least 100. From the above research, the certain point could be deduced as:

1. The author has commenced the assessment of the website with pessimism

⁴⁸ Ibid, Rules 3(b3), 3(b4), 3(c).

⁴⁹ RTI Act (n 23), s. 5.

⁵⁰ Kathmandu, Bharatpur, Biratnagar, Pokhara, Lalitpur, Birganj, Janakpur, Ghorahi, Hetauda, Dhangadhi, Tulsiapur, Itahari, Nepalgunj, Butwal, Dharan, Kalaiya, Jitpur Simara.

⁵¹ Nikhil , *Analysis* available at <https://docs.google.com/document/d/1Zhk4iKhvCitmuVin-TFNww8MCaSQqCYH/edit?usp=sharing&oid=105860106701734458179&rtpof=true&sd=true> accessed on 27 December 2020.

about the existence, however, it was found out every local -bodies even the VDCs have maintained their websites.

2. In regards to information related to the local bodies themselves, the author identified that the local level government has added Citizen's Charter in their website that has detailed information about the services, assigned department and its personnel information in the website.
3. The significance of E-Governance has escalated after Covid as the platform for the dissemination and accessing the government services have become online based. The local government has a dual role to publish general as well as COVID response information, however, there is a lack of regular updates on the website.
4. There was a visible attempt to follow a uniform model website structure by the local government website, however, as a general user, there are some discrepancies in navigating information due to lack of proper categorization of information into heading and sub-headings. It was found that some tabs also had broken links and some with little to no information.
5. The coverage of the fiscal program was found to be reluctant by the local bodies. There was outdated, little to no information on an annual report related to finance.

Conclusion

One of the pro-components of RTI is proactive disclosure. Owing to its nature and easiness as well as its legal obligation, it is one of the definite, concrete, and concise aspects of RTI as it contains the legally defined 20 indicators. For the same, the project aimed to make an RTI indicator index to pave the way for the assessment of local bodies in Nepal. In light of the above findings, the following things need to be emphasized:

1. The structural and information contents in the websites need to be classified as per the 20 indicators mandated by the law to include the core content in the homepage and make the website user-friendly in terms of information access.
2. It is better to introduce a better template for websites of local bodies that will include project reporting systems including Information Management systems (IMS) like susasan.org as well features to file a petition online to move with the times and integrate technology into government.
3. The Constitution of Nepal and the Local Government Operation Act⁵² have made the local government guardian of the local language. For the availability of effective translation and for better understanding, there needs to be the inclusion of local language options in the website.

Besides the above points, internet accessibility can be one of the important aspects in promoting e-governance. The enacted Digital Nepal Framework, 2019 is in the

52. *Sthaniya Sarkar Sanchalan Ain 2074* (Local Government Operation Act 2017), Nepal.

implementation phase which can contribute significantly to digitalizing the governance sector of Nepal. It was the understanding of the researcher that public entities or governments should ensure the effective implementation of their RTI regime by proactively disseminating necessary information amid this pandemic. In addition, different stakeholders like the Information Commission and organizations like the group of researchers should facilitate the interplay between the two. In this way, all the three concerned stakeholders of RTI can contribute to a smoothly functioning of a state structure through information to make a better place to live.