



# The Right to Information (RTI): Legal Framework and Judicial Response in Nepal

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## Abstract

*The Right to Information (RTI) is a fundamental democratic tool that promotes transparency, accountability, and civic participation in governance. This study examines the global evolution of RTI, its implementation in Nepal, and the persistent challenges hindering its effectiveness. The purpose of this research is threefold: to analyze the historical and comparative development of RTI laws worldwide, to assess Nepal's legal and institutional framework under the RTI Act (2007) and constitutional provisions, and to identify key implementation gaps and propose policy reforms. The methods and approach involve a qualitative analysis of legal documents, case laws, scholarly literature, and institutional reports, supplemented by comparative assessments with RTI regimes in different countries. Key measuring variables include legislative robustness, institutional compliance (e.g., response rates, proactive disclosures), bureaucratic resistance, public awareness levels, and digital infrastructure readiness. Findings reveal that while Nepal's RTI framework aligns with global standards, its implementation suffers from bureaucratic inertia, political interference, weak enforcement by the National Information Commission (NIC), and a lack of public awareness—particularly in rural areas. Federalism has further complicated compliance due to uneven capacity across local governments. Suggestions for improvement include amending the RTI Act to clarify exemptions and enforcement mechanisms, strengthening the NIC's quasi-judicial authority, expanding digital governance infrastructure, and launching nationwide awareness campaigns. The study reflects that without systemic reforms, Nepal's RTI regime will remain an underutilized tool for democratic accountability.*

**Key Words:** RTI, (RTI) Act, 2007, NIC, Judiciary, Landmark Discision

## Background

The Right to Information (RTI) has emerged as a cornerstone of modern democratic governance, reinforcing transparency, accountability, and civic participation. Grounded in the liberal democratic ideal that public power must remain open to scrutiny, RTI enables citizens to access state-held information, fostering meaningful participation in civil and political affairs Trapnell (2020). Without such access, democratic processes become hollow, corruption thrives,

and the pursuit of justice falters. Globally, RTI has followed a rich historical arc: Sweden's 1766 Freedom of the Press Act marked the earliest legal recognition of information access, later echoed in key 20th-century statutes such as the U.S. Freedom of Information Act (1966). Canada, Australia, and South Africa followed with similar frameworks. International norms—particularly Article 19 of the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966)—established RTI as a fundamental expression of the right to freedom of expression, prompting worldwide legislative adoption. In South Asia, citizen demand for accountability and participatory governance led to landmark enactments such as India's RTI Act (2005), though recent reforms have raised alarm over the erosion of institutional autonomy Sapkota (2023).

Nepal's RTI journey is closely linked to its broader democratic transformation. The 2006 People's Movement (Jana Andolan II) and subsequent shift to a federal democratic republic laid the groundwork for embedding transparency within the governance system. Nepal's Right to Information Act of 2007, developed with reference to global standards, and Article 27 of the 2015 Constitution, which recognizes RTI as a fundamental right, reflect the nation's evolving commitment to open governance. Civil society efforts and support from international development agencies have further propelled legislative and institutional reforms aimed at enhancing transparency, reducing corruption, and fostering citizen-state trust. Yet, as Paudel (2023) observes, Nepal also encounters persistent challenges familiar to post-conflict and developing contexts: bureaucratic inertia, inadequate public awareness, fragile institutional mechanisms, and weak enforcement structures hinder effective implementation. These obstacles underscore the gap between legal guarantees and practical realization. This study situates Nepal's RTI framework within global democratic theory, assessing its significance as both a democratic instrument and a gauge of state responsiveness amid Nepal's ongoing federalization and post-conflict reconstruction.

- To analyze the global evolution of the Right to Information (RTI) and its significance in democratic governance.
- To examine Nepal's RTI legal and institutional framework, assessing the 2007 Right to Information Act, the constitutional recognition under Article 27 (2015 Constitution), and the role of key bodies like the National Information Commission (NIC), while identifying gaps in enforcement, bureaucratic resistance, and technological limitations that hinder effective implementation.
- To evaluate the challenges and policy gaps in Nepal's RTI regime, including structural barriers such as weak public awareness, political interference, federalism-related disparities, and the lack of whistleblower protections, while proposing strategic reforms—such as legislative amendments, capacity-building for local governments, and digital governance enhancements—to strengthen transparency and accountability.

## **Right to Legal Framework and Judicial Response in Nepal**

The global evolution of the Right to Information (RTI) reflects a centuries-long pursuit of transparency and democratic accountability. Its foundations lie in Sweden's 1766 Freedom of the Press Act, which first granted public access to government documents, embedding Enlightenment ideals of openness and state responsibility. The 20th century marked a turning point, as nations like the United States introduced the Freedom of Information Act (FOIA) in 1966, followed by similar laws in Canada (1983), Australia (1982), and South Africa (2000), where transparency was interwoven with human rights and democratic transformation. The 1990s and 2000s saw a wave of RTI adoption in developing and transitional societies, fueled by civil society activism, donor advocacy, and the recognition that information access underpins good governance. South Africa's Promotion of Access to Information Act (2000) emerged to dismantle apartheid-era secrecy, while India's RTI Act (2005), rooted in grassroots struggles led by the Mazdoor Kisan Shakti Sangathan (MKSS), linked transparency to livelihood and justice. These developments affirmed RTI as a powerful instrument not just for administrative accountability, but for advancing equity, participation, and anti-corruption reforms, Mendel (2010).

Nepal's RTI trajectory is deeply embedded in its democratic transition. The 2006 People's Movement (Jana Andolan II) and the dismantling of absolute monarchy catalyzed a shift toward participatory governance. This momentum culminated in the enactment of the Right to Information Act in 2007, heavily influenced by international best practices and bolstered by domestic reform advocacy and developmental partnerships Bashyal (2019). Despite this promising start, implementation remains fraught with challenges. As Neupane (2018) highlights, limited institutional capacity, entrenched bureaucratic hierarchies, and inconsistent political commitment have undermined RTI enforcement. Comparative analysis further reveals that Nepal's legal framework, while similar to those of India and South Korea, lacks the infrastructural and administrative robustness that facilitated effective compliance elsewhere Khanal (2024). In contrast to South Korea's technologically integrated and well-resourced information systems, Nepal continues to grapple with digital limitations and governance bottlenecks. While its RTI law reflects global democratic standards, the gap between legal provision and practical access underscores the need for sustained institutional reform, digital modernization, and a broader cultural shift toward openness and accountability.

## **Institutional Framework and Legal Provisions in Nepal**

Nepal's governance has long been characterized by centralization, opacity, and elite control, with limited mechanisms for public accountability and constrained access to government-held information. The Official Secrets Act of 1954 exemplified this restrictive orientation, empowering the state to withhold information under vague and expansive criteria such as national security and public order. This legal framework entrenched a culture of secrecy that persisted well into the 1990s Uprety (2011). Although the political shift brought by the 1990 Constitution introduced multiparty democracy and expanded civil liberties, it did not formally enshrine the right to information as a fundamental right. Nevertheless, this period saw the rise of a more assertive civil society, independent media, and citizen-led demands for

openness, catalyzing gradual legal and institutional reforms Shrestha (2019). The People's Movement of 2006 (Jana Andolan II) served as a transformative political moment, intensifying public calls for democratic accountability and institutional restructuring. In response, the 2007 Interim Constitution formally recognized the Right to Information as a fundamental right, institutionalizing the principle of transparency in governance.

Following this constitutional shift, the Right to Information Act, 2007 was enacted, signaling a decisive move away from the long-standing secrecy paradigm. This legislation aimed to institutionalize citizen access to government information and promote public participation in decision-making processes. Legal scholars have noted that this reform was not merely symbolic but represented a genuine redirection in Nepal's governance culture (Bhatta et. al, 2010). However, the transition has been neither linear nor complete. Implementation challenges, including bureaucratic inertia, overlapping mandates, and resistance to transparency, remain persistent (Paudel et. al, 2012). While the legal architecture has expanded in favor of openness, translating these provisions into institutional practice has proven difficult in a governance system still grappling with structural weaknesses. Thus, Nepal's RTI framework represents a significant, though still evolving, departure from its historically secretive administrative tradition toward one that aspires to transparency, public oversight, and democratic accountability.

### **The Right to Information Act, 2007 and Its Regulatory Framework**

The Right to Information (RTI) Act, 2007, constitutes a major legislative milestone in Nepal's democratic evolution, embedding principles of transparency and public accountability into the legal framework. The Act precisely defines core terms such as "information," "public body," "concerned person," and "information officer," laying the groundwork for a system where citizens can file formal information requests, with public agencies obligated to respond within 15 days. It establishes an appeals mechanism for denied or delayed responses and mandates proactive disclosure of organizational, financial, and procedural data. The National Information Commission (NIC), an independent constitutional body, is tasked with overseeing the Act's implementation, equipped with powers to summon officials, order disclosure, and impose sanctions for non-compliance. Article 27 of Nepal's 2015 Constitution further constitutionalized RTI as a fundamental right, aligning with global norms such as Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights Peled & Rabin (2010). These legal provisions echo international experiences, such as India's RTI framework, where similar efforts institutionalized citizen access to state-held information and exposed entrenched opacity Tabassum & Sadashivam (2015).

The 2009 Right to Information Rules operationalize the Act by detailing procedural obligations for public bodies and Information Officers, specifying formats for requests and appeals, and defining proactive disclosure requirements, including budgetary transparency and procurement processes. Yet, Nepal's RTI implementation continues to face significant institutional challenges. As Sharma (2012) notes in the Indian context, ambitious legal frameworks often falter in environments lacking administrative will and oversight capacity—a

problem Nepal also shares. Specific challenges include the absence of trained and appointed Information Officers across many agencies, erratic compliance with proactive disclosure norms, poor archival and documentation systems, and minimal accountability for lapses. Furthermore, the NIC's constitutional authority is undercut by chronic underfunding, personnel shortages, limited technological capacity, and political encroachment—factors that mirror similar constraints observed in Kenya's Access to Information regime Kabata & Garaba (2020). Coordination failures between the NIC and bodies such as the Commission for the Investigation of Abuse of Authority (CIAA) dilute oversight effectiveness. Institutional reform strategies—such as enhancing NIC's autonomy, investing in digital governance infrastructure, and cultivating a culture of openness within public institutions—are essential to fulfilling the transformative potential envisioned by Nepal's RTI framework.

## RTI and the Judiciary

The judiciary in Nepal plays a pivotal role in interpreting and enforcing the Right to Information (RTI), mediating between transparency imperatives and legitimate concerns such as national security, privacy, and judicial autonomy. Courts have consistently upheld RTI as a fundamental right enshrined under Article 27 of the Constitution, reinforcing the state's responsibility to facilitate public access Bhattarai (1990). Landmark decisions—such as *Sudarshan Gautam v. Office of the Prime Minister and Council of Ministers* (2009), which mandated improved record-keeping and disclosure; *Raju Prasad Chapagain v. Nepal Rastra Bank* (2013), which prioritized transparency over confidentiality claims; and *Binod Bhattarai v. Office of the Prime Minister* (2011), which censured delays in disclosure—have established critical RTI precedents Shrestha (2007). In *Advocate Tikaram Bhattarai v. Nepal Police Headquarters* (2015), the court upheld the confidentiality of sensitive information while requiring disclosure of procedural and financial data, affirming proactive transparency consistent with global norms Zhu & Kouroutakis (2019). International rulings like *Sierra Club v. Morton* (U.S.) and *Gautam Bhatia v. Union of India* further affirm RTI's role in environmental justice and participatory democracy Yadav (2024). The judiciary's interpretations also weigh RTI against other interests such as digital privacy, defense, and anti-corruption efforts. Section 3(2) of the RTI Act, 2007 provides for exemptions, yet courts narrowly interpret these to uphold accountability. In *Ramesh Karki v. Ministry of Defense* (2017), classified weapons details were withheld, but procedural and budgetary data were disclosed to deter corruption. This jurisprudence aligns regionally: the Indian Supreme Court in *CBSE v. Aditya Bandopadhyay* (2011) upheld students' access to answer sheets Daves & Walker (2012), and in *Justice K.S. Puttaswamy v. Union of India* (2017), ruled privacy can yield to greater public interest. Similarly, *Lal Babu Pandit v. National Examination Board* (2022) required transparent evaluation criteria with anonymization of assessors (Yadav, 2024). Meanwhile, Nepal's 2019 e-Government Master Plan envisions RTI integration into digital platforms, but faces implementation hurdles due to weak infrastructure and staffing MoCIT, 2019; Shrestha (2007). Scholars advocate for proactive online disclosures and systematic digital training to fully embed RTI into digital governance MoCIT (2019). Additionally, RTI intersects with Nepal's anti-corruption and whistleblower protection frameworks. The Prevention of Corruption Act (2002)

criminalizes authority misuse, with the CIAA as the primary investigative body. RTI allows journalists and citizens to scrutinize public spending, procurement, and auditing. The Melamchi Water Supply Project's exposure of financial anomalies—prompted by RTI—spurred CIAA involvement UNODC (2004). However, in the absence of a dedicated whistleblower protection law, existing partial safeguards under the Civil Service Act (1993) and Prevention of Corruption Act (2002) leave informants legally vulnerable. Finally, RTI strengthens transparency under the Public Procurement Act (2007), and civil society's RTI-backed investigations—such as the bid rigging scandal in Province 2—demonstrate its watchdog role in enhancing public accountability (GON, 2007).

### **Implementation Challenges and Policy Gaps in Nepal's RTI Framework**

The implementation of Nepal's Right to Information (RTI) Act continues to face deep-rooted structural and operational obstacles that significantly curtail its democratic potential. Bureaucratic inertia remains a primary barrier, where administrative reluctance to disclose information is often driven by the desire to preserve political leverage or institutional discretion. Paper-based documentation systems, fragmented filing methods, and weak record-keeping mechanisms further delay the information flow. Public awareness, especially in rural and marginalized communities, remains alarmingly low, with many citizens unaware of their constitutional rights. Compounding this, untrained and under-resourced Public Information Officers frequently mishandle or reject requests, weakening public trust and reinforcing opaque governance practices Paudel (2023). Political interference remains prevalent, as ruling parties and local elites obstruct access to sensitive data to shield corruption or administrative failures. These problems are exacerbated by the weak enforcement capacity of the National Information Commission (NIC), whose directives are often disregarded due to the absence of binding authority Shrestha (2007). Additionally, technological gaps—such as lack of functional websites, digital archives, centralized RTI platforms, and poor internet infrastructure—worsen the digital divide and limit access to e-governance services, especially in remote areas.

From a legal standpoint, Nepal's RTI framework also suffers from significant implementation deficits. Although Section 32 of the RTI Act provides for sanctions against officials who deny information, such penalties are rarely imposed. Moreover, the law lacks clear mandates for proactive disclosure, enabling indefinite delays in publishing vital public information. Loopholes in exemptions under Section 3(b), particularly those citing "national security" or "confidential matters," allow excessive discretion, often used to conceal malpractice Paudel (2023). The absence of comprehensive legal safeguards for whistleblowers further deters individuals from exposing corruption or mismanagement. Scholars have proposed legislative reforms modeled after India's RTI Amendment Act (2019), which strengthens oversight and introduces deadlines for disclosure better aligned with federal governance Zhu & Kouroutakis (2019).

Federalism has introduced new challenges, as decentralization exposes capacity disparities between provinces and local governments. Many municipalities—especially rural ones—lack trained personnel or digital capabilities to fulfill RTI obligations Shiwakoti (2022). Despite



constitutional protections under Article 27, fewer than half of municipalities have appointed designated Information Officers, and less than 30% respond to RTI requests in a timely manner Paudel (2023). Public knowledge of RTI rights remains under 15% in remote areas, reinforcing exclusion and information poverty. This highlights the need for extensive awareness campaigns using community media, school curricula, and participatory tools such as budget hearings and social audits to deepen citizen engagement. Although the NIC has a crucial role in ensuring compliance, it is underfunded, lacks sanctioning power, and suffers from institutional limitations. Scholars recommend upgrading it into a quasi-judicial body with enforcement capabilities, sector-specific guidelines, and robust monitoring mechanisms to address non-compliance Shrestha (2007). While federalism offers the opportunity to customize RTI implementation through provincial regulations and digital platforms, it also risks fragmentation, political capture, and policy misalignment Paudel (2023). Despite support from civil society, media, and international organizations, the RTI regime remains hindered by weak institutionalization, politicization, and lack of long-term planning.

### Summary and Conclusion

The Right to Information (RTI) is a cornerstone of democratic governance, enabling citizens to scrutinize government actions, fostering openness, and promoting active public participation. Globally, RTI has evolved from Sweden's pioneering 1766 Freedom of the Press Act to modern legislation in countries like the United States, India, and South Africa, demonstrating its critical role in advancing participatory and equitable governance. In Nepal, the RTI framework—initiated through the 2007 Act and elevated to a constitutional right in 2015—marks a historic shift from entrenched secrecy to a commitment to openness. Yet, its implementation remains fraught with challenges, including bureaucratic inertia, political interference, weak enforcement by an under-resourced National Information Commission (NIC), low public awareness in marginalized communities, and a deep digital divide further increased by uneven federal capacities. To unlock RTI's transformative potential, Nepal must pursue legislative reforms to close legal gaps and strengthen compliance, enhance institutional and digital capacities, protect whistleblowers, and invest in sustained awareness campaigns that empower citizens to actively exercise their rights. Ultimately, the long-term success of Nepal's RTI regime depends on strong political will, coordinated efforts between the state and civil society, and a cultural shift toward valuing governmental openness as a public good, thereby positioning Nepal as a model of open governance in post-conflict and federalizing societies.

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