I. Rationale and Importance

A society that is not well informed is not a society that is truly free.1 As we know the essence of democratic government lies in the ability of people to make choices about who shall govern or about which policies they support or reject such choices cannot be properly made unless adequate information is available.

The effective operation of representative democracy depends on the people's ability to analyse, discuss and contribute to government decision-making. To do this, they need information. It is well known that much material about government operations is provided voluntarily. There is well-established tradition of publishing legislation and subordinate legislation. The right to information has an important role to play in enhancing the proper working of our representative democracy by giving citizens the right to demand and receive information. Such access to information permits the government to be assessed and enables people to take part more efficiently in the policy and decision-making processes of the government. It is clear that access to information is closely related to the notion of a healthy democracy where citizens participate in and influence the processes of government decision-making and policy formulation on any issue of concern to them. The importance of the right to information legislation is that it provides the means for a citizen to have access to the knowledge and information that will assist a more significant and effective enjoyment of life.

The right to information is vital in recognising citizens as consumers in public life. The public bodies and government departments govern our lives, so these institutions must be held accountable and answerable to the people. People should have a general right of access to information about government, the advice it receives and the decisions it makes. It is also important for the economic and social well being of society in general. The greater the access to information we have, the greater will be the responsiveness of our governments to our needs, wants, ideas and creativity. In other words, the bigger the limitations on access to information, the greater the feeling of helplessness and alienation.

Information is fuel for representative democracy without which people cannot effectively exercise their rights and responsibilities as citizens or make informed choices. It is the currency that we all need to share in the life and governance of our society. Information enhances the accountability of government. It ensures that members of

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Parliament are aware of the activities of the executive, which is especially important in light of the disparity in power between them. It is also an important protection against corruption. Therefore, the right to freedom of information is but one important missile in revealing potentially corrupt activity that shifts the balance of power in a subtle but profound way from the state to the individual. Therefore, guaranteeing access to official information helps to increase transparency in government affairs and serves to reduce government corruption.

If there is the right to freedom of information, citizens need not depend on the whims, moods, and political interests of their representatives to find out how their money is spent and how the public trust in general is being managed. Rather, the burden must be on those who hold the information to explain why such information should not be available.

In short, the right to information is the lifeblood of democracy. It is necessary for individual fulfilment. It is necessary to make a good citizen; to participate into the governing process; to make wise judgement; to maintain human dignity and to uphold democratic process. It empowers the people; makes them responsible citizens; fosters human rights and helps creating just society by preventing clandestine transactions. It does not support only those who are educated, rich and capable of using it. It also helps the uneducated and incompetent to be educated and competent. It bridges the gap between the haves and have nots. It is a means of empowerment and a tool for sustainable development and good governance. Therefore, it favours accountability, transparency and positive change.

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that are narrowly and clearly defined. In view of the large costs, there exists a great deal of purposeful secreting and suppression of government information from the public. Such cover up serves as an important basis for the malfunctioning and even worsening of our governmental system and our society. Good government requires sincerity in its communication with the public. This does not mean that the right of the public to know or the government’s right to hold back information is boundless. In order to make the government able to maintain the faith and confidence of its citizens, it must be in touch truthfully with the governed. The right to freedom of information provides this opportunity to be in touch everyday in the governmental process.

**Meaning of Free Access**

Freedom of information demands that information having public importance must be readily available. There must be free access over such information. What do we mean by free access to information? Free access to information primarily implies that information is available 'without constraint'. The second meaning is that the information must be available without payment if it is for the public interest. The third meaning is that information should be readily available to anyone who seeks it. It should also be made available through publication and means of communication even to those who don’t seek it as per the requirement of the open government and information culture. Generally readily available information does not mean that it is available free of cost. Since production, storage, dissemination and access of information involve some costs, some reasonable fee for the access is justified. In this aspect the right to information is based on business model. However, obstacles and obstructions hindering the free flow of information must be avoided.

**II. Key Issues**

Some issues are very important while discussing the right to information. These are as follows:

- Access to information or document
- Right to know or need to know
- Free access or access with payment
- Affirmative disclosure or passive disclosure
- Citizen’s right or individual’s right
- Access to final decision or access to intermediary process as well
- Information retained by private organisation or government information
- Burden of proof lies with the authority or with the information seeker

While we evaluate the present trend we find that the right to information provides right to get information in documented form if it is available in document. Similarly this right provides access to deliberative function of the government or any other public institution which work for the public. Further, it also guarantees the right to visit the place of public service provider and observe the quality of the service and its standard. People need not establish why they need information rather they can simply state that what sort of information they want to get. If they need information for the protection of public interest they have to get it without payment. If it is for personal need reasonable fee may be charged. Similarly, the government has obligation to furnish information to the public without demand if it is having public concern. It has been said as affirmative disclosure of the information. If information is available after a demand, this has been taken as passive
publication. The more the government is responsive the more the range of voluntary publication of information.

Countries like USA provide the right to information to the individual whereas most of other countries provide this right to the citizen only. Nepal also provides this right to the Nepalese citizens alone.

The right to information does not provide information about internal deliberation and the procedural information unless it is urgent to disclose the procedure for the protection of public interest. Likewise, the constitutional protection of the right to information is available against the information retained by the state. Private sector is immune from disclosing information under constitutional provision. However, the definition of the state may be broadened with the need of the time. In this era of privatization we have to rethink and redefine the scope of the right to information.

If any authority denies access to information on the specific ground, such an authority should clearly show that the demanded information is one of the exempt categories. Information seeker has no any obligation in this regard.

III. Present Status

3.1 Constitutional Position

The right to information has been guaranteed as one of the fundamental rights of the citizen in Nepal. The Constitution of the Kingdom of Nepal under its Article 16 explicitly guarantees this right. Any Nepali citizen has right to demand and receive information having public importance. Besides, there are other rights guaranteed by the constitution having direct relationship with the right to information. These rights are as follows:

- Right to life
- Right to read
- Freedom of opinion and expression
- Press and publication right
- Educational and cultural right
- Right to privacy

3.2 Legal Provisions

There are a number of legal provisions that are related to the right to information. These provisions favor directly or indirectly the concept of open government. By law we have guaranteed that the courts shall transact its business in open court. Similarly there are provisions regarding access to court records and official documents. Everybody has right to be heard before passing any decision against him. It is the universal principle of natural justice. Under the Consumer Protection Act, 2054, consumers' rights to know have been guaranteed. Consumers have right to know about the quality, weight, expiry date and other relevant information about the goods they purchase.

3.3 Secrecy Provisions

Laws do not only prescribe about the right to have access to information and document in Nepal. A number of legal provisions allow secrecy. There is provision regarding secrecy of documents under special Act of Parliament that is the Secrecy of Document Act, 2039. Though this legislation has not been enforced yet, this is in the statute book. Likewise the Ministers require taking oaths of secrecy under the constitutional provision. The Civil Service Act, 2049 and its rules prescribe an oath of secrecy for the civil servants.
Following provisions of secrecy are available in Nepal:

- Privileges and immunities,
- Pre matured information,
- Internal deliberation’s information,
- Commercial or trade secret,
- Matters related to privacy,
- Cabinet secret,
- Privileged communication, and
- Tax returns, private data, bank account etc.

IV. Some Important Supreme Court Decisions Regarding the Right to Information

- Kashi Dahal v. Cabinet Secretariat and others, Nepal Law Reporter 2052 p.582.
- Radheshyam Adhikari v. Cabinet Secretariat and others, Nepal Law Reporter 2048 p.821

V. Problems

There are many problems regarding the effective operation of the right to information in Nepal. These are discussed in brief here.

5.1 Legal Problems

Though there is constitutional guarantee of the right to information, the right to information legislation has not been enacted so far. Without enacting the legislation this right cannot be meaningfully implemented. There are some other ways of getting information out of right to information legislation which are available now.

Although the law regarding right to freedom of information is the major source of access to government information, there are other several ways by which government information is available to members of the public. The parliamentary system, including the expanding parliamentary committee system, promotes the transfer of information from the government to Parliament, and then to the people. Members of the public can try to find information through the MPs of their constituencies. Annual reporting requirements for constitutional organs, community consultation in certain types of bill, publication of information and administrative law requirements increase the flow of information from the government. The government provides information through various means of communication. The media is the main source of information in a democratic country. Press, Radio, Television and Internet like
5.2 Problems of the Communication Sector

Despite legal problems, there is problem of communication sector regarding the right to information. Information disseminating agencies like media are not well developed in the professional line. The media in Nepal has been roughly divided into two categories: the printing media and the broadcasting media. The legal status of press seems very strong in Nepal. Though it is independent and strong in its status, it is dependent in various ways. There are newspapers run by the government as well as by the private individuals and groups. The government owned press is more beneficial in getting advertisements and newsgathering. The government provides advertisements to its own papers. The National News Agency is the only authorised agency in the country to collect and sell the information from within and outside the country, which is owned and controlled by the government. No other agency than this is authorised for this purpose. Though some policies have been formulated to overcome these problems, these policies have not been implemented properly. Without amending the law creating hindrance for free flow of information the press cannot stand independently.

On the one hand, the press is not treated fairly by the government. On the other hand, it has its own problems. The press is urban centred, elite oriented and highly politicised. There is imbalance in access to information; community media is not well developed; quality of the press is very low; press has become lap dog instead of watchdog. Similarly public libraries are very rare. People are deprived of information due to unavailability of enough library facilities. Illiteracy is also one of the major problems.
5.3 Problem of Official Culture

Official culture in Nepal is secrecy oriented. Secrecy has been taken, as qualification to be a good administrator and transparency becomes disqualification. The provision of the Spokesperson has not been effective as they themselves sometime say they are unknown about the decision made by their ministry. The Government does not know about how many reports it has published. Reports of the Inquiry Committee are not available in the Cabinet. Official records are not properly indexed, catalogued and classified. Record management is very poor. These are few tips among the vast iceberg.

5.4 Other Problems

There are other problems like illiteracy, poverty, corruption and unemployment like problems that directly hamper the right to information.

VI. Strategies

6.1 Legal Reforms

Enactment of sound right to information act
- Review of existing secrecy oriented laws
- Amendment of provision regarding secrecy oriented oath for the minister and civil servants
- Enactment of the right to privacy, national security and classification of document legislation

6.2 Policies Reform

- Consultation in law making process
- Issuance of green paper and white paper before introducing major policies
- Adoption of voluntary Code of practice of open government

6.3 Political Measures

- Introduction of information sharing culture among the political parties,
- Political commitments to introduce the necessary legislation,
- Information based decision making process
- Issuance of Citizen’s Charter

6.4 Role of the Civil Society

- Helping people to be aware,
- Introducing consumerism approach,
- Pressurising the government to publish relevant information
- Voting the political parties having openness programme

6.5 Institutional Reforms

- Establishment of public libraries in every part of the country,
- Establishment of professional and competent institution working in the field of media and communication

VII. Conclusion

The right to information, being a tool of empowerment and good governance, has significant role in strengthening the democracy. Keeping its importance role in mind, the framers of the Constitution included it as one of the fundamental rights. However, a suitable legislation to implement it has not been enacted so far. It has become overdue. Culture of secrecy is prevailing in the bureaucracy and governance which should be abandoned promptly. Information literacy program has to be introduced through various strategies in order to create information rich society to fulfil the demand of time.