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Freedom of Expression on Internet in Nepal

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Published by:

Freedom Forum with the funding from International Freedom of Expression Network (IFEX)

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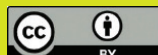
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Freedom of Expression on Internet in Nepal



ABBREVIATION

ETA	Electronic Transaction Act
FF	Freedom Forum
FoE	Freedom of Expression
ICT	Information and Communication Technology
IFEX	International Freedom of Expression Exchange
ISPAN	The Internet Service Providers' Association of Nepal
MoIC	Ministry of Information and Communications
NICT	National Information and Communications Technology Policy
NTA	Nepal Telecommunications Authority

ACKNOWLEDGEMENT

Internet is a vast regime and one of the effective platforms to bolster freedom of expression. Gradual expansion of internet in the developing country has helped in whetting debate on freedoms and human development. One of the important debates among them is the freedom of expression (FoE). Nepal too is witnessing the enhancement of FoE regime with the gradual expansion of internet (Internet penetration has reached nearly 50 percent of the total populace of the country) Despite international acknowledgement that internet is like other medium for the use of FoE, it is not received positively in Nepal in the sense that those using internet and social media in course of FoE practice are harassed and meted out actions.

With this in place, Freedom Forum (FF) has attempted to study thoroughly on the situation of the FoE on internet from the lenses of law, policy and practices prevailing in Nepal. In doing so, International Freedom of Expression Exchange (IFEX) funded the FF. FF therefore expresses deep gratitude to the IFEX, while equal thanks go to Campaigns and Advocacy Coordinator at IFEX, Mr Matthew Hatfield, who continuously provided very constructive and creative inputs to make this endeavour a success.

I heartily thank Mr Narayan Ghimire, Media Monitoring Officer, who devoted to this report as a researcher; and appreciate his untiring efforts to reach necessary documents and experts to strengthen content.

Indebted I'm for the completion of this report is Mr Baburam Aryal, advocate and Chairperson of Internet Society Nepal Chapter, who contributed to the legal part of this report.

Similarly, the help from Executive Director Mr Krishna Sapkota especially for the reviewing and refining the report is quite unforgettable. In addition to this, I thank my office staffs who provided support in a way or other to complete this undertaking.

Taranath Dahal,
Chairperson
Freedom Forum

EXECUTIVE SUMMARY

Internet is the fastest and easiest global channel people opt for exercising freedom of expression. Irrespective of the volume, access and availability, the internet is the best communication platform people use to express their views and opinion that has emerged as a booster and facilitator of free expression practice. Remarkable changes have occurred in political, economic and social systems with the exercise of FoE on internet. Nepal, though a Least Developed Country (LDC) striving to graduate to a developing nation, has not remained aloof in this regard. The internet penetration has reached out nearly to 50 percent of the total population. The social networks as Facebook and twitters and the news portals are luring significant number of youths from diverse sectors. At a time the internet is gradually becoming a credible and convenient medium to exercise the freedom of expression, how enabling and accommodative the national environment is for the pressing issue of internet-based free expression in Nepal. With this background, Freedom Forum, as a civil society organization, devoted to the cause of democracy, with the commitment to the advocacy of the broader freedom of expression, obviously took this matter with keen interest and priority.

With the financial support from the International Freedom of Expression Network (IFEX), the global network of freedom of expression, having more than 150 members across the world, Freedom Forum prepared a report on Freedom of Expression on Internet in Nepal. The report has finely reviewed and analyzed the most recent and relevant policy documents and laws including the Nepal Constitution which was promulgated on September 20, 2015; and brought forth the views from the stakeholders ranging from the security agencies to FoE policy makers, shapers and practitioners via personal consultations to focused group discussion program. With the literature/policy review and stakeholders' concerns and existing practices, the report has aimed at identifying the bottlenecks and obstructions on FoE practice on internet and seeking way out that urges the State and other stakeholders to promote universal principles of democracy in the sense that country has ushered in to the changed political and constitutional setups. During the study as part of report preparation, it is found that internet is still a wonder, an uncharted territory, in Nepal. As most of the internet users are city-

dwellers, a large section of population is still waiting for access to high-speed internet and computers. Because of the poor internet and ICT literacy, and lack of recognition to the internet as the effective modern medium of communication, the debate on internet freedom is quite new. Importantly, Nepal's policy does not seem very hostile to FoE but has not explicitly mentioned internet in relation to FoE in the latest policies and laws as ICT Policy, and Constitution of Nepal. For lack of clear and comprehensive policy and laws, free expression practitioners including common citizens and journalists are harassed and even the cases filed as Public Offence.

In order to realize the FoE provisions in the Constitution, comprehensive acts to see the FoE on internet is the present need. Among the key recommendations of the report are- widening the watchdog role of FoE rights groups/defenders to effectively monitor internet-based free expression issues; spreading internet literacy; de-criminalizing the laws governing FoE on internet; clearly defining the ambiguous terms in the constitution possibly affecting free expression exercise through constitutional court interpretation or statute amendment; scrapping of Section 47 of Electronic Transaction Act, 2008; engaging CSOs and FoE groups while formulating concerned provincial laws and ensuring people's access to quality internet service to broaden free expression practices.

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INTRODUCTION

Globally internet has emerged as an inseparable and inevitable medium of exercising free speech. It is so far the most precious gift of 21st century that science and technology has offered to promote free flow of ideas and information regardless of frontiers. The phenomenal rise in the internet-based exercise of seeking, receiving and imparting information and ideas from any part of the world, in a true sense, has superseded other traditional means of freedom of expression. It is utterly unimaginable to separate internet from freedom of expression and information, and exercise free debate in isolation. Internet has thereby become a life blood of FoE – which is core common human right guaranteed under international conventions and by virtually every constitutional bill of rights in the world including in Nepal.

With nearly half population using internet for various purposes including communications, entertainment and knowledge in Nepal, the multifarious subject of internet freedom has drawn concerns from different quarters. Today the concept of global village has been materialized linking people from one corner of the globe to another. The growing use of social media such as facebook, twitter and online communication tools like skype and viber has deconstructed the practice of communications and opened up avenues for citizens to be constructive part of governance from any part of the world, regardless of any borders.

However, against the universal principle of FoE practice, the people here are harassed by the State in the name of cyber crime. In this background the report 'Freedom of Expression on Internet in Nepal' analyzes the most recent and relevant policy documents and laws including the recent Nepal Constitution, presents the views from multi-stakeholders of internet on the study topic. With this, it has identified the bottlenecks and obstructions on FoE practice on internet and urged the State and other stakeholders to promote universal principles of FoE in line with the changed political and constitutional settings. The aim of this report is to contribute to building a foundation for reforming legal mechanism, policy and practice on internet freedom in Nepal.

However, the report has its own limitations. It has not dealt comprehensively on entire FoE landscape of Nepal, but is focused on FoE on internet. So, only most relevant and up-to-date laws, acts, policy and directives made available to the public as of mid-July 2016 are studied under this report.

CONTEXTS FOR FoE ON INTERNET IN NEPAL

FoE PRACTICE ON INTERNET FOR CHANGE ACROSS GLOBE

Internet, one of the wonderful achievements of science and technology, is used by tens of millions of people for information, communication, study, research and entertainment daily across the globe. Growing character as easy, accessible and affordable, people from different age, and diverse professions and communities are using internet. This global network has been so inseparable that life without internet is regarded meaningless. So, many can't live without the Internet even for a few minutes or days. It has been the fastest and easiest global channel people opt for exercising FoE. Irrespective of the volume, access and availability, the internet is the best communication platform people use to express their views to the concerned people and place. In this sense, it is the booster and facilitator of FoE practice. Remarkable changes in system-political, economic, social- have emerged with the exercise of FoE on internet.

The number of people using internet is hopping with its exponential use. Currently, more than three billion people, nearly half the world, use internet.¹ With almost all sectors linked to internet for its expansion, FoE is the most dominating and noteworthy. The FoE practice through internet has contributed to bringing paradigm shift challenging the entire system. The Arab Spring was whetted by FoE campaign on internet. The use of social media chiefly Facebook and twitter devoted to campaigning and canvassing for a cause resulted in movement- the movement of democracy- the democracy where the FoE is nurtured and promoted.

¹ <http://www.internetlivestats.com/internet-users/>

TECHNOLOGICAL CONTEXT OF INTERNET IN NEPAL

With the expansion of internet in Nepal, the number of internet users has increased rapidly. The expansion of mobile phone service has helped to shoot up internet users. Introduced by a private sector in 1996 in Nepal, the internet has been gradually encompassing the people from diverse professions. According to Nepal Telecommunications Authority of Nepal (NTA), 44.6 percent of country's population is linked to internet. It means nearly half of the population is using internet in Nepal. It is the most convenient and effective medium to convey information and messages. The practice of FoE is largely made through internet. The social media especially the Facebook and twitter are popular in Nepal. The number of Facebook users has reached to 5.5 million. Similarly, the number of internet service providers (ISP) is growing and making good business. In the two decades of history, there are four dozens of ISP now in Nepal.²

POLITICAL CONTEXT ON FoE

Whether it is a business competition or the thriving FoE atmosphere, we find the roots linked to the political freedom in Nepal. The restoration of democracy in 1990 created a solid foundation for the liberal economy where private sector found space to make business. Before 1990, there was party-less political system guided by monarch, which was discouraging to the private sectors to flourish. Although there were few weekly newspapers run by the political parties for the cause of democracy, frequent suppression was there to stifle people's views. Some state-run media used to function as the mouthpiece of the government, of the royal family. But the multi-party political system obviously drew private sector's attention towards the investment in media sector. It saw gradual emergence of media outlets-publication of newspaper (daily, weekly), community radios, and television. Currently there are more than 300 FM radios, thousands of

² <http://ispan.net.np/registered-internet-service-providers/>

newspapers, and nearly three dozens of TV channels. The change from party-less monarchy to multi-party democracy not only threw opportunity for the private media but also created pressure to transform the state-owned media. The state-owned media too began focusing on citizen's voice and encompass the diversity.

More important was the political change of 2005 called second *janaandolan* (People's Movement II) which abolished monarchy and ushered the country into the Federal Republic caused enormous change in media landscape. The movement paved a way for the media pluralism, diversity, and inclusion. The role of media during the movement was also remarkable. The vibrant role of media encompassed the people's voices from across the country thereby whetting and promoting FoE practice. In a way, the second janadolan led to the spurt of media. On the other hand, the regime of internet was also growing. Though slow, the expansion of the technological infrastructures, expansion of mobile phones, use of smart phones and attraction of youths towards new media led to the increasing trend of internet use for FoE. This atmosphere can be attributed to the growth of media portals and social media use.

PRACTICAL CHALLENGES

Despite such achievements, the hurdles are there- citizens and journalists are harassed and even imprisoned for weeks merely because of their use of new media including social media. And, such intimidation is from the State. Whether it is over comments on Facebook, or stories on news portals, the common citizen and journalists are made targets. It is the reflection that State bodies are hostile to the new media, which is obviously against the universal principle of FoE.

SIGNIFICANCE OF THE STUDY

The right to FoE is linked to Nepal's democratic struggles. The party-less panchayat system from 1960 to 1990 kept the State-run media under control, limiting them to the panegyric to the system, and suppressed heavily the demands for democracy which was made by some weekly that functioned as mouthpieces of political parties. The restoration of democracy in 1990 brought forth tremendous opportunities for private sectors to invest on media sector which contributed to spurt of media. The FoE was fully guaranteed by the constitution of the Kingdom Nepal 1990 under the fundamental rights. Moreover, the popular people's movement of 2005 known as second *janaandolan* paved further avenues to prosper media and promote citizens' right to FoE. Despite such achievements, the hurdles are there- citizens and journalists are harassed and even imprisoned for weeks merely because of their use of new media including social media. And, such intimidation is from the State. They are harassed reasoning the cyber crimes while there is no cyber law. While the constitution has fully guaranteed FoE, the State does not stop intimidating those practicing FoE on internet. Whether it is over a comment on Facebook, or news story on news portals, the common citizen and journalists are targeted. It finely reflects that State bodies are hostile to the new media, which is obviously against the universal principles of FoE. On the other hand, with the increased participation on internet, the misconducts on cyberspace are rife. In this background, it is high time a comprehensive study on practice of rights to FoE on internet is essential. The thorough study of the existing laws and policies relating to internet freedom is therefore a significant subject. Time has come now to identify the bottlenecks and obstructions on FoE practice on internet and seeking way out that urge the State and other stakeholders to promote universal principles of democracy in the sense that country has ushered in the changed political and constitutional set up.

METHODOLOGY

To prepare the report, the major method to bring the relevant issues on debate was the analysis (literature review) of the existing national and international instruments, including the constitution, and the UDHR provisions. The next step adopted during the report preparation was the telephonic conversation, in-person meetings and discussion to garner views relating to the freedom of expression from the stakeholders.

A theoretical base was formed by the study team on research methodology, which mainly included both quantitative and qualitative assessment indicators. Policy data on practice of internet-based free expression were collected to take stock the status of enabling environment, key challenges and opportunities offered by internet in regard to the practice of globally accredited freedom of expression. It has also used the methodology of reviewing relevant national and international instruments, published documents, courts' decisions, observations of free expression gagging practices underway in the name of taming cyber crime and specific case studies on the use of different laws to shrink the space for free expression on internet.

A different set of semi-structured questionnaires was prepared for consultations and interviews with thematic experts. Various sources of qualitative and quantitative data including paper presented and comments rendered on the paper in discussion were used in the study. In-person meeting and telephonic conversation with thematic experts and interviewees were done in soliciting their inputs to the study report.

NATIONAL INSTRUMENTS

Nepal got the supreme legal document, the **Constitution of Nepal**³ on September 20, 2015 through the Constituent Assembly. The constitution drafted for the Federal Republic has added various rights under Article 17.2.a. and Article 19 of the Fundamental Rights and Duties (Part 3). As it is the latest national charter, it deserves thorough inspection and analysis on this report.

In addition to the major legal document, Nepal has different Acts and Policies that have the provisions on infrastructural development for harnessing Information and Communication Technology for peoples' betterment including on the practice of FoE.

In order to accelerate the internet service, broadband scheme has been imperative. Nepal too has brought the **Broadband Policy 2015**⁴ which is imperative to be analysed under this endeavour.

Going beyond the sphere of the Broadband Policy, Nepal has brought the **National Information and Communication Technology Policy 2015**.⁵ It is another document that needs well observation and assessment in this report.

The most controversial law that has been a tool to tamper FoE by harassing journalists and citizens frequently in the recent years is **Electronic Transaction Act (ETA) 2008**.⁶ The Act brought to make the electronic transaction fair is also taken as 'cyber law' by State. Article 47 of the Act is cited by the police for the vigilance on citizens' updates on social media. Therefore, ETA is unavoidable legal document the report analyses.

The Online Media Operation Directive 2016 is the most recent and relevant policy document carrying significance in this report.

³ http://www.lawcommission.gov.np/en/?workflow_state=prevailing-laws-constitution

⁴ <http://www.nta.gov.np/ne/component/joomdoc/Broadband%20Policy-Draft.pdf/download>.

⁵ www.nta.gov.np/en/component/joomdoc/ICT%20Policy.pdf/download

⁶ moste.gov.np/elec_tran_act

INTERNATIONAL INSTRUMENTS

In addition to the national instruments, the report consults the most relevant and universal documents on FoE which help compare Nepal's FoE standard to the global principle and practice. The documents advocated globally are obviously imperative for Nepal, a Federal Republic, which is striving to implement its new constitution with the amendments of various laws and framing the provincial laws. Harmonization of the country's constitutional provisions and laws with the international standard is significant to create atmosphere congenial for the better practice of FoE by acknowledging the internet as fundamental vehicle of the communication- the free flow of information.

The **Universal Declaration of Human Rights (UDHR)**⁷ that the UN passed in 1948 is the finest universal document consulted as standard set on the human rights. Therefore, Article 19 of the UDHR is a reference for the comparison of Nepal's legal and political documents to it.

Similarly, another international charter relevant to this report, which in a broader way, mentions the FoE issues is the **International Covenant on Civil and Political Rights (ICCPR)**⁸, to which too Nepal is a state party.

Although the above instruments have talked broadly on FoE, they have not explicitly mentioned 'internet' pertaining to the FoE. Therefore, the endeavours on the new medium of communication in the international level are cited for the report. The **UN Special Rapporteur's report on FoE and the internet submitted to the UNGA**⁹ in 2011 is the worth document to which the national documents are compared to standardize with international set up.

⁷ <http://www.un.org/en/universal-declaration-human-rights>

⁸ <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

⁹ www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf

INTRODUCTION AND EXPANSION OF INTERNET IN NEPAL

EFFORTS MADE ON INTRODUCTION AND EXPANSION OF TELECOMMUNICATIONS

Nepal Telecommunications Authority (NTA), established on March 4, 1998 in line with the Telecommunication Act 1997 and Telecommunication Regulation 1998, is the sole body- a State-run one- to regulate and promote the expansion of the telecommunications in the country. As mentioned in the NTA website¹⁰, the objective of NTA are:

1. *To make the telecommunications service reliable and easily available to the public.*
2. *To make necessary arrangement to avail basic telecommunications service and facilities in all rural and urban areas throughout Nepal.*
3. *To protect the rights and interests of consumers by ensuring the provision of quality service.*
4. *To make arrangement for the coordination and healthy competition among the persons providing Telecommunications Service and facilities*

As the objective mentioned above, NTA is such State-run body that is for making every necessary arrangement to ensure basic telecommunications service throughout the country. It also oversees the telecommunication environment for its healthy competition, that is to say, it is the coordinating agency of the government for the private sectors' activities on expansion of telecommunication e.g. telephone and internet services.

Moreover, the root to the expansion of telecommunications goes to the Constitution of the Kingdom of Nepal 1991¹¹, which was written in the spirit of the popular people's movement. It obviously advocated for people's freedom, and liberal economy to be boosted by participation of private sectors. In 1992,

¹⁰ www.nta.gov.np/

¹¹ http://himalaya.socanth.cam.ac.uk/collections/rarebooks/downloads/Nepal_1990_Constitution_English.pdf

National Communication Policy was formulated which basically opened up avenue for the liberalization of the telecommunication sector. And while talking about the first legal efforts of the government on embracing technology to boost the telecommunications sector came with the Information Technology Policy (IT Policy) in 2000. It was later revised in 2010 augmenting the role of IT as a tool for development and growth.

It was by the decision of the Council of Ministers on December 25, 1995, the involvement of the private sector was initiated in the development of telecommunication services.

Coming to the present, Nepal has the Broadband Policy 2014 and the ICT Policy 2015. The provisioned on these are mentioned under the analysis of national instruments.

The establishment of the NTA was in deed a turning point in history of Nepal's telecommunications. Due to the liberal policy the government adopted in the telecommunications, the private sectors also marched into its competitive market. Currently, six companies are providing the telephone services in Nepal. They are- NDCL, UTL, Ncell, STM, NSTPL, STPL. The market share of telephone service in Nepal is dominated by the mobile service. As per the NTA's record, 94 percent of the market is of mobile service while remaining 3 percent of fixed and next 3 of others (limited mobility, GMPCS etc)

Similarly, the Management of Information System report shows that internet penetration in Nepal as per (NTA) has reached 46.04 percent, while there are 23 internet service providers (ISPs). The internet is provided through the dialup, wireless, cable and fiber. Cable system dominates the internet flow. It is followed by wireless, which again is followed by the fiber.

1.2 Data/Internet Services

Services	Subscribers						Total
	NDCL	UTL	Ncell	STPL	STM	ISPs	
Dialup (PSTN +ISDN)	4266	-	-	-	-	5709	9975
Wireless Modem Optical Fibre Ethernet	-	-	-	-	-	45424	45424
Cable Modem	-	-	-	-	-	79943	79943
ADSL	167363	-	-	-	-	-	167363

Services	Subscribers						Total
	NDCL	UTL	Ncell	STPL	STM	ISPs	
GPRS,EDGE,WCDMA	6662213	-	4920389	100305		-	11682907
CDMA 1X, EVDO	136573	62986	-	-	-	-	199559
WiMAX	14092	-	-	-	-	-	14092
VSAT based Internet	-	-	-	-	13		13
Total	6984507	62986	4920389	100305	13	131076	12199276
Internet Penetration (%)							46.04

Source: <http://www.nta.gov.np/en/home-en/12-english/page/1-welcome>

The credit to the introduction of internet, the modern wonder to Nepal, goes to the private sector, which was based on the liberal economic policies introduced after the restoration of democracy in the country in 1990. The development and expansion of internet has obviously been an effective tool to boost the FoE by raising people's voices from across the country. With the introduction of this latest tool, people's attraction to it was gradual in the initial days while overwhelmingly in the recent time owing to the development of infrastructures to support the internet. Mentioning about the internet and its origin in Nepal, the Mercantile Communications is the most unforgettable name which brought in the internet in the country while the advanced countries like America too was pondering on its expansion. It has now turned into the best augments of FoE in Nepal.

Mercantile has been at the forefront of the Internet evolution and is a cutting edge Internet service provider (ISP) in Nepal. Mercantile pioneered the concept of providing Internet Service in Nepal when the popularity of Internet was just beginning in the United States of America. Mercantile in fact has become the first company that led the nation in introducing new and appropriate information technology by giving individuals and small businesses the ability to use the Internet as a tool to make their lives more productive and their businesses more profitable. Mercantile is continually developing a new and innovative suite of services that make it a faster, easier and smarter Internet experience.¹²

¹² http://mos.com.np/about_mercantile.php

Mercantile Communication was established in 1999. It gradually emerged as the leading bandwidth provider for other Internet Service Providers in Nepal.

Through the internet with various applications and social media as Facebook and twitters, the people are now interacting with the high level officials including the central administration, security agencies and other concerned bodies. They are constantly posting comments and criticisms on the posts/information shared by such high level people and mechanism. It has encouraged massive participation of people in any hot topic. Similarly, political parties and leaders are criticised for their shortcomings and lack of farsightedness. This way, the aware people, without any permission, are exercising their right to FoE. It reflects the optimum practice of democracy. Internet has been an accelerator of the free flow of information, and augments of the FoE.

With the Mercantile Communications the first internet service provider (ISP), the number of ISPs has reached nearly 50 in Nepal.

While talking about the expansion of internet facility in Nepal, the most unforgettable person in Nepal is Mahabir Pun. Foreign-educated, untiring, and dauntless Pun bagged the Nobel Prize of Asia, Roman Magsaysay Award in 2007 for his contribution to community leadership and innovative application of wireless technology in Nepal.

Pun set up the Nepal Wireless Networking Project in 2002 and built a local communication network using wireless technology to connect people in hilly communities of the western region of Nepal. Focused initially for schools in villages, his initiative helped promote digital literacy. The Wifi service he began has now spread more than 175 villages in 15 districts of Nepal.

ANALYSIS OF FoE AND THE RELATED PROVISIONS ON NATIONAL INSTRUMENTS

ON CONSTITUTION

The Constitution of Nepal brought in September 20, 2015 is the supreme political and legal document brought in line with the changed political system- the Federal Democratic Republic. It was promulgated through the Constituent Assembly, formed with the people's representatives from diverse communities possible. The constitution is the reflection of the people's aspirations. One of the most notable achievements is the fundamental rights provided by the constitution to thrive the democracy.

To be particular here, Article 17 of the Constitution of Nepal has mentioned the FoE as one of the fundamental rights. It has finely stated that 'every citizen shall have the following freedom – a) freedom of opinion and expression.' It must be lauded that the constitution has recognized the freedom of opinion and expression as fundamental rights and ensured it to every citizen. However, the proviso (2.1) of the Article is highly likely to be misinterpreted, because the words mentioned in the four provisos here are quite vague:

4. Nothing in sub-clause (d) shall be deemed to prevent the making of an Act to impose reasonable restrictions on any act which may undermine the sovereignty, territorial integrity, nationality and independence of Nepal, or on any act which may constitute espionage against the nation or on any act of divulgence of national secrecy or on any act assisting any foreign state, organization or representative in a manner to undermine the security of Nepal or on an act of sedition or on any act which may undermine the harmonious relations between the Federal Units or on any act of incitement to caste-based or communal hatred or on any act which may undermine the harmonious relations between various castes, tribes, religions and communities or on incitement to violent acts or on any act which may be contrary to public morality.

Here, the vague words can be interpreted in different ways by different people and institutions. For example, the phrases as 'harmonious relations between the

Federal Units,’ ‘public morality’, ‘harmonious relations between various castes, tribes, religions and communities’, ‘territorial integrity’ mentioned on proviso no 4 of the Article 17 needs clear definition. The relations found harmonious to one or two communities may not be found harmonious by others.

Similarly, Article 19 of the Constitution has mentioned ‘Right to communication,’ as the fundamental right. It has vividly spoken that no publication, broadcast on any means would be pre-censored. It says:

(1) No publication and broadcasting or dissemination or printing of any news item, editorial, feature article or other reading, audio and audio-visual material through any means whatsoever including electronic publication, broadcasting and printing shall be censored.

The mention, of course, fully serves the essence of the press freedom, and FoE. It has paved way for the promotion of the FoE which is essential to the thriving democracy. The dissemination of news and views through the means whatsoever obviously incorporates the dissemination of news and views through the modern means of communication as internet which is gradually gaining space in Nepali media landscape. However, the proviso here again mentions that State can impose restriction in the name of ‘harmonious relations’, ‘public decency or morality’, ‘hatred to labour’ ‘caste-based untouchability’ as it says:

Provided that nothing shall be deemed to prevent the making of Acts to impose reasonable restrictions on any act which may undermine the sovereignty, territorial integrity, nationality of Nepal or the harmonious relations between the Federal Units or the harmonious relations between various castes, tribes, religions or communities, or on any act of sedition, defamation or contempt of court or incitement to an offence, or on any act which may be contrary to public decency or morality, on any act of hatred to labour and on any act of incitement to caste-based untouchability as well as gender discrimination.

One after another, the provisos mentioned under the Article 17 and Article 19 of the Constitution of Nepal, have added suspicion on the free flow of information and people’s right to FoE. Making the articles lengthy with vague wording will generate multiple interpretations. As the country has adopted the Federal Republic and is implementing it to the fullest in the near future, provincial parliament can make the laws based on these provisos, which actually are against universal

norms and values and international standards of the FoE. Similar interpretations can be made by the government's legal persons and the courts. Therefore, greater watchfulness during the formulation of laws in the provincial levels is required.

CONSTITUTION OF NEPAL 2015 REGRESSIVE IN TERMS OF FOE ON INTERNET

The Constitution of Nepal 2015 is regressive in terms of its provision relating to the FoE as compared to the Interim Constitution of Nepal 2007, because the latter has explicitly mentioned the phrase online thereby extending the FoE sphere up to the internet. The mention of these words obviously had emboldened the FoE regime on the internet. Under the fundamental rights, Article 15 (2) of the Interim Constitution 2007¹³ states:

Any audio, audio visual or material if produced and broadcasted or printed through any electronic device those materials produced and broadcasted or print radio, television, online or any other digital or electronic press or other media medium shall not be closed, seized or the registration be cancelled.

Although mere mention of any phrase/word relating directly to the internet may not essentially be the robust foundation for the protection of FoE on internet, the comparative analysis of constitutions' FoE provisions reveal the regressive trend in Constitution of Nepal 2015.

ON POLICY

The National Information and Communication Technology Policy, 2015 brought by the government does not mention the phrase 'freedom of expression' in it. It suggests the ICT Policy 2015 is yet to fully embrace the values of free expression and the government too is not aware enough or intentionally avoided the mentioning of the 'freedom of expression' in such significant policy document. Throughout the policy, there are no sentences written that FoE would not be breached, nor FoE protected and promoted.

¹³ <http://www.lawcommission.gov.np/en/documents/2015/08/the-interim-government-of-nepal-act-2007-b-s.pdf>

The policy has tried to speak in length about the cyber crime under the point 12.21. 'Building confidence and Security in the use of ICTs, but failed to mention FoE issues regarding this. It puts:

12.21.1A national level initiative to maintain an effective legal framework and enforcement capabilities to disrupt and prosecute cyber crime will be undertaken. Along these lines, the law enforcement agency capability on cyber crime will be significantly enhanced to understand, investigate and disrupt cyber crime. Specific steps will be taken to make it easier to report cyber crime and ensure that the intelligence from reporting is fed back into effective action and advice to the public.

Needless to say, Nepal is in need of a mechanism to see the cyber crime issues effectively. But what must not be forgotten is journalists and other citizens are harassed in the name of cyber crime under the Electronic Transaction Act (ETA) 2008. Therefore, ignoring this bitter reality and not mentioning about FoE practices on internet while talking about cyber crime lacks logical ground. Police have harassed various people under the ETA over the use of Facebook posts.

Under the point 12.5- ICT for Government service innovation and good governance, the policy mentions- "The use of social media will be promoted to drive inclusion and participation in governance." It is obviously a significant point to propel FoE regime, but it is limited to sharing the one-way information about government service. The use of social media is not for FoE practice, for the policy has not linked this point with the FoE. The mention of the use of social media is stated as only a tool to good governance. In this regard, the government has forgotten that the FoE as one of the essential pillars of the good governance.

On the other hand, although no phrase as 'freedom of expression' and the 'internet freedom' are used in it, some points that deserve welcome regarding the infrastructures for the expansion of the internet. The following is mentioned under the guiding principles of the proposed policy:

5.7. The implementation of this policy shall take into account relevant regional and global strategies and best practices in transforming the nation into a knowledge based society by cultivating strong linkages with the UN Millennium Development Goals (MDGs), WSIS beyond 2015, WTO, Broadband Commission, UN-ESCAP, post 2015 sustainable development agenda etc.

With this guiding principle in place, the government has at least planned for building the knowledge based society, which is created only with the smooth flow of information and people's expression. Also, it is the reflection of the commitment to act in line with the global movements created through the global agenda led by the global institutions WSIS beyond 2015, Broadband Commission, and Post 2015 Sustainable Development Goal.

Moreover, some others objectives of the policy that are friendly to accelerate the infrastructures for internet, the most advanced medium of the FoE, are:

11.1. To empower and facilitate Nepal's participation in the Global Knowledge Society.

11.6. To further streamline clear strategies and obligations for licensed ICT service providers with respect to universal access/service goals and Quality of Service (QoS) and ensure cost-effective connectivity to ICT services such as Internet, E-Commerce and E-Government services;

11.9. To promote cost-effective and qualitative last-mile access technologies for providing secure access to internet including commercial and public information services, eGovernment applications by communities (including the disadvantaged and physically challenged) especially in rural and underserved areas;

ON BROADBAND POLICY

The Broadband Policy Nepal brought in 2015 is another document that has positive provisions which can help create infrastructures to expand internet. But it is silent on FoE. It has chiefly focused on technological aspects of internet. In its mission, it mentions:

- a) To develop and expand the infrastructures of ultramodern, trustworthy and secure broadband especially based on rural community by wiping out disparity on diverse communities' access to information and technology (digital divide),*
- b) In addition to building the knowledge-based society, the broadband infrastructures and services would be developed and expanded with the effective use of information and communication technology to achieve the goal of development*

Similarly, some positive things the Policy mentions are its objectives. Its objectives are focused on expanding the internet service. Under the objectives, the policy says:

8.1. Broadband service with at least 512 kbps (download) will be made available and if demanded in the urban area the broadband service up to 10 mbps speed will be made available

8.2. By 2018, 45 percent households of Nepal will be guaranteed access and coverage of broadband

8.4. By 2018, all district headquarters will have optical fibres networks

8.5. By 2018, a total of 1,500 VDCs will be developed as the e-VDC by building broadband infrastructures and service

8.10. By 2020, all VDCs of Nepal will have e-centres

Despite stating such objectives, the policy does not relate internet to the free flow of information. Internet is the most advanced medium of communication, but issues relating to this aspect are not raised. Similarly, the objectives seem ambitious in the sense that the Policy lacks proper strategic work plans to achieve the aims. Setting up e-centres in all VDCs of Nepal by 2020, expanding fibre networks in all district headquarters by 2018 are laudable objectives, but mere objectives do not serve the purpose. And, no concrete homework is made by the State materializing the objectives till date.

ETA: OBSTRUCTION TO FOE PRACTICE ON INTERNET

The major legal document that the State has used frequently to harass the media persons and citizens is the ETA 2008. Various journalists and citizens are arrested and detained by Nepal Police reasoning their Facebook posts and comments and news on media portals violated the ETA. For this, Article 47 of the Act is invoked. The Article 47 mentions:

Publication of illegal materials in electronic form: (1) If any person publishes or displays any material in the electronic media including computer, internet which are prohibited to publish or display by the prevailing law or which may be contrary to the public morality or decent behavior or any types of materials

which may spread hate or jealousy against anyone or which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes and communities shall be liable to the punishment with the fine not exceeding One Hundred Thousand Rupees or with the imprisonment not exceeding five years or with both.

(2) If any person commit an offence referred to in Sub-section (1) time to time helshe shall be liable to the punishment for each time with one and one half percent of the punishment of the previous punishment.

The ETA brought in 2008 with the objective of making the financial transaction fair, is made a tool to check 'cyber crime' as security claims, while cyber crime is mentioned nowhere. And most importantly, Nepal has not yet formulated cyber law to define well the cyber crime. As a result, the provision 47 is invoked in case any citizen expresses his/her views in social media and news portal. With the rise of internet penetration in Nepal, the use of social media especially the Facebook is also on rise. But the Facebook posts and comments which the Nepal Police deem as the material 'that may spread hate or jealousy against anyone or which may jeopardize the harmonious relations among the peoples ..' (Article) become the immediate target of the State resulting in arrest and detention in the name of cyber crime. The most abhorring is the fact that the police treat those expressing their views on social media in a way the FoE practitioners are criminal. They are detained as if they have committed a crime, while the fundamental principle is- none can be arrested/ detained merely because of his expression- speech/opinion. More important is the fact, they are filed cases at court as per public offence law and ETA.

ETA CRIMINALIZES FOE ON INTERNET

With this provision (Section 47), and its frequent invocation by the State against people's fundamental rights- the FoE, it is fair to say that ETA has criminalized the FoE on internet.

ON DIRECTIVE

The Nepal Government recently issued the **Online Media Operation Directive 2016**, which has various provisions that certainly curtail FoE on internet. To a gross indifference to the protection of the FoE, the preamble of the Directive has mentioned that

“As it is expedient that the registration, renewal, operation and monitoring of the online media be organized, the Government of Nepal has, exercising the rights given by Clause 45 of the Good Governance (management and operation) Act, 2064 B.S., introduced this Directives..”

Here, the government has taken the operation of online media in a bid to maintain good governance, but not recognized as the medium to expand FoE online. This very preamble speaks a lot that the registration, renewal, operation and monitoring of the online media by the State means the State wants to control the online media making the registration and renewal mandatory, and conducting monitoring. Registering media under any State control invites high chances of State suppression.

Similarly, Clause no 11 (Publication and broadcasting to be prohibited) of the Directive mentions states:

The following materials shall not be allowed to be published and broadcast from the online media:

- (a) Causing harm to Nepal's sovereignty, territorial integrity, nationality or good relations among the federal units, various caste, ethnic groups, religion or communities,*
- (b) Amounting to treason, defamation or contempt of court or inciting commission of crime,*
- (c) Act against public protocol or morality,*

(d) Abuse of labour, inciting racial untouchability and gender discrimination,

(e) Without authorized source, that could create illusion and have an adverse impact on international relations.

Yet again, the Directive, like some unclear words/phrases in the constitution has not made it clear ‘abuse of labour’, ‘inciting racial untouchability’, ‘act against public morality’. What sort of activities can be the abuse of labour? What can be the activities against public morality? In the country having numerous castes and culture, the behaviour regarded as public morality in one community may not be the same in other.

Moreover, Clause 21 (Publication to be suspended) of the Directive mentions:

Any online media or its website may be suspended in the following circumstances:

(a) If found operating the online media illegally without registering or renewing within the prescribed limitation,

(b) For publishing or broadcasting materials prohibited for publication pursuant to Clause 11,

(c) For carrying out any act against this Directives and prevalent law.

The online media is a free media, an open media which must not be controlled, but the Directive has mentioned that the online media must be registered in the Department of Information, and renewed from the same. Internet is such a vast open sphere where restriction is impossible, but, the Directive has not allowed to open/run online media without permission. It is quite worrying and obviously curtails FoE on internet. So there is no option but to immediately scrap it.

FoE ONLINE IN NEPAL

FoE is a constitutionally guaranteed right of the Nepali citizen. It is guaranteed in the Constitution of Nepal-2015. However, FoE is not an absolute right. So it is qualified by the law. FoE can be curtailed if it undermines the sovereignty, territorial integrity, nationality, and independence of Nepal or the harmonious relations between the Federal Units or incite caste-based discrimination or untouchability or on any act of disrespect of labour, defamation, contempt of court, incitement to an offence or on any act which may be contrary to public decency or morality.

The constitutional protection of FoE is extended up to online (Internet) as well. Article 19 (1) of the Constitution of Nepal 2015 that mentions:

No publication and broadcasting or dissemination or printing or any news items, editorial, feature article or other reading, audio, audio-visual material through any means whatsoever including electronic publication, broadcasting and printing shall be censored.

However, ETA 2008 poses a serious threat to internet and FoE in Nepal. Section 47 of this Act has been used to control FoE practice on internet in Nepal.

LEGAL FRAMEWORK OF FoE ONLINE

There are various criminal laws that are applicable to FoE domain. This report is confined within following issues of FoE that is criminalized:

Defamation: Defamation is a criminal offence in Nepal. Under Sec. 3 of Libel and Slander Act, 1959, of Nepal, if a person, by way of writing or words or signs or understandable symbols, accuses another person, or publishes the matter with intent to damage other person's character or knowingly or having reason to believe that it will make such a damage, the person shall be deemed to have libeled that other person.

Obscenity: Obscenity is one of the major excuses to criminalize FoE in general and online in particular. There is growing strictness of government agencies on access to the content specially, pornographic and defamatory of the nature. Ministry of Home Affairs, issuing a public notice on 22nd October 2010, imposed liability on ISPs and concerned authorities to stop transmitting or broadcasting or publishing those contents prohibited by Sec. 47 of Electronic Transaction Act, 2008.

The Sec. 47 (1) of the Act is most controversial legal provision that curbs FoE online. This Section states

“If any person publishes or displays any material in the electronic media including computer, internet which are prohibited to publish or display by the prevailing law or which may be contrary to the public morality or decent behavior or any types of materials which may spread hate or jealousy against anyone or which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes and communities shall be liable to the punishment with the fine not exceeding One Hundred Thousand Rupees or with the imprisonment not exceeding five years or with both.”

The one and only prevailing law that prohibits any obscene material is Sec. 2 (c, c1) of the Some Public (Crime and Punishment) Act, 1970, which states:

No person shall commit any of the following acts:

- *To break public peace or to make obscene show by using obscene speech, word or gesture in public place.*
- *To print or publish any obscene materials by using obscene language or by any word or picture which denotes obscene meaning; or to exhibit or sell or distribute such obscene publication in public place other than the purpose of public health or health science;*

Similarly, in the License Agreement with ISPs, there is a provision that “Any obscene content that be termed as obscene by prevailing law of the land, any act which may be contrary to decent public behavior or morality”

Hate speech: Article 17 (2) (a.1) and of the Constitution of Nepal, 2015 provides for restrictions on any act which may undermine the sovereignty, territorial integrity, nationality, and independence of Nepal or the harmonious relations between the Federal Units or incite caste-based discrimination or untouchability or on any act of disrespect of labour, defamation, contempt of court, incitement to an offence or on any act which may be contrary to public decency or morality.

Implementing this, Section 14(d) of the Press and Publication Act, 1991¹⁴ prohibits the publication of anything which creates discord among people of various castes, religion, class, area and community or which promotes communal animosity. Similarly, Section 15 of the National Broadcasting Act, 1993¹⁵ also prohibits the broadcasting of advertisements or materials misinterpreting, disregarding, insulting and devaluing any tribe, language, religion or culture.

Blasphemy: Blasphemy is basically the act of insulting or showing contempt or lack of reverence for God. [<http://www.merriam-webster.com/dictionary/blasphemy>] In Nepal, there is no blasphemy law in a strict sense. However, Article 19 (1) of the Constitution of Nepal says,

Nothing shall be deemed to prevent the making of Acts to impose reasonable restrictions on any act which may undermine the sovereignty, territorial integrity, nationality of Nepal or the harmonious relations between the Federal Units or the harmonious relations between various castes, tribes, religions or communities, or on any act of sedition, defamation or contempt of court or incitement to an offence, or on any act which may be contrary to public decency or morality, on any act of hatred to labour and on any act of incitement to caste-based untouchability as well as gender discrimination.

Political Criticism: Rulers don't like criticism. Many countries have imposed restrictions on FoE over internet in the name of state policy. NTA proposed an amendment on license of all the ISPs in 26th September 2010 and incorporated

¹⁴ <http://www.lawcommission.gov.np/en/documents/2015/08/press-and-publication-act-2048-1991.pdf>

¹⁵ <http://www.lawcommission.gov.np/en/documents/2015/08/national-broadcasting-act-2049-1993.pdf>

certain clauses that impose ISPs to block the website that contains any content which is against the political system adopted by the state. This imposed serious threat on FoE on internet.

CASE STUDIES ON USE OF CRIMINAL LAW TO CURB FoE

There is growing concern of criminalization of use of Internet as tools of FoE. The statistics below reveals that mis/use of social networks tops the chart of cyber crime in Nepal.

Comparative table of reporting of cyber crime in Nepal

S.N.	Type	Fiscal Year 2066-2067	Fiscal Year 2067-2068	Fiscal Year 2068-2069	Fiscal Year 2069-2070	Fiscal Year 2070-2071	Total
1	Social Network	3	12	32	58	16	121
2	Email Threat	4	3	5	8	2	22
3	Illegal Data Access	0	1	1	1	2	5
4	ATM	0	0	1	0	0	1
5	Hack	0	0	2	3	1	6
6	Obscene Website	0	0	1	3	0	4
7	Website Dispute	0	0	2	0	0	2
8	Web SMS Threat	2	0	2	3	0	7
9	SMS Lottery Fraud	0	0	0	6	0	6
10	Phishing	2	0	2	1	0	5
11	Copyright	0	0	0	0	1	1
	Total	11	16	48	83	22	180

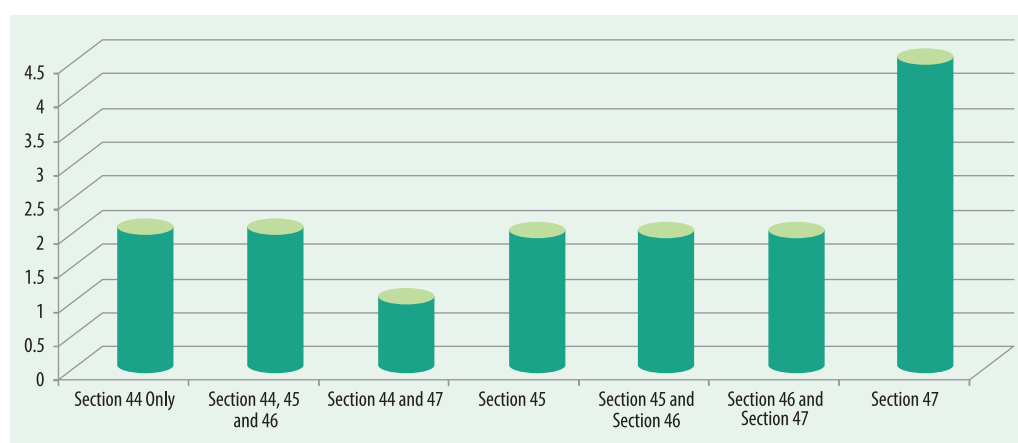
Source: Nepal Police, Hanuman Dhoka, 2015

The fiscal year in the table is as per Nepali calendar (BS), according to which fiscal year 2070-71 BS is 2013-14 AD

With the growth and popularity of social media, it has become a popular platform for criminals over the last decade. Social media has revolutionized the way people interact with others and has become an integral part of life for people of all ages. There is growing trend of cybercrime in Nepal on use of social media tools.

Not only the complaint, it was no surprise that Section 47 (Publication of Unlawful Content) dominates the charge sheets. So far, it seems just four sections are applied.

Application of Specific Section of ETA



SOME CASES AND NEWS STORIES OF THE CONTROL OF F_oE ONLINE

- i. **Government of Nepal vs. Bikash Thapa (Maina Dhital)**
The defendant was arrested and charge sheet submitted at Kathmandu District Court under Section 47 of the ETA, 2008. The major charge that were filed by the applicant was that the defendant harassed the plaintiff sending sexually explicit pictures and words to her email ID and harassed her for long time. But, the accused was acquitted as there was no sufficient evidence to establish the charge.
- ii. **Government of Nepal vs. Ganesh Dulal (KA Kumari)**
Defendant was accused that he involved on publication of private content of the plaintiff and convicted under Section 47 of ETA, 2008. Here, the defendant was accused of taking photograph of a minor and storing it digitally and exploiting the minor. The defendant was punished with minor amount (2,000 NPR).
- iii. **Government of Nepal vs. Bhojraj Basnet et. al.**
Bhojraj Basnet and Narendra Basnet were journalists who allegedly took videos without consent of victim of public humiliation and defamation by upper caste people and broadcasted via online news portal. The Court

declared that the act was under the permission of the exercise of the freedom of expression of citizen under the constitution.

iv. Government of Nepal vs. Abdul Rahaman (Police Report)

This is much debated case in public sphere where a local police out of Kathmandu Valley arrested and filed a charge sheet under Section 47 of the ETA, 2008. Here, the defendant was charged that his complaint of police over social media page was defamatory. However, the Court declared that the act of defendant was under the permissible protection of the freedom of expression and warned Nepal Police for any future hostile prosecution.

v. Government of Nepal vs. Dinesh Acharya (Nirvan Choudhary)

Defendant, a journalist was charged under Section 47 of the ETA, 2008. It was alleged that the defendant defamed the plaintiff sharing a scanned copy of newspaper on Facebook page. The defendant was acquitted on the ground that there was no defamation and it was under permissible provision.

vi. Police harasses online news scribes

On November 4, 2015, the Central Investigation Bureau of Nepal Police took under control two journalists from their media house- yeskathmandu.com- for three hours over the news reporting on the misuse of fuel provided freely to VIPs. A group led by Deputy Superintendent of Police reached the news portal's office at Thapagaon, Kathmandu, and took journalists Manoj Khatiwada and Parbati Thapa under control. They were released after three hours without further inquiry, and action.

vii. Online journalists arrested over news story

Three journalists were arrested over a news story about a women college published on the nepaliheadlines.com news portal about a month prior to the arrest. Police arrested guest editor Sushil Pant and website owner Santosh Bhattarai in the capital city of Kathmandu, on June 20, 2013. One more journalist had already been arrested in the same case.

According to the District Police, 10 days before the arrest of Pant and Bhattarai, journalist Pushkar Nath Kandel was arrested over the same news story. Kandel was running the extrakhabar.com in Palpa, a hilly district in western Nepal.

After some days, they were released as legal case was not initiated owing to the activism of FoE defenders and media fraternity.

viii. Court punishes Radio Chairman over dissemination of news

Chairman of the Ramailo Radio from Okhaldhunga district, Dirgha Khatri, was fined from the District Court over a complaint on dissemination of news on his radio, and the Facebook sharing of the news.

A local from Okhaldhunga district, Dipak Rajbhandhari, had filed a complaint at the District Administration Office against Dirgha reasoning the news aired on radio and shared on Facebook (the news was the rape of a girl by Rajbhandari disseminated a year back- March 2015) was a slander and blemish on his personal life. Later, the District Administration Office took the case to the District Court, which ultimately issued order against Mr Khatri.

On January 13, 2016, Judge at District Court Uddhav Bhattarai, invoking Clause 2 of Some Public Offense and Punishment Act 2027, issued an order against the Dirgha Khatri and his spouse Sushila Karki fining them Rs 3,000 each and the confiscation of Rs 20,000 and Rs 5,000 deposits they had in the DAO.

ANALYSIS

The Court order punishing Radio Chairman Khatri shows that the content shared on Facebook is investigated through criminal law instead of civil law. Moreover, ETA was invoked in the previous cases relating to Mr Pant, Bhattarai and Kandel, Mr Acharya, Mr Khatiwada and Thapa, Mr Rahman, (which too was faulty), but the case on Khatri was initiated and order issued under the Public Office Act which is regarded as a harsh administrative law.

However, if Khatri's case was of slander and libel, it should have been treated under the related Slander and Libel Act.

Similarly, due to the timely intervention and advocacy of civil society and media fraternity, cases on Mr Pant, Mr Bhattarai and Mr Kandel, were not initiated. The District Attorney Office Kathmandu did not file a case at the District Court Kathmandu as police had claimed that they had violated the law, following the agreement with the police and Press Council Nepal, the State-owned media content regulatory body, that the latter would watch over such cases. Then, they were released.

Meanwhile, Acharya, Khatiwada, Thapa, and Rahman had to face litigation, but they were acquitted by the Court.

In Bikas Thapa's case, the Court did not find sufficient evidence that he had harassed the colleague over email/internet. He, after some months' detention, was acquitted. But, citing this case, he was expelled from his media.

Similarly, the story of yeskathmandu.com journalists' brief arrest is a fine example how the State regards online media. On November 4, 2015, the Central Investigation Bureau of Nepal Police took journalists Manoj Khatiwada and Parbati Thapa under control from their office over the news reporting on misuse of fuel provided freely to VIPs, but freed them after three hours without further inquiry.

Among these cases, the most aberrant and attention seeking one is of Dirgha Khatri. Merely because of making Facebook post and disseminating news on radio, case was filed under the public offence. It is a serious threat on practice of FoE on internet.

Most of the arrests and subsequent legal cases under the ETA seem the ETA is used as a tool to harass and threaten citizens/journalists. Khatri's case goes beyond it- Government/State agencies at any time may detain citizens and journalists and initiate criminal case through the Public Offence Act on the news, views and analysis irrespective of their fact, reality, and balance. And it again is upheld by the judiciary. These are the incidents showing the Government may tamper and suppress constitutionally guaranteed rights at any time.

All over the world, the criminal law is used to control the freedom of expression. In Nepal, Section 47 of Electronic Transaction Act, 2008 criminalizes FoE. This Act read with other criminal law punishes any expression up to 5 years imprisonment at first instance. This is contradictory to contemporary legal development.

There is no clarity on legal provisions in Nepal. On one hand, the constitution protects the FoE, on the other, the ETA criminalizes it. Moreover, the ETA is quite confusing about defamation, obscenity and hate speech. All are covered by a single Section, which is highly misused by the State agencies. Similarly, though political criticism is not covered by the Act, an individual is charged under this Act in such activity.

WEBSITE BLOCKING AND FILTERING

Nepal Telecommunication Authority (NTA) is the sole government body to manage and regulate the entire telecommunications. It is therefore the responsible agency to regulate contents on internet. The blocking of any website and filtering content is carried out in line with **Nepal Telecommunications Act 1997**¹⁶ as said by Information Officer of the NTA, Mr Purushottam Khanal. He maintains:

“NTA does have the policy to bolster internet freedom. But, any thing/contet is found tarnishing the harmony among people/different communities or creating hatred in website, it is blocked as per the Telecommunications Act 1997. Similarly, some websites are blocked upon requests by the State authorities as security bodies, home ministry and others on the ground of pornography and national security.”

He argued that there was not any guideline to the ISPAN to block websites, and any verbal order to block any website was not true. Mr Khanal however admitted that www.hulakinews.com was partially blocked during the Tarai/Madhes agitation following the promulgation of the new constitution. “We don’t block website in general, but some content on legal ground,” he said, adding that only two to three websites were partially blocked during the agitation.

To this regard, what does the international instrument say? The sub-topic, on ‘Access to the Internet’ on Special Rapporteurs’ report to UN¹⁷ says:

“Cutting off access to the Internet, or parts of the Internet, for whole populations or segments of the public (shutting down the Internet) can never be justified, including on public order or national security grounds. The same applies to slow-downs imposed on the Internet or parts of the Internet.”

¹⁶ www.nta.gov.np/en/.../Acts/Telecom%20Act%20Upto%20date%20Eng.pdf/download

¹⁷ <https://www.article19.org/resources.php/resource/3313/en/joint-declaration-on-freedom-of-expression-and-the-internet>

Here, though NTA argued that verbal orders are not made to block websites, it contradicts with the views of the ISPAN, the ISPAN Chairman, Suman Lal Pradhan, said during a discussion on FoE on internet that,

“Around 100 websites were blocked in the recent past after the order from NTA. ISPAN was asked verbally to identify and block the websites, especially the pornographic ones. ISPs are not the appropriate body to evaluate the legality of the internet content.”

To look into the past on website blocking and content filtering, the Reporters Sans Frontiers in 2005¹⁸ said:

Reporters Without Borders today condemned the action of the Nepalese government in blocking access to the www.gorkhaneews.com website on 9 September. Everest World Limited, which edits the site, said it had been censored because of “its stand against the curbs on the Nepalese press since 1 February.” The site gets its name from Nepal’s Gurkha people, who for generations have been recruited into an elite British army brigade.

Since 1 February, most of Nepal’s 16 Internet Service Providers have sporadically blocked access to more than a dozen news websites, such as www.samudaya.org and www.insn.org on 30 June.

The above news is of the period of the royal coup which badly suppressed the media in 2005. Of course, the entire FoE regime shrank with aggressive State hostility. However, the situation at present is enormously changed. A big political movement called second janaandolan occurred abolishing the royal regime and opening the country to greater freedom. Despite this, in the name of social harmony, efforts are made to suppress online freedom (FoE on internet) without transparent mechanism that citizens easily know why the internet and its content are blocked.

¹⁸ <https://rsf.org/en/news/another-news-website-blocked>

STANDARDIZATION WITH INTERNATIONAL INSTRUMENTS

The Article 19 of the Universal Declaration of Human Rights states:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontier.

While juxtaposing the Constitution of Nepal-2015 with this universal principle of FoE set in the UDHR, the constitution limits the right to freedom of opinion and expression to only its citizen, as Sub-Article 2 of Article 17: Right to Freedom, mentions, “Every citizen shall have the following freedoms (a) freedom of opinion and expression”.

In the similar vein, the constitutional provision is obviously against the Article 19 of the International Covenant on Civil and Political Rights (ICCPR), for the Article 19 states, “Everyone shall have the right to hold opinions without interference,”.

Nepal is the party to the ICCPR. However, the constitutional provision does not fully abide by it. It is the indication that any foreign person living in Nepal can not exercise his/her right to FoE equally as Nepali citizen does in Nepal.

STAKEHOLDERS' VIEWS AND SUGGESTIONS ON INTERNET USE AND FoE

ETA ONLY LEGAL TOOL TO CURB CYBER CRIME: MR RAYA

In a telephone talk to Freedom Forum, a police official heading the Cyber Crime Unit at Kathmandu Valley Crime Division of Hanumandhoka, Pashupati Raya, said especially the teenagers and women are made victims of cyber crime. He reasoned it the lack of cyber awareness. “Awareness on internet use must be spread,” he said, adding that only legal tool they consult for the ‘cyber crime, as he said, is ETA 2008.

VARYING CONCEPTS OF INTERNET SERIOUS THREAT TO FoE ON INTERNET: MR ACHARYA

Similarly, during a discussion on ‘FoE on internet in Nepal’, Asia-Pacific Coordinator of the International Federation of Journalists, Ujjwal Acharya, said the major obstruction the Nepalis are facing in terms of the use of FoE on internet is ETA. “At a time the internet is expanding in Nepal, its use for exercising FoE is obviously growing. But, it is a gross suppression from the State to harass citizens for expressing on internet and social media as Facebook and twitter.” He, citing a research of the Centre for Media Research Nepal, informed that there are 5.5 million Facebook users in Nepal. Coordinator Acharya stresses that State and its agencies are not to suppress but facilitate people’s right on internet. Also pointed by him is- lack of ICT expertise in the committee formed by the Ministry of Information and Communications to draft a media policy.

He argued that internet is the multi-stakeholders’ platform. The different understandings about internet among the State mechanism, right defenders and internet users have caused serious threat to FoE on internet in Nepal. According to him, many countries have tried to control FoE on internet by ICT related laws. “Online media and other media should be treated equally,” he stressed.

OVER 100 WEBSITES BLOCKED IN RECENT PAST: MR PRADHAN

On the occasion, Chairperson of the Internet Service Providers' Association, Nepal, Suman Lal Pradhan, said ISPs have no role to control the content on internet. ISPs just prepare medium to link the consumers. He revealed that the plight that the Association was frequently prodded to block many websites. Around 100 websites were blocked in the recent past after the order from NTA. ISPAN was asked verbally to identify and block especially websites. He argued that ISPs were not the appropriate body to evaluate the legality of the internet content.

For lack of infrastructures, internet access and speed are limited in Nepal. Augmenting bandwidth is essential for boosting speed and government can provide grants for poor and remote area people to install internet, he stressed.

ETA CRIMINALIZES FoE ON INTERNET: MR ARYAL

Advocate and Internet Society Nepal Chapter Chairperson, Baburam Aryal, argued the present constitution was regressive in terms of FoE on internet, as it intentionally wiped out the mention of FoE on 'online'. He categorically said the interim constitution had however included the term 'online' at least to recognize the internet as a platform for FoE practice. According to him, the FoE practice on print media and on the internet is taken differently in Nepal which in a way has been a casue to harass the citizens under the ETA. ETA criminalized FoE, he added.

EFFORTS TO CONTROL INTERNET CONTENT SHEER FOLLY: MR GURUNG

Similarly, senior investigative journalist Hasta Gurung said, "Internet is an open university. None can control it. It is the booster of global media." He further argued that efforts to regulate and control internet is a sheer folly. "Nepal does not need any law to control it," he underscored.

COMMON UNDERSTANDING FOR DIGITAL FREEDOM: MR DAHAL

Freedom Forum Chairperson Taranath Dahal said, “Time has come for wider stakeholders in the country to debate on FoE on internet, and make a common understanding to protect the digital freedom, and augment democratic values in this age of ICT.” FF was ready to take a lead in the campaign to foster FoE on internet in Nepal, Dahal added.

INTERNET FREEDOM IS DEBATED ISSUE IN SECURITY AGENCY TOO: MS SINGH

Superintendent of Police at Human Rights Cell of Nepal Police, Puja Singh, said when the intention is wrong while using law, it creates problem. Practice of FoE by the journalist and citizen should be regarded same, she said, adding that internet freedom is a debated issue even in the security agency.

STIFLING INTERNET RENDERS NEGATIVE EFFECT: MR KASAJOO

Former Chief Commissioner at the National Information Commission, Binay Kasajoo, during the email conversation, however, says, “The practice of FoE on internet has not gained pace yet. The use of internet for FoE is limited to online newspapers and social media. There is not serious threat to this. There is not adequate debate and discussion on the difference between the FoE in internet and other FoE in other media. Most of the people are unaware about this.”

According to him, for lack of true information on technology, the regulatory bodies are sometime found taking wrong actions. Although the actions reflect that government is against the free development of internet, the laws and policy are not very negative on FoE on internet.

“Any measure taken to stifle internet renders negative effect on operation of State, its development and economy too. Therefore, it is State’s duty to technically ensure every one’s equal rights pertaining to internet freedom and its use. The State should facilitate for this,” he stressed.

The former Chief Information Commissioner stresses the need that it is also the State’s duty to create infrastructures for all mediums of communications, development and expansion of broadband, and convenient and affordable use of satellite.

“Citizens are the major consumers of the internet. The civil society should always be aware on ensuring citizens’ equal access and availability of internet and its freedom, for the State and private sector can sometime make efforts to monopolize internet,” he argued.

INTERNET TO ENABLE CITIZENRY: MR SAPKOTA

“Knowingly or unknowingly the internet-based FoE practice is receiving challenges galore though Nepal has ushered into the FDR political and governance system. It is a fundamental pre-requisite for democracy and good governance that stimulates free debate and keep the citizens’ watchdog role in modern state affairs. Now is the time to augment space for internet freedom averting challenges on its use and enable citizenry to keep their scrutiny on public affairs”, Krishna Sapkota, Executive Director of Freedom Forum.

CONCERTED EFFORTS FOR SAFE, SECURE INTERNET: MR GHIMIRE

All sides- parliamentarians’, advocates and rights defenders, FoE practitioners and activists, judiciary, security agency, ICT experts-should make a common stand on internet rights so that any hurdle on it can be cleared quickly and the internet rights explores fully. All sides’ concerted effort can make internet free, safe and secure, observes Media Monitoring Officer, Narayan Ghimire,

LAW SHOULD NOT BE VERY TECHNICAL: DR DAHAL

The ETA actually is not a cyber law in Nepal. ETA was not brought to make people familiar with cyber world. Police is using it in the name of benefit of good. While formulating cyber law, socio-cultural aspects must be taken into account so that law is easily internalized. Broadband focuses technology. Law should not be very technical; all sides should be addressed by it so that the social issues won’t be shrunk, said Dr Sudhamshu Dahal, Assistant Professor, School of Arts, Kathmandu University.

OBSERVATION

There is not any exact and transparent mechanism to block the websites. Reflecting the time after the royal coup of 2005 which made the ISPAN to block various websites, the ISPAN is facing the same verbal orders these days too to block websites. Civic watch is essential to thwart the State efforts to monopolize internet. Internet is an open university and making attempts to control it is sheer folly. Uniformity in the understandings about internet is a need. ETA criminalizes FoE on internet.

LAXITY ON IMPLEMENTING COMMITMENTS

The government's budget for 2015/016 had brought an innovative idea of smart cities. As per the budget, Kathmandu, Bara and one another district would have smart cities. But, there were no initiative taken to implement the budget.

The governments led by any of the political leaders do not fail to make commitment to FoE. And interestingly, formation of committees under the Ministry of Information and Communication (MoIC) with the change of government is not new. Recently, the MoIC was renamed as the Ministry of Information and Communication Technology, which brought hope among media fraternity and development sectors that communication regime would be boosted with this initiative. But after some weeks, the Ministry of Information and Communication Technology was renamed as it was earlier.

Only internet-friendly policies are not enough to ensure the Internet in different parts of the country. The development of information and communications technology (ICT) with the necessary infrastructure is a pre-requisite. Given the lack of sufficient ICT infrastructure in Nepal, the expansion of the Internet has been delayed. Similarly, although the Broadband Policy and the ICT Policy have very good provision on augmenting internet expansion, no concrete actions plans are unveiled to materialize these.

DIGITAL DIVIDE

Although the internet penetration has increased, the patterns of its uses among different genders, different economic and social classes, diverse communities, and regions is not equal- that is to say, the digital divide is commonplace in Nepal. However, In Nepal, there are not any survey and study about the digital divide.

It means the people in Nepal are not proportionately linked to internet which is again the indication that already privileged can be more privileged and those deprived will be further impoverished. It is consequently related to development gap.

The Wireless Broadband Master Plan for Federal Democratic of Nepal¹⁹ prepared by the International Telecommunication Union in 2012, mentions:

Although technology neutrality is, and ought to be a widely accepted principle for the efficient allocation of spectrum, the deployment of W-CDMA and LTE wireless technology with the capability of reaching the highest number of people should be seen as a priority for Nepal and is endorsed under this masterplan. Satellite services – perhaps with a local cellular or Wi-Fi hotspot can also provide a critical role in addressing Nepal's digital divide in more remote areas of the country.

It is how the Master Plan has finely stressed the need of deploying the wireless technology so that the highest number of people would be benefitted in Nepal. Similarly, regarding the digital divide, the joint declaration on freedom of expression and the internet submitted to UN in 2011,²⁰ says:

Public and private policies aimed at extending Internet access have substantially increased the presence of Internet facilities in developing States. Yet, despite these efforts, Internet usage is still lagging in developing States, perpetuating the “digital divide”, a term that refers to the gap between people with effective access to digital

¹⁹ http://nta.gov.np/files/Wireless_Broadband_Master_Plan_Nepal-EV4.pdf

²⁰ www.ohchr.org/Documents/Issues/Opinion/A.66.290.pdf

and information technology, in particular the Internet, and those with very limited or no access at all. ... without Internet access, which facilitates economic development and the enjoyment of a range of human rights, marginalized groups and developing States remain trapped in a disadvantaged situation, thereby perpetrating the existing socio-economic disparities both within and between States.

Yet again, the report by the Special Rapporteur underscores the bridging of digital divide, arguing that access to internet is not only limited to FoE but also to empower and equalize people with the socio-economic rights. The access to internet rescues the communities trapped in the disadvantaged situation. It is indeed a phenomenal element to narrow the socio-economic disparities.

In this regard, out of 75 districts in Nepal, optical fibre has been spread to 49 district headquarters. Similarly, to link 500 community schools with internet, bidding is opened by the NTA.

RECOMMENDATIONS

- i. FoE rights groups/defenders should play the watchdog role, continuously monitor FoE issues on internet, and spread internet literacy
- ii. Laws governing FoE on internet should be de-criminalized
- iii. Make clear the definition of ‘harmonious relations’ between the Federal Units, and ‘..disrespect of labour’. Same is the case on proviso (6) under same clause of the same article, for the words ‘public decency or morality of the general public...’. These terms needs to be defined clearly by court interpretation or the constitutional amendment
- iv. Amend proviso under clause (1) of Article 19 (right to communications) to make clear the vague words as ‘public decency or morality’, ‘hatred to labour’.
- v. Amend clause (1) of Article 19 to explicitly mention ‘internet’ under the fundamental rights in the sentence: No publication and broadcasting or dissemination or printing of any news item, editorial, feature article or other reading, audio and audio-visual material through any means whatsoever including electronic publication, broadcasting and printing shall be censored.
- vi. Government should ensure constructive engagement of civil society and FoE groups while formulating provincial laws governing FoE
- vii. Privacy and data protection laws should be brought to make systematic the personal/confidential data safe while practicing FoE on internet.
- viii. Annul Section 47 of the Electronic Transaction Act 2008
- ix. Scrap Online Media Operation Directive 2016
- x. Ensure people’s access to quality internet service through broadband to augment FoE

CONCLUSION

FoE is a constitutionally guaranteed right. So, it should be protected and respected from different organs of the government. FoE must be rule and restrictions must be exceptions. Internet is still a wonder, an uncharted area, in Nepal. Most of the internet users are in the city. A large section of population is still waiting for its access to high-speed internet and computers. However, with the expansion of this modern means of communications, people are attracted towards this as the best platform to exercise their FoE. Even the new form of Nepali media- online portals- have come into operation. Because of the poor internet and ICT literacy, and lack of recognition to the internet as the effective modern medium of communication, the debate on internet freedom is quite new. In the policy level, Nepal does not seem hostile to FoE but has not explicitly mentioned internet in relation to FoE in the latest policies and laws as ICT Policy, and Constitution of Nepal. For lack of clear and comprehensive policy and laws, journalists and common citizens are harassed and even the cases filed as Public Offence. In order to realize the FoE provision in the Constitution, comprehensive acts to see the FoE on internet is the present need.

Keeping in mind the possible repressive move the government can take by using the grey areas of the constitutional provisions to restrict scope of FoE, Freedom Forum are cautious to play a consistent watchful role that requires consistent vigilance on relevant policies even at all State levels and put policy advocacy efforts for reforms. Freedom Forum can outline alternative laws governing FoE on internet to advocate for the de-criminalization of FoE related cases. In order to increase internet literacy across the country the campaigns along with sensitization and capacity building training of different FoE groups are to be put in place.

Freedom Forum's future action can be to define the ambiguous and inconsistent constitutional provisions on FoE either through amendment to the constitution or through the constitutional court interpretation. Political lobby and advocacy is imperative to enable environment for constitutional amendment. Political dialogue and consultations are required to be undertaken to make it a political agenda. Filing PIL demanding court's clear interpretation of the clauses is another

intervention area so that it would facilitate the exercise of FoE in line with international standards and best practices.

Freedom Forum can use the internet study report and other relevant policy document to make public and their representatives aware on basics of internet freedom.

The action will resultantly prepare the base for stakeholders' engagement while formulating provincial laws governing FoE.

As mentioned earlier Freedom Forum in consultation with multiple stakeholders can outline separate model laws of privacy and data protection. It will help establish clear demarcation between the right to privacy and right to information and better the FoE practices.

ANNEXES

A. SOME STORIES OF ARREST/LEGAL CASE ON CITIZEN OVER FOE PRACTICE ON INTERNET

A. Businessman's arrest over facebook comments tampers freedom of expression

On June 1, 2014, the police arrested a businessman Mohammad Abdul Rahman from Portaha of Saptari, a district in the southern plains of Nepal, over his comment on a Facebook post of a news story. The police arrested him reasoning his comments violated the Electronic Transaction Act.

The police then filed a case in the district court, Saptari, which later sent it to the Kathmandu on June 19, saying it had no jurisdiction to look into the case. So, businessman Rahman was brought to Kathmandu by the police.

In response to a journalist's Facebook post of a story, 'Improving security in Saptari', the businessman on May 31 had commented as 'How to say the security improving as I had to pay Rs 50,000 to bring back my looted motorcycle.'

Meanwhile, a month back, the police had arrested a government employee over a similar case- response on a Facebook post. Though brought to the capital city for action, he was released after some days. (Link/footnote)

http://www.nepalpressfreedom.org/content/index.php?option=com_content&view=article&id=694:businessmans-arrest-over-facebook-comments-tampers-freedom-of-expression&catid=41:top-headlines&Itemid=120

B. Editor arrested in Nepal over Facebook post

On September 30, 2013, the District Police in Kathmandu arrested the editor of the Share Bazaar weekly, Dinesh Acharya, over a complaint lodged

by an industrialist. Industrialist Nirvan Chaudhary had accused the editor of “assassinating his character” through the Internet (specifically a post on Facebook).

Acharya had published a news story about Chaudhary in the June 23 edition of Share Bazaar, and also posted the story on Facebook. (Link/footnote)

http://www.ifex.org/nepal/2013/10/01/arrest_facebook_post/

C. Nepalese online journalists arrested over news story

Three journalists were arrested over a news story about a women college published on the nepaliheadlines.com news portal about a month prior to the arrest.

Police arrested guest editor Sushil Pant and website owner Santosh Bhattarai in the capital city of Kathmandu, on June 20, 2013.

As Freedom Forum’s Media Monitoring team went to the District Police Office of Kathmandu on June 23, it was discovered that one more journalist had already been arrested in the same case.

According to the District Police, 10 days before the arrest of Pant and Bhattarai, journalist Pushkar Nath Kandel was arrested over the same news story. Kandel runs the Extrakhabar news portal in Palpa, a hilly district in western Nepal.

Journalists Pant and Bhattarai were arrested after Kandel told the police that he had copied the story from nepaliheadlines.com.

Asked why the journalists were arrested, the District Police said, “After the Campus Chief of the Kanya Multiple Campus, Dillibazaar, based in the capital city, lodged a complaint arguing that the story carried on nepaliheadlines.com would badly tarnish the image of the campus and the character of the girl students, we arrested the journalists.”

The police also said the journalists were arrested as per the Electronic Transaction Act 2008, and would face criminal charges.

Freedom Forum's Monitoring Team met with the three journalists on June 23 and garnered information about the incident.

"I and my friends take it as a struggle for freedom of expression relating to online journalism in Nepal. We are never against press freedom," said Pant.

The police is continuing its investigation, having taken the journalists to document their views at the Office of the District Attorney. (Link/Footnote)

https://www.ifex.org/nepal/2013/06/25/criminal_charges/

D. Police harasses online news scribes

On November 4, 2015, the Central Investigation Bureau of Nepal Police took under control two journalists from their media house- yeskathmandu.com- for three hours over the news reporting on the misuse of fuel provided freely to VIPs.

A group led by Deputy Superintendent of Police reached the news portal's office at Thapagaon, Kathmandu, and took journalists Manoj Khatiwada and Parbati Thapa under control.

Journalist Khatiwada said, "We are held for three hours from the office over the news 'black-marketing of fuel provided to VIP', and released without any conditions and reason by the Nepal Police's CIB." Link/footnote

http://www.nepalpressfreedom.org/content/index.php?option=com_content&view=article&id=765:police-harasses-journalists-&catid=41:top-headlines&Itemid=120

E. Businessman's arrest over facebook comments tampers freedom of expression

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Meanwhisle, a month back, the police had arrested a government employee over a similar case- response on a Facebook post. Though brought to the capital city for action, he was released after some days. (Link/footnote)

http://www.nepalpressfreedom.org/content/index.php?option=com_content&view=article&id=694:businessmans-arrest-over-facebook-comments-tampers-freedom-of-expression&catid=41:top-headlines&Itemid=120

B. NEWS COVERAGE ON THE PROGRAM ABOUT FoE ON INTERNET IN NEPAL

FREEDOM OF EXPRESSION ON INTERNET: A TOPIC TO DISCUSS IN NEPAL

Kathmandu, May 4: The rise of social networks and the news portals have posed serious threat to traditional media. The stories on the newspapers disseminated early morning are already stale, while the online television and radio are supplementing and replacing the old TV and radio sets.

With the growing penetration of internet across the country, freedom of expression (FoE) has got open and uncontrolled regime inviting interest and concern from multi-stakeholders. At a time when the internet has tremendously benefited the citizens, it has also become a matter of big concern of the State.

The FoE practice on print media and on the internet is taken differently, and is thereby harassing the citizens under the Electronic Transaction Act-2008. “FoE is criminalized by the ETA, as Section 47 of this act has been used by the State to nab, detain and file cases against citizen’s fundamental rights,” said Baburam Aryal, advocate and Chairman of Internet Society Nepal Chapter during a programme on ‘Freedom of Expression on Internet in Nepal’.

At the programme organized by the Freedom Forum on the occasion of the World Press Freedom Day, in the capital city Wednesday, he made a presentation on ‘FoE Online in Nepal’ and argued that present constitution was regressive in terms of FoE on internet.

He categorically said the interim constitution had however included the term ‘online’ at least to recognize the internet as a platform for FoE practice, which the present constitution has omitted.

On the occasion, Freedom Forum Chairman Taranath Dahal said, “Time has come for wider stakeholders to debate on FoE on internet, and make a common understanding to protect the digital freedom, and augment democratic values in this age of ICT.”

Similarly, South Asia Program Coordinator at International Federation of Journalists, Asia-Pacific, Ujjwal Acharya, said internet is the multi-stakeholders’ platform. The different understandings about internet among the State

mechanism, right defenders and internet users have caused serious threat to FoE on internet in Nepal. According to him, many countries have tried to control FoE on internet by ICT related laws. “Online media and other media should be treated equally,” he stressed.

Senior investigative journalist Hasta Gurung said, “Internet is an open university. None can control it. It is the booster of global media.” He further argued that efforts to regulate and control internet is a sheer folly. “Nepal does not need any law to control it,” he underscored.

On the occasion, Chairman of Nepal Bar Association, Sher Bahadur KC, said internet should be used by balancing the conflict and development; while Chairman of the Internet Service Providers’ Association, Suman Lal Pradhan, shared the plight that the Association was frequently prodded to block many websites.

Superintendent of Police at Human Rights Cell of Nepal Police, Puja Singh, said when the intention is wrong while using law, it creates problem. Practice of FoE by the journalist and citizen should be regarded same, she said, adding that internet freedom is a debated issue even in the security agency.

Dinesh Acharya, who had been detained and a case filed against him for sharing a news story on Facebook, shared his plight and suggested the State agencies that they studied thoroughly on internet rights.

Other speakers pointed out the need of building ICT awareness, sharing of internet knowledge among diverse stakeholders, and congruity between jurisprudence and practice to bolster FoE on internet. RSS

Source: <http://www.rssnepal.com/?p=2086>

C. DEBATE ON FREEDOM OF EXPRESSION ON INTERNET STRESSED IN NEPAL

Freedom Forum marked the World Press Freedom Day-2016 by organizing a discussion program on “Freedom of Expression on Internet in Nepal” in Kathmandu on May 4.

The program was focused on FoE on internet to mainstreamize this issue in view of the rise of social networks and the news portals inviting multi-stakeholders’ internet and concern in Nepal.

Multifarious issues relating to the FoE on internet emerged in the program attended by the journalists, FoE defenders, university teachers, technologists, media researchers, advocates and legal practitioners, among others.

With the growing penetration of internet across the country, freedom of expression (FoE) has got open and uncontrolled regime inviting interest and concern from multi-stakeholders. At a time when the internet has tremendously benefited the citizens, it has also become a matter of big concern of the State, the participants said.

Presenting a paper on “Freedom of Expression on Internet in Nepal,” the advocate and Chairman of Internet Society Nepal Chapter, Baburam Aryal, argued that major legal hurdle in practicing FoE on internet is Section 47 of Electronic Transaction Act 2008. “This section has criminalized FoE on internet. As a result, various journalists and citizens have been targeted by the security agency, and cases were filed,” he added.

According to him, the present constitution was regressive in terms of FoE on internet, as it intentionally wiped out the mention of FoE on ‘online’. He categorically said the interim constitution had however included the term ‘online’ at least to recognize the internet as a platform for FoE practice.

The FoE practice on print media and on the internet is taken differently in Nepal which in a way has been a casue to harass the citizens under the Electronic Transaction Act-2008. Aryal’s presentation included other related issues as defamation, obscenity, hat speech, blasphemy and political criticism and shared some legal cases the State handled under Section 47 of the ETA.

Facilitating the program, Freedom Forum Chairman Taranath Dahal said, “Time

has come for wider stakeholders in the country to debate on FoE on internet, and make a common understanding to protect the digital freedom, and augment democratic values in this age of ICT.” Freedom Forum was ready to take a lead in the campaign to foster FoE on internet in Nepal, Dahal added.

Similarly, South Asia Program Coordinator at International Federation of Journalists, Asia-Pacific, Ujjwal Acharya, said internet is the multi-stakeholders’ platform. The different understandings about internet among the State mechanism, right defenders and internet users have caused serious threat to FoE on internet in Nepal. According to him, many countries have tried to control FoE on internet by ICT related laws. “Online media and other media should be treated equally,” he stressed.

Senior investigative journalist Hasta Gurung said, “Internet is an open university. None can control it. It is the booster of global media.” He further argued that efforts to regulate and control internet is a sheer folly. “Nepal does not need any law to control it,” he underscored.

On the occasion, Chairman of Nepal Bar Association, Sher Bahadur KC, said internet should be used by balancing the conflict and development; while Chairman of the Internet Service Providers’ Association, Suman Lal Pradhan, shared the plight that the Association was frequently prodded to block many websites.

According to him, around 100 websites were blocked in the recent past after the order from Nepal Telecommunications Authority (NTA). He further revealed that ISPs’ Association was asked verbally to identify and block especially the pornographic websites.

Superintendent of Police at Human Rights Cell of Nepal Police, Puja Singh, said when the intention is wrong while using law, it creates problem. Practice of FoE by the journalist and citizen should be regarded same, she said, adding that internet freedom is a debated issue even in the security agency.

Similarly, Board Member at the Freedom Forum, Ms Rammaya Lamichhane, said the main objective of the ETA at its origination should be understood for its interpretation, which could help reduce the victimization of citizens under this act.

Dinesh Acharya, who had been detained and a case filed against him for sharing a news story on Facebook, shared his plight and suggested the State agencies that they studied thoroughly on internet rights.

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Other speakers including Online Journalists Association's Chairman, Prabesh Subedi, UNESCO representative JB Biswokarma, Chairman of Media Action Nepal, Laxman Datt Pant, and US journalist Jill Filipovic, media law advocate Rishi Ram Ghimire and Tanka Aryal, freelance journalist Shiromani Ghimire, FF Vice-Chair Hari Binod Adhikari, Executive Director Krishna Sapkota, Public Affairs Officer at US Embassy, Kathmandu, Meena Kaini, ICT and development expert Dr Sudhamsu Dahal pointed out the need of building ICT awareness, sharing of internet knowledge among diverse stakeholders, and congruity between jurisprudence and practice to bolster FoE on internet.

Source: <http://freedomforum.org.np/content/debate-on-freedom-of-expression-on-internet-stressed-in-nepal/>

D. ONLINE MEDIA OPERATION DIRECTIVES, 2073

Preamble: As it is expedient that the registration, renewal, operation and monitoring of the online media be organized, the Government of Nepal has, exercising the rights given by Clause 45 of the Good Governance (management and operation) Act, 2064 B.S., introduced this Directives.

Approved by Government of Nepal (Council of Ministers) dated 2073/02/31

Chapter -1 Brief Title and Commencement

1. **Brief Title and Commencement:** (1) This Directives may be called "Online Media Operation Directives, 2073".
- (2) This Directives shall come into force from the dated approved by the

Government of Nepal, Council of Ministers.

2. Definition: Unless the subject or context otherwise requires, in this Directives-

- (a) “Online media” means the method, process or medium that produces, publishes, transmits or disseminates message-oriented or thematic opinion, photo, audio visual by using sign, symbol, text, voice, graphics, song, music, video, animation and various multi-media through the internet, after having been established or registered pursuant to the prevalent law and adopting the journalism and editorial principles.
- (b) “Online journalism” means the technical work of news writing, information and visual collection, and editing for the purpose of production, publishing, transmission and distribution of news-oriented or informative materials including news, information, opinion, photo or audio visual by using the technology based on the internet.
- (c) “Department” means the Department of Information.
- (d) “Press Registrar” means the Press Registrar designated by the Government of Nepal.

Chapter -2 Registration Provisions

3. Registration and Operation:

- (1) Upon enforcement of these Directives, any individual or organization desiring to operate online journalism through the online media should file an application at the Department in the format pursuant to Schedule-1.
 - (2) The online media operating before the enforcement of these Directives should file an application for registration at the Department within sixty days of commencement of these Directives.
 - (3) All kinds of print and electronic media (including radio, television), government or private that wish to operate online journalism through online media should file an application for registration at the Department within the date pursuant to Sub-clause (1).
4. Registration Process: Any individual or organization desiring to operate online journalism through the online media should include the follow documents along with the application filed for registration pursuant to Clause (3) or (4):
- (a) If an organization, a copy of the organization registration certificate, copies of prabandhapatra and regulations,
 - (b) Name, surname, address, phone number, mobile phone number, and a copy of citizenship certificate
 - (c) In case of an organization, copies of the certificate of registration under Value Added Tax (VAT) or Permanent Accounts Number (PAN)
 - (d) A copy of the minute of the decision taken by the proprietor of the organization to transmit and disseminate news material from the online media
 - (e) A copy of the certificate of registration or renewal of domain registration.
 - (f) Name, surname, address and contact telephone number of the Editor and broadcaster/disseminator

(5) Registration certificate to be given:

- (1) The Department shall, upon receiving an application for registration of online media pursuant to Clause 4, carry out necessary examination of such application.
- (2) The Department shall, after finding that the details of the complaint upon examination pursuant to Sub-clause (1) is justified, provide the concerned individual or organization a registration certificate in the format as per Schedule-2.

Chapter 3**Renewal and Human Resources related provision****6. To be renewed:**

- (1) The online media registered pursuant to Clause 5 shall be renewed at the Department every year within the end of the month of Asar (mid-June).
- (2) Along with the application in the format prescribed by the Department, renewal pursuant to Sub-clause (1) should also include submission of a copy of the certificate of tax clearance for the previous Fiscal Year and a copy of the audit report.
- (3) The service of the online media not renewed within the limitation pursuant to Sub-clause (1) shall be ceased as per the prevalent law.

7. Provision related to human resource: Details of an update of the hierarchal posts of editor, broadcaster, journalists, employees and workers essential to operate online media shall be submitted to the Department and the Press Registrar while registering and renewing the media.

8. Press Accreditation to be acquired: A journalist working for the online media shall acquire the press accreditation (press pass) from the Department pursuant to prevalent law.

Chapter 4**Provision related to conduct**

9. Details to be maintained: The online media shall maintain the following details in the home page of its website:

- (a) Registration number received from the Department, financial year, name, address and contact phone number of the proprietor,
- (b) The name of the proprietor, editor or news chief or both should be clearly visible in the online,

- (c) If the second domain is being used, that website should have .np,
- (d) If the material from other social network or website is to be re-published from one's website, then it should be kept at the homepage along with the icon of the network or webpage.

10. Responsibility over the sub-domain given: If any organization has been operating online media by formally acquiring a domain and has divided the domain to sub-domain, then the responsibility of the material published and disseminated in the sub-domain shall be responsibility of both running the domain and sub-domain.

11. Publication and broadcasting to be prohibited: The following materials shall not be allowed to be published and broadcast from the online media:

- (a) Causing harm to Nepal's sovereignty, territorial integrity, nationality or good relations among the federal units, various caste, ethnic groups, religion or communities,
- (b) Amounting to treason, defamation or contempt of court or inciting commission of crime,
- (c) Act against public protocol or morality,
- (d) Abuse of labour, inciting racial untouchability and gender discrimination,
- (e) Without authorized source, that could create illusion and have an adverse impact on international relations.

12. Accountability over published material:

- (1) The online media publishing or broadcasting any material without revealing the source shall be fully responsible for the publication or broadcast of such material.
- (2) If by revealing the source, online media shall not be allowed to re-publish or broadcast materials pursuant to Clause 11.

13. Published material to be archived safely: The online media shall maintain archive of the materials it published or broadcast safely for at least six months.

14. Corrigendum and information:

- (1) If any error is found in the material published or broadcast by an online media, and has to be corrected, then the material should be maintained as it is by correcting the error, and information about the same shall be published or broadcast.
- (2) If any erroneous material published by an online media has to be completely or partially deleted, it should be removed from the website by keeping it safety to able to be presented when sought by the Press Council.

15. Journalist Code of Conduct to be followed: The proprietor, editor, publisher and journalists operating the online media should follow the prevalent law and the journalist code of conduct introduced by the Press Council.

Chapter -6

Monitoring provisions:

16. Listing of online media:

The Press Council Nepal may list the online media.

17. Inspection and Monitoring:

- (1) The Department shall carry out inspection and monitoring in relation to the adherence to the prevalent law and these Directives by the online media.
- (2) Press Council shall carry out inspection and monitoring in relation to the adherence to the journalist code of conduct.
- (3) It shall be duty of all online media proprietors, editors, publishers or institutions to provide necessary support to the inspection and monitoring pursuant to Sub-clause (1) or (2).

18. Benefits to be suspended: Any online media that is not renewed within the limitation prescribed in the Directives or is informed of being put in the list of noncompliance by the Press Council for not following the journalists code of conduct shall not be entitled to any kind of benefits given on behalf of the Government of Nepal.

19. Monitoring of online news portal operated from outside the country: If information is received from any source of any online news portal operated from abroad publishing or broadcasting any material against Clause 11, then the Department may write to the concerned authority to stop such material from being published or broadcast inside Nepal.

Chapter -7

Provision relating to complaints/grievances

20. Complaint to be filed:

- (1) If anyone has suffered any kind of damage or has any grievance over the material published or broadcast by any online media, then the concerned person may register a complaint at the Press Council including such material (screen shot or URL).
- (2) The Press Council shall carry out necessary investigation into the complaint received pursuant to Sub-clause (1). The concerned online media shall provide the required information sought by the Press Council in course of such investigation.
- (3) The refutation sent by the affected party over any news, information or

material published or broadcast in an online media should be included and published or broadcast in the page of the same subject.

21. Publication to be suspended: Any online media or its website may be suspended in the following circumstances:

- (a) If found operating the online media illegally without registering or renewing within the prescribed limitation,
- (b) For publishing or broadcasting materials prohibited for publication pursuant to Clause 11,
- (c) For carrying out any act against this Directives and prevalent law.

Chapter-8 Miscellaneous

22. **Free support to be provided:** In the event of a disaster or state of crisis, the online media should support by publishing or broadcasting for free notice, statement or public awareness-oriented materials released by the Government of Nepal.
23. **Informed to be provided:** The Department and Press Council shall be informed of any online media registered as per this Directives shutting down or is unable to operate for any reason.

Schedule -1
(Related to Clause 3)
Application for registration of online media

To

The Director General

Department of Information, Kathmandu



Photo

I/Weregister this application (with a Rs. 10 stamp and two copies of photograph) including the following details for permission to practice online journalism through the online media with the following details:

1. Details of Online media/online news portal:
 - (a) Name:-
 - (b) Main domain:-
 - (c) Second domain:-
 - (d) Language:-
2. Office address:
3. Proprietor's name, address and contact telephone no.
4. Editor's name, address and contact telephone no.
5. Broadcaster's name, address and contact telephone no.
6. Other details:

Applicant's:
Name:
Contact No.

Signature:
Address:

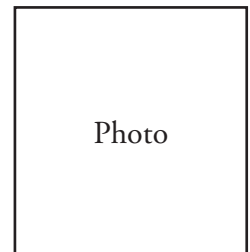
Schedule-2
(Related to Sub-clause (2) of Clause 5)
Registration Certificate

S.No.

Registration Certification No. :

Photo

To,
Mr.....



You have been granted this certificate in order to practice online journalism through online media of the following details:

1. Details of online media:

- (a) Name:-
- (b) Main domain:-
- (c) Second domain:-
- (d) Language:-

2. Office address:

3. Proprietor's name, address and contact telephone no.

4. Editor's name, address and contact telephone no.

5. Broadcaster's name, address and contact telephone no.

6. Other details:

Office stamp

Signature:

Designation:

Renewal details:

Certified by:

Name:

Date:

S.No.	Date of renewal	Term of renewal	Signature of the renewal officer	Remarks

E. SOME GLIMPSES OF PROGRAM ON FoE ON INTERNET IN NEPAL



F. PARTICIPANTS IN THE MAY 4, 2016 PROGRAM ON FOE ON INTERNET IN NEPAL

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1	Mr Binay Kasajoo	Former Chief Information Commissioner
2	Mr Pashupati Raya	Nepali Police Officer, Cyber Crime Cell
3	Mr Purushottam Khanal	Spokesperson of Nepal Telecommunications Authority
4	Dr Sudhamshu Dahal	Assistant Professor, School of Arts, Kathmandu University.



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