



THE STATE OF DIGITAL RIGHTS IN NEPAL 2022

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TABLE OF CONTENT

EXECUTIVE SUMMARY	2
INTRODUCTION	3
CHAPTER ONE	4
INTERNET ECOSYSTEM AND ACCESSIBILITY	4
DIGITAL INFRASTRUCTURE IN NEPAL	4
TELECOMMUNICATION INFRASTRUCTURE	4
INTERNET INFRASTRUCTURE	4
DIGITAL MEDIA PRACTICES	4
POLICY ENVIRONMENT AND INTERNET ACCESS	4
GENDER AND ACCESS TO ICT	5
MAJOR DIGITAL RIGHTS ISSUES (ACCESS)	5
CHAPTER TWO	6
FREEDOM OF EXPRESSION	6
POLICY ENVIRONMENT FOR FREEDOM OF EXPRESSION	6
PROPOSED LEGAL REFORM RELATED TO FREEDOM OF EXPRESSION	6
ELECTION 2022, DIGITAL RIGHTS, AND FREEDOM OF EXPRESSION	7
MAJOR DIGITAL RIGHTS AND FREEDOM OF EXPRESSION ISSUES IN 2022	8
CHAPTER THREE	9
RIGHT TO PRIVACY, DATA PROTECTION, DIGITAL SAFETY AND SECURITY	9
POLICY ENVIRONMENT FOR RIGHT TO PRIVACY, DATA PROTECTION, DIGITAL SAFETY AND SECURITY	9
MAJOR DIGITAL RIGHTS ISSUES CONCERNING PRIVACY, DATA PROTECTION, DIGITAL SAFETY, AND SECURITY IN 2022	10
DEVELOPMENTS IN ICT AND EMERGING TECHNOLOGIES	13
Key Recommendations:	14

EXECUTIVE SUMMARY

The "State of Digital Rights in Nepal 2022" report produced by Digital Rights Nepal provides a thorough analysis of Nepal's digital rights landscape, focusing on critical areas such as internet accessibility, freedom of expression, right to privacy, data protection, and digital safety.

Despite progress in expanding digital infrastructure, Nepal faces challenges in ensuring equitable internet access, particularly in rural regions where factors like affordability and low digital literacy hinder adoption. While mobile broadband coverage stands at 94.25%, only 37.8% of households have broadband access.

The digital revolution has led to increased social media use, contributing to democratic norms and transparency. However, Nepal's digital governance relies on outdated laws like the Electronic Transaction Act 2063, which inadequately addresses modern digital challenges, risking freedom of expression.

Freedom of expression encounters complex dynamics. Regulations during elections and arrests related to online content underscore the need for clarity in legislation and protection of digital expression rights.

Privacy and data protection issues arise from the absence of comprehensive laws. The National ID and Civil Registration Act and the proposed Cyber Security Policy underscore the urgency of robust legal safeguards for personal data and cybersecurity.

Recommendations for stakeholders emerge from these findings. The government should enact comprehensive data protection laws and modernize digital regulations. Private entities must enhance cybersecurity practices and ethical data management. Civil society should advocate for digital rights, offer education on digital literacy and cybersecurity, and collaborate to drive positive change.

To create a digitally inclusive Nepal that respects individual rights and security, addressing these concerns collectively is paramount.

INTRODUCTION

In the evolving digital landscape of Nepal, access to digital technology and its impact on society have taken center stage. As of January 2023, mobile broadband coverage encompasses 94.25% of the population, as reported by the Nepal Telecommunications Authority (NTA). However, this progress contrasts with data from the 2021 National Census, revealing that broadband internet access is available in just 37.8% of households. Notably, urban areas boast a higher rate at 45.7%, while rural locales lag at 21.5%. The government's efforts to expand internet access and digital literacy are commendable, yet significant work remains for equitable technology distribution.

A striking transformation is observed in social media and internet use. Nepal has witnessed a surge, with 12.60 million social media users, representing 41% of the population, as reported by Data Reportal¹. This digital surge accompanies the nation's ongoing digital infrastructure development, opening new avenues for connectivity and communication.

Digital technology has amplified democratic norms, empowering civil society and catalyzing transparency in governance. However, this transformation is juxtaposed with emerging challenges to digital freedom. Mis/Disinformation, hate speech, and extremism necessitate vigilant mitigation. Nepal's digital rights governance, while nascent, plays a pivotal role in shaping the future of its digital landscape.

Central to this landscape is the Electronic Transaction Act 2063 (ETA 2063), Nepal's sole governing legislation in cyberspace. Notably, it lacks timely updates to accommodate digital advancements. Concerns arise from reported misuse of the act to curb freedom of expression, prompting scrutiny of Section 47's legality by CSOs, which resulted in filing a writ contesting its constitutionality in the nation's Supreme Court. Addressing these issues, the proposed Information Technology Bill 2075 aims to replace ETA 2063, requiring careful evaluation to balance its provisions with freedom of speech.

Produced by Digital Rights Nepal in collaboration with the Open Society Policy Center, the "State of Digital Rights in Nepal 2022" report scrutinizes Nepal's digital freedom landscape from January 1, 2022, to December 31, 2022. Employing a mixed methodology, the report navigates laws, policies, and practices, supported by primary and secondary data sources. Diverse concerns surface, including privacy, data protection, net neutrality, censorship, surveillance, cybersecurity, and accessibility.

These concerns coalesce into four focal themes, guiding the report's analysis and insights:

- Internet Ecosystem and Accessibility: Assessing Nepal's digital infrastructure expansion and inclusivity efforts.
- Freedom of Expression: Exploring the interplay of digital expression and potential constraints, especially in the context of elections and content-related issues.
- Right to Privacy and Data Protection: Delving into the landscape of privacy rights, data protection, and relevant legal frameworks.
- Digital Safety and Security: Investigating cybersecurity challenges, collaboration with ethical hackers, and measures for safeguarding digital well-being.

¹[https://datareportal.com/reports/digital-2023-nepal#:~:text=Nepal's%20internet%20penetration%20rate%20stood,percent\)%20between%202022%20and%202023.](https://datareportal.com/reports/digital-2023-nepal#:~:text=Nepal's%20internet%20penetration%20rate%20stood,percent)%20between%202022%20and%202023.)

CHAPTER ONE

INTERNET ECOSYSTEM AND ACCESSIBILITY

◆ DIGITAL INFRASTRUCTURE IN NEPAL

Access to the internet remains a challenge in Nepal, with only around 37.8% of households having broadband connectivity². This digital divide worsens inequalities, particularly in rural areas. Limited infrastructure, high costs, and low digital literacy hinder access, while affordable devices are scarce. The government is working to enhance internet access through infrastructure expansion and digital literacy policies. However, equitable internet access requires further action, including affordability improvements and technology integration in education and healthcare.

◆ TELECOMMUNICATION INFRASTRUCTURE

Nepal's telecommunication sector has seen substantial growth. The total telephone service penetration, encompassing fixed and mobile, reaches 137% of the population. While mobile services dominate, fixed lines also contribute³. However, the calculation of penetration should consider alternative approaches beyond counting sim cards and landlines.

◆ INTERNET INFRASTRUCTURE

Estimates of Nepal's internet penetration vary. The National Telecommunication Authority (NTA) reports 102%⁴, while other sources suggest 51.6%, with social media users at 41%. Internet users numbered around 11.51 million in 2022 and increased to 15.85 million in 2023⁵. Broadband service coverage, mainly through mobile and fixed connections, has been expanding. The NTA quotes 91.55% of penetration among which 25.27% is acquired by fixed connection 65.68% is mobile broadband⁶. Nepal Telecom extended its 4G coverage, yet access remains limited to certain local governments.

◆ DIGITAL MEDIA PRACTICES

Nepal's digital media landscape is evolving. Around 3827 online media have been registered with the Press Council⁷. Social media usage is growing rapidly, with 12.6 million users as of January 2023. Facebook dominates, with 13.63 million users, predominantly male. TikTok's rise is noteworthy, serving as a platform for creativity and talent.

The development of Nepal's digital infrastructure is essential for equitable access and inclusion. Initiatives to expand connectivity, promote digital literacy, and encourage innovative platforms contribute to bridging the digital divide and fostering digital rights.

◆ POLICY ENVIRONMENT AND INTERNET ACCESS

Nepal's digital governance relies on the Electronic Transaction Act, 2006, with impacts from other laws like the National Penal Code, 2018 and Individual Privacy Act, 2018. Overarching policies guiding digital rights in Nepal include:

- National Broadband Policy 2014: Aims for universal broadband access, emphasizing sustainable, affordable, and ubiquitous service.
- Digital Nepal Framework 2019: Aims to connect citizens for socioeconomic growth, encompassing one nation, eight sectors, and 80 digital activities.
- Online Media Operation Directives 2017: Regulates registered online news media, requiring registration and renewals.

Regulating social media is not explicitly covered by Nepali laws. Section 47 of the Electronic Transaction Act and the National Penal Code have been used, A draft Social Media Regulation Directive which was proposed by the government was not adopted after stakeholders' concerns.

◇ GENDER AND ACCESS TO ICT

Owing to diverse socio-cultural and economic distinctions among various genders, disparities in ICT accessibility exist. Unfortunately, disaggregated data concerning this issue is currently unavailable. In 2018, World Bank statistics indicated that females constituted 54.54% of Nepal's total population. Within this demographic, female representation within the IT sector was merely around 5-10%. Similarly, engagement of girls and women in STEM (Science, Technology, Engineering, and Mathematics) fields remained notably constrained. Factors like inadequate encouragement, lack of awareness, absence of role models, and societal biases collectively contribute to the decreased involvement of girls in these domains.

Likewise, significant disparities can be observed between women and men, as well as between girls and boys, when it comes to accessing and utilizing Internet services and digital devices like laptops and smartphones. According to a report by UNICEF, in Nepal, there are twice as many boys with Internet access compared to girls.

◇ MAJOR DIGITAL RIGHTS ISSUES (ACCESS)

- Internet Shutdowns and Conflicts: Conflicts between Nepal Telecom⁸, Nepal Electricity Authority⁹, and ISPs on pole bills and internet tariffs rate threaten internet access. Advocacy against shutdown warnings has been ongoing.
- Quality and Cost of Internet: Despite the advantage of lower taxes¹⁰ The cost of internet services in Nepal remains relatively high when compared to the local purchasing capacity, although it can be considered more affordable in a global context. Nepal currently holds the 10th position worldwide in terms of mobile data pricing. Although there is a noticeable increase in mobile data consumption, there has been a concerning decrease in connection speeds¹¹.
- Accessibility Challenges: Websites and apps remain inaccessible to the visually impaired and people with disabilities, limiting access to information and services¹².
- Connectivity Development: In August 2022, Nepal and China discussed the Trans-Himalayan Multi-Dimensional Connectivity Network, funded by China's Belt and Road Initiative. The Information Super Highway Project aims to install 6,331 km of fiber optics; 25.6% (1,646 km) is done in 3.5 years¹³. Nepal Telecom planned 5G trials since mid-2021, delayed by politics; testing began for NT employees in Feb 2023¹⁴. Despite strides, 7% lack even 2G access¹⁵. NTA provided free internet to 16,177 locations, supported by the Rural Telecommunication Development Fund¹⁶.
- Government Monitoring: NTA assessed mobile and internet services, highlighting quality issues and growing complaints¹⁷. Ncell was recognized as Nepal's fastest network¹⁸.

Nepal faces both opportunities and challenges in its journey toward improved digital rights and inclusive internet access.

²National Census Report 2021, available at <https://censusnepal.cbs.gov.np/results/household>

³MIS Report, NTA available at <https://nta.gov.np/wp-content/uploads/2023/02/MIS-Kartik-2079.pdf>

⁴<https://www.newbusinessage.com/Articles/view/13948>

⁵<https://datareportal.com/reports/digital-2023-nepal#:~:text=->

Data%20shows%20that%20Nepal's%20population,percent%20lived%20in%20rural%20areas

⁶MIS Report , NTA

⁷Listed-online-media.xlsx (presscouncilnepal.gov.np), Bajagain, B. (2021). प्रेस काउन्सिल नेपाल | Press Council Nepal. Retrieved 5 September 2021, from <https://www.presscouncilnepal.gov.np/np/>

⁸https://technologykhabar.com/2022/06/24/110514/?utm_

source=Digital+Rights+Nepal&utm_campaign=8d707a1e19-EMAIL_CAMPAIGN_2022_06_07_06_31_COPY_01&utm_medium=email&utm_term=0_4c031bf850-8d707a1e19-588692867; <https://www.techpana.com/2022/138958> and <https://technologykhabar.com/2022/09/22/119346/>

⁹<https://www.prasashan.com/2022/04/27/316967/>

¹⁰<https://www.techpana.com/2022/132797/>

¹¹<https://www.speedtest.net/global-index/nepal>

¹²<https://www.techpana.com/2022/140164>

¹³<https://technologykhabar.com/2022/11/07/122330/>

¹⁴<https://technologykhabar.com/2022/12/19/125641/>

¹⁵<https://www.techpana.com/2022/132062/>

¹⁶<https://www.techpana.com/2022/133956/>

¹⁷<https://www.techpana.com/2022/130522/>

CHAPTER TWO

FREEDOM OF EXPRESSION

Freedom of expression, a fundamental right in Nepal, faces both opportunities and threats in the digital age. While online platforms enable diverse opinions, challenges like censorship, criminalization of online expression, cyberattacks, and hacking persist. Robust protections for digital freedom of expression, including legal frameworks for free speech and privacy, are essential for democracy and human rights in Nepal.

◆ POLICY ENVIRONMENT FOR FREEDOM OF EXPRESSION

- Article 17 of the Constitution of Nepal, 2015 guarantees the right to freedom, under which freedom of opinion and expression¹⁹ is ensured.
- National Civil Code, 2017: Article 20(1) guarantees personal liberty, and subsection 2(a) upholds the right to express opinions.
- National Penal Code, 2017: Section 121 limits online freedom of expression through the prohibition of producing or selling obscene content, with exceptions for legitimate purposes.
- Advertisement (Regulation) Act, 2019: Governs advertising and affects digital freedom of expression due to vague definitions and potential restrictions.
- National Broadcasting Act 1993: Enacted to protect freedom of expression and right to information requires licenses for broadcasting, provides a space for enabling censorship and cancellation of licenses.

◆ PROPOSED LEGAL REFORM RELATED TO FREEDOM OF EXPRESSION

Information Technology Bill, 2018: The Information Technology Bill, 2018, which was introduced in 2018 in parliament is still under discussion in the Parliament, it aims to regulate social media in Nepal. However, the bill sparked controversy due to its provisions for strict regulation. Some of major issues in the Bill are:

- Some clauses are violative of the constitution from FoE perspective. Sec. 83 (Cyber Bullying), Sec. 86 (Obscene Material), Sec 88 (Misuse of IT System), Section 94 (Publishing/posting on Social Media) are much concerned issues.
- Registration of Social Media Operator at the Department of IT
- The Department of IT has sweeping power on removal of content. Violation of the order of the Department has criminal liability of upto 3 years imprisonment and there is no appealing authority of this.
- Data localization is the most for any service provider that holds information about the government agency, public agency, financial institutions and medical institutions.
- Confusing Intermediary Liability clause. Though there is an exception for intermediaries, the proviso part of the e document is sweeping the effect to the exception.
- It is vaguely drafted on the limitation of import and export of certain IT related goods.

¹⁸https://www.speedtest.net/awards/nepal/2022/?award_type=carrier&time_period=q1-q2

¹⁹Article 17(2) of Constitution of Nepal, 2015

²⁰<https://kathmandupost.com/national/2021/02/13/draft-directives-to-regulate-social-media-give-authorities-power-to-define-decency-and-morality>

²¹Clause 6, Online media Directive 2017.

Social Media Directive: The Ministry of Communication and Information Technology drafted a directive to regulate social media, granting sweeping power to delete posts in social media prohibited by the directive. Contentious issues, including intermediary liability, freedom of expression, and registration of social media companies, were subjects of debate. Given the controversial nature of the draft directive it has not been adopted²⁰.

Media Council Bill: The proposed Media Council Bill seeks to replace the existing Press Council Act 1992. The bill envisions a Media Council with the objective of promoting responsible journalism while raising concerns about its power to impose fines and potential impact on media independence.

Online Media Operation Directives, 2017: Despite constitutional protections, the Regulation requires annual renewal of online media, sparking legal challenges²¹. The Supreme Court declared the renewal provision unconstitutional²², and the Directive is subjudice, awaiting further review by the Constitutional Bench.

Amendment to Broadcasting Regulation: The government's eleventh amendment to the National Broadcasting Regulation raised concerns due to its vague and broad provisions that could infringe on freedom of expression, broadcasting rights, and the principle of an open internet. The imprecise nature of the amendment could be wielded as a tool to curtail the liberties of citizens, impacting their constitutional and legal entitlements. DRN organized discussions and media coverage to address these concerns²³.

Online media content regulation: In June 2022, a decision by the High Court Patan expanded the scope of the Press Council Nepal (PCN), a statutory body established to monitor media in Nepal, and paved the way for PCN to regulate online media along with other traditional media. This decision has formally recognized press council authority on regulating online media along with traditional media. However, a separate independent regulatory body for the regulation of online media would be more ideal given the nature of social media is different from legacy media. The Press Council Nepal itself has suggested the government establish a separate independent regulatory body for the regulation of social media.

ELECTION 2022, DIGITAL RIGHTS, AND FREEDOM OF EXPRESSION

Election Code of Conduct: The Election Commission Nepal (ECN) issued a Code of Conduct for the 2022 elections, with provisions that potentially curtailed freedom of expression. DRN raised concerns about the impact on citizens' rights and submitted a memorandum to ECN²⁴.

Monitoring of dis-/mis-information: ECN established a committee to monitor disinformation during elections²⁵. DRN sought information on the committee's working, highlighting concerns over misinformation's impact on democratic processes.

Use of social media: ECN utilized social media extensively for voter education during the elections, recognizing its role in reducing invalid votes. Political parties requested relaxation of social media rules for online campaigning²⁶.

ECN controversies: ECN faced controversy over attempts to limit freedom of expression online, clashing with social media campaigns critical of political leaders and using legal measures to address offensive remarks against candidates. ECN's move to fine offenders and impose imprisonment led to criticism, with many asserting it curtailed citizens' right to express opinions²⁷. In a related incident, Meta deactivated the popular Facebook group MRR for violating "community guidelines" during the election period. However, the group was reactivated after a brief suspension²⁸. The "No, Not Again" campaign against political leaders also triggered legal action, resulting in a Supreme Court interim order dismissing ECN's regulation of the campaign²⁹. In another instance, ECN retracted a directive to remove a news report, "Agni Kharel's son Nishan in US Army, also continues to hold Nepali citizenship³⁰," from Setopati within 24 hours after facing strong criticism from civil society and media, which deemed the move an infringement on press freedom and freedom of expression³¹.

²²A divisional bench of Justice Deepak Kumar Karki and Sushmalata Mathema issued the order.

²³<https://shilapatra.com/detail/79180> , <https://youtu.be/xLqjbzDC5ys>, <https://merolagani.com/NewsDetail.aspx?news-ID=79136#.Yi9em0UtvJE.twitter>, <https://www.onlinekhabar.com/2022/04/1108150>

²⁴<https://nepalmat.com/content/23748>, <https://www.nayapatrikadaily.com/news-details/84298/2022-04-12>
<https://www.techpana.com/2022/123941/>

²⁵<https://www.nayapatrikadaily.com/news-details/85437/2022-05-02>

MAJOR DIGITAL RIGHTS AND FREEDOM OF EXPRESSION ISSUES IN 2022

Regressive Regime for Digital Rights: While Nepal's constitution guarantees freedom of expression, recent developments have raised concerns about its enforcement. Article 17(2)(a) of the constitution ensures the freedom of opinion and expression. However, this is a relative right and the Proviso 1 of the Article 17(2) gives the space for legislation to restrict the right to opinion and expression. The government's attempts to regulate online speech and criminalize certain expressions have led to the suppression of free speech and restricted access to information. Privacy protections are lacking, leaving individuals vulnerable to surveillance and data collection. High cybercrime rates highlight the need for improved cybersecurity, while internet access disparities contribute to economic and social inequalities.

Regulation of Online Media: A High Court decision granted Press Council Nepal (PCN) the authority to regulate online media, leading to concerns about potential misuse of power. While curbing misinformation is necessary, the unique challenges of online content require expertise that PCN may lack. Calls for an independent regulatory body for online media have emerged. With the court validating its authority, PCN has started taking action against social media channels as well. In a year, PCN has taken action against 14 YouTube channels and similarly has recommended the Nepal Police Cyber Bureau to take similar action against 34 unregistered YouTube channels. PCN has said that it considered taking action against the YouTube channels because they incited people, dispersed false information and fake news, damaged social cohesion, and propagated information that puts a strain on international relations and comradery between friendly nations.

Content-Led Arrests: Comedian Apoorva Kshitij Singh's arrest for allegedly offending the Newa community during a stand-up performance highlights concerns about freedom of expression³². Similarly, the arrest of a YouTuber Prabesh Lama, for obscene content³³ and another for pranks³⁴ raises questions about the scope of content-related offenses and their potential impact on digital rights.

Content Filtering by ISPs: During the FIFA World Cup 2022, ISPs in Nepal blocked access to football streaming websites, raising issues of content filtering and regulatory jurisdiction. This action, without official directives, indicated potential limitations on internet freedom and highlighted a need for clear guidelines³⁵.

Increased Online Violence Against Women Journalists: A survey by the Media Advocacy Group (MAG) revealed 53 % of women journalists facing online violence. The survey found that online violence often escalated to physical threats or assaults. Lack of training and support underscore the need for comprehensive measures to counter online violence against women journalists, including legal safeguards and capacity-building initiatives.

As Nepal grapples with these digital rights and freedom of expression challenges, balancing regulatory efforts with the protection of fundamental rights remains a complex endeavor.

²⁶https://technologykhabar.com/2022/08/22/116852/?utm_source=Digital+Rights+Nepal&utm_campaign=036475fe47-EMAIL_CAMPAIGN_2022_08_24_05_21&utm_medium=email&utm_term=0_4c031bf850-036475fe47-588695375

²⁷<https://thehimalayantimes.com/nepal/election-commission-urges-not-to-give-offensive-expression> and <https://www.techpana.com/2022/139428>, <https://techpana.com/2022/139453>, <https://www.bbc.com/nepali/news-63405536>

²⁸<https://www.techpana.com/2022/139598>, <https://www.techpana.com/2022/139619>

²⁹<https://en.setopati.com/political/159844>, <https://technologykhabar.com/2022/11/10/122620/> and <https://myrepublica.nagariknetwork.com/news/sc-issues-interim-order-not-to-take-action-against-no-not-again-campaigners/>

³⁰<https://www.setopati.com/politics/286043>

³¹<https://en.setopati.com/view/159842>, <https://kathmandupost.com/national/2022/11/05/election-commission-s-order-to-remove-news-from-portal-courts-controversy> and <https://en.setopati.com/political/159845>

³²<https://english.onlinekhabar.com/apoorwa-kshitiz-singh-released-bail.html>

³³<https://ekantipur.com/national/2022/07/05/165702448104149202.html>

³⁴<https://himalsanchar.com/viral-youtuber-arrested-for-doing-mischief-by-threatening-to-throw-acid/>

³⁵<https://kathmandupost.com/money/2022/11/27/world-cup-fans-turn-to-live-streams-to-avoid-extra-fee>

³⁶<https://kathmandupost.com/national/2021/11/17/nepal-to-start-issuing-e-passports-from-today>

³⁷Number 8, National Cyber Security Policy, 2021

³⁸Section 47, Electronic Transaction Act, 2006.

³⁹Section 19, The Privacy Act, 2018.

⁴⁰Section 26, The Privacy Act, 2018.

⁴¹Chapter 2-11, Cyber Security Bylaw, 2020.

CHAPTER THREE

RIGHT TO PRIVACY, DATA PROTECTION, DIGITAL SAFETY AND SECURITY

In Nepal, the right to privacy, data protection, digital safety, and security faces significant challenges due to the lack of robust legal safeguards. The increasing collection, storage, and use of personal data by various entities, coupled with the complexities of the digital era, have raised concerns about individual privacy. Instances of data breaches and cyber crimes have put personal information at risk, while limited privacy protections have enabled government surveillance and monitoring of online activities. Addressing these multifaceted issues requires the establishment of stronger privacy laws and regulations, along with enhanced public awareness regarding the significance of privacy, data protection, digital safety, and security in the digital age.

◆ POLICY ENVIRONMENT FOR RIGHT TO PRIVACY, DATA PROTECTION, DIGITAL SAFETY AND SECURITY

National ID and Civil Registration Act, 2019: This Act facilitated the legal basis for National ID and Civil Registration, including the issuance of Integrated National Identity Cards with personal and biological information. The government began linking the National ID for various services, starting with passports³⁶.

National Cybersecurity Policy, 2021 [Draft]: The Ministry of Communications and Information Technology introduced the National Cybersecurity Policy, 2021, inviting public feedback. The policy seeks to safeguard diverse forms of data from theft and damage, enforcing stringent requirements for securing sensitive data, personally identifiable information, protected health information, personal information, intellectual property, data concerning government operations, and industry information systems³⁷.

Electronic Transactions Act, 2006: The Electronic Transactions Act, 2006, enacted by the Nepal Government, aims to regulate electronic transactions and digital signatures. Its key goals are to establish legal provisions for authenticating and regularizing electronic records, ensuring their recognition, validity, integrity, and reliability. The Act also aims to prevent unauthorized use and alteration of electronic records. The accompanying Electronic Transaction Rule was established in 2008 to facilitate effective implementation.

However, two controversial sections, namely Section 47 and Section 48, have drawn significant attention. Section 47 addresses the publication of illegal materials in electronic form. Sub-section (1) of this section states that individuals who publish or display materials on electronic media, including computers and the internet, that are prohibited by existing laws or are contrary to public morality, decency, or that incite hate or jealousy may face penalties. These penalties can include a fine of up to One Hundred Thousand Rupees, imprisonment for up to five years, or both³⁸.

Individual Privacy Act, 2018: Privacy is enshrined as a constitutional right in Nepal. The Individual Privacy Act, 2018 serves to implement this right by addressing privacy in electronic means. It grants individuals the right to privacy over personal information, correspondence, and statistics stored electronically³⁹. The Act prohibits unauthorized access to personal information and guarantees the protection of personal data collected by public bodies⁴⁰. The Individual Privacy Act, 2075 has reinforced personal data privacy but lacked provisions for effective protection in online platforms, emphasizing the need for a comprehensive data privacy law.

The Information Technology Emergency Response Team (Operation and Management Team) Directive, 2075, aims to address cybersecurity risks arising from IT development and usage. It establishes an emergency response team to manage cybersecurity crises and the National Cybersecurity Inspection Center to assess Government IT systems.

The Cyber Security Bylaw, 2020, currently in effect, covers Internet service providers and telecommunications under NTA. It outlines standards for General Security, Infrastructure/Network, Core System, Applications, Data Privacy, IS audit, Cloud, CERT/Incident Response, SOC, Cybersecurity awareness, and capacity building⁴¹.

MAJOR DIGITAL RIGHTS ISSUES CONCERNING PRIVACY, DATA PROTECTION, DIGITAL SAFETY, AND SECURITY IN 2022

The Special Service Bill 2019, which was up for discussion in the parliament, contained controversial surveillance provisions. Section 10 grants investigative authorities broad powers to intercept and listen to phone calls without judicial approval for suspected espionage, sabotage, and subversion. This has sparked debate, as existing laws lack clarity on prior judicial permission for digital surveillance on citizens⁴².

For instance, the Individual Privacy Act's Section 19(3) allows electronic dialogue interception with consent or authorized orders but lacks explicit judicial approval. Passing the Special Service Bill without amendments could weaken citizens' privacy rights, potentially enabling government misuse against protesters and opponents. DRN expressed concerns, disseminating a primer to stakeholders opposing such legislation.

NTA Launched MDMS: The Mobile Device Management System (MDMS) was introduced to control unauthorized mobile phone imports, raising concerns about arbitrary application⁴³.

ECN's Monitoring of Social Media Contents: The Election Commission of Nepal (ECN) monitored social media to ensure adherence to the Election Code of Conduct, raising questions about potential curtailment of freedom of expression and privacy⁴⁴.

NTA and ISPs at Odds Over Customer Data: ISPs and the industry regulator NTA have recently been at odds over the issue of access to customer data. In order to connect the Telecommunication Traffic Monitoring and Fraud Control System (TERAMOCS), NTA requested access to user information⁴⁵. However, ISPs claimed that they were unable to provide access to customer data because of the users' legal and personal privacy concerns. NTA claimed that the decision to implement a TERAMOCS system was to control tax leakage, call bypass, and ensure service quality. NTA asserted that the goal of the data collection was entirely different and would not violate customers' privacy. Despite NTA claims, there was no guarantee that that TERAMOCS system would not compromise citizen privacy. NTA and ISPs should find a way out balancing both the legal concerns (tax leakage, call bypass) and protect users' privacy.

New Statistics Bill Passed: A new Statistics Bill was passed by the house of representation on August 10, 2022, a year after it was passed by the National Assembly. This Bill replaced the Statistics Act, 1958, a 64-year-old legislation. In the absence of ICT-friendly statistics laws, the government has been facing problems such as formulation of long-term statistical policy, access to data, and management of data in the electronic system⁴⁶. The Act has centralized the power and authority in the hands of the Office of Prime Minister⁴⁷.

SIM Recycle - Privacy and Security Concerns: The practice of recycling inactive SIM cards sparked concerns over user security and privacy. A Writ Petitioner filed a lawsuit against NTA and other telecom operators to stop the practice of recycling SIM cards to new owners without first notifying the original owner. The Supreme Court, on December 29, issued an interim order and show cause against NTA directive allowing telecom companies to recycle SIM numbers that have been inactive for more than a year to another person and deactivate SIM cards that have not been used in six months.

Election Code of Conduct 2079: Mandating candidates to submit property details raised privacy concerns, as it contradicted existing laws and infringed on citizens' right to privacy⁴⁸.

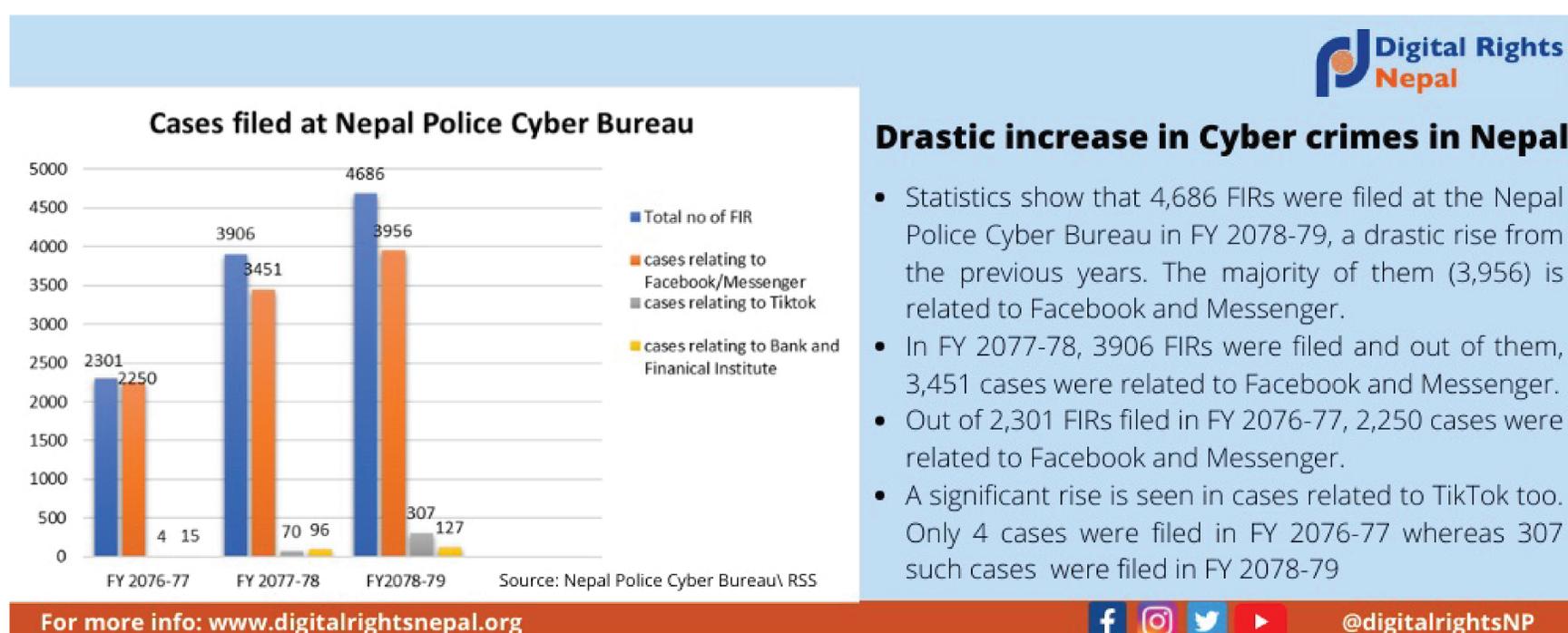
Identifiable Details of Voters Made Public by ECN: The publication of voter details on the ECN website, while ensuring transparency, also posed risks of data misuse, highlighting the need for balancing transparency and privacy⁴⁹.

CCTVs being monitored: To ensure that the CCTV Installation and Operation Procedure 2016 were followed, DAO Kathmandu began monitoring the CCTV installation and operation. As per the procedure, the CCTV footage should be stored securely and confidentially for three months and sent to the Nepal Police or other government authority for inquiry, when required. The law also forbids the installation of CCTV cameras and the capturing of pictures in a way that breaches human rights, or to modify it for commercial purposes. According to the DAO Kathmandu, 6,852 complaints about the misuse of CCTV footage have been made in the first month of the current fiscal year alone⁵⁰.

National Cyber Security Center Being Planned: Nepal's budget for fiscal year 2079/80 planned to establish the National Cyber Security Center. The center was aimed to develop and conduct research as an official authority on cyber security enhancement and digital forensics. The National Cyber Security Center would also test the cyber security of the Nepal government's digital systems to control breaches.

Cyber Security Bill Being Planned: Nepal Telecommunication Authority (NTA) has started necessary discussions and consultations to draft the Cyber Security Bill. The bill is being prepared to address the cyber incidents and prevent them, which have risen due to recent advancements and accessibility of cyberspace. Stakeholders' feedback and collaboration, as demonstrated with the National Cyber Security Policy 2021, are essential to ensure an effective cybersecurity framework.

Drastic Increase in Cyber Crimes: The surge in Internet penetration has paralleled an uptick in cybercrime cases in Nepal. Inadequate cybersecurity measures have rendered both public and private organizations vulnerable to data breaches, endangering personally identifiable information. Recent events highlight the need for comprehensive policy intervention and legislative updates to address cybercrime effectively.



Collaboration with Ethical Hackers: NTA has entered into a collaboration with BugV, an ethical hacking platform, to enhance cybersecurity. This partnership involves crowdsourced identification of vulnerabilities in NTA's website, leading to timely rectification⁵¹. The initiative underscores the importance of collaborative efforts to bolster cyber defenses.

National ID Card Portal's Security Concerns: The National Identity Card of Nepal contains crucial personal information and plays a pivotal role in identification and verification. Concerns have arisen regarding the security of the online pre-enrollment portal. The absence of HTTPS encryption raises questions about the protection of sensitive data, necessitating improved data protection measures⁵².

The evolving digital landscape of Nepal calls for comprehensive efforts to safeguard privacy, data protection, digital safety, and security. The establishment of clear and robust legal frameworks, effective enforcement mechanisms, collaboration with ethical hackers, and constant vigilance are crucial steps towards creating a safer and more secure digital environment for individuals, organizations, and the nation as a whole. The ongoing convergence of technology and policy will shape Nepal's digital future, ensuring that the rights and security of its citizens are upheld.

⁴²<https://www.onlinekhabar.com/2022/08/1167872>

⁴³<https://nta.gov.np/en/notice-mdms-2022-09-15/>

⁴⁴<https://www.techpana.com/2022/139427>

⁴⁵<https://technologykhabar.com/2022/08/14/116095/>

⁴⁶<https://nagariknews.nagariknetwork.com/politics/907861-1660130103.html>

⁴⁷<https://www.onlinekhabar.com/2022/08/1176541>

⁴⁸<https://www.onlinekhabar.com/2022/09/1198961>

⁴⁹<https://techpana.com/2022/139532>

⁵⁰<https://technologykhabar.com/2022/08/31/117634/>

⁵¹<https://techmandu.com/nta-and-bugv-collaborate-to-improve-cybersecurity/>

⁵²<https://kathmandupost.com/national/2022/09/23/a-legion-of-safety-concerns-surrounds-national-id-scheme>

DEVELOPMENTS IN ICT AND EMERGING TECHNOLOGIES

Artificial Intelligence (AI)

In 2022, the global AI landscape soared to unprecedented heights, and Nepal eagerly joined the AI revolution. However, a missing puzzle piece threatens to dampen this progress – the absence of a robust legal framework.

AI's rapid evolution is reshaping industries worldwide, which shows a need for Nepal to join AI initiatives. Yet, the lack of clear legal guidelines casts uncertainty over this promising path.

In an era dominated by AI's potential, a comprehensive national strategy is vital. It would address ethical concerns, data privacy, accountability, and economic opportunities. This legal blueprint would empower stakeholders – from businesses and researchers to policymakers and citizens – to navigate the AI landscape with clarity and confidence.

Ethical AI deployment is paramount. Striking the right balance between autonomous decision-making and safeguarding human rights requires legal guidance. A comprehensive framework would ensure AI adheres to ethical principles, curbing biases and discrimination.

Data privacy emerges as a central concern. Robust legislation would protect individuals' data rights while facilitating responsible data use to fuel AI advancements.

Economically, a legal structure can stimulate innovation, entrepreneurship, and foreign investment. Clearly defined parameters for intellectual property and technology transfer can fuel AI-driven startups and global collaborations, positioning Nepal as an AI front-runner.

KEY RECOMMENDATIONS

Government of Nepal:

- In 2022, the global AI landscape soared to unprecedented heights, and Nepal eagerly joined the AI revolution. However, a missing puzzle piece threatens to dampen this progress – the absence of a robust legal framework.
- AI's rapid evolution is reshaping industries worldwide, which shows a need for Nepal to join AI initiatives. Yet, the lack of clear legal guidelines casts uncertainty over this promising path.
- In an era dominated by AI's potential, a comprehensive national strategy is vital. It would address ethical concerns, data privacy, accountability, and economic opportunities. This legal blueprint would empower stakeholders – from businesses and researchers to policymakers and citizens – to navigate the AI landscape with clarity and confidence.
- Ethical AI deployment is paramount. Striking the right balance between autonomous decision-making and safeguarding human rights requires legal guidance. A comprehensive framework would ensure AI adheres to ethical principles, curbing biases and discrimination.
- Data privacy emerges as a central concern. Robust legislation would protect individuals' data rights while facilitating responsible data use to fuel AI advancements.
- Economically, a legal structure can stimulate innovation, entrepreneurship, and foreign investment. Clearly defined parameters for intellectual property and technology transfer can fuel AI-driven startups and global collaborations, positioning Nepal as an AI front-runner.

Private Sector:

- **Robust Cybersecurity Measures:** Strengthen cybersecurity measures to protect user data, prevent data breaches, and ensure the security of digital platforms and services.
- **Ethical Data Practices:** Adopt ethical data collection and usage practices, obtain informed consent from users, and provide transparent information about how personal data is utilized.
- **Collaboration with Civil Society:** Engage with civil society organizations to develop and implement best practices for data protection, privacy, and cybersecurity.
- **Accessibility and Inclusion:** Design digital platforms and services that are accessible to all individuals, including those with disabilities, and bridge the digital divide by considering affordability and inclusivity.

Civil Society Organizations:

- **Advocacy and Awareness:** Continue advocacy efforts to raise awareness about digital rights, privacy issues, and the importance of maintaining an open and free online environment.
- **Legal and Policy Advocacy:** Collaborate with legal experts to advocate for the reform of existing laws and the creation of new legislation that promotes and protects digital rights.
- **Capacity-Building and Education:** Conduct workshops, seminars, and training programs to enhance digital literacy, cybersecurity awareness, and the responsible use of digital platforms.
- **Partnerships and Collaboration:** Foster partnerships with government agencies, the private sector, and international organizations to collectively address digital rights challenges and drive positive change.
- The advancement of digital rights in Nepal requires a multi-faceted approach involving the government, private sector, civil society, and citizens. By implementing these recommendations, Nepal can create an environment that fosters digital innovation, protects individual rights, and ensures a safer and more inclusive digital space for all.

ABOUT US

Digital Rights Nepal

Digital Rights Nepal (DRN) is a non-profit organization established in 2020, dedicated to safeguarding digital rights and fostering a secure online environment in Nepal. With a diverse team of advocates and experts, DRN conducts research, advocates for policy reforms, and engages in capacity-building initiatives to promote online freedom of expression, privacy protection, access to information, and cybersecurity. Led by passionate changemakers in human rights and digital advocacy, DRN plays a pivotal role in shaping the digital landscape of Nepal, both locally and on the international stage.



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