

REVIEW OF NEPAL SPECIAL SERVICE BILL:

Yet another bill that curtails human rights, individual freedom, shrinks civic space and attacks on democracy

Terai Human Rights Defenders Alliance (THRDA Alliance) expresses its serious concerns over the government's continuous attempt to shrink civic space in Nepal.

The "[Bill to Amend and Integrate Laws related to Formation and Operation of Nepal Special Service](#)¹" that the government registered at the National Assembly on 11 December 2019 with the commencement of winter season of the federal parliament is government's new attempt to curtail individual's freedom particularly right to privacy and to shrink civic space.

We are of the view that the government attempts to curtail individual freedom, right to expression and privacy through this legislation. This will ultimately jeopardize human rights movement and democracy in the country.

Below is a brief review and analysis of the Bill.

Preamble: *Whereas, it is expedient to amend and integrate the existing legislations relating to the formation, operation and terms of services with a view to maintain public interests by facilitating the work of protecting and promoting national independence, sovereignty, geographical integrity, national security, national interest and national autonomy, and to create law and order situation,*

the Federal Parliament prepared this act.

The Bill claims in its preamble that it is necessary to promote and protect national independence, sovereignty, geographical integrity, national security, national interest and national autonomy, and to create law and order situation, it does not provide an explanation on what could constitute the breach of sovereignty, national integrity, national interest and communal harmony. Consequently, this gives enough room for the government to use this law against an individual or groups or organizations raising voices against the administration or the government in case of their failure or weaknesses. The government can use this bill to restrict the freedom of expression, and a right to peaceful demonstration.

¹ Bill to Amend and Integrate Laws related to Formation and Operation of Nepal Special Service
<http://na.parliament.gov.np/uploads/attachments/fq4l2pxhncrmbtso.pdf>

Under its Chapter 2 - 'Formation of Service and Structural Arrangement', the Bill envisions to bring the National Investigation Department (NID) under the Office of Prime Minister and Council of Ministers (OPMCM).

Chapter 5 of the Bill speaks of the NID's functions, duties and power. One of the NID's functions is to gather information on any attempt to raise arms against the state, incite communal hatred and any act of espionage, sabotage and subversion. NID can also gather information on any attempt to provide any kind of help to foreign organizations and individuals whose acts are against the state.

Chapter 3 of the Bill consists of 'Investigation, Intelligence and Counter-Intelligence activities. Section 10 of this section has a special provision on information collection.

10 (1) In order to gather information and carry out spying activities in accordance with the law, the department may surveil, monitor and intercept and record suspected or surveilled individuals, groups and organizations' conversations, audio, video, or electronic signals or details transmitted by suspected or through public communication or other means.

Explanation: "Interception", for this section, means the work of acquiring required materials following the monitoring or surveillance of communication networks.

(2) To use sub-section (1), officer deputed for investigation, after getting consent from chief investigation director, needs request from authorized officials, institutions or service providers to provide such computer, telephone, mobile phone, materials/means of internet or the details of conversation, signals or information sent through such mediums.

(3) As per sub-section (2), authorized officials, institutions or service providers need to provide such computer, telephone, mobile phone, materials/means of internet or the details of conversation, signals or information sent through such mediums, if required.

The above sections violate citizens' fundamental right to privacy and right to freedom as guaranteed by the constitution (Article 28 and Article 17). The Bill proposes to give powers to NID to wiretap phones and to intercept digital communications of individuals. Service providers shall have to provide information to NID if it seeks details of any individual and organization's communications that they have exchanged using telephone, mobile phone or computer.

Nepali civil society members have fought legal battle to protect individual's right to privacy. The Supreme Court has set a precedent in a case filed by Baburam Aryal et al versus Government of Nepal² whereby investigative agencies can collect individual's

² Baburam Aryal et al versus Government of Nepal
<http://bit.ly/baburamvsnepalgovt>

private data in the course of investigation only with the court's permission and the court may give permission only when investigative agencies file a case against the individual.

Police can gather individuals' personal data through the court's permission if it has compelling reasons for doing so in the course of investigation of a crime. However, the Bill allows authorities to collect individual data, tap phones and intercept individual's communication without a court's approval. Civil society members say as the authorities can collect individual's private data with the court's permission in accordance with the existing laws, there is no need for another new law.

Notably, Chapter 9 of [the Privacy Act, 2018](#)³ (Electronic Means and Privacy) stipulates:

19. To have privacy of electronic means:(1) Every person shall have the right to maintain privacy of the matter relating to any of his or her personal information, document, correspondence, data or character that remained in electronic means. (2) No one shall obtain the notice, information, correspondence of any person remained in electronic means in unauthorized manner, violate or provide its privacy for anybody in unauthorized manner." (Section 19, Privacy Act 2018)

However, the provisions in this Bill override the above-mentioned clauses of the Privacy Law.

Chapter 4 of the proposed Bill envisions to have a special office for the intelligence – Central Instruction Committee --, a nine-member committee led by the prime minister to draft the necessary policy, coordinate and provide the needed guidance.

It appears as if the government can use this law to surveil against its opponents, rights activists and civil society members to silence their critical voices. The Bill has already installed fear in the minds of the public, especially right activists and those critical mass.

On top of that, the Bill contravenes a [UN resolution passed in 2013](#)⁴ that require member states to review their laws so as to ensure that their domestic laws did not violate right to privacy guaranteed by international law.

CALL TO ACTION

³ The Privacy Act 2018
<http://www.lawcommission.gov.np/en/archives/20697>

⁴ Resolution adopted by the General Assembly on 18 December 2013
<https://undocs.org/A/RES/68/167>

The introduction of such bill is yet another attempt by the government to curtail individual's freedom, right to expression and privacy. This shows the government's continuous attempt to curtail civil liberty and shrink civic space.

Earlier, the government came up with controversial bills, which consist of Nepal Media Council Bill, Bill on Mass Communications, Information Technology Bill, Federal Civil Service Bill, NHRC Act (Amendment) Bill, and National Security Council Bill⁵ among others, that have received widespread criticism from several quarters, including the opposition parties, human rights community, civil society, media and the general public. Last June, the government had to withdraw the controversial Guthi Bill from the Federal Parliament after the members of civil society and *Guthi* organizations staged a huge protest against the proposed legislation aimed at nationalizing properties of *Guthis*. Likewise, the government had earlier formulated the "national integrity policy" with a view to control civil society. National and international organizations heavily criticized this policy, and later, the government stepped back on this. It seems the government is not bothered at public outcry and huge criticism in the past as it has come up with this new restrictive bill.

There is no doubt that the government requires an intelligence service but it should not be brought at the cost of human rights and public liberty. As the Bill is being criticized as it was drafted and introduced without consultation with the concerned stakeholders. The formulation and enactment of laws and public policies through a broad-based consultation is recognized by international standards, including International Covenant on Civil and Political Rights (ICCPR) and it is an obligation of signatory countries to abide by its provisions.

Opposition parties and leaders have already protested the Bill in the Parliament. It requires a serious concern from both the national and international human rights communities, including diplomatic missions. A consolidated effort to protest the Bill is a must to foil the government's malicious intent to curtail human rights, shrink civil liberty and attack on democracy.

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Terai Human Rights Defenders Alliance (THRDA) is a non-governmental organization registered under Nepali law and is working to protect and promote human rights through research, legal intervention and advocacy. It works in close coordination with Nepal's National Human Rights Commission, and reports to international human rights organizations, including the UN Office of the High Commissioner for Human Rights. For more info: www.thrda.org

⁵ Six bills on hold following controversy
<https://myrepublica.nagariknetwork.com/news/six-bills-on-hold-following-controversy/>