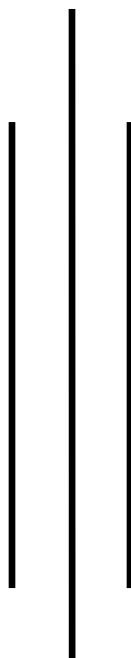


Review on

Bill Formulated to amend and integrate the laws related to Public Service Broadcasting



Freedom Forum

August 2020



FREEDOM FORUM
"A Nepali CSO (civil society organization) dedicated to democracy, human rights and governance"

Review of PSB Bill

The long-awaited issue of public broadcasting has now entered the Parliament. The debate and various initiatives on this subject which started in 2063 BS (2007) have now entered a new phase. The government has registered a bill in the parliament on July 29 to amend and consolidate the laws on public broadcasting to change the existing regulation system of Radio Nepal and Nepal Television. Since, the session of the parliament ended abruptly; the bill has not yet entered the parliamentary proceedings. Thus, it is seen to be silencing the momentum of public debate and discourses.

The government has given three main reasons for introducing this bill, which is included in 30 Sections.

One: To ensure constitutionally guaranteed freedom of opinion and expression and the right to information,

Second: To consolidate Radio Nepal and Nepal Television and transform into a public broadcasting as per National Mass Media Policy, 2073.

Third: To well-inform citizens by adhering to the democratic values and the values of independent journalism in a healthy, fair and accountable manner.

In order to fulfill the aforementioned objectives, the bill proposes to provide financial management of public broadcasting institutions from three types of sources. One: Grants from Union, State and Local Governments, Second: Income made by the organization itself and Third: Amount received from foreign governments or organizations.

The amount received from these sources will be a separate fund of income received from these sources.

The section wise preliminary review of the "Public Service Broadcasting Act, 2077" proposed to regulate public service broadcasting institutions is as follows:-

1) Preamble: To guarantee the freedom of opinion and expression of the citizens, to guarantee the right to information, to produce and broadcast neutral, impartial, factual, objective information and news, to produce and broadcast education, health, entertainment programs, to promote national interest and unity and to strengthen inclusive democracy by establishing and operating a public service broadcasting institution. The aforementioned six goals have been outlined for establishing and operating an accountable public service broadcasting institution. But the added phrase "whereas it is expedient to consolidate and amend the laws" seems unclear and unjustified. This is because there are no any existing legal provisions and institutions related to public service broadcasting in Nepal. Therefore, the sentence seems irrelevant. Overall, the six vision statements mentioned above are however appropriate.

Instead, it may be pertinent to refer here to the need to transform existing government-owned Radio Nepal and Nepal Television into public service broadcasting. Further, including the vision in the preamble to constitute PSB in all three level structure of the country will be more relevant.

2) Section 2 (e) solely defines Radio and Television broadcasting in the definition of broadcasting, excluding internet broadcasts. Thus, digital broadcasting must be included as well.

3) The broad and ambiguous terminology in Section 3, Sub-section 2 stating that the location of the central office of PSB in Kathmandu and other offices may be set as necessary cannot assimilate the principle of universality of PSB. Instead, the offices must be set in all the seven states providing access to all 753 municipalities should be added to guarantee universal access ensured by law.

4) Section 4 states that PSB will be an self-governed and organized institution. The PSB should also be characterized as an "autonomous body" to ensure neutrality of the institution. Therefore, this section must be read as "PSB shall be an autonomous, self-governed and organized institution".

5) Section 5 consists of 12 sub-sections as the functions of PSB. Sub-section 13 of this section mentions "PSB will undertake other tasks as prescribed". Several functions of PSB are repeated and ambiguous. Similarly, some important points are missing.

The function of PSB should include areas covered in Mass Media Policy-2073 as to PSB, fundamental rights of the citizens and the directive principles and goals of the state as enshrined in the constitution.

In addition, making public service broadcasting accessible to different states and municipalities, setting standards and principles for public service broadcasting, and the question of whether public service broadcasters should operate commercial broadcasting channels should also be addressed in this Section.

6) Regarding the formation of PSB in Section 6, the provision related to the council is not in line with the norms and principles of Public Service Broadcasting (PSB).

The provision mentions the chairperson of the council to be Minister or Minister of State for Communications and Information Technology, which does not guarantee the "independence, autonomy and impartiality" of the PSB. In the proposed 30-member council, there will be federal government minister and 4 Secretaries, 7 members nominated by the state government, 15 members from different fields nominated by the Federal Ministry, 3 representatives of 3 federations of local governments and 4 chairperson of different organizations will be ex-officio and the chairperson of PSB executive committee will be member-secretary.

It is evident that the government's will is decisive in the work of the council as all the government representatives or the government appointees are in the council, exception being the chairpersons of 3 out of 4 organizations. It is clear that the decisions will not be "free and fair".

Therefore, there should be an arrangement for the council to be headed by a chairperson of a parliamentary committee or to be appointed by the president on the recommendation of an impartial recommendation committee. The structure and method of selecting council members should also be independent. The participation of parliamentary political parties should be ensured in the council. Opposition voices should be given space. Gender and inclusive representation must also be ensured. In addition, the information Commission, organizations concerning language, literature and culture and human rights organizations should be included as well. The National Information Commission, Telecommunications Authority, the Media Authority which is proposed in the Mass Media Act also needs a presence.

Therefore, the structure of this council should be restructured to include expanded and independent representation.

The significance of the council is for it to remain as an accountability and oversight mechanism. It should be established as a forum for formulating and reviewing crucial policies like approving the budget, reviewing the editorial policy, passing rules and regulations and conducting internal audits (relating to various subjects). Therefore, its meeting should be held at least twice a year (not once as proposed in Section 6 (4) of the Bill) and its tenure should match that of the Executive Committee. (The bill provides for three years term of the council and five years for the executive committee.)

The function of the council in section 7 of the bill should be to review the policies and to pass the regulations, guidelines etc. and it should be submitting its recommendations and report to the parliament.

7) Section 8 of the bill proposes a five-member executive committee to operate the institution. It is mentioned that this committee will be formed by the Government of Nepal. The chairperson will be appointed by the Council of Ministers and the members will be appointed by the Ministry. This proposal also does not appear to be in line with the international norms and practices of PSB.

For the formation of such an executive committee, there should be a parliamentary committee with all-party representation. For example, a committee consisting of the Leader of the Opposition and a government Minister may be convened by the Speaker, or there may be a more representative recommendation committee. The executive committee should not include government officials (as Section 8 (b) of the bill provides for the joint secretary of the federal ministry to be a member). The size of the executive committee could be smaller for efficiency.

8) Sections 8 to 16 are related to the executive committee.

These Sections contain provisions relating to the formation, qualifications and disqualifications of the office bearers, provision for vacancies and removal, meeting and duties of the office bearers and facilities, tenure, etc.

Chapter 4 is important section that focuses on governmental (governance) management section of PSB Bill. The provisions on these sections need an urgent overall review.

For instance, Section 12 states that this committee has the authority to approve the annual policy, plan, program and budget of PSB. The power to approve or pass such plans and policies must remain with the Council. Similarly, in the removal provision as mentioned in section 14, the authority of removal is given to the ministry, which can potentially cause harm in the long run. The right to such removal should be exercised only through the procedure of the concerned parliamentary committee. Similarly, in the absence of the chairperson of the executive committee, the ministry has the right to appoint acting chairperson. This should also be amended.

9) Another important feature of public service broadcasting is financial autonomy. Public service broadcasters cannot provide independent and impartial editorial services if they have to rely on the market and the government for resource management.

Creating an independent broadcaster means creating an autonomous broadcaster that are not guided by political interference or the market conditions.

Therefore, the four sources mentioned in Section 19 (a)(b)(c)(d) on the provisions related to the fund are specified as grants from the Government of Nepal, grants received from the state and local level, foreign sources and the income of the institution. However, a condition is added stating that the approval of the Ministry of Finance is required to obtain foreign resources. This arrangement requires clarity and liberal arrangements. For example, at least 50 percent of the proposed budget of the fund should be ensured for the PSB from the federal annual budget passed by the parliament.

Of the remaining 50 percent of the resources, certain percentage of grants should be ensured through the budget from all the seven states and 753 municipalities. Alternatively, there should be a legal arrangement for the registration, renewal fee and royalty of radio and television broadcasting at all three levels of the country. The registration / renewal fee and royalty tax of the broadcasting media to go directly to the PSB Fund.

Similarly, the definition relating to the income of a public service broadcaster should be clear in the Act. Generally, PSB is not supposed to collect revenue from commercial advertising. However, some produce public service broadcasting materials and make them available to other broadcasters with charges. However, there should be theoretical clarity in the law about this. For example, the public service broadcaster should only advertise in the public interest or should

broadcast advertisements for a certain period of the total broadcasting. For example, the bill could mention that 10 per cent of the total budget of PSB shall be earned from advertising.

10. Section 21 of the Bill proposes a theoretical basis for the formation of listener and audience group.

This provision is positive but needs more clarity. Such mechanisms are the basis of public accountability. And it should be ensured that the feedback of such groups are included in the editorial policy.

11) Free of cost Frequency, priorities and certainty is crucial for the PSB. A provision regarding this is mentioned in Section 23, however due to the limitation of such services in the capital and few parts of the country, there is still more to be done. The act should guarantee free of cost frequency for all radio and TV channels from state to the municipal level. Also, private and community broadcasters should not be constrained in terms of frequency distribution.

12) The duplication in sub-section (e) and (g) of Section 24, should be cleared.

13. Section 25 mentions that the Government of Nepal can "give directions as required". Such authority should not be given to the government as such practice does not exist in other countries as shows that the government still holds abundance of power. Such practices are globally unacceptable. The norm is that the government should not issue directives that have an adverse impact on the autonomy and independence of the public service broadcaster.

Necessary guidance should only be given on the issues of sovereignty, integrity of the country, public interest and the national interest.

14. Regarding the annual report of section 26, there should be an arrangement to submit the annual report to the Parliament through the government as per the universal principle of the PSB.

15. The consent of the PSB is also taken as a precondition in the formulation of regulatory laws for the autonomy of the institution. Although the rules to be framed as per the Act will be passed by the Council of Ministers, legal autonomy should be provided to ensure that such rules are drafted only through the recommendation of the PSB Council. This right should be ensured by amending Section 28 of the Bill.

16. PSB is a media guided by the principles of self-regulation of journalism. Therefore, in order to ensure the highest practice of self-regulation, it is necessary to formulate and receive various codes of conduct related to the broadcasting service and to establish its own ombudsman system for the implementation of such codes of conduct. This concept is missing in the bill.

This can be included in Section 5 under the duties and rights. Similarly, the law should also mention the obligation of PSB to conduct regular social audits on the financial and editorial situation.

17. This Bill does not provide guidelines on how the state and local governments should regulate the concept of public service broadcasting.

In the schedule of the Constitution, both the state and local level have some authority related to radio and television broadcasting. However, as it has to be clarified by the federal law it would be appropriate to have policy related provision in this act on whether separate public services broadcaster can exist at the state and local levels, or, whether state and local levels have an obligation to ensure nationwide access to public service broadcasting.

18. One of the major features of public service broadcasting is the need for a policy and legal basis to collaborate with other private and community broadcasters in different parts of the country. There needs to be legal clarity on the sharing of broadcasting infrastructure, production and program materials.

19. The integration of both Radio Nepal and Nepal Television into a public service broadcaster is certainly a challenging project. This may take time, but the transitional provisions of Section 24 (f) indicate that the time will be unnecessarily elongated, giving room for the risk of the Act not being implemented at all.

The bill should provide for the completion of the transitional arrangement within the stipulated time. For example, provision stating that this shall be fully enforced within one year or six months of the passing of this Act should be ensured in the Act.

At the same time, the existing assets and liabilities of these two government-owned entities should be automatically transferred to PSB. Thus, section 24 (f) should be further clarified.

20. The National Mass Media Policy, 2073 BS has clarified the policy regarding public service broadcasting. The Act must be in line with this policy. According to the mass media policy, public service broadcasting needs to be as follows.

(a) Arrangements shall be made to operate Radio Nepal and Nepal Television as national public service broadcasts and to operate in a clean, fair and accountable manner by assimilating the essence of democratic values and independent journalism.

(b). As the public service broadcasting organization shall fulfill the communication needs of the people and provide early warning about natural disaster or epidemics, the arrangement of broadcasting focusing on local issues at the provincial and local level shall be ensured. As access to public service broadcasting should be nationwide, priority will be given to frequency distribution.

(c) Public service broadcasting shall have the policy of producing and broadcasting news and programs in accordance with the established norms of national unity, democratic values and professional journalism without any discrimination against any individual or community.

(d). Arrangements shall be made to use the latest technology to expand the public service broadcasting through radio, television, satellite and internet to all parts of Nepal and in international arena.

(e). In order to make the public service broadcasting inclusive of the contents related to women, persons with disabilities, Adivasi, Janajati, Dalit, Madhesi, backward areas and communities, the inclusion of endangered traditions, culture and community programs, such contents shall be encouraged by adopting proportional inclusive policy at all levels.

(f). Contents promoting intercultural, inter-ethnic, inter-geographical, inter-lingual and inter-linguistic dialogue shall be encouraged.

(g) Arrangements shall be made for the public service broadcasting to make its services available to the private sector broadcasters in the public interest.

21) There are some universally established principles regarding the requirements and characteristics of public service broadcasters. The British Broadcasting Corporation, established in the United Kingdom in 1920, the Japan Broadcasting Corporation (NHK) of Japan, the Corporation for Public Broadcasting established in the United States under the Public Broadcasting Act of 1967, and the Prasar Bharati Corporation (Broadcasting Corporation of India) established in India in 1990 remain as public service broadcasters.

British Broadcasting Corporation (BBC) is a public service broadcasting organization formed by the Royal Charter. In order to maintain its independence, impartiality and credibility, there is a provision for the formation of "board of directors" by the head of state (Queen) on the recommendation of the government. In 2017, the provision of "BBC Trust" was abolished to operate it through the "board system". The board is accountable to the parliament, it submits its annual report to the parliament through the government, and operates basically through the fund operated through television and radio license fees to remain independent from the control of the government. The Board of Directors appoints the Executive Committee and the Chief Executive Officer. Established as the world's oldest public service broadcaster, BBC has worldwide reach. It has been operating a variety of channels.

The Corporation for Public Broadcasting was established in the United States in 1967 under President Johnson's Public Broadcasting Act. For its operation, the directors are appointed by the President for a term of six years with the approval of the Senate. The board plays the role of primary director of the organization in formulating policies, prioritizing programs, setting standards for the flow of factual, balanced and reliable information. The board appoints the executive director.

The Japan Broadcasting Corporation (NHK), established under the Japanese Broadcasting Act, is a public service broadcaster. The license fee for television and radio is the main source of its

financial operations. The annual budget is approved by Parliament (DIET). The board with 12 directors is appointed by the parliament. The board forms the executive committee.

In India, Prasar Bharati Broadcasting Corporation was established in 1997 as a public service broadcasting organization under the Prasar Bharati (Indian Broadcasting Corporation) Act of 1990. Prasar Bharati was established with the objective of providing information, education and entertainment to the people by protecting the unity and integrity of the country as per the provisions of the 1990 Act, guided by the values adopted by the nation and respecting the right of the people to be informed, including social justice, gender rights, minority rights. The law provides for the board to operate independently of government control.

The chairperson, executive members and other thematic members of the board are appointed by the president on the recommendation of a three-member recommendation committee comprising the chairperson of the press council and eminent persons appointed by the president. The executive member is the chief executive of the organization and some of the members are part-time members. The chairman and members of the board can be removed by the President on the basis of the report submitted by the Supreme Court on the basis of the report of the inquiry committee in case of misconduct.

The Broadcasting Council is made up of people appointed by the President and Parliament for the purpose of attending and deciding on complaints about the board actions and behavior.

The annual report of the organization is submitted to the parliament through the government. Then, the parliamentary committee formed from the members of the National Assembly and the House of Representatives will discuss the report and monitor the work of the organization.

Conclusion: There are some universally accepted basic established norms and characteristics regarding the nature of public service broadcasting organization. Public Service Broadcaster is a public broadcasting organization controlled by the people and working for the people with the investment of the people. It is focused on providing information, education and entertainment to the general public free from profit, political interference, business group pressure and from state control and interference. Similarly, public service broadcaster respects pluralism, diversity, produces programs and maintains transparency as a cornerstone of democracy. The purpose of social service should be the principle of a public service broadcaster.

In this context the High Level Media Recommendation Commission of 2063, the High Level Task Force on Government Media Regulation had made recommendations, Freedom Forum had prepared a draft of the Public Broadcasting Services Bill with UNESCO Kathmandu, a Bill was drafted by the Mass Media Policy Implementation Task Force, report of a project run with support from JICA and a bill was prepared by the Shah-led Task Force on Public Broadcasting

Services formed in 2073 BS. However, the drafters of PSB bill have not considered the recommendations given in regards to the PSB Bill.

Universality, Diversity, independence in editorial, funding and governance, and distinctiveness and innovative are the four major pillars of PSB. However, the bill is not in line with the nature, characteristics and global recognition of a public service broadcaster.

Hence, the proposed provisions should be reconsidered to make them globally recognized as per the characteristics and global experience of a public service broadcaster.

End