

## **PROPOSED SOCIAL MEDIA BILL PUTS THE YARDSTICKS SET BY THE CONSTITUTION FOR FREEDOM OF EXPRESSION IN JEOPARDY**

### **Media Action Nepal's analysis on Nepal's Social Media Bill**

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#### **About us:**

The first ever member and the Co-chair of the Media Freedom Coalition-Consultative Network (MFC-CN) from Nepal, the Media Action Nepal (MAN) is committed to developing plural, independent and accountable media and thus far has contributed greatly to change the course. Since its inception in 2015, the organization has been a torchbearer of freedom of expression, press freedom and media development in Nepal through research, policy dialogue, advocacy and capacity-building of journalists in collaboration with national, regional and international organizations. In addition, also the member of the Global Forum for Media Development (GFMD) and the first ever signatory to the Freelance Journalist Safety Principles of the ACOS Alliance from Nepal, MAN works closely with the international media rights organizations to advocate for the rights of journalists, with an inclusive newsroom a top priority, and uphold their safety through evidence-backed interventions in Nepal and across South Asia through solid networks and partnerships.

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### **Executive Summary**

The analysis carried out by Media Action Nepal highlights significant concerns regarding the proposed Social Media Bill (SMB) of the Government of Nepal (GoN), which threatens the fundamental rights of freedom of expression (FoE) and online civic space guaranteed under the Constitution of Nepal. The bill, if implemented in its current form, could jeopardize these constitutional guarantees and is deemed incompatible with international human rights instruments that Nepal has ratified.

Key criticisms of the SMB include its potential to curtail freedom of speech and expression by mandating content censorship on social networking sites, which may lead to undue restrictions on diverse viewpoints and the stifling of dissent. The bill's provisions on user privacy raise concerns about data collection and retention practices that could infringe upon individuals' right to privacy and deter free expression. Moreover, the composition and functioning of the proposed Social Media Management Council under the bill are questioned due to its lack of representation from civil society or non-governmental organizations (NGOs) actively working to protect freedom of speech and online expression. This raises doubts about the council's independence and transparency in decision-making.

Media Action Nepal calls for urgent amendments to the SMB to align it with Nepal's fundamental rights provisions and international human rights standards. Recommendations include broader consultations with stakeholders and experts to ensure that any regulatory framework for social media platforms strikes a balance between addressing legitimate concerns such as hate speech and disinformation while upholding individuals' rights to free expression. This analysis underscores the need for the GoN to uphold its commitments to international human rights treaties and protect freedom of expression by reframing the SMB to safeguard these fundamental rights rather than undermine them. Any regulatory measures must be proportionate, transparent, and subject to judicial review to ensure compliance with constitutional and international standards of free speech and online expression.

### **Jeopardy of Freedom of Expression (FoE)**

The constitution of Nepal guarantees freedom of expression and right to communication as fundamental rights, but the proposed Social Media Bill (Bill aimed at regulating and managing social networking sites), made public by the Ministry of Communication and Information Technology (MoCIT) on 28 December 2023, threatens to undermine these rights if implemented without necessary amendments. It not only poses serious threats to the fundamental rights enshrined in the Supreme Law of Nepal, it also contradicts and stands incompatible with international treaties and agreements that Nepal has ratified, including the International Covenant on Civil and Political Rights (ICCPR).

## **Widespread Criticism**

As soon as it was forwarded by the Nepalese government, it drew widespread criticism and demands that it be thoroughly scrutinized and not implemented without proper amendments as Social Media Bill (SMB) curtails and violates the internationally set principles of freedom of speech and expression, media and digital freedom, including press freedom, in Nepal. On the other hand, the Constitution of Nepal (2015), Article 17(2) (a), guarantees “freedom of opinion and expression.” It stipulates, “No person shall be deprived of his or her personal liberty except in accordance with law.” Furthermore, Article 19 ensures Right to Communication, Article 27 ensures the Right to Information, and Article 28 Ensures the Right to Privacy.

By [analyzing the bill](#) and its potential conflicts with constitutional rights to free speech and online expression, Media Action Nepal's Chairperson Laxman Datt Pant urged authorities to make immediate amendments to the several clauses of the bill.

## **Incompatibility with International Human Rights Instruments**

However, the recent provisions in relation to freedom of expression incorporated in the SMB are not compatible with the Constitution of Nepal. Moreover, it also contradicts the press liberty related provisions included in the Universal Declaration of Human Rights (UDHR) and ICCPR. Article 19 of the UDHR reads, “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 frontiers.” The word media also unites each online or social media platform. Likewise, Article 19 of the ICCPR also ensures the right to hold opinions without interference. This article further explains that everyone shall have the right to hold opinions without interference. And, “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

It also addresses and supports other media, including the online platform. It has also been endorsed by the United Nations Human Rights Council. The United Nations Human Rights Council has approved a resolution stating that state parties must protect the right to free expression on the internet. “The same rights that people have offline must also be protected online,” said the resolution.

The UNHRC Resolution A/HRC/20/L.13 reads in number 1 that it “*affirms* that the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one’s choice, in accordance with Article 19 of the UDHR and the ICCPR.”

## **Controversial Provisions**

Several provisions of the SMB aimed at governing social networking sites or online platforms may raise concerns about freedom of expression, which is a fundamental human right enshrined in international law and majority of the national constitutions, including Nepal's. Some of the

provisions that could potentially contradict internationally accepted principles of freedom of expression are:

**Content Censorship:** A bill requiring social networking sites to monitor and censor content may violate people's right to freely express themselves. This could include requirements to remove certain types of content deemed offensive or harmful to the government, potentially leading to censorship and limiting the diversity of viewpoints.

**User Privacy:** The Bill also empowers the collection and retention of users' data by platforms, which could infringe upon individuals' right to privacy and potentially threaten free expression. It would lead to an acceleration of the Spiral of Silence among citizens, and users may be less inclined to express themselves openly if they fear their personal information is being monitored or misused.

**Restrictions on Dissent:** SMB would restrict or penalize online criticism of the government or public figures, which could undermine freedom of expression and stifle dissenting voices. Such regulations might be used to suppress political opposition or dissenting opinions, limiting the ability of individuals to participate in public discourse.

**Lack of Transparency:** Enforcement mechanisms lack transparency and due process protections, which can lead to uncertainty and inhibit free expression. If people are unsure about what types of speech are permitted or how laws or regulations will be enforced, they may self-censor to avoid potential consequences. There is no representation of CSOs or NGOs working for media freedom at the Social Media Management Council purposed under the Bill.

### **Conflicting Clauses**

The following are some key clauses that could potentially conflict with the principle of free expression and promote restrictions on it:

- Section 3 of the Bill establishes a Social Media Management Council made up of the Minister for Communication and Information Technology (Chair), the Secretary of the Communication and Information Technology Ministry, the Chairperson of the Nepal Telecommunication Authority, two representatives from social networking sites, the Director of the Department of Information Technology, and others. However, there is no representation from civil society or non-governmental organizations (NGOs) that actively work to protect and promote freedom of speech and expression. The Council lacks broad representation, the inclusion of only two individuals representing social media operators or their organizations is insufficient to adequately represent civic voices. Leading the council by the Minister, a political figure, undermines the council's independence.
- Government for undeclared censorship and surveillance of social media content. Section 7(a) of the bill empowers the Social Media Management Center to remove any content that is not suitable. The same section stated that: *“The center can instruct the respective social media platforms through the point of contact to remove content that is not deemed suitable for publishing and broadcasting.”* What methodology, criteria, process, and tools are used to determine that content is inappropriate? The bill fails to provide any clarification. This provision could allow the Federal Government to censor content critical of the government,

opposing government decisions or policies, or expressing differing opinions on government matters.

- The Bill does not welcome the registration of international social media platforms in Nepal, and such provisions not only impose restrictions on freedom of expression but also give negative message to foreign investment. Section 9 of the Bill reads: "Individuals, companies or organizations wishing to operate social media platforms must register with the Social Media Management Center." This provision directly restricts the operation of social media platforms in Nepal. More than 18 documents are required for registration, including an Article of Association, Memorandum, Shareholder List, Passport, and Tax Clearance Certificate, among others. Social platforms are the best places to express public opinion, thereby creating a public sphere in the digital world. This provision, on the other hand, restricts Nepali citizens' use of social media platforms. If any international social media site refuses to register, the government may block such platforms in Nepal under other provisions of the Bill.
- Section 20 of the SMB prohibits trolling as well as liking, commenting, and sharing. Trolls are common when celebrities or political leaders engage in unusual behavior or encounter bizarre situations. Additionally, users can share or comment on such moments. However, this provision imposed a substantial fine on it. Defamation, hate speech, and cyberbullying are already addressed in various Nepali laws and codes of conduct. As a result, most of the provisions are repetitions of the provisions of other laws. Such as the Individual Privacy Act 2018, Electronic Transaction Act 2008, The Act Relating to Children 2018, National Penal (Code) Act, 2017, the Caste-Based Discrimination and Untouchability (Offence and Punishment) Act, 2011, and Disaster Risk Reduction and Management Act 2017 and so on. That means there is the possibility of having multiple cases or allegations at once on the social platform.

Therefore, any government that expresses a commitment to protecting free expression must hold a wider consultation and consider expert opinions before passing legislation. It is also necessary to learn from international trends and reform the existing SMB.

### **Reforms needed to safeguard rights**

If the proposed Social Media Bill (SMB) is passed without adequate consultations and amendments, it will severely restrict and unlawfully monitor freedom of speech, online expression, and press freedom, undermining constitutionally guaranteed rights. Therefore, the government of Nepal, a former member of the UN Human Rights Council and signatory to various human rights treaties, must not overlook its commitments.

Any regulatory framework for social media platforms must strike a balance between addressing legitimate concerns such as hate speech, misinformation, disinformation, and online harassment, while also safeguarding individuals' right to freely express themselves. Restrictions on freedom of expression should be narrowly tailored, proportionate, and subject to judicial review to ensure compliance with international human rights standards.

Existing laws, including the Penal Code, are adequate for monitoring and regulating social media platforms. Therefore, the government committed to protecting free expression should engage in

broader consultations and consider expert opinions before passing legislation. It is also crucial to learn from international trends and reform the proposed SMB accordingly.

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