

Legislative Brief

The Private Detective Agencies (Regulation) Bill, 2007

The Bill was introduced in the Rajya Sabha on 13th August, 2007 and was referred to the Standing Committee on Home Affairs (Chairperson: Smt. Sushma Swaraj).

The Standing Committee is scheduled to submit its report within three months.

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Highlights of the Bill

- ◆ The Private Detective Agencies (Regulation) Bill, 2007 provides for the regulation and licensing of private detective agencies operating in India.
- ◆ Every private detective agency will require a licence to operate. Licences shall be granted by regulation boards established at the central and state level.
- ◆ A private detective agency may employ a person as an agent if he is an Indian citizen, of 21 years of age or above, and satisfies certain specified requirements about his antecedents, training and physical fitness.
- ◆ An agency must maintain a register with specified information, including the names and addresses of its managers, staff and clients. It shall also record the salaries of its staff, and the gist of the work it has undertaken for a client.
- ◆ Any agent violating a person's right to privacy and freedom shall be punishable with imprisonment and a fine.

Key Issues and Analysis

- ◆ A private detective agency is defined as one with "a valid licence". This makes the Bill inapplicable to those operating without a licence.
- ◆ The breaching of an individual's right to privacy has been made punishable. Previously the right to privacy in India has only been defined with regard to state surveillance.
- ◆ In a number of other countries that regulate private detectives, it is the agent that is licensed rather than the agency.
- ◆ The Bill specifies that a private detective must be an Indian citizen. Such a requirement does not exist in similar legislation in several other countries.
- ◆ A person who is not an Indian citizen may not hold a majority shareholding in an agency. Many other sectors in India do not have this requirement. The Bill also does not explicitly prevent a majority of shares being held jointly by foreigners.
- ◆ Under certain circumstances, the government may cancel licences without consulting the licensing boards. This differs from the practice in several other countries.

PART A: HIGHLIGHTS OF THE BILL¹

Context

Over the last decade there has been a strong growth among private security and detective agencies, with more than 500,000 people being employed for the purpose, primarily by private security agencies.² There was no existing legislation to specifically regulate their work until the Private Security Agencies (Regulation) Act, 2005 was passed. The Private Detective Agencies (Regulation) Bill, 2007 is based on that Act.³ It provides for the regulation of private detective agencies through the granting of licences and specifies the parameters within which the agencies shall operate within the country, as well as the penalties for offences related to their work. The Bill provides for the establishment of regulating agencies at both the central and the state levels.

Key Features

Licensing of Private Detective Agencies

- Only persons who have obtained a licence under the Act may carry on, or commence, private detective agency work in India. Any person who has already begun such work before the commencement of the Act may continue to do so for a further 180 days, if he has applied for a licence within that time period, till the disposal of his application.
- An application must be made to the State Private Detective Regulatory Board to operate in one state, or to the Central Private Detective Regulatory Board to operate in two or more states. The Central Board shall be set up by the central government, and shall have between five and seven members. A State Board shall be set up by the state government, and have between three and five members. In addition to government officials, the Boards may have industry representatives.

Private Detective Agencies and Agents

- A licence to operate a private detective agency shall not be considered from a person who has been (a) convicted by a competent court for an offence whose punishment is imprisonment for at least two years; (b) keeping links with any organisation or association banned under any law for activities prejudicial to national security or public order, or if there is any information that the person has indulged in activities prejudicial to national security or public order; (c) dismissed from government service; or (d) found violating certain provisions of the Act which deal with carrying a photo identity card and confidentiality of information collected.
- Every private detective agency shall display a copy of its licence conspicuously in its place of business. It shall maintain a register with the (a) names and addresses of those managing the agency; (b) the names addresses, photographs and salaries of its agents; (c) the names and addresses of the persons it has provided services and the “gist” of those services; and (d) any other prescribed information.
- An agency may only employ a person to work as a private detective agent who (a) is an Indian citizen; (b) is 21 years of age or older; (c) has passed a prescribed training course, and (d) meets certain prescribed standards of character antecedents and physical fitness. No person may be employed as a private detective if he has been sentenced to imprisonment for a period of two years or more for an offence. Every agent shall carry a photo identity card issued by the agency when he is at work.

Cancellation of Licence

- The Central or State Board may cancel a licence under certain conditions. The appeal against a cancellation may be made within 60 days of the cancellation order. The central or state government may also suspend or revoke a licence on the grounds of national security or public order. All orders for cancellation need to be in writing, after giving the concerned person a hearing.

Offences and Penalties

- An agent shall provide information about an investigation for a lawful purpose only to the client or his recognised representative. Any person who operates without a licence shall be liable to a penalty up to Rs 2 lakh by the Board in the first instance. Persistent offence shall be punished by imprisonment for up to two years and a fine of up to Rs 5 lakh. Any agent violating a person’s right to privacy and freedom shall be punishable with imprisonment for up to six months and a fine up to Rs 50,000.

PART B: KEY ISSUES AND ANALYSIS

Definition of Private Detective Agency and Work

Clauses
2 (h), 7

The definition of “private detective agency” combined with the prohibition of private detective work without a licence could make the entire Bill inapplicable in practice. The Bill specifies that “no person can carry out or commence the business of private detective agency unless he holds a licence issued under the Act”. A private detective agency is defined as “a person...holding a valid licence to carry out the detective work.” Therefore, according to the Bill, a person without a licence, no matter what service he provides (including surveillance work), is not performing the business of a private detective agency (as defined in the Bill), and the provisions of this Bill would not apply to him.

Clauses
2 (g), 2 (h)

Also, the definitions of “private detective work” and “private detective agency” depend on each other. The Bill defines private detective work as “collection of information in a lawful manner for such an objective by a licensed detective agency”. A private detective agency is defined as a person who carries out detective work.

Clause
2 (g)

It is also not clear what “such an objective” refers to in the definition of private detective work. All information gathering work, including surveys and academic research, could potentially be defined as private detective work as long as it is carried out by a licensed private detective agency.

The legislation in some other countries, which have Acts regulating private detectives, list the specific services that a private detective is permitted to offer.

Table 1. Private Detective Agency Regulation in Certain Countries

	Private Detective Work	Licensed Person	Licence Issuing / Revoking Agency	Citizenship of Agent
California, US	Investigating crimes, the antecedents or movements of a person, providing security, etc.	Agent	Director of Consumer Affairs	No requirement
Alberta, Canada	Obtaining information about personal character, searching for missing persons, etc.	Agent	Administrator designated by Minister of Justice and Attorney General	No requirement
Queensland, Australia	Being paid to give information on another person	Agent	Chief Executive of Department	No requirement
Singapore (Existing)	Obtaining information about personal character, searching for missing persons, etc.	Agent	Public Officer appointed by Minister	No requirement
Singapore (Proposed)	Obtaining information about personal character, searching for missing persons, etc.	Agent and Agency	Public Officer appointed by Minister	No requirement
India (Proposed)	Unspecified	Agency	State or Central Board / state or central governments (revoking only)	Indian citizenship required

Sources: Business and Professions Code Chapter 11.3: Private Investigator (California); Private Investigators and Security Guards Act, R.S.A. 2000 (Alberta); Security Providers Act, 1993 (Queensland); Private Investigation and Security Agencies Act, 1985 (Singapore); Private Security Industry Bill, 2007 (Singapore); Private Detective Agencies (Regulation) Bill, 2007 (India); PRS.

Right to Privacy and Surveillance by Private Agents

Clause
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The Bill makes it an offence for an agent to violate the right to privacy of an individual. The Supreme Court has held, in several cases, that the right to privacy is inherent to the fundamental right to personal liberty under Article 21 of the Constitution. In a 1962 Supreme Court decision, the majority decided that surveillance by the police was constitutionally valid; however, the minority dissent held this to be violative of Article 21 (right to life) and Article 19(d) (right to freedom of movement) of the Constitution.⁴

The Supreme Court has also said that, “as a concept it may be too broad and moralistic to define it judicially. Whether right to privacy can be claimed or has been infringed in a given case would depend on the facts of the said case.”⁵ In another case it stated that, “the right to privacy in any event will necessarily have to go through a process of case-by-case development” and that it “must be subject to restriction on the basis of compelling public interest.”⁶ All of these judgements are with regard to surveillance by state agencies, and it is unclear how they would apply when the surveillance is conducted by private agencies.

Registration and Licensing

Licensing of Agency versus Licensing of Private Detective

Clauses 7, 13
The Bill issues a licence to the agency rather than an individual agent. In several other countries the licence is issued to individuals rather than agencies.⁷ See Table 1.

Citizenship Requirement to be Private Detective

Clause 13 (1) (a)
The Bill states that only citizens of India may apply to be private detectives. In similar legislation in various other countries there is no such clause. It is unclear why foreign nationals with valid visas permitting them to work in India are not allowed to work as private detectives.

Citizenship Requirement for Majority Shareholding in Agency

Clause 9 (2)
A licence may not be issued to a company, firm or association of persons “if it is not registered in India, or having a proprietor or a majority shareholder, partner or director, who is not a citizen of India.” Majority Indian shareholding is not required in many other sectors. Furthermore this appears to permit, for instance, a company held by three foreign shareholders where each holds a one-third stake. This would fulfil the requirement that none of them, individually, is a majority shareholder.

Revocation or Suspension of Licence Directly by Government

Clauses 4 (3), 6 (3)
The issuing Board may cancel or suspend a licence if an agency does not fulfil the conditions of the licence. In addition, the Bill states that the state or central government may revoke or suspend licences directly in case of a danger to public order or national security, and shall inform the concerned Board afterwards. In the case of similar legislation in many other parts of the world the power to revoke or suspend licences is held only by the agency authorised to issue them.

Licence May be Granted or Refused within 90 Days

Clause 10 (4)
The Bill states that a Board may either grant or refuse an application for a licence within ninety days. It is not a mandatory maximum limit and the Board may take as long as it likes to come to a decision.

Composition of Central / State Board

Clauses 3 (2), 5 (2)
The Bill stipulates the maximum number of representatives of private detective agencies and chambers of trade and commerce on the Central and State Boards, but does not specify a minimum number. It is possible for the Boards to be composed solely of government appointees.

Notes

1. This Brief has been written on the basis of the Private Detective Agencies (Regulation) Bill, 2007, which was introduced in the Rajya Sabha on 13th August, 2007 and referred to the Standing Committee on Home Affairs (Chairperson: Smt. Sushma Swaraj). The Standing Committee is scheduled to submit its report within three months.
2. The Union Home Minister, Mr. Shivraj Patil, stated that private security firms employed 500,000. “Govt Plans to Rope in Private Agencies for Intelligence”, The Sunday Express, November 5, 2006. <http://www.indianexpress.com/story/16040.html>.
3. “Private Detective Agencies (Regulation) Bill, 2007 introduced in Rajya Sabha”, Press Information Bureau press release, <http://pib.nic.in/release/release.asp?relid=29847>.
4. Kharak Singh vs the State of UP & Ors, 1963 AIR 1295, 1964 SCR (1) 332.
5. PUCL v State of India 1996(9), Judgment dated December 18, 1996 in W.P. (C) No. 246 of 1991. In this judgement, it held that tapping of telephones violated this right.
6. Govind vs. State of Madhya Pradesh and Anr., AIR 1975 SC 1378.
7. In Singapore the proposed Private Security Industry Bill, 2007 requires a private detective agency to have its own licence, and all agents working for it would also be required to have individual licences.

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