



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rishikesh Dave; Publisher – Ayush Pandey

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Silencing Journalism – A Downturn

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Received 16 December 2022; *Accepted* 29 December 2022; *Published* 03 January 2023

Media freedom, time and again, has been considered a vital aspect of functioning democracy. Its importance and influence can't be undermined. Hence, the article brings ignites the discussion by explaining how journalists are being prosecuted recently in the name of national security, and public safety laws. Judicial intimidation has become a worrying phenomenon. Various laws used arbitrarily in this respect have been analyzed. The process of sabotaging the fourth estate of democracy can eventually harm the other rights and can shake the foundations of an established nation. The level of press freedom indicates the legal, social, and political environment within which the system operates. This can be corroborated by analyzing the status quo of India and other countries. It ends with a note of caution that freedom comes with some restrictions which need to be followed. However, these restrictions should not become grounds for human rights violations by using the loopholes present.

Keywords: *journalist, press freedom, prosecution, publication, democracy.*

INTRODUCTION

Recently, there was a heavy suspension of the Twitter accounts of the high-profile journalists covering the takeover of Twitter by Elon Musk giving no reason. These included journalists from

the Washington Post, CNN, the NY Times, and some independent ones¹. This move was later withdrawn. This is just the tip of the iceberg. The story continues to the extent that the prosecution of journalists in the name of national security is happening across the way. Not only this, journalists are getting killed chasing a story. Online threats like death and rape threats are becoming more common against women reporters and the situation has become more aggrandized by electronic surveillance installed over them tracking every nick of the moment hampering their safety and security².

Tracking the story of Journalist Siddique Kappan arrested on the charges of terrorism, sedition, and promoting enmity between religious groups³ to Nobel prize winner Maria Ressa facing an onslaught of various legal charges for her strong criticism of the former president of the Philippines Rodrigo Duterte, the story down the line has been the same. A UN expert named Irene Khan warned that this decline has become a dangerous reality for reporters around the world and is prominently significant in totalitarian states and backsliding democracies⁴. According to him, critical independent journalism is essential when the world is shackled in misinformation. Even Indian Authorities have repeatedly targeted critics and news handles conducting raids at their workplaces. Critics are being prosecuted under Information Technology Act⁵ and IT Rules, 2021⁶. Also, in some areas, authorities place internet shutdowns impeding the work of journalists and escalating counter-terrorism, sedition, and national security laws.

¹ Oliver Darcy, 'Elon Musk bans several prominent journalists from Twitter calling into question his commitment to free speech' (*CNN Business*, 16 December 2022) <<https://edition.cnn.com/2022/12/15/media/twitter-musk-journalists-hnk-intl/index.html>> accessed 16 December 2022

² United Nations, 'UN experts warns of dangerous decline in press freedom' (*OHCHR*, 8 July 2022) <<https://www.ohchr.org/en/stories/2022/07/un-expert-warns-dangerous-decline-media-freedom>> accessed 16 December 2022

³ Human Rights Watch, 'India : Media Freedom under Threat' (*HRW*, 3 May 2022) <<https://www.hrw.org/news/2022/05/03/india-media-freedom-under-threat>> accessed 16 December 2022

⁴ *Ibid*

⁵ Information and Technology Act 2000

⁶ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021

PROSECUTION OF JOURNALISTS

Free and independent media is the core element of functioning democracy. But there have been various instances of torture, intimidation, and discrimination coming out in the limelight because of the investigative work they are involved with. The government has repeatedly invoked the law permitting detentions for up to even two years on vague grounds preventing the suspects from acts prejudicial to state security and maintenance of public order. Detainees are blocked from obtaining bail orders. This situation has resulted in jail becoming the norm, and bail becoming the exception. While judicial intimidation of journalists remains a worrying phenomenon, the question that is put forth before discussing this is who are journalists?

This is because information and telecommunication technology have come ahead to such an extent in the process of development, that those who disseminate information are not just restricted to the pages of the newspaper or stream it through the voice of radio. The scope has widened to blogs, websites, and social networks. Also, the line between the journalists/reporters and vocal citizens seem to fade away. This is because the rise in user-generated content has mingled their contributions. Hereby, the term 'journalist' is defined as any legal person who disseminates information regularly and professionally through any mass media means.⁷

Special concern towards journalists is required not because of the heavy-taxing job that they are involved with but the important social roles they serve to society at large. An attack or even just the prosecution of the journalist is an attack on the strong foothold of human rights. Freedom of expression⁸ is both an individual and collective right. The protection of journalists serves as a reminder that the voices in a democracy are meant to be heard. When the threat forces the journalists to back off, the vital aspect of freedom of speech and expression comes down. Journalists play a key role in constructing a society that follows an open disclosure of facts and

⁷ Christof Heynes & Sharath Srinivasan, 'Protecting the life of Journalists: The need for a higher level of engagement' (2013) 35(2) HRQ 304

⁸ Constitution of India 1950, art. 19

searches for truth instead of one based on rumour, biases, and power abuse and they are often in the line of fire⁹.

TOOLS EMPLOYED FOR PROSECUTION

Journalists become the targets of prosecution because of the nature of their reporting subjects which often include terrorism, state corruption, human rights violations, or cases involving public officials leaving them vulnerable. Legal systems are weaponized targeting journalists and subjecting them to the procedure of prosecution. One of the examples can be Maria Ressa. Being the chief editor of the news outlet 'Rappler', she was tried and convicted for the 'cyber libel' offence covering a story based on corrupt connections between a businessman and a top-notch judge Rebecca Radcliffe.¹⁰ She had to serve a prison sentence of six years even though the article was published in 2012 at a time when the cyber libel law wasn't in existence. It is often said that to say there was no political pressure was a naïve statement. Despite this, she continued her passion for Rappler's journalism¹¹.

Apart from this, other forms of judicial harassment used against journalists are the employment of SLAPP (Strategic Lawsuit against public participation)- the filing of libel and slander cases. These are some of the tools used by government authorities and even private individuals to bring down journalists in the murky waters of lengthy and costly lawsuits. Not only this, journalists are finding themselves in the dark web of phishing attacks, online campaigns, man-in-the-middle attacks, fake domain attacks, etc¹². The recent use of 'troll armies' to silence the journalists who are staunch critics of state institutions has become even more popular¹³.

⁹ *Ibid*

¹⁰ Hannah Ellis Peterson & Rebecca Ratcliffe, 'Maria Ressa-everything you need to know about the Rappler Editor' (*The Guardian*, 15 June 2020) <<https://www.theguardian.com/world/2019/feb/14/maria-ressa-arrest-everything-you-need-to-know-about-the-rappler-editor>> accessed 16 December 2022

¹¹ *Ibid*

¹² Jennife R Henriksen & Ors, 'Building digital safety for journalism: a survey of selected issues' (*UNESCO*, 2015) <<https://unesdoc.unesco.org/ark:/48223/pf0000232358>> accessed 16 December 2022

¹³ Reporters Without Borders, 'New Delhi police fail to take action in response to death threats against journalist' (*RWB*, 25 September 2019), <<https://rsf.org/en/news/new-delhipolice-fail-take-action-response-death-threats-againstjournalist>> accessed 16 December 2022

The number of journalists put behind bars for their professional work has touched a record high with 363 cases of reporters being deprived of their freedom dated 1 December 2022 as per the records of the 2022 Prison Census released by the Committee to Protect Journalists (CPJ),¹⁴ a non-profit organization promoting press freedom worldwide. The top five jailers this year are from China, Myanmar, Turkey, and Belarus respectively. This dataset is of the year 2022 marked by conflict, media repression, authoritarian leaders' crackdown on independent reporting, and repression of media freedom. The statistics also indicate that – the driver behind the government's efforts to stifle the media voice is because of the Covid-19 situation grappling the world and Russian aggression over Ukraine¹⁵.

INDIAN SCENARIO AND THE WORLD

INDIA

Amidst growing restrictions on media freedom, Indian journalists have been arrested under various charges of terrorism, sedition, and public safety under the respective laws explained below:

The Official Secrets Act, 1923¹⁶-A Broad Framework

The Act has been used to locate and punish espionage, sedition, or breaches of national security threatening the integrity of India. The catch-all provision of Section 5¹⁷ has transformed most issues of governance into confidential matters. The section states,

“As per this section, any person having information about a prohibited place, or such information which may help an enemy state, or which has been entrusted to him in confidence, or which he has obtained owing to his official position, commits an offence if (s)he communicates it to an unauthorized person, uses it in a manner prejudicial to the interests of the state, retains it when (s)he has no right to do so or fails to take reasonable care of such information.”

¹⁴ Committee to Protect Journalists, *Number of Jailed Journalists spikes to global new record (2022-12)*

¹⁵ *Ibid*

¹⁶ Official Secrets Act 1923

¹⁷ *Ibid* s 5

Although, Delhi High Court in 2009, highlighted a very peculiar aspect of this section mentioning that a document labelled as ‘secret’ just can’t render a person liable under the draconian law. It freed a journalist of a decade-old CBI charge accused of carrying a note by the cabinet on the policy of divestment in his report¹⁸.

Jammu And Kashmir Public Safety Act¹⁹

Thousands of Kashmiris have been booked after the annulment of the special status of Jammu and Kashmir under this act by the authorities as “The Act permits detentions without trial for up to two years on ambiguous grounds preventing the suspect from acting in any manner prejudicial to the safety and security of the state or the maintenance of the public order.” The authorities have misused this law to detain people without sufficient evidence, preventing them to have bail orders, and a lot many journalists have faced police interrogation, raids, physical assault, and manipulated criminal suits for their reporting.

The Saga of Sedition- From Disha Ravi to Sharjeel Imam²⁰

The constitutionality of Sec 124 A²¹ was determined in *Kedarnath Singh v the State of Bihar*²², wherein the Supreme Court upheld that the section can only be invoked if the acts involved had led to incitement of violence. The section has been used against cartoonists, journalists, and stand-up comedians. In the case of *State v Disha Ravi*²³, the Delhi High Court ruled that just because citizens who are constantly involved with the functioning of the democratic government can’t be prosecuted just because they don’t agree with the policies of the government.

¹⁸ Nandita Singh, ‘What’s Official Secrets Act, the law Modi govt wants to use against Rafale papers ‘leak’ (*The Print*, 7 March 2019) <<https://theprint.in/theprint-essential/whats-official-secrets-act-the-law-modi-govt-wants-to-use-against-rafale-papers-leak/202498/>> accessed 16 December 2022

¹⁹ Jammu And Kashmir Public Safety Act 1978

²⁰ Outlook India, ‘From Disha Ravi to Sharjeel Imam: Five high profile cases that shook India’ (*OI*, 13 May 2022) <<https://www.outlookindia.com/national/disha-ravi-to-sharjeel-imam-five-high-profile-sedition-cases-that-shook-the-nation-news-196343>> accessed 16 December 2022

²¹ Indian Penal Code 1860, s 124(A)

²² *Kedarnath Singh v State of Bihar* (1962) SC 955

²³ *Disha A Ravi v State* (*NCT of Delhi*) (2021) SCC OnLine Del 1249

In another case of the State of Meghalaya v Patricia Mukhim²⁴, Justice L. Nageshwar Rao and S. Ravindra Bhat stated that the voice of the journalist can't be stifled on the pretext of involving them in the criminal prosecution. Herein, an FIR was filed against the editor Patricia Mukhim of Shillong Times for her Facebook post alleging that it incited communal hostility and may lead to communal violence.

THE WORLD

India is not an exceptional case for the condition of press freedom existing at the present moment. This can be corroborated by the conditions prevailing around the globe. For an illustration, The Espionage Act of 1917²⁵ can be an example. The act came just after the first world war making information obtained, photos captured or descriptions copied related to the defence of the United States illegal with the intention of using that information against its national interest or for the gain of any foreign nation. Still, some significant portions of the Act are in force prosecuting spies and leakers of classified information.

One notable example of this Act is Julius Assange. Expressing their great concern over his prosecution, various media groups have urged that publishing is not a crime and that Assange's prosecution is a direct attack on press freedom²⁶. Twelve years ago, co-founder of WikiLeaks, Julius Assange published the inner workings of US diplomacy around the world as per the information provided by the American soldier Chelsea Manning. Excerpts from 2,50,000 documents were obtained by Julius in the 'Cablegate leak'. These excerpts were to be released in collaboration with various media outlets like the Guardian, Le Monde, El Pais, etc.

Since his arrest in the Ecuadorian embassy in London in 2019, he had been imprisoned in Belmarsh prison in south London²⁷. Even, press freedom groups consider US scrutinization in Assange's case as a threat to security reporting and whistleblowing, however, the US doesn't

²⁴ *Patricia Mukhim v State of Meghalaya* (2021) SCC OnLine SC 258

²⁵ US Espionage Act 1917

²⁶ Jim Waterson, 'Publishing is not a crime': Media groups urge to drop Julius Assange charges' (*The Guardian*, 28 November 2022) <<https://www.theguardian.com/media/2022/nov/28/media-groups-urge-us-drop-julian-assange-charges>> accessed 16 December 2022

²⁷ *Ibid*

consider him a journalist. That is why their stand is that their department doesn't target journalists²⁸.

Shedding the light on the global scenario of journalists, various shades of prosecution come out. Recently Chinese Authorities have tightened online journalism and several reporters have been detained covering the protests on the government's zero covid policy. Also, many journalists prosecuted are Uighurs from China where Beijing has been accused of human rights violations and mass detentions of community members. A similar scenario prevails in the context of Hongkong journalists. There, the voices have been stifled in the name of national security law. As per the CPJ rankings, Myanmar has been the second-worst jailer of journalists. Turkey's independent media has been decimated by government shutdowns, takeovers, and exiling them out of their profession²⁹.

MEDIA FREEDOM

Edmund Burke once remarked, "*Media is considered and regarded as the fourth estate of democracy.*"

Media has the power to influence the crowd more than any other source or medium. The Constitution of India does not explicitly state media freedom, rather the provision is implied under Article 19.³⁰ Media Freedom came into the limelight after the judgment of *Romesh Thappar v State of Madras*³¹, in this judgment, the Supreme Court ruled against the State stating that "There is no doubt regarding the fact that freedom of speech and expression also includes freedom of propagation of ideas ensured by the freedom of circulation."

Justice Venkataramaiah in judgment named *Indian Express Newspaper v Union of India*³² remarked that "Press freedom is the heart and soul of social and political discourse. It has

²⁸ Charlie Savage, 'Assange indicted under Espionage Act, raising first Amendment Issues' (NY Times, 23 May 2019) <<https://www.nytimes.com/2019/05/23/us/politics/assange-indictment.html>> accessed 16 December 2022

²⁹ Official Secrets Act 1923

³⁰ Constitution of India 1950, art. 19

³¹ *Romesh Thappar v State of Madras* (1950) SCC 436

³² *Indian Express Newspaper v Union of India* (1985) 1 SCC 641

assumed the role of public educators to make education possible in the developing world at a time when advanced means of communication were not available. Being the purveyors of news, newspapers have a crucial role to play in public administration". Also, Freedom of media is enshrined under freedom of expression which is considered one of the meta rights- rights dependent on the realization of many other rights. Generally, press freedom works in tandem with the level of democracy.

REPRESSION OF MEDIA FREEDOM

Given that the media holds such a prominent role, the government may try to control or interrupt the continuous stretch of media-generated information. The statistics indicate that media freedom has been declining for the past decade. New forms of repression are coming along the way. Although the institution of the press is not the first when to be attacked when the country takes an anti-democratic turn, the suppression of media freedom is a strong indicator of the downfall of civil liberties and political rights³³.

The power grabs on the media by the government is strongly linked with the crash of media freedom. The control may be direct or indirect terms. The state may monopolize the institution of media directly or can put financial pressure on private firms for covering news in their way³⁴. In the autocratic style of the government, the method common is crushing the dissenting voices because any disclosure of the information will only expose the official wrongdoing or disclose the official narrative while the populist leaders in democracies try to tame the press. Not only there has been repression from the end of the state, but rather the independence of the media is also undermined by government-backed ownership, public denunciation of journalists, etc.

Keeping ownership of those media outlets in their own hands, the authorities ensure that the outlets of the widest audience support the government. Not only this, even various organization tracking the level of media independence doesn't take into account the level of professionalism

³³ Sarah Repucci, 'Media Freedom: A Downward Spiral' (*Freedom House*, 2019)

<<https://freedomhouse.org/report/freedom-and-media/2019/media-freedom-downward-spiral>> accessed 16 December 2022

³⁴ John Mueller, 'Democracy and Ralph's Pretty Good Grocery: Elections, Equality, and the Minimal Human Being' (1992) 36(4) *American Journal of Political Science* 983

guiding these media outlets. This element of professionalism includes the basic values of objectiveness, fairness, impartiality, and the main purpose to serve the general audience. For example- most political parties still have connections with newspapers and media houses³⁵. Sometimes, the constitutional protection of media freedom may also be misleading since there are laws at times that curb the publication of politically sensitive issues for example- the genocide of largescale Armenians in 1915³⁶.

CRITICAL ANALYSIS

After going through the status quo of the media freedom and conditions of reporters around the world, it is crystal clear that free and independent media in a true sense helps the public to come out of the veil of ignorance and make informed decisions. It offers protection against abuse of power and false propaganda. The independence or freedom given to them helps to support the cause of democracy.

It is not true that the condition of media freedom is the same all over the world since there are countries that are improving their press freedom scores giving a ray of hope. This gives hope for the improved political and social ambiance within which such outlets operate. Also, these trends are not the same all the time. For example, Nepal (76th) and Bulgaria(91st) still stand out apart from the crowd as per the data released by Reporter Without Borders in the World Press Freedom Index³⁷. In these countries, the situation seems to be improved. Media freedom shows a rebound as in the case of these countries. But, press freedom even after rebounding can fall again hence it is not a dead end.

Granting media freedom is necessary as it indicates the democratic standing of the country, however, it also comes up with certain restrictions which need to be followed to favour the

³⁵ James T Hamilton, *All the News That's Fit to Sell: How the Market Transforms Information into News* (Princeton University Press 2006)

³⁶ Jenifer Whitten Woodring, 'Watchdog or Lapdog? Media Freedom, Regime Type, and Government Respect for Human Rights' (2009) 53(3) *International Studies Quarterly* 595

³⁷ G Sampath, 'India's position on World Press Freedom Index' (*The Hindu*, 5 May 2022)

<<https://www.thehindu.com/news/national/indias-position-on-the-world-press-freedom-index/article65382354.ece>> accessed 16 December 2022

interests of the general public preserving the respect for media freedom. These platforms shouldn't become a place where violations of others' rights, and incitement of hatred becomes common destroying the spirit of freedom of speech and expression.

CONCLUSION

This article initiates the discussion by mentioning how the voice of journalists is silenced to how the state prosecutes them in the garb of national security, public safety, etc. Though freedom of expression provides the right to publish and circulate as reiterated by various Supreme Court judgments, however, this comes with some restrictions³⁸ which should be followed to avoid the situation where the right of one encroach on the rights of others. However, the restrictions are becoming grounds for human rights violations and illegal detentions. In India, the protection of press freedom is enshrined under its constitution.

In the same way, various global mechanisms and organizations are working entirely for this cause, preserving media freedom and preventing the prosecution of journalists. Various stats are indicating the level of media freedom in the countries and also indicate the condition of media freedom is not static highlighting the conditions in which media operates. The responsibility of media freedom in democratic countries seems even bigger as the conditions prevailing there become a precedent for non-democratic countries. Hence these nations need to make ensure that their actions don't violate press freedom.

³⁸ *Ibid*