

JOURNALISM IS NOT A CRIME

- *Draft Report on Arrests, wrongful detention and intimidation of media personnel (With Recommendations)*

The Press Council of India was set up in 1978 by an act of Parliament to serve as a watchdog to ensure the freedom of the press. Section 13 (1) of the Press Council Act, 1978 under 'Objects and functions of the Council' says: "The objects of the Council shall be to preserve the freedom of the Press and to maintain and improve the standards of newspapers and news agencies in India."

In outlining these objects, Parliament has mandated the Press Council to implement and uphold the freedom of the press as enshrined as a fundamental right in the Constitution of India in Article 19(1)(a) read with Article 19(2) that guarantees Freedom of Speech and Expression.

The existence of a free, independent and powerful media is the cornerstone of a democracy, especially of a highly differentiated society like India. Media is not only a medium to consume news, and express one's opinions and views, but it is also a platform to focus the searchlight on where there is wrongdoing, especially in the corridors of power.

Article 19 (1)(a) of the Constitution is an endorsement of what India's first Prime Minister of India, Jawahar Lal Nehru expressed: "I would rather have a completely free press with all the dangers involved in the wrong use of that freedom than a suppressed and regulated press."

Unlike the Constitution of the US, where Freedom of Speech and Freedom of the Press are specifically and separately guaranteed by the First Amendment, the Indian Constitution guarantees the right to freedom of the press as part of the Right to Free Speech and Expression as defined in Article 19(1)(a). It is an implied or deduced right that has been over the years reiterated by the Supreme Court in scores of judgements.

The fact that Freedom of the Press is a constitutionally guaranteed fundamental right has not stopped attacks on the press and on press persons through the ages. One has to see the formation of the Press Council in that context. Over the years, as education and literacy has penetrated even the remotest corner of the country, the news media has played an increasingly important role, and in proportion, the attacks and attempts to curb free news flows have also increased.

Private surveys show that the Indian news media is functioning under severe constraints. India was ranked 159 out of 180 countries on the World Press Freedom Index 2024, compiled by the French non-governmental organization, Reporters sans Frontiers (RSF), also known as Reporters Without Borders. This is only a marginal improvement from the previous year, where India ranked 161 out of 180 countries in 2023.

Five journalists were killed and 226 others were targeted by state agencies, non-state political actors, anti-social elements, and criminals across India during 2023, says the India Press Freedom Annual Report released on 3 May 2024 on World Press Freedom Day. Giving a breakdown of the numbers, the report, released by the India Freedom of Expression Initiative, an alliance of press freedom NGOs, said while 148 journalists were targeted by state actors, 78 journalists were targeted by the non-State actors including political leaders, activists and criminals.

Every year the Press Council receives hundreds of complaints in respect of violation of press freedom and suppression of free speech. These are of various categories such as

- Complaints by journalists and media groups against specific individuals who, feeling threatened by exposes or news reports, try to physically or otherwise curb the reportage.
- Complaints by journalists and media groups against larger corporate groups or business or other interests who try and curb free flow of information.
- Complaints by individuals or business or other interest groups against journalists and / or media organizations who misuse their freedom to report by publishing reports that are wrong or untruthful with the aim of bringing the complainant into disrepute or to extract some other concession.
- Complaints by journalists and news media organizations against the Union or state governments, against specific ministers or government functionaries, and often against law enforcement agencies for misusing their executive powers to curb the freedom of reporting by threats, arrests, physical violence and in some cases even death and disappearances.

In this inquiry we are mainly concerned with the last category of violations. They are the most serious as the state and its representatives are charged with upholding the law, and more specifically the freedom of the press; but instead they become willing participants or complicit by not initiating action that curbs or violates the freedom of the press.

The Press Council has initiated action either suo-motu or by taking cognizance of many of these complaints. The experience derived from these has provided rich data on the kind of attacks and harassment press persons face when they go about their business of gathering and transmitting news.

1. When state actors misuse the law to curb press freedom:

Over recent months and years it has been seen that state governments and district administration, panicking at a deteriorating law and order situation, often blame the messenger and clamp down on media networks and journalists using anti-terrorist laws such as the UAPA and laws against sedition, disturbance of communal peace, etc. Some examples:

November 2021 – The state of Tripura, which faced communal clashes and some burning of places of worship arrested several journalists and attempted to ban news flows about the tensions and clashes. The suo motu action initiated by the Press Council took note of the arrest of NewsClick journalist Shyam Meera Singh under the Unlawful Activities Prevention Act (UAPA) for his tweet on Tripura violence. Four Delhi-based lawyers who visited the state as part of an independent fact-finding team were also charged under Section 13 of the UAPA and various sections of the IPC.

The development came in the October 26 incident when the 12 mosques and three Muslim residences in the state were vandalized allegedly by the activists of the Vishwa Hindu Parishad (VHP) amid protests over violence against Hindus in Bangladesh. Meera tweeted that he was arrested under the draconian UAPA Act for uttering 3 words: 'Tripura is Burning.'

January 18, 2021 – Paojel Chaoba and Dhiren Sadokpam, two editors of a Manipuri news portal, were arrested on sedition and terror-related charges under the IPC and Unlawful Activities (Prevention) Act over the publication of an article criticizing the state's militancy movement. This included 'Frontier Manipur' executive editor Paojel Chaoba and editor-in-chief Dhiren Sadokpam.

The two journalists have been charged under IPC Sections 124A (sedition), 120B (criminal conspiracy), 505(b) (causing alarm to induce offence against the state), and 34 (common intention), as well as the UAPA's Section 39 (supporting a terror organization).

March-April 2020, the first phase of Covid-19: A report collated and published by the Delhi-based Rights and Risk Analysis Group (RRAG) has said that as many as 55 journalists “faced arrest, registration of FIRs, summons or show-cause notices, physical assaults, alleged destruction of properties and threats” for reporting on COVID-19 or “exercising freedom of opinion and expression during the national lockdown between March 25 and May 31, 2020.”

The report highlighted the case of Ashwini Saini, a contributor to the *Dainik Jagran* in Himachal Pradesh, as an example. Saini had five FIRs against him.. The first one was registered when, on April 8, 2020, Saini made a video report on the plight of migrant workers stuck in Mandi district because of the lockdown, and the failure of the administration to provide them with rations. When the scribe wrote a letter to the Prime Minister, the local police filed three additional FIRs on him under the Disaster Management Act.

October 2023, the NewsClick case: Starting from 3 October, 2023, a special cell of the Delhi Police carried out raids on the NewsClick's offices, its employees and a large number of journalists who were contributors or writers for the news portal. While two persons were formally arrested, about 80 journalists were detained, and a large number of their gadgets seized. These raids and detentions were in pursuit of investigations related to a case under the UAPA registered against NewsClick and other unnamed persons.

In summary:

- 81 persons were raided of which 61 are journalists - both direct employees of NewsClick, as well as freelance writers and contributors.
- As many 306 gadgets including laptops, cell phones and hard drives were seized and have still not been returned.
- In most cases neither panchnama nor hash values were provided for the seized digital items
- In the case of 4 persons, their passports too were seized
- Two persons - Prabir Purkayastha and Amit Chowdhury - were arrested
- Many of the journalists were called in for questioning multiple times, some were asked to provide their login details.

While the Police is empowered and within its rights to investigate the links of the news network NewClick and its sources of funding, it must be noted that the wide, sweeping net of the Police had subjected a large number of journalists, who had nothing to do with the business and ideological connections of NewsClick, to multiple raids of their homes followed up by detentions. Most of the journalists' professional devices including their laptops and cellphones, too had been seized. The wide-ranging action seemed to be *prima facie* heavy-handed and amounted to infringement of the Freedom of the Press. The Press Council had written to the Delhi Police and expressed concern about these mass detentions and seizure of journalists' gadgets.

2. Ministers across party lines, and government functionaries, when threatened by news exposes, misuse enforcement agencies to act, often violently, against press persons.

The following are some illustrations:

- ① **The Murder of Jagendra Singh, 2015:** Jagendra Singh, a freelance journalist from Shahjahanpur, U.P. was killed at the instance of a Samajwadi Party minister Rammurti Verma, after his repeated exposes of illegal sand mining and sexual assault on an Anganwadi worker. A posse of policemen came to his house on 1 June 2015, where an argument ensued, and thereafter they pinned him down and poured petrol over his body and set him on fire. He died on 8 June 2015, after he failed to respond to treatment at the King George University Hospital, Lucknow; but not before he recorded a dying declaration on video naming the minister and his henchmen for the murderous assault. The Police initially tried to make out a case of suicide, but following the Supreme Court agreeing to hear a PIL on the matter, Rammurti Verma and the SP state government at that time, reached an out-of-court settlement of Rs 30 lakh in cash and employment for the journalists' two sons.

Kishorchandra Wangkhem, digital media journalist from Manipur: Wangkhem was arrested 3 times between 2018 and 2021 for critical comments against the Manipur Chief Minister N Biren Singh, and other ministers in the government. In 2018, he was arrested under the National Security Act (NSA), after he posted a video on Facebook and criticized

Manipur Chief Minister N. Biren Singh and Prime Minister Narendra Modi. In Meitei language, Wangkhem had criticized Biren Singh for attempting to link Rani Lakshmibai to the freedom movement of Manipur and termed the Chief Minister's comments as an "insult to the freedom fighters of Manipur". He was released from Manipur Central Jail in April 2019, after spending 133 days in prison.

Later, Wangkhem spent more than three months in prison on charges of sedition, for quoting and commenting on an Instagram war between a wife and an alleged lover of a local minister, Okram Henry Singh (nephew of former Chief Minister of Manipur Okram Ibobi Singh), which went viral on Imphal's social media.

In May 2021, provisions of the NSA were again invoked against Wangkhem for posts alluding to the death of Manipur BJP President Saikhom Tikendra Singh due to COVID-19, saying cow urine and cow dung were no cures for COVID-19.

Arrest and illegal detention of Journalist Sanjay Rana for raising questions to UP state education minister Gulab Devi in respect of election promises: This was a case taken up suo-motu by the Press Council for inquiry. Sanjay Rana, a district correspondent of the 'Moradabad Ujala' attended a public meeting in Buddhanagar village, Sambhal District UP, on 12 March 2023, which was addressed by Ms Gulab Devi, state education minister. At the meeting there was some disquiet among the public on unfulfilled election promises. Sanjay Rana, in the open meeting asked a few questions in respect of why the village roads and the boundary wall, as promised, had not been repaired. The minister took offence for being named publicly, and the local police assaulted him and took him away from the meeting. He was formally arrested and kept in the lockup at the local police station the next day.

Some members of the BJP lodged a police complaint based on which a FIR was registered that Sanjay Rana was a 'fake' journalist, and that he had created a disturbance at the public meeting as he was in a drunken state. Initial inquiries did not support this hypothesis. Video coverage of the event showed Rana raising a few questions politely and members of the public too had supported him. He also had an appointment letter as 'district correspondent' from 'Muradabad Ujala' and his senior editors said he had been assigned to cover the event.

3. When law enforcers become handmaidens of law breakers:

Journalists gather news often under stressful conditions. They travel to remote areas and respond to complaints of wrongdoing, corruption in high places, etc. In these circumstances, they often attract the ire of vested interests who want to keep things quiet. There are those interests who view the reporting of information and bringing truth to light as a hazard at best avoided, and at worst to be suppressed. In these circumstances press persons are cajoled, threatened, beaten and even sometimes killed by vested interests who see information flow as anathema to their fiefdoms. This is especially true of rural and semi-urban areas where it is still difficult to disturb the feudal power base of the rich and powerful. A significant example is the brutal murder of Shashikat Warishe, a reporter of the 'Konkan Times' in Rajapur, Maharashtra on 6 February 2023. The assailant, Pandarinath Amberkar, mowed down Shahshikant with his SUV at a petrol pump. Amberkar, involved in various suspect land deals, had been fronting for an oil refinery and was unhappy with the reporter continuing to expose these deals.

Journalists working on politically sensitive or investigative stories often find themselves targeted and even jailed and charged with various trumped up offences. Sometimes threat of criminal action is used to deter news persons from reporting on developments or specific incidents. These punitive measures adopted against press persons for pursuing their professional work is among the many threats to the freedom of the press requiring urgent intervention.

In the normal flow of things, law enforcement bodies like the state police must ensure that press persons should provide protection to the journalist. In cases of threats or harassment, they must swing into actions and bring to book such persons for criminal intimidation. However, based on the constant flow of complaints both before the Press Council and before courts and human rights bodies, it is reasonable to conclude that often the opposite is true. Law enforcement persons, acting on the orders of superiors, instead of protecting press persons become handmaidens of vested interests and criminal elements, and play an active part in threatening or attacking journalists and ensuring their voices are muzzled.

Let's examine a few examples of how this works:

Brutal attack on Sandeep Mahajan, Freelance journalist: On 10 August, 2023, a freelance journalist, Sandeep Mahajan, was accosted in broad daylight at Damodar intersection, in Pachora town, Jalgaon, Maharashtra, by 11-12 goons that were connected to Kishore Patil, an MLA belonging to the Eknath Shinde Shiv Sena. Mahajan had been reporting on the rape and murder of an 8-year old girl from Gondgaon village, and the MLA – though not named formally – felt he was being unfairly targeted. The gang that accosted Mahajan dragged him down from his bike, put a cloth over his face, and repeatedly assaulted him adding threats that he should stop references to 'Kishore Appa' in his dispatches. The incident was captured on video and became viral. Several media organizations lodged their protest and the Press Council took Suo Motu cognizance of the incident and appointed a fact-finding committee.

The Inquiry Committee has documented that though the attackers were well known – Sharad Yuvraj Patil, Sujit Ravindra Sawant and others – the police initially registered a non-cognizable offence against 'unknown persons'. After pressure mounted, the attackers were detained but were soon released after they were presented before the Tehsildar and it was recorded that 'preventive action' was taken under Sec 107 of the Code of Criminal Procedure (CrPC). The Press Council inquiry found that the journalist Mahajan had been repeatedly threatened ("I will break your leges", he was told on phone by Kishore Patil) with grievous harm to him and his family. After the incident, the MLA openly acknowledged his involvement and admitted on camera that he had threatened the journalist. Yet the police said it had adopted only 'chapter proceedings' against the accused as they needed a chance to improve their conduct! One Superintendent of Police RajKumar told the Inquiry Committee that the police did not invoke Maharashtra's Protection of Journalists Act, as Sandeep Mahajan did not have any press credentials!

The MLA Kishore Patil feared no one in the area, including the police. He was fairly sure of the protection he had of the Chief Minister Eknath Shinde. The Inquiry Committee finally concluded: *"From the facts and conversations with various organization it can be concluded that the police took care at every step that the paperwork concerning the*

assault continues, but no person including the attackers face any problem. The conduct of the Pachora police remained the same which the police are often maligned for. They neither took care of the medical treatment of the tortured person nor paid attention to his demand for providing security.”

Journalists beaten during Delhi 2020 communal riots, Police file FIR against journalists for breach of peace: Delhi saw one of the worst communal clashes in its history during February of 2020. Over 50 persons perished. On August 11, 2020, a mob attacked the journalists in northeast Delhi while they were covering the riots. For about 90 minutes, the attackers slapped and kicked the journalists, used communal slurs, made death threats, and sexually harassed the woman. Despite the public attack, it took more than an hour and a half for the police to appear on the scene and whisk them away. Though complaints were filed on that day itself, no action against the attackers was taken.

What the police did do was it filed an FIR against 3 journalists of the Caravan Magazine on 14 August, 2020 – Shahid Tantray, Prabhjit Singh, and an unnamed female colleague – and, opened an investigation. The sections slapped on the journalists include 153A (promoting communal enmity) and 354 of the IPC (outraging the modesty of a woman). The FIR was generated based on the complaint of an unknown woman. The matter came to light after the journalists began receiving court summons in June, this year – nearly 4 years after the incident. The Delhi Police took its time coming to the scene where the journalists were assaulted and abused, but it lost no time in filing FIRs against them. The investigation by the Police against the journalists and the cases filed against them were kept under wraps but kept alive as a form of harassment, perhaps under direction from the Home Ministry.

4. **Intimidation and harassment as an occupational hazard:** Finally, in sheer numerical terms, journalists suffer the maximum number of attacks, petty assaults and various forms of harassment by random police personnel operating at the bottom of the pyramid. Young beat reporters, district and mofussil correspondents and photographers and cameramen in thousands become easy prey at the hands of the constable, the Station House Officer (SHO) or jail officials.

The reasons can be as diverse as a policeman's hurt ego, or an overzealous reaction by police persons against photographers or camera persons while handling a boisterous rally of protestors.

The Press Council gets hundreds of complaints every year from journalists who have been assaulted or harassed by policemen when covering a protest rally, or faced cases and wrongful confinement because the local police personnel are aligned with vested interests who do not want press publicity.

The problem is magnified as police personnel are not trained to understand the rights of press persons and the need to allow them to work independently and professionally as news gatherers. As a profession, compared to lawyers, the status of press persons is not understood. Senior police officers do not impart the knowledge and training required to understand the rights of the Fourth Estate. In most cases, law enforcement personnel look upon reporters and photographers as a pesky nuisance that must be kept in place.

Just a few examples will illustrate the size of the problem:

- In a complaint received by the Press Council Secretariat on 23-04-2019, from Bhind, Madhya Pradesh, accredited journalist Dinesh Singh Badoria, Yoginder Singh Badoria of DNN channel, and Sumer Singh Narwariya of 'Nai Duniya' said the Shri Mahaveer Singh, assistant Jail Superintendent, Sub-Jail, Mehagaon, Bhind (MP) misbehaved and threatened them as they had been publishing critical news exposing him for taking money from prisoners, and beating them in jail.
- A complaint dated 06-07-2020 was received by the Press Council from Sukhdev Bhargava of Rashtriya Press, Hindi Daily, Khiri (U.P.), where the complainant said he received a tip off regarding supplying of illegal petrol and liquor at Pal Dhaba, Mahmampur National Highway, Pasgwa. When he reached the spot to cover the news, he found there were two liquor trucks and Constable Manish Chowdhury of Majhila Police Station, along with others were drinking liquor. The complainant said when one of his colleagues started making a video, the policeman and his associates abused and assaulted him and also snatched his Press ID.

- The President, Bhirbhum Journalist Welfare Association, filed a complaint dt 02-09-2019 stating that its member, Bhabani Prasad Roy, a photographer, was assigned to cover the festival of Kaushaki at Tarapith on 8 August 2019. When covering the festival, he found assistant sub-inspector Debiprasad Modal pushing and beating some pilgrims attending the festival. When he tried to take photographs of the incident, he was physically stopped despite Bhabani Roy showing his Press ID. He was physically assaulted by ASI Mondal. The photographer was then brought to the local police station where he was assaulted again and kept in detention overnight till 10.00 am the next day. After the Press Council launched an inquiry into the incident, the ASI Debiprasad Mondal, in his defense, stated that he acted against the photo journalist as he was found beating and abusing pilgrims at the religious festival. He also, in his statement, threatened to take legal action against the Press Council, if it did not drop the case.

- The Press Council of India (PCI) took suo-motu cognizance when it was informed by the District Journalists Organisation and Journalists Club of Unnao, U.P. that the Chief Development Officer and others had assaulted Krishna Tiwari, a journalist working with the India News channel, on 10 July, 2021. The Superintendent of Police, who investigated the case, dismissed it as one of old enmity. The S.P. in his report said when there were block level elections a year ago, the CDO, in a bid to clear traffic, had asked members of the public and the press to leave the premises; Krishna Tiwari, who had not Press ID was then also asked to leave. This can hardly justify the assault on the journalist.

It needs to be mentioned that there are cases when journalists misuse their professional positions for serving their personal or vested interests or for ends that have nothing to do with journalism. It is true that there have been instances of terrorists or common criminals disguising their identity as journalists; or business journalists who have connived to fix stock prices by planting fake news. These persons are not practicing genuine journalism and they cannot seek protection by invoking their right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution.

However, the flip side is: the police and other investigative agencies when targeting journalists rarely charge them for 'journalistic' pursuits; instead they conjure up offenses of an extraneous nature. In the case of the Birbhum photographer who was assaulted by ASI Debiprasad Mondal,

it was alleged he was not taking photographs but assaulting and abusing pilgrims and the police had to intervene to avoid a law and order situation. Similarly, journalists of Caravan Magazine who were covering the Delhi riots in August 2020, were charged with 'inciting communal violence'.

The two common charges against journalists raised by law enforcement officials is (i) The journalist is not a genuine professional, and (ii) the circulation of a particular news item or investigation is not for a journalistic purpose but to extort money or other favours. Significantly, current BJP leader Narayan Rane had opposed the passage of the Maharashtra Journalist Protection Act, 2017 on the specious plea that it will provide grist to the extortion mill of fake journalists.

Journalists are often labelled as not 'genuine' as they pursue other professions like running a shop or a side business. To this it must be pointed out that except for the big metros that offer a regular stable job to journalists, in the case of small district or rural news media outlets, journalistic news gathering is entrusted to part-timers as the emoluments offered are small and cannot sustain a normal family. This has worsened over time as advertising sources have dried up, while print publications have been folding up because of poor revenue. In these circumstances, a large section of journalists are employed as part-timers or on short term contracts. This does not make them 'fake' or 'not genuine' journalists.

RECOMMENDATIONS:

A. NATIONAL LAW FOR THE SECURITY OF JOURNALISTS:

Considering the wide prevalence of threats, intimidation and violence against media persons, the Union government must consider legislating a national act on the lines of The Maharashtra Media Persons and Media Institutions (Prevention of Violence and Damage or Loss to Property) Act, 2017. The Maharashtra Act, notified by the President in 2019, is not only a deterrent to violence against media persons performing their duty, but also penalizes the destruction of any property related to media persons or organizations with a jail term up to 3 years or fine of Rs 50,000/- or both. While the Maharashtra Act is silent on the use of threats and violence by law enforcement personnel, the Union

government can consider framing specific penalties for those defenders of the law who cross the red line in respect of journalists.

B. GIVING MORE TEETH TO THE PRESS COUNCIL ACT, 1978

The central government should consider adding more teeth and widening the scope of the Press Council Act, 1978 so that the watchdog body is better equipped to meet the increasing challenges and threats faced by the Fourth Estate. More specifically, it may be observed that the Press Council, under the present dispensation, can only make advisory orders which are not enforceable. These do not work as deterrents for unscrupulous elements who may want to browbeat or intimidate press persons. Again, it is observed in most of the cases of dispute, it is government and enforcement agencies that seem to be the main respondents facing charges of breaching the fundamental rights of speech and expression. Punitive measures provided in the Press Council Act by way of jail terms and heavy fines will go a long way to address the problem.

The Press Council Act, legislated in 1978 has not changed with the times and is limited to printed and published periodicals. Over the years, news media has expanded in leaps and bounds to include television and broadcasting networks, digital and online news services and various other platforms. The scope and coverage of the Act needs to include all the news media formats in its ambit.

C. SENSITIZING AND CODIFYING NORMS FOR LAW ENFORCEMENT PERSONNEL

Law enforcement and police departments are the natural bulwarks for protecting the rights of the Fourth Estate against the attacks of vested interests. Yet we find that in numerous cases and instances governments and law enforcement agencies become a threat to the freedom of the press. If democracy is to be preserved and nurtured in the country, the government has to rethink its priorities and lay special emphasis on creating a protective environment for news media which will allow journalists and media persons to function freely. This will among other things, require:

- A serious training programme for government personnel from the most senior level down to the junior-most constable to sensitize and generate respect for the constitutional rights and obligations of news networks, agencies and news persons.

- Formulate a code or a SOP to be followed by police / government agencies when pressing charges, detaining or seeking punitive action against journalists. For instance, law enforcement personnel must verify the credentials of a journalist in the field with the Editor before initiating any action.
- Develop broad guidelines for the Union and state governments to ensure that news networks and agencies are allowed to function autonomously.

D. KEEPING A VIGIL THROUGH CONSTANT MONITORING

Among the most effective ways of keeping an eye on the challenges faced by the country's news networks, is by constant and detailed monitoring. Starting from the national apex level, to state and district forums, the state of the media – the number of complaints, the controversies and the toll in terms of number of journalists who have faced intimidation or harassment, and the number of cases filed and orders therein – should be documented every quarter or at least on a half-yearly basis. This should be done by autonomous government bodies and coordinated with the National and State Human Rights Commission as well as the Press Council. The monitoring exercise from bottom up – from district to the national level – will indicate where urgent intervention is necessary and where progress is being made. A summary of the data can be brought out as an Annual 'State of the Indian Media' report to the nation to ensure maximum public participation in defending the institutions of the Fourth Estate.



Gurbir Singh
Member – Press Council of India
2nd August, 2024

Note of Shri Gurbir Singh submitted as Report on Arrest, Wrongful Detention and Intimidation of Media Personnel along with Comments and Dissent by Chairperson

A note dated 8.8.2022 was received from Shri Gurbir Singh, Member, Press Council concerning alleged wrongful arrest and detention of journalists. The issue was discussed in meetings of the Council. In the meeting held on 28.02.2023 Shri Gurbir Singh was requested to collect relevant data only from public domain and prepare a comprehensive note so that existing guidelines can be reviewed and suggestions if any can be made. Shri Gurbir Singh was requested to take help of any other member if found necessary. It must be made clear that no one member committee was appointed by the Council.

Accordingly, Shri Gurbir Singh has forwarded his draft Note dated 2.8.2024 in which he has referred to some cases of attack on journalists. In some of these cases the Press Council has either taken suo-motu cognizance or has issued notice pursuant to complaint received by it. In some cases sub-committees have been appointed to conduct inquiry. Upon submission of report by the sub-committee appropriate orders are passed and suitable directions are given. Where it is found that case is sub-judice then in view of S 14(3) of the Press Council Act 1978, the proceedings are dropped. In some cases referred to by Shri Gurbir Singh the Press Council has no record to show that it has taken cognizance. Shri Gurbir Singh has also not produced any record in respect thereof. In those cases version of State or Police Authorities is not available. The Press Council cannot submit one sided report when averments are made inter alia that "Law enforcers become handmaidens of law breakers" or "the state and its representatives are charged with upholding the law, more specifically the freedom of the press, but instead they become willing participants or complicit by not initiating action." It is necessary to take the view of State/Police Authorities to avoid violation of principles of natural justice. Mr. Gurbir Singh's draft can take shape of a report only after the other side's version is obtained.

RPS

2

I am unable to concur with all observations made by Shri Gurbir Singh and all recommendations made by him and hence I hereby record my comments and dissent. I shall first briefly touch the contents of the draft note.

Reference is made in the note to the 'World Press Index 2024' compiled by the French non-governmental organisation 'Reporters Sans Frontiers'(RSF) where India ranked 161 out of 180 countries in 2023. The ranking methodology is questionable and the Press Council of India, in past, has raised its concern about the authenticity and credibility of such reports prepared and published by RSF.

Press Council of India in this regard has communicated with the South Asian Office of the RSF several times to learn about their methodology to arrive at the ranking. Further, PCI had expressed its willingness to share how the Council is working to preserve the freedom of press. No response was received from RSF.

Former Chairman Press Council of India at the UNESCO conference in Jakarta, Indonesia in May, 2017 even raised this issue on international platform. He stated that the RSF report does not present all sides of the matter and most importantly where India does have an autonomous body for the protection and preservation of freedom of press, then at least RSF should consult such an organization as part of good research.

Similarly, the authenticity and reliability of India Press Freedom Annual Report released on 3.5.2024 by the India Freedom of Expression Initiative, an alliance of press freedom NGOs needs to be looked into.

Later in the year 2020, Press Council of India participated in the discussion/meeting of Index Monitoring Cell (formed by the Ministry of Information & Broadcasting) and shared action plans with Index Monitoring Cell in preparing report to access the parameters that

APB

affect Press Freedom in India. The Government of India is looking into the methodology adopted by the RSF.

Since, the Press Council has contested the ranking of India on the World Press Freedom Index 2024, it cannot be treated as a negative feature. This portion of Shri Gurbir Singh's communication is not acceptable as it contradicts Press Council's stand.

I shall now refer briefly to the cases cited by Shri Gurbir Singh. The first incident relates to arrest of NewsClick journalist Shyam Meera Singh in November 2021. The Press Council does not have any record of this case. No action was taken by Press Council as no complaint was received from victim nor was Press Council's attention drawn to it by its members. The version of the police is not before the Press Council.

So far as incident dated 18.01.2021 relating to arrest of Paojel Chaoba and Dhiren Sadokpam editors of Manipur news portal is concerned no action is taken by the Press Council because no complaint was received from victim(s) nor was its attention drawn to it by members of the Press Council. The version of the police is not before the Press Council.

So far as arrest of journalists during March-April 2020 which was the first phase of Covid is concerned, where print media was involved, suo-motu action was taken by the Press Council and adjudication orders were passed. In case of Ashwini Saini, since he contributed to Mandi Live facebook page, his case was not covered by Press Council's jurisdiction. Hence, no cognisance was taken. Police version of this case is not with the Press Council.

Rest of the cases cited by Shri Gurbir Singh have been appropriately dealt with by the Press Council.

RPO

4

So far as recommendations are concerned much needs to be stated. Recommendation 'A' can be accepted without hesitation.

So far recommendation 'B' is concerned making Press Council stronger is a welcome measure. But I feel that it is not always that the police or government agencies are at fault. At times the journalists are also guilty of corrupt practices. Shri Gurbir Singh has himself observed in the note as under :

"It needs to be mentioned that there are cases when journalists misuse their professional positions for serving their personal or vested interests or for ends that having nothing to do with journalism. It is true that there have been instances of terrorist or common criminals disguising their identity as journalists; or business journalists who have connived to fix stock prices by planting fake news. These persons are not practicing genuine journalism and they cannot seek protection by invoking their right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution."

Therefore, if punitive measures are to be introduced they should also be applicable to erring journalists.

So far recommendation 'C' is concerned it says that Law enforcement personnel must verify the credentials of a journalist in the field with the Editor before initiating action. This is unacceptable. Investigating agency must be allowed to investigate a case by adopting such procedure as it deems fit. It cannot be directed to follow a particular mode of action. In a given case it may record statement of an editor in another it may not. In the matter of investigation there cannot be any Standing Operating Procedure (SOP). The recommendation for SOP cannot be made.

Recommendation 'D' needs clarification. The Press Council has been regularly taking cognisance of cases of alleged intimidation and harassment of journalists. The cognisance taken and adjudication orders passed in such matters can be documented. National and Human Rights Organisations are working in fields assigned to them by law independently. It

RPP

5

is not necessary for the Press Council which is an independent quasi-judicial statutory body to get entangled with their working. Such exercise will be unwieldy. The Press Council has requested Press Information Bureau to furnish relevant Pan India press/news reports of matters connected with press. Recently Press Council has taken Suo Motu Cognizance in respect of attack on Mr. Khoirom Loyalakpa, Editor of Naharolgi Thoudang on 27.09.2024 on the basis of one such press report. The Press Council will showcase its own actions. It will not be a part of any Annual State of Indian Media Report. I record my dissent as regards recommendations 'C' and 'D'.

I shall end my note of comments and dissent by again making it clear that all the paragraphs relating to ranking of India in World Press Freedom Index 2024 and to the report of India Freedom of Expression Initiative contained in Shri Gurbir Singh's note will have to be deleted as being contrary to the Press Council's official stand. At least in three cases cited by Shri Gurbir Singh Police version is not before the Press Council. The entire note will have to be also forwarded to the Government to obtain its views on the theme of Shri Gurbir Singh's note based on about 14 incidents covering a span of time from 2015 to 2023 that the freedom of press is muzzled in India. There is no denying that there are some cases of police highhandedness. The Press Council has dealt with them with a firm hand. But whether from those cases conclusion drawn by Shri Gurbir Singh that press is under attack in India and the situation is bleak can be drawn is the question on which views of the otherside will have to be obtained. When the Press Council submits any report on any important and sensitive issue, it always contains the version of both sides. This practice is followed in all matters. In my opinion unless police and State's version is incorporated in the note it cannot be termed as a report.

For all the above reasons I do not accept incomplete note of Shri Gurbir Singh as report. My comments and dissent may be taken into consideration.

RP Desai 27.9.24
(Ranjana Prakash Desai)
Chairperson
Press Council of India,
New Delhi