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**NAVIGATING THE MEDIA-STATE DEBATE: A MULTIFACETED
ANALYSIS OF THE SUPPRESSION OF FOURTH ESTATE AND
DEMOCRATIC EROSION IN CONTEMPORARY INDIA**

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Abstract

The media is an undisclosed pillar of Indian democracy as it acts as a bridge between the government and the people by keeping them informed of the happenings of the government. This doesn't end well for the press, as ruling parties desire to keep their workings a secret. To curtail the same, the government uses the reason of national security to curb the unrequited reports of the media, which has evolved into a threat to journalists. This paper examines all the aspects of the threat to journalists, how the Government uses national security as a blanket to curb unwanted reports and tries to devise a holistic approach to increase the freedom of the press and media in the country.

Introduction to the state-media relationship in India:

“A free press can, of course, be good or bad, but, most certainly, without freedom, the press will never be anything but bad.”

— Albert Camus

Ranging from terrorist prevention to technology laws, every law is somehow used in such a way as to cover every possible dissenting voice against the leadership². These laws were introduced to prevent the felonious, illicit misuse of liberties guaranteed by the Constitution, instead, it happens that these laws are used to suppress the dissenter and to circumvent such situations the other way around.

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² Jigisha Khunteta, *The Last Wish : FREEDOM TO DISSENT AND MEDIA OF KERALA UNION WORKING JOURNALISTS*, (2023), <https://allindialegalforum.com/2023/01/18/the-last-wish-freedom-to-dissent-and-media-of-kerala-union-working-journalists/>.

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In a democratic country like India, the media, referred to as the fourth estate, interferes and acts as an arbiter, provides responsible information for the people to make choices, promotes accountability in the system which rules them, and substantially incites diverse people to make diverse opinions. It has created a platform to enhance the reach of individual perceptions and provided a sharp-edged tool to question governmental actions in the public domain.

According to the Press freedom index 2023, India stands at 150th rank, closer to the ranks of its neighboring underdeveloped countries like Pakistan (156) and Afghanistan (157) an alarming fact of concern. Nonetheless, unlike India, those countries had witnessed widespread legal harassment by state and non-state actors for covering sensitive issues. Indian media and government have been in each other's pockets since the coming of 'The Bengal Gazette' and have been an essential medium of disseminating information to the ultimate sovereign, the people. It is often in countries like India, even though it is democratic in governance, the government is placed on a higher plane where the sovereign, i.e., the people, cannot even access ongoing governmental processes.³ The role of media becomes quintessential, as it has a most powerful presence in a large democracy, being the backbone of the country by enlightening the citizens on various economic, political, and other frontiers. It acts as an eye-opener for the people and picturizes the harsh realities of life.

It is a well-known fact that the media acts as the fourth estate of democracy, and for such an organ, freedom is mandatory to function efficiently. So if the press is not accessible, the information does not reach the people, and the people lose interest in participating in government functions.⁴ The two most important aspects of Indian life are democracy and mass media. It has completed the goal of transforming people's lives. However, it is unclear how far Indian lives have evolved and how far the nation has advanced.⁵

The print and electronic media help in promoting and upholding democracy. It has made contributions in the field of improving Indian democracy by promoting and fostering debates and thereby engaging politicians and people that occupy the higher tier of the government and making the process a little more transparent. In addition, they act as a public watchdog by exposing the abuses of power whenever the government steps out of line and makes sure the

³Rai, B. (2015) "Role of Media in Indian Democracy" *The Indian Journal of Political Science*, 76, pp. 437–441.

⁴Sarkar P. Role of Media in Strengthening Democracy in India. *J Adv Res Jour Mass Comm* 2017; 4(3&4):111-115.

⁵*Supra* note 3at 1

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government takes public accountability.⁶ But unfortunately, that is precisely what this debate is about; whether to give the constitutionally guaranteed freedom to the press or not, and that decision lies in the hands of the government, invalidating the notion of the connection it creates among the people and the ruling government. The public sees only what the print and television media shows the people, as the situation has worsened, and the government mandates what the press is supposed to show people.

The relationship between the state and the media has been strained since the internal emergency proclaimed in 1975-77, during which the restrictions on press freedoms became more stringent, and the act of prosecuting journalists under the blanket of national security was at its peak. It is unnecessary to say that there were restrictions on press media since the colonial period, and the newspapers were prohibited from promulgating information derogating from the government; perhaps that is where this idea came from. Taking the present conditions and the question of freedom of the press, the democracy of the country is being seriously undermined, and making boundaries on media freedom is taking a toll on citizens' awareness of the government's processes.

Protecting Democracy or Silencing Dissent? The Ethics of National Security and Media Suppression:

- Fluidity of national security and the freedom of the press

National security is intertwined with a nation's socioeconomic and political stability. The apex court considered that it would be unwise to cook a concrete definition of 'National security'; such an expression does not have a fixed meaning. While courts have attempted to differentiate national security from public order conceptually, it is impossible in judicial scope (and perhaps unwise) to lay down a textbook definition⁷. Stepping back in time, the primary intention in leaving the term undefined is to allow the courts to determine the cases based on their specific facts and circumstances. However, the Apex Court has demarcated the scope of the words 'Law and order,' 'Public order,' and 'Security of state' in the case of *Dr Ram Manohar Lohia v. State of Bihar & Ors*⁸. The judgment further illustrated that:

⁶*Supra* note 4

⁷ Romesh Thappar vs The State of Madras, 1950 AIR 124

⁸Dr. Ram Manohar Lohia vs State of Bihar And Others, 1966 AIR 740

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“Public order is synonymous with public safety and tranquillity; it is the absence of disorder involving breaches of local significance. Disturbance of public order entails disorders of less gravity than those affecting the ‘Security of State.’ ‘Law and order’ also comprehend disorders of less gravity than those affecting ‘public order.’”

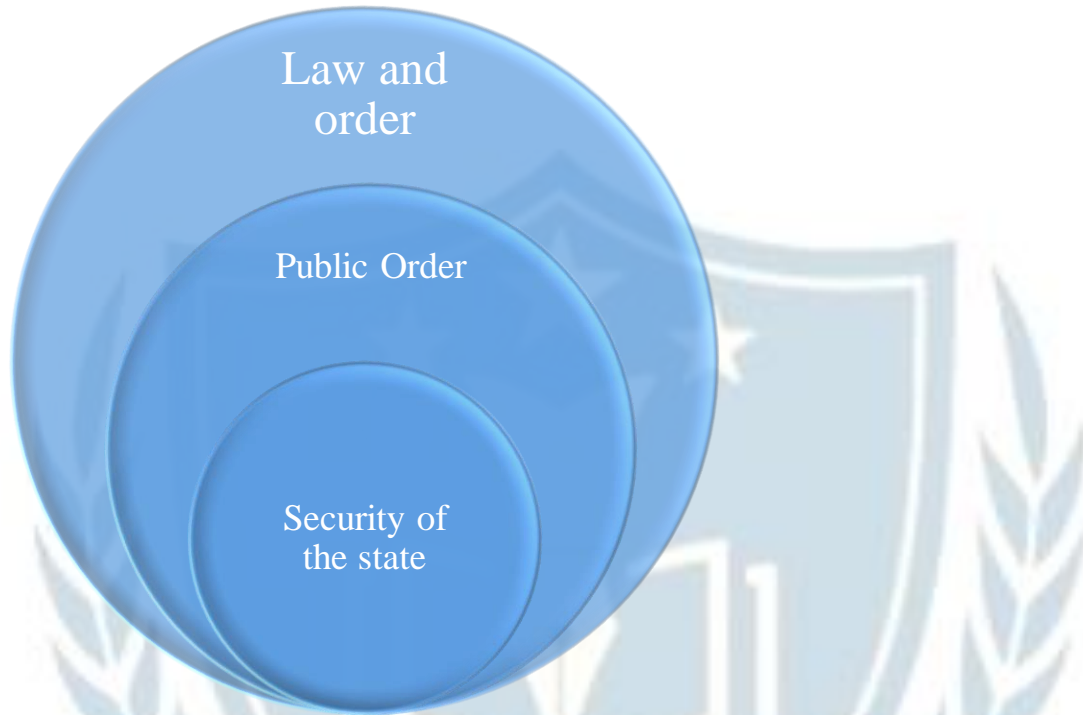


FIG 1: Pictorial representation of the categorization in *Dr. Ram Manohar Lohia v. State of Bihar & Ors.*

From the above illustration, it is easy to see that an act may affect law and order but not public demand, just as an act may affect public order but not the security of the State. The act's intensity and degree of seriousness determine whether it falls under the purview of any of the categories, and such categorization cannot escape judicial intervention. For instance, if a journalist writes an article criticizing the Budget plan, it tends to fall within the first two concentric circles (depending upon the degree of words used).

If a person incites communal violence or clash between various groups in the public domain, it intrudes deep into the core circle, i.e., it affects the state's security. Matters which concern the larger sphere, i.e., law and order, do not mean that it also affects the public order or safety of the state. The three circles represent three types of speech: (1) speech that is protected

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under Article 19(1)(a), (2) speech that is not protected but may be regulated by the State, and (3) speech that is not protected and is outside the shade of the law. These concentric circles have contemporary relevance as they can be applied mainly in cases where there is a conflict of interests in balancing reasonable restrictions and freedom of speech. Conclusively, by the benefit of this judgment, this framework allows the courts to analyze the degree of actions proportionate to the circles and creates a platform for the courts to assess whether the government's action was necessary to protect national security, whether it was proportionate to the threat, and whether it was the least restrictive means available. If the court found that the government's action was not proportional, it could order the government to reverse its actions.

- Using 'National security as a blanket:

In many circumstances, the state has used the phrase 'National security' to escape scrutiny from the eyes of the law. In the case of *Manohar Lal Sharma vs. Union of India*, the Apex court highlighted that the state should not take a blanket cover from judicial light by simply using the term 'National security.'

The court further stated that:

"It is a settled position of law that in matters about national security, the scope of judicial review is limited. However, this does not mean that the State gets a free pass every time the 'national security' specter is raised. National security cannot be the bugbear that the judiciary shies away from by its mere mentioning.⁹"

By analyzing various judicial pronouncements of the courts, one can infer that the state cannot claim a free pass to escape judicial scrutiny whenever it argues for 'National security.'

The court pointed out that the state has to justify its departure and that the burden lies upon the government to establish before the courts that national security is at stake in that particular matter. It is firmly registered that the aspects of natural justice are never to be ignored. Additionally, it is to be noted that the court opined to consider and scrutinize the facts of the case, which is subjective to each patient, and measure whether the claim of privilege through the phrase 'National security' outweighs the liberty guaranteed. The courts have the primary duty to exhibit an extensive analysis of the state's satisfaction to invoke the

⁹Manohar Lal Sharma Vs Union of India, AIR 2021 SC 539

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debated claim by examining the cogent materials and whether the state has used such material to vindicate. The courts reached this arena by analyzing Lord Scarman's words in *Council of Civil Service Unions v Minister for the Civil Service*¹⁰.

India has legislation maintaining national security and public order, i.e., the National Security Act 1980. However, it is often criticized that the Government frequently misuses the act to abuse Pro-opposition journalists. There have been several instances where individuals have been detained under the NSA for their alleged involvement in activities unrelated to national security aimed at criticizing the government or advocating human rights.

Despite the importance of national security issues, press freedom must be unrestricted under every other circumstance. In a democratic society, any restrictions on press freedom must be reasonable, proportionate, and required.

- The Anti-establishment tag: A tool of suppression

Recently, the government instrumentalized the term 'Anti-establishment' and tags pro-opposition elements certainly to suppress it. Media acts as a torch bearer in the public sphere and guides democracy in the right direction. By being critical of governmental actions, it passes light to the darkest rooms of administration, and by establishing the various dimensions of political activities, media tends to exercise its highest standard of journalism and showcases the independence of media in the world's largest democracy. But frequently, the ruling body abuses the journalists by legislation to suppress them and brings them under the stigmatized sphere of 'Terrorists'. In the case of *Kedar Nath Singh v. State of Bihar*, the Apex court well established that mere criticism does not attract to be 'Anti-establishment or Seditious.'

In this judgment, Justice JR Mudholkar, in his own words, described that:

"Every person has a right to say and write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or to create public disorder."

Restricting the freedom of the press not only encroaches upon the right of the journalists but also limits people from thinking along a single tangent and shields them from exposure to differing perspectives. In recent times, mere criticism or a critical appraisal of the

¹⁰Council of Civil Service Unions Vs Minister for the Civil Service, 1985 AC 374, 406

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government's dispassionate attitude is termed Anti-establishment. The government adopts this treacherous trend to term those activities that incite violence, tend to create a feeling of disgust toward the government and disturb public tranquility.

It is worth noting that the term 'anti-establishment' is often used loosely, without a clear definition or a legal basis. Using such labels to stifle the freedom of expression and dissent is a cause for concern. It raises questions about the limits of the government's power and the protection of fundamental rights.

Recently, the Supreme Court criticized the usage of the term 'Anti-establishment' and questioned the validity of such a term in the case of *Madhyamam Broadcasting Limited vs. Union of India & Ors*¹¹. In this case, a regional news channel critically viewed controversial subjects, including UAPA, the Armed Forces (Special Powers) Act, Government developmental projects, encounter killings, and the Citizenship (Amendment) Act, CAA/NPR/NRC. The government branded these activities of the news channel as 'anti-establishment' and subsequently banned its broadcast. When this issue was contested before the court, the center tried to dodge liability by producing limited evidence to prove the same by submitting a 'limited affidavit.' The court condemned the stance taken by the government and criticized the usage of unethical terms like 'anti-establishment,' primarily used to stifle journalistic freedom.

The Court condemned that:

"The use of such a terminology represents an expectation that the press must support the establishment."

The court further reaffirmed the importance of media in a democratic society and the need for it to be able to criticize the government without fear of reprisal. The court relied upon the much-celebrated judgments which superimposed the freedom of the press, such as *Om Kumar v. Union of India*¹² and *Union of India v. Ganayutham*¹³, to reaffirm that 'it is the cardinal responsibility of the media to act as a watching eye on the functioning of the government and to expose any misdeeds or malpractices and put them for public debate. In

¹¹Madhyamam Broadcasting Limited vs Union of India & Ors, 2023 SCC online SC 366

¹²Om Kumar v. Union of India, (2001) 2 SCC 386

¹³Union of India v. Ganayutham,(1997) 7 SCC 463

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doing so, the media may sometimes take a critical stance towards the government, but this does not mean they are anti-establishment.’

The court further stated that it was the duty of the government to respect and uphold the right to freedom of speech and expression, even if it was critical of the government or its policies. The government cannot use the pretext of national security or any other reason to silence or curtail the media's freedom. Therefore, in this case, the court was against the government's attempt to label the media as ‘anti-establishment’ and recognized the importance of free and independent media in a democratic society.

On the other hand, the Apex court stressed that the scope or impact of disseminated information cannot be used as a basis to restrict or deny the fundamental right to freedom of expression¹⁴. In other words, the right to express oneself freely can be expanded based on the message’s reach or influence.

The court, in its words, held that:

“The wider range of circulation of information or its greater impact cannot restrict the content of the right nor can it justify its denial.”

This underscores the importance of upholding the principles of free speech in all forms of communication, regardless of the audience’s medium or size. Notably, these actions by the center impose an imminent threat on the degree of journalism. Moreover, it imposes indirect pressure and pre-imposes a chilling effect on pro-opposition journalists and media houses.

Conclusively, as rightly stated by Justice Hidayatullah

"Dissent is the safety valve of democracy. If dissent is not allowed, then the pressure cooker may burst."

1. "Necessary and Proportionate": Evaluating Past Incidents of Press Freedom Curtailment in the Name of National Security:

At first glance, the functioning of the press and media in India appears to be unencumbered by any influence from the government or its organs. However, upon closer inspection, it becomes evident that this perception is far from the truth. Despite the press and media being integral components of any country, their autonomy is often compromised, particularly in

¹⁴ Secretary, Ministry of Information & Broadcasting Government of India v. Cricket Association of Bengal, (1995) 2 SCC 161; Shreya Singhal v. Union of India, (2015) 5 SCC 1

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India, where they are expected to serve as a democratic watchdog by calling out government bodies when they overstep their bounds and make mistakes.

Ironically, the seemingly self-reliant organizations bear the brunt of the most stringent limitations and frequent manipulations from government organs that assume an authoritarian stance. Given that sovereignty in a democratic setup is vested in the people rather than any single entity or individual, it becomes essential for constitutional makers to limit the power of these autonomous entities by imposing reasonable restrictions. These constraints prevent the media from attaining absolute power, ensuring that they remain accountable and continue to play a critical role in safeguarding the democratic ideals of the nation. In light of this, the question of curtailing the freedom of these independent entities by limiting their powers and imposing restrictions is not only a constitutional obligation but also a practical necessity. The limitations must be exercised under reasonable circumstances¹⁵, preventing them from assuming supreme power, and the primary focus must always remain the protection of the democratic principles enshrined in the Constitution.

The Indian Constitution guarantees its citizens the fundamental right of freedom of speech and expression, which extends to freedom of the press. However, it is not explicitly mentioned, as the partition of India highly facilitated superimposition.¹⁶ However, these freedoms are not absolute and are subject to restrictions as stipulated under Article 19(2) of the Constitution, which includes grounds such as decency and morality, public order, sovereignty, friendly relations with other states, and national security. However, these grounds need to be better defined, and their interpretation becomes crucial in identifying what actions are deemed to be against public morality or threaten national security. Consequently, this gives the government a degree of flexibility to classify any activity as a threat to national security, thereby curbing the freedom of expression.

The first and foremost incident of restriction was laid down when the colonial Indian government passed the Censorship of press act to suppress the French from publishing anything that opposed the government. Then came the vernacular press act¹⁷ in 1878 to

¹⁵In this case, national security and emergency

¹⁶Dhavan, R. (1986) "The press and the constitutional guarantee of free speech and expression," *Journal of the Indian Law Institute*, 28, pp. 299–335.

See supra note 7, Also see Brij Bhushan and Another Vs The State of Delhi 1950 AIR 129

¹⁷Vernacular Press Act, 1878, Act No. XXVII of 1878 (India).

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curtail the freedom of Indian newspapers, excluding those in English, which is a clear example of repressive censorship in pre-British India. The imposition of unreasonable restrictions on the press wasn't curtailed once the country gained independence. Still, conversely, it took a darker form and restricted the freedom of the media in a more nuanced manner that would be very difficult to identify.

The idea of restricting press freedom wasn't a brainchild of the Constitution drafters but was instead that of the colonizers. In the pre-constitutional era, the restriction of press media was only subject to the colonial acts in force; those in existence were drafted in a way that restricted newspapers from publishing anything offensive about the government. The period post-independence saw the inception of the darkest hour of the Indian press during the reign of Indira Gandhi.¹⁸ The emergency period was described as the 'sterile period of the press' owing to the authoritarian stance of Indira Gandhi since 1961.¹⁹ This became imminent when she recorded a resounding victory in the 1971 parliamentary elections and helmed the Bangladesh war. She was more confident and challenged the operations and management of the print media. Her Government held out various threats, and steps were proposed to curb that section of the Press, which was thought to be the most independent.²⁰ During the early period of 1975, she became increasingly threatened by the press media's extending support to the Janata Party; she declared an emergency and took control of the press. The Indira Gandhi administration justified its tight restrictions on the media by citing the 'security of the state' and 'promotion of disaffection' mentioned in Article 19 (2). In India, radio and television were governed by the state in 1975. The government also had authority over print media according to Article 19(2), which allowed for restrictions on that sector of the media.

3.2: Prosecution of journalists and infiltration of the Ruling government:

The authoritarian government took a grimmer format, switched to vengeance mode, and called into trials. Successfully, most of the time, either jailed the journalists for producing content that opposed the party in power by prosecuting them under counter-terrorism and sedition laws, as said by ten human rights organizations.²¹ The basis for the sedition laws in

¹⁸Ghosh, J. (2017) "Indira Gandhi's call of emergency and press censorship in India: The ethical parameters revisited," *Global Media Journal*, 8.

¹⁹Ibid

²⁰Sahu, R.N. (2005) *The press in India: Perspective in development and relevance*. New Delhi, Delhi: Kanishka.

²¹ "India: Media Freedom Under Threat" (2022) *Freedom House*, May. Available at: <https://freedomhouse.org/article/india-media-freedom-under-threat>.

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India is under S.124A of the Indian Penal Code. This law is subject to feigned interpretation due to which it creates a situation where an upper hand to the government is evident as it contains phrases like 'bring into hatred or contempt' or 'attempt to excite disaffection,' which can be interpreted in such a way that it could endanger the right to freedom and expression of innocent journalists.

Falsely prosecuting the journalists started when Mrs. Indira Gandhi declared an internal emergency and took control of the press. During that time, seven international journalists were expelled by her government, while 29 others were given entry bans to India. Well over 46 reporters, two cartoonists, and six photographers who regularly covered the capital were denied accreditation. At the same time, 258 journalists were detained throughout the 21-month Emergency period under the sedition and national emergency laws.²²

Recently, *Mr. Amit Trivedi*, a political cartoonist, and social activist, was called into court for publishing a drawing on the website 'India against corruption' in the opinion of the government defaming the constitution, the Parliament, and the national emblem.²³ His material was held to be derogatory, which gave the government a stance to prosecute him under S.124A of the IPC. Even though in the case of *Vinod Dua*,²⁴ a senior journalist, the High Court held that the applications of sedition laws under sections 124A and 505 of the IPC should be subject to the guidelines laid down by the court in the case of *Kedar Nath Singh*,²⁵ the lack of extent of the ambit of sedition creates humongous confusion. It makes having dissenting opinions which are 'against' the government dangerous.

The validity of the sedition law in India has been called into court several times for its overly broad plane through which the government can claim anything and everything as sedition, and recently, in the case of *M/s Aamoda Broadcasting Company Pvt. Ltd. & Anr. v. The State of Andhra Pradesh & Ors (2021)* where the CJI D.Y. Chandrachud opined that "Everything cannot be seditious. It is time we define what sedition is and what is not."²⁶ This opinion was promulgated to restrain the Andhra Pradesh government from prosecuting a Telugu news channel under sedition laws.

²² Singh, I.B. (1980) "The Indian mass media system: Before, during and after the national emergency," *Canadian Journal of Communication*, 7(2), pp. 38–49. Available at: <https://doi.org/10.22230/cjc.1980v7n2a248>.

²³ Sanskar Marathe V. The state of Maharashtra 2015 CriLJ 3561

²⁴ *Vinod Dua vs. Union of India (UOI) and Ors*, MANU/SC/0363/2021

²⁵ *Kedar Nath Singh v. The state of Bihar* 1962 Supp. (2) S.C.R. 769

²⁶ *M/s Aamoda Broadcasting Company Pvt. Ltd. & Anr. v. The State of Andhra Pradesh & Ors* MANU/SCOR/16303/202

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In recent years, the acquirement of press media by conglomerates is not new but instead has become a normal practice in a capitalist society. Also, there is no exception in acquiring when it comes to the press media, even though the print media is regarded as the fourth pillar of democracy. This practice has proven to be harmful to the press media as it paves the way to infiltration of the influence of the ruling parties, thereby tainting the freedom of the press in the country. It has not only restricted press freedom but also made having a dissenting opinion to that of the government injurious to the life and safety of the journalists who even dare to do so.²⁷ According to the UNESCO Observatory, nearly 45 journalists were killed in India between 2010 and 2022. The Global Impunity Index 2021 by CPJ also positioned India 12th on their index, where journalists are murdered, and their killers go free. India topped the chart with the highest number of cases filed against journalists during Covid-19.²⁸

The domain of freedom of the press is continuing to shrink as the result of repressive censorship actions of the government, which has pushed journalists to a sphere where they only have an option of accepting the views of the ruling party or else be raided and charged under the name of sedition and national security.²⁹ The fear of extensive shrinkage of the freedom of the press was further intensified in the month of February, when India's tax authorities raided the BBC's offices in Delhi and Mumbai and, after three days of search, accused the British broadcaster of evading taxes.

“The raid took place less than a month after the BBC released a documentary titled “India: The Modi Question” critical of Modi and alleged his responsibility for anti-Muslim violence that left more than 1,000 dead and tens of thousands displaced in Gujarat in 2002 when he was serving as chief minister of the state. The Indian Supreme Court has cleared Modi of responsibility.”

As reported by the NPR.³⁰

²⁷Ks, M. (2022) “Why Declining Press Freedom Is Nobody’s Concern in India,” *Outlook India* [Preprint]. Available at: <https://www.outlookindia.com/national/why-declining-press-freedom-is-nobody-s-concern-in-india--news-205243>.

²⁸Bose, R. (2022) “Is India's Free Press in Its Final Throes?” *Outlook India* [Preprint]. Available at: <https://www.outlookindia.com/national/is-india-s-free-press-in-its-final-throes--news-235243>.

²⁹Magazine, A. (2023) “Weeks after its documentary taken off, BBC gets I-T knock,” *Indian Express*, February.

³⁰Kumar, R. and Fayer, L. (2023) “Indian tax agents raid BBC for 2nd day, after it aired documentary critical of Modi,” *National Public Radio*, February. Available at: <https://www.npr.org/2023/02/14/1156726845/indian-tax-authorities-raid-bbc-weeks-after-it-airs-documentary-critical-of-modi>.

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The Modi government running in its eighth year of undeclared emergency has cut down the domain of the freedom of the press almost into half of what the constitution had initially granted it using colorable legislation and has also promulgated to use it further in the coming years.³¹ It is critical to remember Kappan, Gul, and Shah because they are the most apparent icons of the government's broad attack on press freedom in India today.³² These journalists decided to uncover the real news that the government did obviously shroud and were charged under the Unlawful Activities Prevention Act and now are held under the Public Safety Act to prevent them from escaping. Today's intimidations, on the other hand, are far more lethal and have taken various forms, including bans on television media for unjustified reasons of national security,³³ the use of unauthorized spyware to keep journalists under surveillance,³⁴ the use of official agencies to harass journalists in the name of economic offenses,³⁵ rendering the Press Council of India powerless by failing to appoint a chairperson, and industrial scale production of fake news.

The attacks on the press and the intensity of the same continue to increase, and there's no time or use in continuing to hide that India's democracy has been dying a slow death since the internal emergency of 1975. Modi's government isn't mitigating the same. Still, it further amplifies it by denying freedom of speech and expression and, going one step above, prosecuting the journalists under various fluid acts by manipulating them in their favor.

3.3: Striking the Right-balance:

The strenuous task of containing the emerging threats to democracy and the inevitable interest in freedom remains one of today's most crucial tasks. However, this delicate task requires finding the right balance to promote national security priorities and journalists' reporting activities' full autonomy. While legitimate concerns exist involving balancing privacy violations versus pursuing terrorism-related investigations using surveillance or other technological aids, media watchdogs must push back meaningfully where journalistic freedoms are threatened.

³¹"The Modi Government's Escalating Offensive Against Freedom of the Press" (2022) *The Wire* [Preprint]. Available at: <https://thewire.in/media/editorial-the-modi-governments-escalating-offensive-against-freedom-of-the-press>.

³²Bhakto, A. (2022) "Journalists and press freedom under attack in Jammu and Kashmir," *Frontline*, February.

³³*Supra* note 12

³⁴*Supra* note 9

³⁵*Supra* note 38

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It is necessary to argue that press freedom upholds democracy, as it creates a credible platform through which citizens access crucial knowledge and track accountability from their leaders. Conversely, disregarding national security while overemphasizing media rights will severely hinder public order. It can expose sensitive information that poses a potential threat, compromising state and individual security. It is unarguable that the government has the legal and moral authority to prosecute unauthorized and unethical informational disclosures that fail to answer to the justifications of transparency, credibility, justiciability, and liberty. Unless steps are taken to ensure that intrusions on the press are taken only as an absolute last resort, it is lamented that governmental actions may ultimately serve to subvert justice more than aiding it.

This long-ending issue of Balance was put forth before the courtrooms as one of the issues in the KS Puttaswamy case, where the Supreme Court held that any restriction on press freedom must pass the test of proportionality. The court affirmed,

"The principle of proportionality has to be considered at two stages - first, the action which the State takes must be suitable for which it is taken, and second, such action should not be excessive or disproportionate to the goal to be achieved."

The importance of national security must be balanced; however, this interest should not supersede press freedom. Any limitations on the media must be meticulously evaluated based on its necessity and proportionality in a democratic society. To quote the Indian Supreme Court's words about Romesh Thappar Case, "Freedom of speech and the press should receive generous support from all those who believe in the freedom of individuals³⁶."

3.4: The test of Proportionality as the Savior:

Before we delve into nuances of the "reasonable restrictions on free speech," it is vital to analyze the extent of restrictions that can be imposed. On the one hand, it requires that any government action must be proportionate to the legitimate purpose it seeks to achieve, meaning that the impact on individual rights should not be more significant than necessary to achieve that purpose. On the other hand, governments should not use their power arbitrarily or unnecessarily and help protect the rights and freedoms of individuals fairly and reasonably.

³⁶*Supra* note 7

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The courts have shunned much light upon this issue and have pronounced various judgments in protecting civil liberties.

Firstly, civil rights give room for the healthy exercise of rights. Secondly, the power of the state to restrict those rights for the collective well-being by imposing limitations. These two notions stand as conflicting democratic principles. It takes us to the question of how this tension can be resolved. Nevertheless, neither facet should be complimented or mended in favor of the other. This dilemma should be determined by considering that rights and restrictions should pave the way for harmonious and peaceful co-existence. This development should be treated as ‘Constructive tension’ as these two conflicting facets of democracy develop harmoniously coexisting with each other.

This leads us to the following unresolved conundrum, how the balance between the two might be achieved. The solution to this can be achieved by implementing the principle of proportionality.

In *Modern Dental College & Research Centre v. State of M.P.*, the Apex court has laid down the test of proportionality, which was based on a German concept developed by the German Federal Constitutional Court which states that:

“Four subcomponents of proportionality which need to be satisfied were taken note of. These are:

- (a) A measure restricting a right must have a legitimate goal (legitimate goal stage).*
- (b) It must be a suitable means of furthering this goal (suitability or rational connection stage).*
- (c) There must not be any less restrictive but equally effective alternative (necessity stage).*
- (d) The measure must not have a disproportionate impact on the right holder (balancing stage).”*

Based on the German concept, this ruling should be contrasted with its Canadian counterpart, which has a similar but more nuanced approach to this issue. The Canadian principle states that there shall be a ‘Rational nexus’ between such a measure imposed and the object sought

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to be achieved. It says that the limitation should be least restrictive, such compelling, and it should never override the object of such measure³⁷.

In the case of *K.S. Puttaswamy (Retired) v. Union of India*³⁸, Justice Sikri demodulated the test passed in the *Modern dental college case* and held in his own words that:

“Proportionality is an essential facet of the guarantee against arbitrary State action because it ensures that the nature and quality of the encroachment on the right is not disproportionate to the purpose of the law.”

In this same judgment, Justice Chandrachud and Justice Sanjay Kishan Kaul concurred that such measures it has taken are the least intrusive means available to achieve the desired objective³⁹.

By keenly observing the jurisprudential trend of the above judicial pronouncement, which establishes a consistent legal framework, one can conclude that to be reasonable; the imposed restriction should have a reasonable relation between the object to be achieved. It must be within the thing of such legislation⁴⁰. It requires that any government action be proportionate to the legitimate purpose it seeks to achieve, meaning that the impact on individual rights should be most necessary to achieve that purpose. This ensures that governments do not use their power arbitrarily or unnecessarily and helps protect the rights and freedoms of individuals fairly and reasonably.

Concluding remarks:

The suppression of the fourth estate and democratic erosion in contemporary India has sparked a multifaceted debate on navigating the complex relationship between the media and the state. Through a comprehensive analysis, we propose a holistic approach that entails legal reforms, media pluralism, and the safety of journalists. The government, media organizations, civil society, and the public must collaborate to achieve this. The judiciary, in particular, is responsible for upholding the constitutional values of freedom of expression and press freedom.

³⁷ R. v. Oakes, (1986) 1 SCR 103 (Can) SC,

³⁸ K.S. Puttaswamy (Retired) v. Union of India, (2019) 1 SCC 1

³⁹ Ibid.,

⁴⁰ P.P. Enterprises v. Union of India, (1982) 2 SCC 33

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Moreover, it is crucial to understand the global context of media suppression and democratic erosion and learn from the experiences of other countries. This can provide insights into the challenges confronting India and offer potential solutions. Most importantly, India can gain insights from the US model of Shield laws, which protects the identities of journalists involved in investigative journalism in the country. It allows for the protection of the uniqueness of the journalists and facilitates the publication of information by protecting their disclosures.

In conclusion, thriving and independent media is crucial for a healthy democracy. We must all take responsibility for protecting it by addressing the suppression of the fourth estate and democratic erosion in contemporary India.



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