Policy Brief

The State of Press Freedom and Safety of Journalists in South Asia





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Executive Summary

The South Asia region is witnessing an unprecedented onslaught on media freedom. Journalists and media organizations are faced with a multitude of challenges. A climate of hatred towards journalists and media outlets is being fostered by political parties in power in the region. Objective and critical journalism is frowned upon by those in power, who use social media, cutting edge information technology and financial constraints to undermine press freedom.

Media pluralism has witnessed a marked decline amidst increasing arrests, online attacks, smear campaigns and legal actions against independent media organizations and individual journalists, who criticise political leaders and governments. Equally alarming is the fact that these democratically elected governments are not only failing to uphold press freedom and to protect journalists, but have also enacted legislation or resorted to other means of coercion to stifle independent media and critical journalists¹. Media organizations that do not toe the

official line are being starved of government advertising revenue and the private sector is under pressure to withhold advertisements to these outlets2.

Over the years, several journalists have been killed in the region with complete impunity³. Attacks on journalists are a daily occurrence. The situation is so grave that journalists and editors have resorted to self-censorship in these countries.

The COVID-19 pandemic has exacerbated the assault on press freedom globally and the South Asia region is no exception. According to the IPI COVID-19 Press Freedom Tracker⁴, nearly 200 violations linked to the pandemic have been reported from the Asia-Pacific region, of which 107 are from four South Asian countries: Bangladesh, India, Nepal and Pakistan⁵. As many as 71 journalists have faced arrests and charges related to their coverage of the pandemic and its consequences, while 32 cases of physical attacks and verbal threats have been reported from these countries.

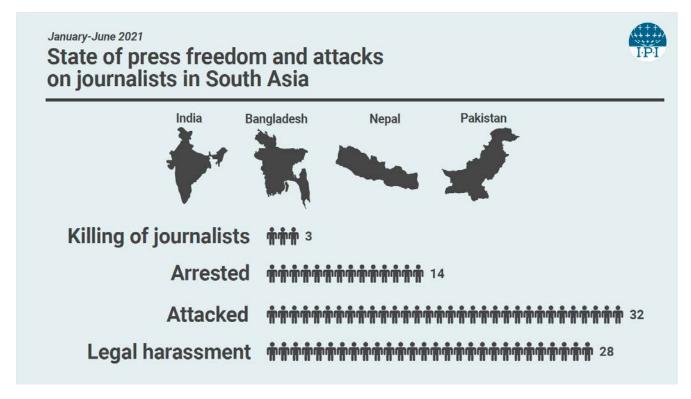


Figure: Data on press freedom violations and attacks on journalists in Bangladesh, India, Nepal and Pakistan between January and June 15, 2021

Since the beginning of 2021, three journalists have been killed, 14 arrested and 32 targeted in attacks across the region. Another 28 journalists have had criminal cases filed against them, with possible threat of arrest and prosecution under criminal laws the provide for stringent punishment, as governments try to clamp down on critical reporting and social media posts by journalists⁶.

The actions by governments in these countries constitute a major obstruction to the free flow of independent news, which is all the more important during an unprecedented health crisis. Informing the public about vital measures to contain the virus, as well as maintaining an open dialogue and debate on the adequacy of those measures, are essential for winning public confidence to deal effectively with the pandemic.

Governments in South Asia are extremely sensitive and averse to international pressure on issues of human rights and press freedom, and in fact, view such interventions as interference in their domestic affairs.

All South Asian countries are States parties to the Universal Declaration of Human Rights (UDHR)⁷ and have ratified the International Covenant on Civil and

Political Rights (ICCPR)⁸, and therefore duty bound to uphold and protect freedom of expression and media freedom. However, actions by governments undermine these international norms and severely infringe upon freedom of expression and press freedom.

Furthermore, all these countries have adopted the Sustainable Development Goals (SDGs) and are obliged to take relevant steps to attain these goals, including SDG 16 target 10, which requires Member States to ensure public access to information and protect fundamental freedoms in accordance with national legislation and international agreements? According to the UN's Sustainable Development Goals Report 2020, journalists and human rights defenders have become targets of violent attacks and that there has been a marked rise in widespread hostile rhetoric directed at the media and journalists¹⁰.

The crackdown on the freedom of expression in South Asia poses a major challenge to attaining the SDGs and needs to be addressed urgently through coordinated action by the international community.

The Current State of **Press Freedom** and Safety of Journalists

Bangladesh

The Digital Security Act¹¹, which was passed by parliament in October 2018, has stifled press freedom and forced self-censorship on the country's media. The law is one of the most draconian in Bangladesh's history, as it provides sweeping powers to authorities to block or remove any content in the digital media deemed harmful to harmony or public order or seen to incite communal hatred.

The provisions of the Act severely restrict press freedom. Section 25 provides for five years' imprisonment on the charge of deliberately publishing or broadcasting on a website content that attacks or intimidates or of knowingly publishing or broadcasting false information.

A person can be punished with 14 years' imprisonment if found guilty of assisting someone to commit crimes under the Official Secrets Act, 1923, through the electronic medium. Similarly, a person can face up to 7 years in prison for publishing or broadcasting material on a website that is determined as spreading hatred and creating enmity¹². Editors and journalists in Bangladesh have been protesting against the law since before it came into being.

In January 2019, the law was used to arrest a journalist of the Dhaka Tribune for a report on election irregularities¹³. The journalist was accused of falsely reporting about voting irregularities during an election won by Prime



Minister Sheikh Hasina. If convicted, the journalist faces up to 18 years in prison. In February that year, five more journalists were charged under the Digital Security Act¹⁴. All those cases are pending before the courts.

In May 2019, the Bangladesh Telecommunications Regulatory Commission blocked access to two news websites¹⁵ after they published reports critical of the government. However, no explanation was provided for the decision.

Even before the repressive law was passed, hundreds of libel, defamation and contempt of court cases were filed against prominent editors, journalists and bloggers in the country. Mahfuz Anam, editor of the leading English language newspaper, the Daily Star, and member of the IPI Executive Board, has 83 cases pending against him, with the financial damages claimed amounting to US \$8 billion¹⁶.

In 2017 alone, 169 cases were filed against journalists under various sections of legal provisions¹⁷, which included cases of defamation and charges relating to insulting the Prime Minister.

Government supporters attacked journalists for covering student protests in August 2018¹⁸. A prominent award-winning photojournalist, Shahidul Alam, was arrested on August 5, 2018, after giving an interview to Al Jazeera about the protests. He spent nearly four months in prison before being released on bail¹⁹. Despite demands by press freedom organizations and noted intellectuals from around the world, the government has refused to drop charges against Alam.

Since early 2020, IPI has recorded 12 cases in which journalists were arrested for reporting on COVID-19 or exposing corruption related to the government's response to the pandemic. In February, cartoonist Ahmed Kabir Kishore, photojournalist Shafiqul Islam Kajol, and writer and journalist Mushtaq Ahmed were arrested under the Digital Security Act for criticizing the government. Ahmed died in prison later that month, after contracting COVID-19. The two other journalists face life imprisonment if found guilty.

Most recently, in May this year, Rozina Islam, a well-known investigative journalist of Prothom Alo, one of the country's biggest Bengali language newspapers, was arrested while she was at the Ministry of Health to gather information about reports of suspected corruption. Islam was charged under the Official Secrets Act with the theft and photographing of sensitive state documents. The journalist was granted

bail after three days in detention. Islam's arrest led to a major backlash within the country and condemnation by the international community, prompting the Foreign Minister to say the arrest was regrettable.²⁰

India

Press freedom in India has declined rapidly over the past few years²¹. The mainstream media is under pressure, with the government adopting various tactics to influence media companies and journalists²². Editors in the country are walking a tightrope in a bid to maintain their independence. Those who do not fall in line face the wrath of the government, are denied advertising revenue²³ and labelled anti-national. Journalists who are critical of the government are also attacked on social media by both leaders and supporters of the BJP²⁴. There have also been allegations that the government carried out unauthorized surveillance on journalists because of their reporting²⁵.

Since 2014, as many as 31 journalists have been killed in the country and all these cases have so far remained unsolved, resulting in growing impunity for crimes against journalists²⁶. Most were killed in targeted attacks and had been working for regional language media outlets that are highly influential but are also under severe pressure from the ruling party.

India accounts for the highest number of pandemic-related press freedom violations in the region. As many as 60 journalists²⁷ have been arrested or charged under various laws, and 23 journalists subjected to verbal and physical attacks. The Indian government has resorted to diverse means to prevent independent media from criticizing its handling of the pandemic²⁸, in a bid to control the public narrative. In March 2020, the government unsuccessfully petitioned the country's Supreme Court to bar the media from publishing information on COVID-19 that had not been cleared by the government. The apex court refused to intervene but directed the media to "refer to and publish" the official version of the developments.

As the pandemic spread rapidly across the country, the government and its law enforcement machinery resorted to the use of an archaic sedition law to silence critical journalists. At least eight senior journalists and editors have been charged with sedition. In a recent judgement, the Supreme Court ruled that the government could not pursue sedition charges against journalists merely for their criticism of authorities²⁹. Subsequently, the Supreme Court directed that



no journalist should be arrested for criticising the government³⁰. However, this has not prevented the police from filing charges against journalists for their reporting and social media posts under other oppressive laws like the Unlawful Activities Prevention Act and the Disaster Management Act.

Several journalists were arrested in January 2021 for reporting on the ongoing farmers' protests in India, and cases were filed against well-known editors for their social media posts and reports.

In February this year, the Indian government announced the controversial Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. Part III of the rules pertains to digital news publishers and publishers of online curated content. The new rules introduce a three-tier grievance redressal mechanism to be overseen by a committee of government officials. At the first tier, publishers are required to appoint a Grievance Redressal Officer to respond to complaints within 15 days. The second tier provides for self-regulatory bodies to be appointed by the news organizations themselves, following the guidelines of the government on the structure of such bodies. Finally, the third tier comprises an oversight body set up by the Ministry of Information and Broadcasting to hear

appeals to decisions made at the second and third tiers. The oversight body would have the power to order the deletion or modification of content in certain cases. In addition to that, the rules grant "emergency powers" to the government oversight body to block online content when "no delay is acceptable". In those circumstances, the blocking of content could be ordered without requiring the publisher of the information to first be heard.

Digital media publications have filed petitions in court against the new rules and have accused the government of circumventing parliament to implement them.

Following the second wave of the pandemic in the country, which led to severe shortages of oxygen, the government attempted to suppress criticism of its response. In April, it asked social media networks to take down posts that were critical of the government and political leaders, which led to the removal of dozens of tweets.

Also in April, the government of the northern state of Uttar Pradesh ordered officials to apply the National Security Act and seize the property of individuals who spread "rumours" on social media claiming that hospitals were struggling to maintain their oxygen

supplies. The order came as media reports highlighted oxygen shortages and the rising number of deaths in the state. However, India's Supreme Court intervened, ruling that a clampdown on COVID-19 information would amount to contempt of court.

In May this year, the Election Commission of India appealed to the Supreme Court, seeking a direction to the media to refrain from reporting oral observations made by courts. The media had previously reported that in response to a Public Interest Litigation about the preparedness of the southern state of Tamil Nadu to tackle COVID-19 infections, a High Court had observed that the Election Commission was singularly responsible for the prevalent situation, as it had allowed the elections to the state legislative assembly to be held amid the pandemic. The Supreme Court rejected the application, saying the media could not be stopped from reporting on oral remarks of judges.

While India's apex and other courts have ruled in favour of freedom of expression, there has been no reprieve for journalists and media organizations in Indian-administered Kashmir. They have faced severe restrictions, legal harassment and arrests³¹ since August 2019, when India stripped the state of Jammu & Kashmir of its autonomous status, splitting it into two union territories directly administered by the federal government. The Internet, which was blocked when the government announced its decision, has since been restored in Kashmir. Media organizations critical of the government have been denied advertisements³², starving them of a substantial source of revenue and delivering a crippling blow to press freedom.

Nepal

Journalists in Nepal feel threatened by the criminal code implemented in 2018, which restricts press freedom³³ and imposes a heavy penalty for violations³⁴. Criticizing the President or members of parliament is a criminal offence, while the code prohibits publishing private information, including of officials, imposes a ban on recording conversations without permission and requires photographers to obtain permits in order to take pictures, and to sell or publish them. Authorities can detain suspects for up to 40 days while investigating criminal charges.

Meanwhile, the government has proposed four new laws: the Advertisement Regulation Bill, the IT Bill, the Nepal Media Council Bill, and the Public Service Broadcasting Bill, which according to journalists and media outlets, would stifle press freedom³⁵. The provisions in the bills include steep financial penalties and long prison sentences for anyone seen to be criticising the government. The Media Council Bill seeks to put an end to the independence of the Council by having all members appointed by the President. The IT Bill would require all social network companies operating within the country to register with the Department of Information Technology. Additionally, the bill would ban any content on social media deemed to have a detrimental effect on Nepal's "national unity". The term has not been clearly defined, leaving the door open for misuse by government and spurious claims.

According to the 2019 Annual Report of Freedom Forum Nepal, as many as 111 cases of press freedom violations involving 163 journalists were recorded that year, the highest number over a seven-year period³⁶.

Pakistan

In Pakistan, the mainstream media is under serious threat, as radical political actors constantly attack media outlets and journalists. The armed forces have also played a key role in stifling press freedom in the country³⁷. Journalists have been slapped with lawsuits, including on charges of treason³⁸. Cases of abduction, physical attacks and torture of journalists have become commonplace³⁹. Equally disturbing is the nationwide intimidation of newspaper distributors, apparently intended to disrupt the circulation of newspapers like Dawn⁴⁰, Jang and The News. Reports indicate that acts of intimidation occur daily in large metropolitan residential areas and in medium-sized towns, particularly in military cantonments and militaryadministrated residential societies housing large civilian populations. Similar tactics are being deployed against cable television service providers affiliated to the Electronic Media Regulatory Authority. News channels such as Geo and Dawn News are frequently blocked from reaching audiences⁴¹.

Journalists and media organizations have been protesting against a proposed ordinance to regulate the media⁴². The government proposes to repeal all existing media laws and replace them with the ordinance, which would create a new media regulatory body, the Pakistan Media Development Authority (PMDA) headed by a government official. While the PMDA would have the authority to shut down media organizations, the ordinance also provides for the establishment of media tribunals with the power to



impose punishments of up to three years' imprisonment and a financial penalty on content producers for violating provisions in the ordinance. In an open letter to Prime Minister Imran Khan, IPI expressed grave concerns over the proposed ordinance, in particular the lack of independence of the regulatory body. "While your government's decision to appoint a committee to discuss the Ordinance with stakeholders is a positive move, we believe that the Ordinance itself should be withdrawn immediately, as there are sufficient mechanisms and processes available in the country to regulate the media and the PDMA will have a negative impact on the freedom of a vibrant and responsible media in Pakistan", IPI said in the letter⁴³.

Meanwhile, in a positive development, on May 28 in the Sindh province the state assembly passed the "Sindh Protection of Journalists and Other Media Practitioners Bill 2021"44. As per the new law, the provincial government would be required to protect the right to lie, safety and security of every journalist, which has been provided under Article 9 of the country's constitution. The bill also provides for setting up a "Commission for Protection of Journalists and Other Media Workers" to proactively protect journalists. However, the provincial governor returned the Bill to the assembly for without approving it. The assembly once again passed the bill and now it does

not require the consent of the governor. Civil society organizations, like the Pakistan Press Foundation, are working with the provincial government to draft the rules and regulations for the implementation of the Bill.

In 2019, at least 60 journalists were charged with terrorism in 35 cases, with 50 journalists being booked in the Sindh province alone. Some court decisions have set a worrying precedent "where courts toe the line of an increasingly authoritarian state apparatus"45.

In December that year, protestors laid siege to the Islamabad office of the English-language daily Dawn, with similar protests following outside the Karachi Press Club and Dawn's offices in that city. Demonstrators carried banners branding Dawn CEO Hamid Haroon and Editor Zaffar Abbas as "traitors" and demanding that they be hanged. Protests against Dawn came after ruling party politicians criticized the newspaper on social media for publishing a report relating to a November attack in London⁴⁶.

Earlier in 2019, Cyril Almeida, an Assistant Editor of Dawn was charged with treason for publishing an interview of former prime minister Nawaz Sharif and Almeida's name was for a time put on the Exit Control List, barring him from leaving the country⁴⁷. In June that year, Almeida received the 2019 IPI Press Freedom

Hero award at the 68th World Congress in Geneva, and in October, he resigned from Dawn and has taken a break from the profession.

In February 2021, protestors targeted the offices of the Jang-Geo Group, attacking several journalists and destroying property.

Sri Lanka

The return to power of the Rajapaksa family in the 2019 presidential election in Sri Lanka had sparked concerns amongst media outlets and journalists over the future of media freedom in the country⁴⁸. President Gotabaya Rajapaksa has given assurances that his government will uphold press freedom⁴⁹, but fears remain. In 2011, while current Prime Minister Mahinda Rajapaksa was president, several news websites were blocked⁵⁰ by the country's regulatory commission for 'publishing reports that amounted to character assassination of the president and senior ministers. Media groups are apprehensive that such restrictions may once again be imposed on news outlets that are critical of the government.

Journalists belonging to Tamil language media outlets in the eastern district of Batticaloa received death threats in January 2020⁵¹. In the North and East of the

country too, several Tamil language journalists have been harassed and arrested by security forces. Many Tamil journalists have reported that they are under surveillance by the police, prevented from travelling for work and their homes visited by unidentified persons seeking information about them.

The intimidation and detention of Tamil language journalists increased significantly ahead of the UN Human Rights Council resolution in March this year, establishing an accountability process to collect, analyse and preserve evidence of international crimes committed in Sri Lanka for use in future prosecutions⁵². The BBC Tamil language service correspondent lodged a complaint with the police in March, alleging that unidentified persons were looking for information about him in the capital Colombo and later followed him during his visit to the northern part of the country⁵³.

On March 29, two journalists working for a YouTube channel 'Tube Tamil' Mugunthan Divanya, a woman reporter, and her male colleague Wimal Raj were arrested by the Terrorist Investigation Division of the Sri Lanka Police and have since been in detention, charged under the Prevention of Terrorism (Proscription of the Liberation Tigers of Tamil Eelam) Regulations No. 1 of 2011. A police spokesperson said that the two journalists had been promoting the cause of the separatist Liberation Tigers of Tamil Eelam.



Recommendations

For the High-Level Political Forum on Sustainable Development. The HLPF should:

1. Take serious note of the stifling press freedom environment and attacks on journalists in South Asian countries.

The state of press freedom and the increasing threat to the safety of journalists are major impediments to attaining not just SDG 16 but all 17 Sustainable Development Goals. Without the informed participation of citizens, countries cannot fulfil their commitment to achieving SDGs. Governments in South Asia are deterring public debate and inhibiting freedom of expression, thus undermining human rights and the International Covenant on Civil and Political Rights. A lively public debate and the empowerment of citizens through access to information are essential to achieving the SDGs.

2. Engage with South Asian governments through diplomatic channels to ensure the safety of journalists and press freedom.

As governments in South Asian countries are sensitive to criticism by the international community, HLPF members should use diplomatic channels to convey their concerns over curbs on press freedom and threats to journalists to the respective governments.

3. Urge governments in South Asia to end the arrest, intimidation, and legal and financial harassment of journalists and independent media organizations.

The HLPF should urge governments to stop the intimidation and arrests of journalists for their reporting and end the legal harassment of independent media organizations. They should call for all cases filed against journalists and media outlets to be dropped immediately. Independent media organizations should not be denied advertisement revenue by governments.

4. Exhort governments in South Asia to speedily investigate crimes against journalists.

Most murders of journalists in the region have remained unsolved. Journalists and editors have been calling on their governments to expedite

investigations into these cases and bring perpetrators to justice. HLPF members should use diplomatic channels to encourage governments to ensure that there is no impunity for crimes against journalists.

5. Demand the repeal of draconian laws that suppress press freedom and the ability of journalists to report independently.

Several draconian laws and measures put in place by South Asian governments have forced journalists to resort to self-censorship. This has led to the infringement of the right to freedom of expression. The Digital Security Act in Bangladesh, the sedition laws and the new Information Technology rules in India, Pakistan's proposed ordinance to create a new media regulatory body, the new laws proposed in Nepal and the application of anti-terrorism laws in Sri Lanka are all having a chilling effect on media freedom. The HLPF should call on the governments to repeal these laws and hold discussions with all relevant stakeholders before enacting new legislation.

6. Urge governments in South Asia to release detained journalists, drop all charges brought against journalists for their reporting on corruption in government and inadequate response to the COVID-19 pandemic.

Since the onset of the pandemic, governments in South Asia have attempted to control the public narrative, clamping down on criticism of their policies in dealing with the health crisis. Several journalists have been arrested and cases filed against many more for their critical reporting and for exposing corruption in government departments relating to the procurement of equipment and the provision of other services to citizens. The HLPF should call on the governments to release all detained journalists, drop charges against journalists and media organizations for their reporting on COVID-19, and stop the harassment of journalists for their social media posts.

7. Support journalists' bodies, press freedom groups and civil society organizations in their campaign to promote media freedom and the safety of journalists.

Journalists' bodies and press freedom organizations are key stakeholders in these countries, who are constantly campaigning to promote press freedom and the safety of journalists. Many of these organizations also provide legal support to journalists, who do not have the resources to fight cases against them in the courts. The HLPF members should support such organizations through their diplomatic missions and development aid mechanisms.

8. Enable implementation of the national legislations and mechanisms for press freedom and safety of journalists.

The UN Plan of Action on the Safety of Journalists and the Issue of Impunity adopted in 2012 urges Member States to develop legislation and mechanisms guaranteeing freedom of expression and information, including, for example, requirements that States effectively investigate and prosecute crimes against freedom of expression. The HLPF members should support development and implementation of such national mechanisms for the safety of journalists through diplomatic and capacity building measures, in collaboration with UNESCO and civil society organizations.

Notes

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