

October 4, 2023

Journalism Cannot Be Prosecuted As 'Terrorism'.

By: Digipub and other press groups

"Subjecting journalists to a concentrated criminal process because the government disapproves of their coverage of national and international affairs is an attempt to chill the press by threat of reprisal – the very ingredient you identified as a threat to freedom."

Dear Chief Justice Chandrachud,

We write this letter as a voluntary and free coalition of organisations that represent the free press and who are committed to upholding the values of freedom of speech and expression enshrined in our Constitution.

This letter is an earnest plea to the sentinel on the *qui vive*, weather-beaten as that phrase may have become – an appeal from one institution that is essential for the exercise of freedom and democracy in India, to one that is Supreme and is sworn to protect the Constitution that enshrines those freedoms.

We write this letter conscious of the fact that it is addressed not just to the Chief Justice of India but to an incumbent who has said, within the court and outside, that the “press has a duty to speak truth to power and present citizens with hard facts enabling them to make choices that propel democracy in the right direction” and that India's freedoms will be safe as long as journalists can play this role “without being chilled by a threat of reprisal.”

The fact is that today, a large section of journalists in India finds itself working under the threat of reprisal. And it is imperative that the Judiciary confronts Power with a fundamental Truth – that there is a Constitution to which we are all answerable.

On October 3, 2023, the Special Cell of the Delhi Police raided the homes of 46 journalists, editors, writers, and professionals seemingly connected in one way or another to the online news portal, *NewsClick*. The raids led to the arrest of two persons under various sections of the Unlawful Activities (Prevention) Act, and the seizure of mobile phones and computers without ensuring the integrity of their data – a basic protocol that is essential to due process. The invocation of UAPA is especially chilling. Journalism cannot be prosecuted as 'terrorism'. Enough instances in history abound to tell us where that eventually goes.

During your time at the Supreme Court, you have seen how on numerous occasions, the country's investigating agencies have been misused and weaponised against the Press. Sedition and terrorism cases have been filed against editors and reporters, and multiple, sequential and/or frivolous FIRs have been used as an instrument of harassment against journalists.

The purpose of addressing this letter to you is not to bypass or circumvent the process and procedure established by law. But when journalists are summoned and their devices seized in the name of investigation, there is an inherent malice in the process that must be checked.

Just as the police are obliged by the Constitution to state the grounds of arrest, it must equally be a precondition to questioning. In its absence, as we have seen in the *NewsClick* case, vague assertions about the investigation of some unspecified offence have become the grounds for questioning journalists about their coverage of, *inter alia*, the farmers' movement, the government's handling of the Covid pandemic and the protest against the Citizenship (Amendment) Act.

We do not say that journalists are above the law. We are not and do not wish to be. However, intimidation of the media affects the democratic fabric of society. And subjecting journalists to a concentrated criminal process because the government disapproves of their coverage of national and international affairs is an attempt to chill the press by threat of reprisal – the very ingredient you identified as a threat to freedom.

Wide powers of investigation are given to the state on the assumption of bonafides on the part of its agencies. Equally, a wide immunity against coercion must be read into the constitutional provisions of free speech, and methods must be devised against police overreach – especially given the repeated misuse of these powers. Far too much is at stake to test every case at the end of a trial which can last years.

Journalists arrested under UAPA can end up spending months, if not years, behind bars before they are even granted bail. We already have the case of Siddique Kappan before us; he was incarcerated for two years and four months before finally securing bail. The tragic death of Father Stan Swamy in custody is a reminder of how indifferent the authorities seem to have become towards human life under the guise of combating ‘terrorism’.

Our fear is that state actions against the media have been taken beyond measure, and should they be allowed to continue in the direction they are headed, it may be too late for corrective or remedial steps. It is, therefore, our collective view that the Higher Judiciary must now intervene to put an end to the increasingly repressive use of investigating agencies against the media.

Specifically, we would be obliged if the courts would consider:

1. The framing of norms to discourage the seizure of journalists’ phones and laptops on a whim, as has been the case. The Supreme Court is seized of this issue in a writ petition filed by noted academics – *Ram Ramaswamy & Ors. v. Union of India*, W.P. (Crl) No. 138/2021 – and has not been satisfied by the affidavits filed by the Union of India in these proceedings. While the wheels of justice have been turning, the State has continued to act with impunity. The seizure of devices compromises our professional work. As the Supreme Court itself has observed (in the *Pegasus* matter), the protection of sources is an “important and necessary corollary” of freedom of media. But laptops and phones are no longer just official tools used to conduct official business. They have fundamentally become an extension of one’s self. These devices are integrated into our entire lives and have vital personal information contained in them – from communication to photographs to conversations with family and friends. There is no reason or justification that investigating agencies should have access to such material.
2. Evolving guidelines for the interrogation of journalists and for seizures from them, to ensure that these are not undertaken as fishing expeditions with no bearing to an actual offence.
3. Finding ways to ensure the accountability of state agencies and individual officers who are found overstepping the law or wilfully misleading courts with vague and open-ended investigations against journalists for their journalistic work.

We, the undersigned, write this letter to your lordship after considerable thought and contemplation.

There have been many instances over the past few years when assaults on the free press by the State have required judicial intervention, and we continue to pursue such cases. But the developments over the past 24 hours have left us no option but to appeal to your good conscience to take cognisance and intervene before it is too late and an autocratic police state becomes the norm.

As journalists and news professionals, we are always ready and willing to cooperate with any bona fide investigation. However, ad hoc, sweeping seizures and interrogations surely cannot be considered acceptable in any democratic country, let alone one that has begun advertising itself as the ‘mother of democracy’.

Sincerely,

Digipub News India Foundation

Indian Women’s Press Corps

Press Club of India, New Delhi

Foundation for Media Professionals

Network of Women in Media, India

Chandigarh Press Club

National Alliance of Journalists

Delhi Union of Journalists

Kerala Union of Working Journalists

Brihanmumbai Union of Journalists

Free Speech Collective, Mumbai

Mumbai Press Club

Arunachal Pradesh Union of Working Journalists

Press Association

Guwahati Press Club