

NEPAL

THE LEGAL STRANGLEHOLD

Nepal witnessed a stable government under the premiership of KP Sharma Oli, though the same cannot be said for freedom of the press. The government, buoyed by the two-third majority in the parliament, has largely ignored freedom of the press and unnecessarily criticized the media and journalists to tarnish the public image of the media. Alongside that, it has also introduced laws or drafts of laws that could eventually degrade the state of press freedom in the country.

Prime Minister KP Sharma Oli heads a government led by the Nepal Communist Party (NCP) a party formed after unification of the erstwhile Communist Party of Nepal (United Marxist Leninist) and the Communist Party of Nepal (Maoist-Centre). The party has a comfortable majority in the parliament, and thereby controls the law-making process at a crucial juncture when the country needs a slew of new laws and regulations. Given the often opaque and non-consultative process that is followed to draft legislation, the new laws or drafts include provisions contrary to global standards of press freedom, freedom of the expression and freedom of the internet.

The federal structure means that the provincial governments are responsible for making provincial laws, and most of the drafts relating to the media put forth in provincial assemblies have restrictive provisions. The provinces and local bodies are entrusted with some responsibilities regarding regulation of local media, which they seem to have interpreted as the right to control the media.

For journalists, the year was a continuum of threats and violence. Since May 4, 2018, the Federation of Nepali Journalists (FNJ) recorded 58 instances of press freedom violations, the majority of them being attacks, threats, misconduct and arrests. These occurred at a time when impunity for crimes against journalists is a long-standing issue.

FEAR OF RESTRICTIONS

Nepal's new Criminal Codes Act 2017 and Civil Codes Act 2017 became law on August 17, 2018, replacing 15 laws including 55-year-old civil and criminal laws. The new laws aim to amend and consolidate all existing criminal laws and civil laws into one document. Some provisions in the Criminal Codes Act 2017 have been criticized for restricting freedom of expression and press freedom.

IFJ affiliates FNJ and the Nepal Press Union (NPU), as well as other media stakeholders, expressed concern and demanded amendments to some of the provisions. The FNJ ran a protest campaign, including street protests and demonstrations and succeeded in forming a task force to review the laws. However, the report of the taskforce was ambiguous and did not bring any further action on the laws.

The provisions of the laws relating to privacy and defamation contradict 'complete press freedom' and other rights of the citizens guaranteed by the Constitution of Nepal. The major concerns over the Criminal Codes Act 2017 are over the ambiguity in provisions that leaves enough scope of misuse.

The provisions that were highlighted as problematic are



Sections 293 to 308, relating to privacy and defamation. If proven guilty, the accused faces up to three years of imprisonment.

- Section 293 prohibits listening to or recording conversations between two or more people without consent or authority. Violations are punishable by up to two years' imprisonment and/or a fine of Rs. 20,000 (USD 200). Journalists say this provision will kill investigative journalism.
- Section 294 prohibits publicizing private information of others found during professional works without consent or authority. Violations are punishable by up to one year in prison and/or Rs. 10,000 (USD 100) fine.
- Section 295 prohibits taking photographs without consent, and violations are punishable by up to two years in prison. Section 296 prohibits giving away, selling or publication of photos for commercial purpose without the consent of the subject in the photographs.
- Section 298 prohibits receiving or sending unauthorized information or messages through an electronic medium and publishing them.



Nepali policemen and activists of the Tarun Dal, the youth wing of Nepali Congress Party, clash during a demonstration against the government in Kathmandu on July 21, 2018.

CREDIT: PRAKASH MATHEMA / AFP

ON JULY 21, 2018, FIVE JOURNALISTS WERE ATTACKED BY POLICE OFFICERS WHILE THEY WERE COVERING CLASHES BETWEEN THE POLICE AND DEMONSTRATORS NEAR THE PARLIAMENT IN KATHMANDU.

- Section 305 prohibits slander; Section 306 prohibits libel, including satire. Section 307 states that slander and libel are punishable by up to two years in prison, and slander and libel through electronic or mass media are punishable by an additional year.

Govinda Acharya, the FNJ president, said: “More than 80 journalists faced criminal cases and harassment due to one provision in the Electronic Transaction Act for their news. The new Act has dozens of such provisions that criminalizes written or spoken expression, and journalists face imprisonment up to three years for merely writing news. This is against international standards and principles of press freedom; as well as the Constitution of Nepal.”

Badri Sigdel, the NPU president, said: “The NPU condemns the Act with provisions that restrict journalists to report, write and take photographs. Such restrictions are against democratic norms and values; and point towards authoritarianism. The NPU demands immediate amendment of the unacceptable provisions of the law.”

FNJ’s former president Dharmendra Jha says: “The Act,

if implemented as it is, will affect journalism as some of the new provisions in the Act are restrictive to freedom of expression and press freedom.”

Another former president Shiva Gaunle says: “There is a problem with the provisions on privacy and defamation. Despite being good overall, the problem is that the Act does not differentiate between the private and public life of people. Journalists should have the right to report and write about the public life of people.”

FNJ Secretary Ram Prasad Dahal says: “Nepali journalists will be working with a sword hanging over their head. The FNJ is very concerned and we will struggle for the rights of journalists to ensure people’s rights to information is fulfilled.”

Bikash Karki, the chairman of the Photojournalists’ Club, Nepal says: “The provisions related to consent on photography can be misused to harass photojournalists and media. The threat of misuse of the provisions will not allow photojournalists to work in the way in which we have worked in the past.”



Nepali Prime Minister KP Sharma Oli, whose government holds a two-third majority, has introduced laws or drafts of laws that could eventually degrade the state of press freedom in Nepal. Oli observes the royal crown of Nepal's former monarchs on October 15, 2018, as it is put up for display in the Narayanhiti Museum for the first time since Nepal abolished the monarchy in 2008. CREDIT: PRAKASH MATHEMA / AFP

WRATH ON SOCIAL MEDIA

A new Information and Technology (IT) Bill that was tabled in the parliament on February 20, 2019, provided a peek into the government's willingness to control freedom of expression. The draft states that all social networking sites need to be registered in Nepal to be able to operate otherwise the government could potentially block them. The draft also states that an 'improper' post – such as defamation or violating the country's sovereignty – on social media is an offence carrying a punishment of up to five years in jail and a fine of Rs.1.5 million (USD 10,000).

The government has reiterated that such provisions are necessary to ensure taxation on advertising on social networks, and to protect data exploitation. However, there is widespread concern as it seems to be an attempt by the government to justify control over the websites. The catch is that if the social media platforms are registered in Nepal, they will be liable to follow the laws of the land, and the IT Bill's Clause 94 states that a government department will be able to order them to remove content for six types of violations, mostly associated with defamation and privacy.

Earlier on February 11, the government tabled the Federal Civil Service Bill with provisions restricting civil servants from criticizing the government on media and social media. It also restricts them from providing information to the media. Clause 75 of the bill states: "No civil employee shall, on his/her real or pseudo name or anonymity, publish any feature article, provide any news to the press, broadcast a speech through radio or television etc, make any public speech or publish any statement via broadcast or social media in such a manner as to be contrary to the policies of the Government of Nepal or to undermine mutual relationship between the Government of Nepal and the people or the relationship with any foreign country."

The bill was the continuation of a directive issued by the Ministry of Education, Science and Technology. The directive issued on October 2018 bars all staff and teachers from criticizing the government and political parties or posting comments or liking posts or sharing posts to that effect on social media. The Social Media and Mobile Phone Use Directive 2018 applies to civil servants under the Ministry and its subordinated departments, school and university teachers both from private and public institutions.

Freedom of expression on the internet is clearly a big issue for the government as PM Oli in multiple instances had asked his cadres to unite to defend the government on social media. The result of this was seen when a popular folk singer, Pashupati Sharma, released a new song that made satirical references to political leaders with words roughly translating to 'loot whatever you can, since that's allowed only in Nepal'. The youth wing of the ruling party issued a statement against the song and the singer was forced to pull it down from YouTube.

Student leaders from the ruling party harassed and threatened journalists of online news portal hamrakura.com over a news report about a Member of Parliament (MP) and the chairperson of the students union on June 2018. Seven people led by a central committee member of the All Nepal National Free Students' Union (ANNFSU), entered the media office on the evening and demanded the removal of the news related to MP and ANNFSU chairperson Nabina Lama.

Ironically, this came at a time when the government was asking all government offices to harness the power of the social media. In August 2018, the Prime Minister's Office released the Procedure on Use of Social Networking Sites by Government Agencies to strengthen communication between the authorities and people, share information about

MINISTER BASKOTA AND PM OLI, AS WELL AS OTHERS IN THE GOVERNMENT, HAVE REPEATEDLY CLAIMED THAT THE GOVERNMENT HAS NO INTENTION TO MUZZLE THE PRESS FREEDOM OR FREEDOM OF EXPRESSION. BUT EVERY TIME THESE STATEMENTS WERE MADE, THEY HAVE CRITICIZED 'EVIL' PRACTICES OF JOURNALISM.

government activities and address public grievances.

Another bill of concern is the Bill on Management of Advertisement Regulation 2018 which was also tabled in parliament. Some provisions of the bill are ambiguous and can curtail freedom of expression. For instance, clause 5 of the bill prohibits the promotion and encouragement of a product and service prone to obscenity without properly defining what constitutes obscenity. The clause also contains provisions on defamation and contempt of court and other clauses criminalize false advertising.

RESTRICTIVE PROVINCIAL BILLS

Media laws are being drafted in provinces across the country, but all of the drafts are restrictive to press freedom. Some bills have provisions to criminalize media offences including provisions for jailing journalists, some others have provisions contradicting the constitutional guarantee of free press.

Sensing the urgency to advocate for press freedom, the FNJ constituted a high-level mission that travelled across the country to meet with provincial governments, advising them not to contravene press freedom. Media policy watchdogs such as the Center for Media Research – Nepal's Media Policy Hub and Freedom Forum Nepal stated that the common trend is to put in some kind of provisions to control the media. Such bills include Integrated Communication Bill by Province 2, Media Bill of Province 3, Gandaki Province's Mass Communication Policy, and Province 5's Broadcasting Bill.

CRITICISM OF THE PRIVATE PRESS

On November 11, 2019, the government started withholding the decisions of the meetings of the Council of Ministers after some of its decisions were met with public outrage and were challenged in the Supreme Court. The government spokesperson and Minister for Communication and Information Technology Gokul Prasad Baskota on November 11 told the media that "the decisions will be known in due

time" and didn't read out the decisions, thereby breaking a long-standing tradition of addressing the media.

The Himalayan Times daily in its editorial titled 'why so secretive' said: "Keeping the Cabinet decisions secret [is] clear indication that the government is moving towards tightening the noose on the media."

Minister Baskota since then started having a weekly press conference at his office and he has used the platform not only to disclose selected decisions of the Council of Ministers but also to lambast private media issuing threats to them and preaching journalism. For example, on November 30, 2018, he warned media owners and journalists to think about their investment and their jobs while writing news stories that are unfavourable to the government. He said media should not forget that the government is the main source of news as well as advertising revenue.

It is worth noting that Baskota is the minister accused of directing the State-owned Nepal Television (NTV) to stop a long-running talk show by journalist Raju Thapa after Thapa asked him tough questions in June, 2018. The programme which had been on air for the past 12 years was abruptly cancelled after Minister Baskota's interview where he was quizzed about his property. Thapa alleged that the programme was cancelled at the direct intervention of the minister, which the latter denied.

Minister Baskota and PM Oli, as well as others in the government, have repeatedly claimed that the government has no intention to muzzle the press freedom or freedom of expression. But every time these statements were made, they have criticized 'evil' practices of journalism. For example, PM Oli, during a panel discussion in a session on "Shaping the Future of Democracy" at the 49th meeting of the World Economic Forum in Davos, said he had a 'normal' relationship with the press as in any democracy and claimed that the Nepali press was completely free. However, he also added that people wanted to see a responsible press and said: "In the name of press freedom, if somebody gives false news and hurts others and damages another's family life, prestige and business, then it is not good."



Minister for Communication and Information Technology, Minister Baskota, was accused of directing Nepal Television (NTV) to stop a long-running talk show after host Raju Thapa asked tough questions of the minister in June 2018. CREDIT: SCREENSHOT



Indian Prime Minister Narendra Modi arrives at Kathmandu airport on May 11, 2018 for a two-day visit aiming to reset strained relations between India and its small northern neighbour. Nepal journalists from private media were not allowed to cover the Indian PM's visit to Mustang or the program in the office of the president in Kathmandu. CREDIT: ASHOK DULAL / AFP



VIOLENCE ON JOURNALISTS

The FNJ's press freedom violation database recorded 58 instances since May 4, 2018. A murder and a disappearance of journalist took place, but both incidents were not related to their work.

Radio journalist Manohar Dhakal, 42, was found lying dead by the roadside in Makwanpur district on January 9. Four people were arrested in connection with the murder, two of whom have plead guilty of murdering Dhakal when he questioned their presence in the secluded area near the forest while they were smoking marijuana.

Another radio journalist Tej Bahadur (Teju) Khadka went missing on August 25, 2018 while returning from a remote pilgrimage site in Bajura district. Teams mobilized by the army, FNJ and local journalist groups failed to locate him and his whereabouts remains unknown.

According to the FNJ database, at least 22 journalists were subjected to misconduct or harassment, 21 journalists were attacked, and 14 others threatened for their work. Five media houses suffered seizure of their assets.

Nepali journalists across the country faced attacks and threats, especially during demonstrations. On July 21, 2018 five journalists were attacked by police officers while they were covering clashes between the police and demonstrators near the parliament in Kathmandu. On July 18, 2018 LB Devkota of *Kantipur* daily and Prakash Upadhyay of AP1 TV sustained minor injuries after an attack by the police while they were covering the clashes between police and demonstrators in Jumla, Karnali. On July 22, 2018 journalist Bidur Katuwal, the joint secretary of FNJ Udayapur district, was threatened by Baldev Chaudhary, the mayor of Triyuga Municipality, Devi Kumar Chaudhary, the vice-mayor, and Provincial Assembly member Sunita Chaudhary over a report. Similarly, journalists Chhabilal Tiwari and Om Prakash Gayal were attacked in Parbat on August 9, 2018; and Radheshyam

Biswokarma, Salman Khan and Deepak Ghimire were attacked while reporting in Rupandehi on August 5, 2018. A dozen cadres of ruling NCP attacked journalist Lokendra Khanal of *Nagarik* daily in Rukum district in west Nepal on November 9, 2018 over news reports.

Several journalists were arrested during the period under review, mostly under the Clause 47 of the Electronic Transaction Act 2008.

MISUSE OF CYBER-CRIME LAW

This clause that criminalizes anything published on the internet is increasingly being used to harass journalists.

Examples of such misuse include the arrest of Raju Basnet, the editor of a weekly newspaper and an online portal. The editor-



Journalist Dinesh Giri was attacked by three people over a news report in June in eastern Nepal. CREDIT: NEPAL PRESS UNION

NEPALI JOURNALISTS FROM THE PRIVATE MEDIA WERE NOT ALLOWED TO COVER THE VISIT OF INDIAN PM NARENDRA MODI TO MUSTANG IN MAY 2018 OR THE PROGRAM IN THE OFFICE OF THE PRESIDENT IN KATHMANDU, ALTHOUGH INDIAN AND OTHER INTERNATIONAL PRESS WERE ALLOWED TO COVER THESE EVENTS.

in-chief of *Khojtalash* weekly was arrested on September 10, 2018 from his home at Godavari Municipality, Lalitpur, in the Kathmandu Valley under a court order reportedly over a news report about pressure being exerted by lawmakers to illegally sell government-owned factory land. The story in question was originally published in another weekly, *Drishti*, on September 4. Khojtalash.com republished the story under a different headline on September 6. Basnet, who was released after four days, said: "I believe I was detained due to my political beliefs, I strongly believe in democratic ideology. Because they did not take action against the weekly which originally published the news, the complaint was just to harass me. The police did not allow me to talk to the media even after the court asked for my release."

Another case is that of Gopal Chand, the editor of an online news portal postpati.com, who was arrested on November 27, 2018 by the Central Intelligence Bureau (CIB) of Nepal Police after portal published a news report that a local resident of Chitwan district attempted to attack former Prime Minister Pushpa Kamal Dahal 'Prachanda', also co-chairman of the ruling NCP. Police accused Chand of spreading false information.

Journalists were also barred from reporting news of programmes organized by the government on various occasions. Nepali journalists from the private media were not allowed to cover the visit of Indian PM Narendra Modi to Mustang in May 2018 or the program in the office of the president in Kathmandu, although Indian and other international press were allowed to cover these events. In November, journalists were also barred from covering the meeting of parliamentary committees during crucial discussions.

One more instance of harassment occurred on April 15, when Arjun Giri, editor of the weekly Tandav and tandavnews.com, was arrested in Pokhara, on charges of publishing news about alleged fraud committed by a businessman, Bipendra Batas. The latter sought registration information from the Press Council of Nepal (PCN) which officially wrote to him saying that the news portal was not listed as media. Batas then approached the Central Investigation Bureau of the Nepal Police, which got a court order to arrest Giri. After his arrest, it turned out that the PCN had provided incorrect information and that Giri should not be prosecuted under the law. Giri was released on the first day under FNJ's protection but was kept handcuffed in custody for two more days until the Kathmandu District Court on April 18 ordered his release on ordinary bail. Some believe that Batas achieved his objective of harassing Giri, by subjecting him to three days in police custody.

CONTINUING IMPUNITY

Impunity and self-censorship are two issues that continue to impede free expression in the Nepali media community. According to the FNJ records, out of 36 journalists killed since 1996, only six cases went to prosecution.

Trishna Acharya, the daughter of murdered journalist Dev D Kaudinya told the Freedom Forum: "The transitional justice mechanisms established for justice to the conflict victims have done nothing. Mere distribution of money does not ensure justice. We want to know why our father was killed

and who did it. I just want to ask the Commissions - either just kill the victim families or don't delay justice and further victimize. My father died once but we are dying every day to know the truth."

THE MINIMUM WAGE FIASCO

The level of threat and harassment of journalists and the impunity to perpetrators, has led to a situation where journalists, especially those outside Kathmandu, find it increasingly difficult to report on critical issues. In Kathmandu, the biggest media market, corporate interests could be seen playing a role in shaping content.

One such incident concerns the minimum wage of journalists. In September 2018, the government approved 25 percent increase in the minimum wage of the journalists as recommended by the Minimum Wage Fixation Committee. Nepal Media Society (NMS), the association of media owners, called the decision unilateral and refused to implement it, while the government remained adamant in implementing the new wage. A Supreme Court ordered the government to halt implementing the new wage in a widely criticized interim order.

In a circular dated February 1, 2019, the Department of Information and Broadcasting, which issues press accreditation enabling journalists to enter government buildings, made it mandatory for journalists to produce their bank statements to avail the facility and asked media houses to submit a copy of the payroll of all journalists. The biggest newspaper *Kantipur* reported it as a press freedom violation whereas NMS, in a widely carried press statement, said: "Orders and directives that are aimed at controlling the press should be rescinded immediately to avoid any situation of anarchy and conflict in the country." The IFJ-affiliate FNJ has repeatedly urged media houses to implement the new wage.

MORE CHALLENGES AHEAD

The year to come will define the state of press freedom in Nepal. Whereas Nepal's constitution is explicit in mentioning press freedom and other related freedoms, the government has not whole-heartedly accepted these and is trying to exert control over people's opinions, especially dissenting ones. They believe tough regulations are required to control criticism, and they seem to be paving the way for such control by enacting a plethora of laws. The end of the political transition and the establishment of a stable government were thought to be stepping stones towards strengthening press freedom in Nepal, but on the contrary, press freedom appears to have weakened. FNJ President Govinda Acharya said in a press statement on March 29, 2019: "Though the number of press freedom violations has decreased, the trend remains the same. Self-censorship and impunity still reign. The issues of working journalists remain as they were." Alongside, the parliament and provincial assemblies are now looking to enacting laws that aim to control the media. The year ahead will not be easy for independent media, nor for media policy advocacy in the country.