

NEPAL

CREEPING CONTROL

For more than two decades, Nepal's political arena was in turmoil, and this instability was thought to be the key cause of the precarious state of press freedom and violation of journalist's rights. In the last two years, as transitional politics seemingly settled, the media community realised that this was not the case, and that their struggle for the fundamental rights of freedom of expression and journalist's rights is perennial.

In the last two years, the government led by Prime Minister KP Sharma Oli is stable, with a near two-third majority in parliament. Yet, the government has not been up to the mark in upholding principles of democracy in the interests of the media and journalists. The 'shrinking civic space' is a term that is increasingly being used after the government introduced bills with provisions restricting civil liberties; made repeated criticism of the press and civil society; and also demonstrated an utter lack of commitment in addressing long standing issues such as impunity for crimes against journalists.

Nepal's policy-making process can best be described as opaque and non-consultative. Members of parliament most often vote in the interests of their parties rather than on the merits of issues. This makes it easier for the government to introduce bills that include provisions contrary to global standards of press freedom, freedom of expression and freedom of the internet. The Media Council Bill and the Information Technology Management Bill are two such examples of increased state control. The new federal structure means that the provincial as well as local governments are making provincial and local laws, and most of them have restrictive provisions.

From May 2019 to April 2020, available data shows that violations of press freedom continued unabated; there was very little progress in ensuring journalists' rights. According to the IFJ-affiliate Federation of Nepali Journalists (FNJ), the government did not make sufficient effort to protect the safety and independence of the media and rarely prosecuted individuals who attacked journalists across the country.

There was also little or no progress in addressing long standing issues such as justice for slain journalists, self-censorship, online freedom and the implementation of the Working Journalists Act.

QUANTITY AND QUALITY BOOM

Nepal is a small country but the number of media operating across the districts in several languages is comparatively high. There are more than 200 television stations, more than 700 FM radio stations, and more than 7,000 newspapers across the nation. Almost 2,000 online news websites are registered with the government.

The advertising market is worth approximately NRs. 12 billion (approximately USD 100 million) per annum with more than one-third of the pie to newspapers and nearly one-fourth of the total going to television. Radio and online media outlets claim advertisement revenue worth half-a-billion each annually. Although the advertisement chunk to the online media is not very substantial, online media start-ups are flying high, with many new platforms emerging and drawing in established journalists, especially from the print media. The buzz of online media has created a fast-moving media market and journalists are switching jobs more often than ever.



SAFETY OF JOURNALISTS

"The year wasn't a happy one for the journalism sector," begins the press statement of the FNJ's annual review of 2019. The umbrella organisation of journalists noted that although there was a slight decrease in the number of press freedom violations compared to the previous year, the disturbing trend of undermining press freedom and journalists' rights continued from both state and non-state actors. This resulted in a challenging environment for media and for journalists to freely and fearlessly exercise their constitutionally guaranteed right to press freedom.

Since May 2019, FNJ monitoring recorded 45 verified incidents of press freedom violations. Significant violations included arrests (22 incidents), misconduct towards journalists on duty (18 incidents), attacks (17 incidents) and threats (10 incidents). These incidents led to a situation where journalists

Amidst the nation-wide lockdown imposed to prevent the spread of Covid-19, mules carry empty gas cylinders near Namche Bazar in the Everest Region on March 24, 2020. The lockdown in Nepal has seen a drastic increase in media rights violations, salary cuts and media closures. CREDIT: PRAKASH MATHEMA / AFP



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had to carry out their professional duties with some level of self-censorship.

An example of the pressure that a journalist in Nepal had to endure for critical reporting is the case of Ajaya Babu Shiwakoti, the editor of *hamrakura.com* and the general secretary of Nepal Press Union (NPU). Shiwakoti had to live in fear of his life for weeks after breaking news of allegations of sexual harassment by the then Speaker of the Parliament Krishna Bahadur Mahara. In September 2019, Shiwakoti interviewed the survivor – an employee at the federal parliament – immediately after the alleged rape attempt. The Speaker was forced to resign and spend more than three months in jail before he was released by the district court due to lack of evidence.

The journalist received threats from various unknown numbers and he was informed that some groups were ‘tracking his movements’ and ‘planning to vandalise his office and assault

him’. Shiwakoti, however, continued his mission to tell truth to power. He was also later involved in reporting a bribery scandal involving Nepal’s minister of communications and information technology in March 2020. Minister Gokul Prasad Baskota, a former journalist who, ironically, as a government spokesperson had criticised critical coverage of the government on various occasions, resigned. However, unidentified people had put the journalist’s residence and his activities under surveillance and he received threats on social media.

An incident of how media and journalists are devalued in Nepal involved the Chinese Embassy in Kathmandu after the *Kathmandu Post* daily on February 18, 2020 published a syndicated column arguing that the Chinese system of governance exacerbated the Covid-19 outbreak with an illustration of a 100 yuan note altered to show communist China’s founder Mao Zedong wearing a face mask. The Chinese



The government of KP Sharma Oli (L) has been criticised for failing to uphold principles of democracy in the interests of the media. Pictured speaking at the ILO International Labour Conference in Geneva on June 10, 2019. CREDIT: FABRICE COFFRINI / AFP

THE MEDIA COUNCIL BILL AND THE INFORMATION TECHNOLOGY MANAGEMENT BILL ARE TWO SUCH EXAMPLES OF INCREASED STATE CONTROL.

Embassy in Kathmandu issued a press statement not only registering its dissatisfaction over the content but went on to cross the diplomatic line to personally attack the then editor-in-chief Anup Kaphle. The statement added: “The Chinese Embassy in Nepal has made solemn representations to the newspaper and himself and reserves the right of further action.” This enraged civil society and the media community and editors all stood by Kaphle to condemn the Chinese Embassy’s statement.

Journalist Om Hamal, editor of online news portal *Janasanchar.com*, was arrested on August 23, 2019 from Pokhara for his alleged connection with a political outfit that was declared illegal by the state. On September 4, the Supreme Court ordered his release, but the police re-arrested him outside the gate of the Supreme Court raising questions about the rule of law. Following protests, he was released after a few days in custody.

On December 10, 2019, the police marked International Human Rights Day by baton-charging a journalist who was capturing police brutality on football fans. It was the last day of the South Asia Games 2019 hosted by Nepal, and fans were trying to enter the main stadium for the final match between Nepal and Bhutan when the police beat up some fans while attempting to control the crowd. Suman Chapagain of *Nagarik* daily who witnessed the incident was taking photographs when he was beaten by the police. He needed a visit to a nearby hospital, and despite the police agreeing to look into the incident following protests from the FNJ-affiliated Nepal Sports Journalists Forum and Photojournalists’ Club, there has been no news of an investigation.

TINY STEPS TOWARDS ACCOUNTABILITY

Impunity still reigns in Nepal as the cases where victims get justice are rare – especially in the cases of violations of journalists’ rights. The FNJ says in many cases the state has failed to implement legal procedures despite identification of perpetrators involved in killing of journalists, which demonstrates a lack of seriousness to end impunity in crimes against journalists. Nepal has witnessed the murder of 37 journalists and disappearances of five since 1997, mostly during the Maoist insurgency. FNJ records show that in only five cases of murder, justice has been delivered whereas another five cases are still under judicial procedure.

A positive development in 2020 was the arrest of one of the murderers of journalist Birendra Sah 12 years after the crime. Narendra Phaujdar aka Kundan Phaujdar a former Maoist cadre was arrested for his involvement in the 2007 murder of Sah. The journalist was kidnapped by an unidentified group on October 7, 2007 and his body was found 34 days later. Among five individuals involved in the murder, one has completed the jail term, another is serving his sentence and two are still at large.

NEW MEDIA, OLD CONTROLS

The internet has become a new and powerful avenue of citizen’s voices, and social media is often setting the agenda for mainstream media and ensuring accountability from government and its agencies. The government has a confusing policy regarding use of social media: while it wants to reach more and more of the public using social media to disseminate information and create a platform for citizens to engage



Hundreds of members of the indigenous Newar community stage a torch protest in Patan on June 14, against the Guthi Bill which they say will destroy the ancient religion and culture of Nepal. The protesters demanded that the government withdraw the bill from the Parliament. CREDIT: PRAKASH MATHEMA / AFP

with governments to acquire services, it also wants to control opinions on social media. The government has not only issued notices to the government-employed teachers and civil servants to refrain from criticising the government in social media, but ministers, and also the prime minister, have repeatedly expressed their dissatisfaction with opinions being expressed on social media.

With regard to control, Nepal has blocked pornographic sites, but it has also formulated laws that allows it to block sites and content, without requiring court orders.

STILL INVISIBLE

There is still a long road to travel for women journalists in Nepal. A report by Freedom Forum Nepal, which analysed 21 provincial newspapers for inclusion of women in their content from July to September 2019 found that women are almost invisible in the newspapers. The report recorded only five per cent of women

have news bylines and only 12 per cent are news sources. Clearly, a lot remains to be done to increase the representation of women in the Nepali media.

The issue of online harassment, especially of woman journalists, and trolling to silence critical voices on social media is an emergent issue. Nitu Pandit, the chairperson of Sancharika Samuha, women journalists' union, says, "On the internet, negative personal comments are overshadowing opinions on gender, especially those by actresses, women journalists and activists. The comments questioning personal character amount to censoring women's opinions."

WAGE STRUGGLES ABOUND

On January 30, 2020, journalists working for *Nagarik* and *Republica* dailies, including associate editor Tilak Pathak,

submitted a memorandum to publishers urging the payment of salaries. The letter, which was leaked to the social media stated that they hadn't received their salaries for three months, and some district correspondents hadn't received salaries for up to 10 months. They threatened to stop working if they were not paid within 10 days.

January 30 was also the deadline given by the journalists at *Karobar* daily to the management to meaningfully conclude talks with their union regarding their salaries and benefits.

These two cases are not new in Nepal's media industry. The crisis was averted as the journalists did not go on strike in either of the publication houses, but the incidents show the difficult situation for journalists in Nepal.

The state-owned Radio Nepal sacked three journalists in Doti – Sunita Rawal, Prakash Bam and Chakra Kunwar without any prior notice or administrative process in September 2019. The union leaders who held a demonstration demanding the reinstatement of the journalists' jobs were arrested and detained for three hours.

Journalists' rights are determined by the Working Journalists' Act and its regulations. However, the media industry has always ignored the provisions in such a way that the FNJ has had to raise the issue of the implementation of the Act on every occasion. In 2019, the FNJ decided to 'force the media houses to submit the list of employed journalists to the state authorities' by public shaming. In October 2018, the government decided to increase the journalists' salary by 25 per cent, which many private media houses have not implemented, and have instead refrained from putting on government records the number of journalists in their employment and their respective salaries.

On March 28, 2020, FNJ chair Govinda Acharya issued a statement to mark the federation's establishment day in which he stated that the FNJ would continue to put pressure on the government for the complete implementation of the Working Journalists' Act.



FNJ members protest against Nepal's Media Council Bill with other civil society leaders and human rights activists. CREDIT: FNJ

THE LEGAL ENVIRONMENT

The key area of concern in Nepal is the legal environment, especially the one the state is trying to create through new proposed laws. Despite the government's expressed commitment to press freedom and its "willingness to amend any anti-press freedom provisions" to end FNJ-led protests on two controversial laws in 2018, the government showed no backtracking as it introduced, one after another, laws that undermined the freedom of the press, freedom of expression as well as internet freedom.

The restrictive provisions in proposed laws has drawn flak from not only IFJ-affiliated FNJ and NPU but also from other media rights organisations, civil society organisations and international agencies.

The UNESCO urged Nepali policymakers to adopt policies to provide a conducive environment for media freedom. In a statement on World Radio Day on February 13, 2020, the UNESCO Office in Kathmandu said that 'it is necessary for people to be able to express themselves without fear.'

The US Department of State, in its annual Country Report on Human Rights Practices 2020, stated that the constitution and existing laws guarantee freedom of speech and press in Nepal, but the government tried to restrict media freedom by threatening journalists and news organisations that criticised the authorities.

Last year, two controversial bills were heavily criticised by the media rights organisations. One of the bills, the Information Technology Management Bill – passed by the Development and Technology Committee of House of Representative (HoR) on December 29, 2019 – threatens freedom of speech online. Among the key concerns around the Information Technology Management Bill includes provisions to impose fines of up to NRs 1.5 million (approximately USD 12,500) or jail terms up to five years for posting content on social media that in the eyes of government may pose a threat to the "country's sovereignty, security, unity or harmony". The bill also includes mandatory

The *Kathmandu Post's* publication of a syndicated column in February arguing that China's system of governance exacerbated the coronavirus outbreak with an illustration of a 100 yuan note altered to show communist China's founder Mao Zedong wearing a face mask, prompted a strong China backlash in Nepal which was resisted by media and unions.

provisions for social media companies to be registered in Nepal. If not, the use of their services will be banned.

The bill replaces the existing Electronic Transaction Act (ETA) which had been widely misused to arrest and harass citizens over their social media posts. This apart, the bill provides for far tougher punishments for committing the same offense on the internet as compared to committing the crime in person.

The bill passed through the committee despite the main opposition party's disagreement and will now be presented to the full house for approval. Since the ruling party has a nearly two-third majority in the parliament, it is likely to be passed without further changes.

The Media Council Bill was equally problematic. Among the controversial provisions, the provision to conducting licensing examination for journalists by the Council and up to Rs 1 million (USD 8,300) fine against journalists, editors and publishers if they breached the code of conduct was removed

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when the bill passed through the Upper House. These provisions were dropped at the last minute after prolonged opposition by the FNJ and NPU as well as other civil society organisations and the opposition party.

However, the bill which now needs to be endorsed by the lower house, proposes a Media Council in which the majority of members will be government appointed thereby undermining its role as an autonomous body to support journalism in the country. The media stakeholders view the Media Council more as a government agency to control them rather than a body to ensure responsible journalism.

BACKDOOR CENSORSHIP

During the Covid-19 lockdown, an unprecedented case of violation of press freedom surfaced, throwing the spotlight on backdoor censorship that becomes possible when the state puts pressure on private technology companies.

On April 1, 2020, *kathmandupress* – a news portal on social media claimed that news had disappeared from the website without its knowledge. The ‘disappeared’ news alleged that the Prime Minister’s IT consultant Ali Asgar, and sons of his chief adviser and deputy PM were involved in a corruption scandal in the procurement of health equipment. It was later revealed that Shiran Technologies, which developed and hosted the news portal, used backdoor access to delete the news. The

company apologised, citing a communication error after FNJ, NPU and a group of editors issued statements denouncing the company and demanding an investigation. The publication also said that it was denied access to the site for a few hours and was given access only after threatening of legal action. The company is a subsidiary of a bigger company co-owned by Asgar, and *kathmandupress* claimed that the news was deleted deliberately on his instructions.

CONDITIONAL FREEDOM

After Prime Minister KP Sharma Oli publicly criticised editors, he invited many of them to his residence for a meeting. During the meeting he expressed commitment to “uphold press freedom and all civilian rights,” adding, “the press, which has a habit of criticising everyone, should also learn to face criticism, as it sometimes crosses the limit”.

The government, Oli said, wanted everyone to “practice freedom responsibly” in order to create a “civilised society”. The statement is a testimony of the government’s approach to media. Whereas there is spoken commitment towards media freedom and freedom of expression, between the lines, there is dissatisfaction over critical content and people’s opinions.

The coming year will witness a struggle for press freedom as the government will continue to attempt to control the Nepali media, particularly social media.



FNJ Protests against Media Council Bill forming 1.5km long human chain