

Downfall Of Investigative Journalism: Need for Implementation Of New Protective Legislation or Neutralising The Misuse Of The Present Ones

by

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Abstract

Investigative Journalism which can be understood as gathering evidence, constructing narratives and then making sense of the things in order to make news judgements have the ability to unveil some really uncomfortable facts which might create controversy in the society. Large scale revelations have been made through the way of investigative journalism throughout the world from the very recent Panama papers leak on corruption to 1891 expose of Bofors defence deal in India. Films have been made and books have been written on the stories investigated by the Investigative Journalists, but looking at the recent trends in the country, investigative journalism seems to be at a declining curve. During a recent book launch CJI. C.V. Ramana pointed out that in early days newspapers used to have articles about big exposes and scandals all over it and how the trends of the Investigative Journalism is constantly decreasing in the country, but the question here is that what exactly are the reasons behind that downfall. This research paper focuses on the reasons behind the downfall of the investigative Journalism in India that is majorly increase in threats and killing of the Journalists to which the potential solutions is the implementation of some effective protective legislations along with preventing the misuse of current laws.

I. Introduction

A Democracy is as free as its press, people around the world, civil rights leaders and even the makers of the constitution of India repeated the same thing many times in their own different manner. As a result of that, journalism is said to be free in India. Here, press is regarded as the fourth tower of the democracy but if one examines the recent trends, this statement is on the verge of becoming history. Since Independence, Press became a powerful tool against corruption or scandals by both government and corporations in the country and Investigative Journalism played a crucial role in the same.

Investigative Journalism as the name suggests, involves conducting an investigation on some activity which seems problematic by collecting evidences, sting operations and research in order to prepare a fool proof case against that¹. As it is mostly concerned with revealing facts, so before publishing an article or a series of pieces, reporters require to dig deep into a matter, at times spend weeks, months, or even years gathering information. The facts which are generally disclosed by the way of investigative journalism are mostly related organized crime, corruption, corporate misconduct, and unscrupulous behaviour of politicians and leaders. Some of them have been covered up on purpose, while others may have been ignored or missed by news organisations². All these being a very sensitive areas, requires tenacity, meticulous attention to detail, pattern detection abilities, and the ability to put complex material into simple terms. While obtaining information for a topic, journalists employ a variety of sources, including public records, specialised research sources, freedom of information requests, interviews, open-source databases, and legal documents³.

The Paper deals with the Importance of the investigative Journalism along with the constitutional and judicial back to it and various instances where Investigative Journalism sparked up an investigation which later helped in unfolding various scandals. This shall also discuss the various reasons behind the steady decline of the investigative journalism in India and how instead of making a legislature towards the protection of the journalists, the present legislatures are being used to stop them.

¹James L. Aucoin, *Investigative Journalism* EIMMC. 583, 583-591 (2003)

²Free Press Unlimited, *Investigative journalism: unmasking the truth* FREE PRESS UNLIMITED (Dec. 27, 2021, 8:20 PM) <https://www.freepressunlimited.org/en/current/investigative-journalism-unmasking-truth>

³*Id.* at 2

Aim and Objective of the study

Aim: To Trace the diminishing culture of Investigative Journalism. **Objective:** To Review the legal aspects of freedom of press and how that does plays a major role carrying out investigative Journalism, Analysing lack of regulations for their protection of journalists, Reviewing some incidences and case laws related to Investigative Journalism in order to ascertain the recent trends in India.

Hypothesis: Lack of legislative protection for the Journalists in India is a major factor behind the downfall of Investigative Journalism in India.

Methodology: The research topic is exploratory so the research has been conducted in an empirical manner.

II. Constitutional Validity

Investigative journalism has been appreciated many a time by many judges and the most recent event of that is while hearing the Rafael case, Supreme Court appreciated the reports published by the Hindu and take that in as in authentic document⁴. Investigative Journalism as a subject derives its powers from the powers of free press in India. Here, Transparency of right of information emanates from right to free speech and expression guaranteed under article 19(1) of the Indian constitution which means if there is a lack of information it would ultimately mean a restriction on right to freedom of speech. It gathers information, opinions and hence gather all the masses and whereabouts about the government and their policies and enlighten us. Although freedom of speech and expression comes with restrictions but reasonable ones. Because in no manner this freedom of speech can be an absolute one keeping in mind all the public interest. Press being the principal vehicle carrier for the supply of information to the citizens and to maintain freedom of press in a large democracy like India, it is the duty of the judiciary to hold the free press constitutionally because freedom of press is considered as heart and soul of social and political intercourse.

III. Instances of Investigative Journalism

Investigative reporting aims at holding people at the authority, companies, governments and sometimes criminals, responsible for their activities and ensures that no one acts above the law

⁴ Harinath Kumar, *A Study to Analyze the Recent Trend of Investigative Journalism in India: with special reference to Journalism on 'Rafale Deal'*, 9(04) IJREITSS 235, 233-238 (2019)

by exposing corruption, crimes and malpractices. Investigative journalism is not doubt a very dangerous profession but this too is very crucial for a healthy democracy. There are many facts and cases which were kept hidden from the public and came out only with the help of the Investigative journalism. Few instances of such events are

- **The Cement Scandal of 1981:** This was the time when the corruptions has started to make the headlines of the newspapers. Amongst all of them there was this well researched and well written article by Arun Shourie of Indian express which exposed some major government officials responsible for the leak of funds in the government cement grants⁵.
- **The Bofors Expose:** This was one of India's most famous case of Investigative Journalism which dates back to 1987. Bofors was a Sweden based arm manufacturer which was dealing with Indian government. The Hindu published an article regarding this deal which exposed that many top government officials were involved in taking kickbacks from the Swedish company and they backed their article with about 200 concerned document and related interviews with the Swedish officials⁶.
- **The Infamous Ashwini Sarin:** Ashwini Sarin was one of India's bold Investigative Journalists. From exposing various government schemes to major Human Trafficking network, he proved that good journalism have the power of changing the world⁷. He wrote a well-researched and extensive article on the Family Planning scheme of the government during the emergency and how people were forced as a part of that scheme. Another ground breaking article by him exposed a well organised and major human trafficking racket working in India⁸.
- **The Defence Deal Scandal of 2001:** This was related to many government top officials who were caught taking bribe from some journalist disguised as arms dealers. This sting operation led to further arrests and resignations⁹.
- **The Rafael Deals Papers Case:** This is one of the most recent case of investigative Journalism in India. This is about the 6 controversial reports written by N Ram and

⁵Sanchari Pal, *Power of Press: 5 Times India Was Rocked By Investigative Journalism* THEBETTERINDIA (Dec. 27, 2021, 7:30 PM) <https://www.thebetterindia.com/121148/journalist-investigations-that-changed-india/>

⁶R.K. Raghavan, *Guns, Swedes and the Gandhis — how the Bofors scam tested the limits of the CBI's power* THE PRINT (Dec. 27, 2021, 8:35 PM) <https://theprint.in/pageturner/excerpt/guns-swedes-and-the-gandhis-how-the-bofors-scam-tested-the-limits-of-the-cbis-power/531144/>

⁷*Id.* at 5

⁸*Id.* at 5

⁹*Id.* at 5

published by The Hindu which contained some confidential documents about the deal. The report was further praised by the court as well¹⁰.

These are the few famous cases of Investigative Journalism in India which were famous or discussed widely. Apart from these newspapers and news channels there are many books which were published by various journalist over the time period, disclosing some really uncomfortable facts about various cases and events. Some of these books never get published and even if they are, they never got that viewership and stardom because of some obvious reasons.

- **Aarushi's cry for help:** The famous dual murder case of Aarushi Talwar and Hemraj was analytically explained by the Crime Journalist Avirook Sen. Sen was following this case from the very start and his view was beyond the proceedings of the court rooms and charge sheet filled by the police officials. The extremely well researched and extensive book "Aarushi" contained some solid evidences includes some forensic reports and direct interviews with the neighbours and also the previous Investigating Officer who started the investigation¹¹. This effort of Avirook Sen was praised by the entire Journalism fraternity but sadly could not helped Aarushi in getting the deserved justice.

IV. Downfall in present scenario

There was a time when people used to wait for the newspapers as they were considered as the most reliable source of information about any wrong happening in the country but that's vanishing somewhere now. The result of this downfall is not based on just one or two but many major factors like lack of resources, bad working conditions, lack of viewership and most importantly lack of security. The Murder or arrests of various journalists are becoming usual headlines now. These issues are discussed once or twice then everybody moves on to the daily life without any solution.

As per the recent reports out of 40 journalists who were allegedly killed between 2014 to 2019, killings of 21 one directly linked to the journalism story they were working on¹². This is more than 50% of them and also the one those could be linked clearly. There are many more

¹⁰HARINATH, *supra* note 4 at 3

¹¹Aakash Joshi, *Avirook Sen on 'Aarushi' and the Talwars' Conviction* THE QUINT (Dec. 27, 2021, 7:00 PM) <https://www.thequint.com/news/india/exclusive-avirook-sen-on-aarushi-and-the-talwars-conviction>

¹²Bansari Kamdar, *Journalism in India: A Dangerous Pursuit?* THE DIPLOMAT (Dec. 27, 2021, 8:50 PM) <https://thediplomat.com/2018/11/journalism-in-india-a-dangerous-pursuit/>

journalists who were harassed mentally or physically or been coerced to drop the story. The cost of free press is not just rising in India, but this is the story of majority of nations in the world. Reporter Zhang Zhan was arrested and imprisoned last year for covering aspects of the COVID-19 epidemic that the Chinese government wished to downplay¹³. Danny Fenster, a US based journalist, was working with a censored news organisation that had been critical of a military coup led by senior Myanmar military officers, has been sentenced to 11 years imprisonment by a Myanmar court. Another Journalist Daphne Anne Caruana Galizia, reported on political and financial wrongdoing in Malta, the Maltese writer, dubbed a "one-man WikiLeaks," but paid very high price for that. She was killed by a vehicle bomb in 2017¹⁴. Three individuals were accused with the crime, one of whom was sentenced to 15 years in prison for murder. Worryingly, a report by a group of former Maltese judges claimed that the conspiracy encompassed former Maltese government officials¹⁵.

Threat is not just from the outsiders, apart from the threats as a result of investigative journalism, reporters are arrested by their own government under laws like UAPA¹⁶. One fairly recent example of the same is of Siddique Kappan, he was arrested almost a year ago while he was going to Hathras to meet the victim's family under this act and he is in jail ever since¹⁷. Not just him, but there are various such reporters and journalists who have been assaulted by their own system.

Looking at records it is absolutely clear that the condition of the Investigative Journalism is not very good and journalists are not at all safe. The cost of finding a new story is increasing day by day and not for most of them, it is their life which is gradually leading to its downfall.

These stories, on the other hand, serve as a sharp reminder as to how investigative media poses a real threat to corrupt hierarchies.

V. Conclusion

As per the latest Index Press Freedom Index, India was declared as a bad country for journalism and secured 142nd rank amongst 180 countries and 14th in terms of killing of the journalists

¹³ARTICLE 19 <https://www.article19.org/resources/china-release-journalist-zhang-zhan/> (Last Visited on Dec. 28, 2021)

¹⁴BBC NEWS <https://www.bbc.com/news/world-asia-59258112> (Last Visited on Dec. 28, 2021)

¹⁵BBC NEWS <https://www.bbc.com/news/world-europe-58012903> (Last Visited on Dec. 28, 2021)

¹⁶P. Sainath, *To the CJI, On His Lament that Investigative Journalism Is Vanishing From Indian Media* THE WIRE (Dec, 28, 2021, 4:30 PM) <https://thewire.in/media/to-the-cji-on-his-lament-that-investigative-journalism-is-vanishing-from-indian-media>

¹⁷*Id.* at 16

around the world¹⁸. India which is known for democracy and its constitution lengthiest written constitution, this rank was neither good nor appreciable but rather came as a reminder for the law makers, press and media and all the concerned authorities that this is high time to take this issue seriously and make the country a safe space for journalists to work.

The freedom of press which is given under the constitution ensures no interference of outside authority or power and that is one reason behind no regulating legislation for the media. But the need of some protective legislations to protect the journalist and media as the law is not just to protect the ones in power rather for everybody, even for the dissenting voices.

As per the aftermaths of the killing of Journalist Gauri Lankesh in 2017, the Ministry of the Home Affairs issued an advisory for every state and Union Territory under the name of “Safety and Security of Journalists” which advised the states and the Union Territories to take steps and make provision for the safety, protection of free expression and in time disposal of any case of assault or other crime¹⁹. Since then, Maharashtra is the only state to come up with a protective legislation, the “Maharashtra Media person and Institution (Prevention of Violence and Damage or loss to Property Bill), 2017”²⁰ which makes any offence against journalists or press houses a non bailable offence.

Also there are some laws like UAPA and Sedition laws, in order to press the voice of the dissent many authority use them against the journalists and their cases keep on revolving from one court to another. As the advisory talked about the speedy trial, that should also be used for the cases filed against the journalists.

Even after the advisory, the rank of India in free press Index went down to two ranks, from 140th in 2019 to 142nd in 2021 which is evident that mere advisory shall not make any difference²¹. There is a need of one central law for the protection of media houses and concerned persons along with the proper implementation of that. The Constitution of India talks about all of these freedoms, India just need some legislations for that.

¹⁸*Id.* at 16

¹⁹THE QUINT, <https://www.thequint.com/news/hot-news/protect-journalists-says-ministry-of-home-affairs#read-more> (Last Visited on Dec, 28, 2021)

²⁰Sakshee Saxena, *Need For Laws Protecting Rights Of Media* LEGAL SERVICES INDIA (Dec, 28, 2021, 5:15 PM) <https://www.legalserviceindia.com/legal/article-2299-need-for-laws-protecting-rights-of-media.html>

²¹*Id.* at 19



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