

Rule by Law: Huge Threat to Nepali Media

Online media at receiving end; press freedom violation highest in recent seven years

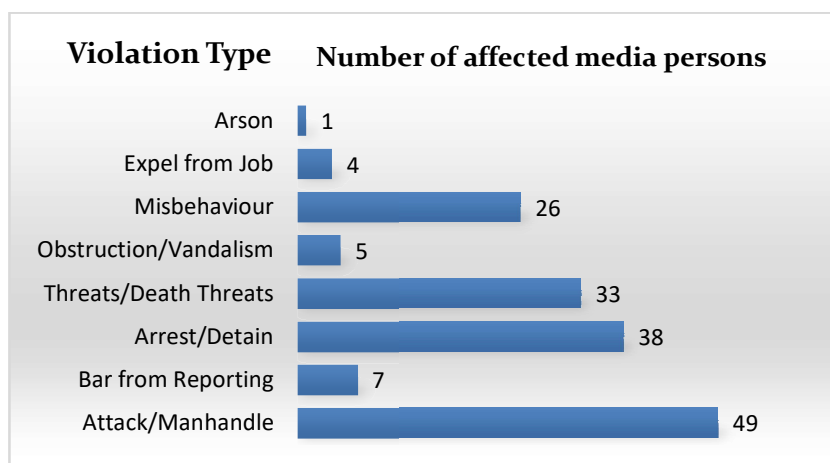
Summary: Continuous upward trend on press freedom violation, sheer ignorance to impunity relating to crime against journalists, coordinated attack to discredit media and journalists, move to suppress FoE and media freedom with rule by law, deepening non-transparency with non-disclosure of information and mounting harassment with arrest of FoE practitioners- poet, singer, rapper, artists- portray worsening situation of media freedom and free speech in 2019.

Freedom Forum recorded a total of 111 press freedom violations this year (January 2019 to December 31, 2019) against 98 recorded last year. The press freedom violation is recorded highest in the seven years. In 111 incidents of press freedom violation, as many as 163 journalists from various media were directly affected.

In line with the federal system, a new model of governance in the country having three layers of government- local, provincial and federal- are getting institutionalized by bringing laws and policies, conducting activities for development and governance. It is good that new laws and regulations are being made to implement the constitution, but equally worrying is the growing hostility meted out to media- both in law with restrictive provisions and in practice with threats, attacks and arrests.

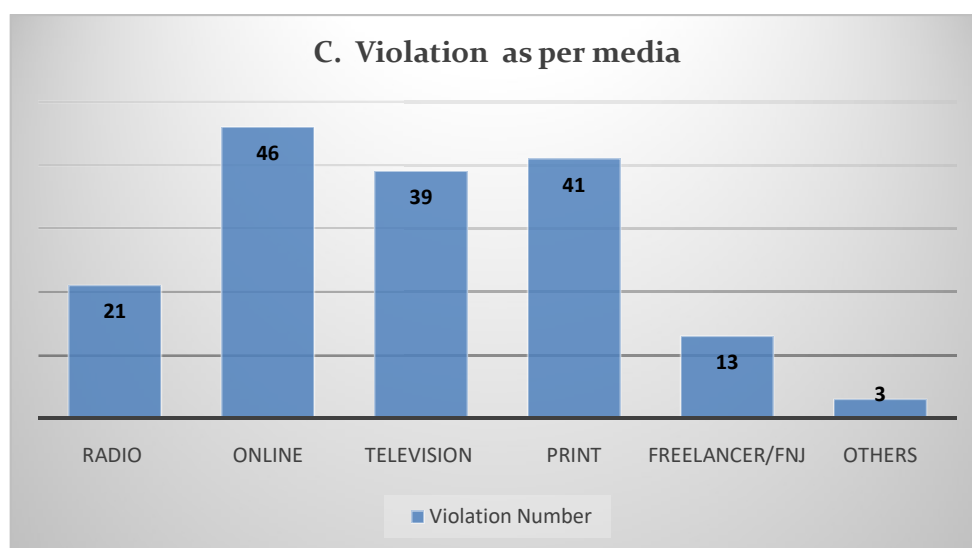
Freedom Forum keenly observed the broader aspects of freedom of expression over this past year. From print to online media, from journalist to artists and writers, and information seekers, whether these practitioners of FoE were obstructed and intimidated in their profession was the focus. This report dwells on these issues.

A. Number of total affected journalists in different press freedom violation: 163



B. Some Highlights

- Province 3 witnessed the highest number of press freedom violations (40) followed by Province 2 (29), Province 4 (12) and Province 1 (11).
- The number of journalists affected are 38 (arrest/detention), 49 (attack/manhandle), 26 (misbehavior) 5 (vandalism /obstruction), (4 expel from job) and 1 (arson).
- This year too, Kathmandu Valley housing the federal capital, alone witnessed 40 number of press freedom violations.
- In the total 111 violations, the number of male journalists affected were 158, while female 5.
- The data shows that public officials comprise highest in number to intimidate media/journalists.



D. Laws and Policies

The efforts made at three tiers of government to prepare necessary laws and policies to suit the changed context is appreciative. However, the way the efforts are made for it are disappointing- inclusive and participatory process is avoided in law/policy making; provisions limiting FoE and mass media are foisted. The efforts are indeed aimed at violating the constitutional rights.

The Development and Technology Committee of the House on Sunday (Dec 29) passed the controversial Information Technology Bill without making major amendments, which many fear could curtail freedom of speech online and increase surveillance of personal data. ...It also has provisions of hefty fines or imprisonment of individuals who post “improper” content on social networking

*sites that the authorities deem discrediting individuals and an attack on national security.*¹

The Bill was forwarded to the House of Representatives despite any amendments that are supportive to the free press.

Similarly, the taskforce made last year to amend the regressive provision on Criminal Code, which came into force early last year, failed to do anything as legal reform that favours FoE atmosphere. Owing to the pressure built on government with suggestions and protest, the taskforce was formed to check the provisions on the points as national security, social security, defamation, libel, blasphemy, hate speech and privacy, but no initiation has been taken to this regard. In the name of these points, FoE would be criminalized.

Although Individual Privacy Act was passed, no expected change was made, thereby weakening the prospects of investigative journalism, risking common citizen's data and privacy.

The introduction of Advertisement Act centralizing the distribution of government advertisement is equally worrying, for it is to bring financial crisis to small media and invites chance of media misuse. It has criminalized advertisement contents.

The Media Council Bill, which is currently at the Legislative Committee of the Upper House, the National Assembly, is yet to be made favourable to media freedom.

Province 1, 2, 5, and 6 brought the media and information rights related laws do not comply with constitutional provisions (Article 17, 19, 27 and Annex 6, 7 and 9) and international standard of FoE. It is also worrying indeed.

It is appreciative that the law (FoE related) making process at Province 2, Gandaki Province and Far-West Province is inclusive and participatory. But, the draft laws have not proposed progressive provisions.

Many local governments have come up with various media regulation. It is difficult to check whether these abide by the national charter and FoE standard. However, it can be said they are made in a control-oriented manner. Complexity is created with numerous regulations.

On the other hand, no initiatives were taken on much talked public service broadcasting bill for the transformation of Radio Nepal and Nepal Television, and mass media bill for amending old media laws for the changed context. These were the need at present but no initiation was taken from the State side on these needs.

¹ <https://kathmandupost.com/2019/12/29/house-panel-passes-controversial-it-bill-disregarding-dozens-of-amendment-proposals>



F. Trend Analyses

Disappointing it is that media persons are directed how to report news; defamed over news; mocked at over language and grammar; decried as tool captured by 'bourgeoisie'; blamed that journalists are 'guided'. Responsible persons as government spokesperson, prime minister, and chairperson of the ruling party are making such remarks. It is deplorable development of late. The remarks from the top level have encouraged systematic and coordinated efforts to keep journalists under government control and shrink civic space.

The number of press freedom violations growing every year is evidently unfavourable atmosphere for media freedom. At a time journalism is expected to flourish along with growing issues and agenda in view of the three-tier government, the increase in press freedom violation shows shrinking space to media persons.

Compared to the previous year, more numbers of journalists from online media are in target, which implies that digital media would see more threats in the days ahead. Together, it shows attention and importance to new media is on rise.

Among the violations, the highest number of assailants belonged to the public entity-government staffs, security agency and people's representatives. It is strong reminder that public officials are not tolerating media and journalists' reporting. Continuation of such suppression endangers free press and democratic values.

At local levels, media persons are lured of financial gain, misused, and suppressed to kill news. Networks of government media are proliferating in a way it would be difficult to check their contents.

Another alarming trend this year is number of arrest and brief detention hopped from 13 to 38. Journalists and other FoE practitioners as poet, singer, information seekers, anti-corruption campaigners and rapper are harassed immediately with detention and arrest. The security agency might have been encouraged and pro-active to arrest FoE practitioners also because of the atmosphere being created for their highhandedness with tough laws in the making.

1. *Anti-corruption activist Gyanendra Shahi has been severely beaten in Chitwan while he was leading an anti-corruption demonstration in the district. Shahi was beaten black and blue by a group of unidentified youths on Saturday when he was leading an anti-government demonstration at Chaubishkothi in Bharatpur. The group also vandalized the vehicle belonging to the activist.*²
2. *A satirical video of a song uploaded on YouTube demanding good governance and an end to corruption in Nepal was withdrawn by the singer two days after its release on 16 February 2019. Popular folk singer Pashupati Sharma pulled out the viral song Lutnasake lut kanchha (Loot, loot, brother, loot as much as you can!) after the youth wing of the ruling Nepal Communist Party (NCP) – Youth Federation Nepal – issued a circular addressed to its cadres to protest against the song by Sharma in all districts across the country.*³
3. *YouTube presenter and comedy artist Pranesh Gautam was arrested for his comments on a film in federal capital, Kathmandu, in June.*⁴
4. *Rapper Samir Ghising, popularly known as VTEN, was taken into police custody by a team of Metropolitan Police Crime Division (MPCD) from Jawalakhel, Lalitpur, on October 24.*⁵
5. *Film makers have put it that censorship was mounting on film development. They are asked and ordered to make suitable titles. The government body decries the words used in film. Similarly, even the book publishers are now obliged to give notice to the government before publishing book.*

The police had caught Ghising for the use of 'obscene words/lyrics.' V10 is a heartthrob of many young people for his popular song, "Hami Yestai Ta Ho Ni Bro". Similarly, folk singer Sharma had sung exposing the deepening corruption in the country involving high profile people.

The arrest of singer, rapper by the police is sheer misuse of Electronic Transaction Act. The moral policing initiated by the security force is detrimental to free press. It has spread fear among all FoE practitioners and advocates, which does not suit to democracy.

Continuous trend of making restrictive laws indicates criminalization of FoE in online and offline space would grow more in the days ahead.

² <https://myrepublica.nagariknetwork.com/news/anti-corruption-activist-gyanendra-shahi-thrashed-in-chitwan/>

³ <https://ifex.org/nepali-singer-pulls-anti-corruption-song-after-receiving-threats/>

⁴ <http://nepalpressfreedom.org/main/issue-single/1066>

⁵ <https://thehimalayantimes.com/kathmandu/rapper-vten-under-police-custody/>

The misuse of state/government-owned media has alarmingly grown this year, thereby creating atmosphere to spread single political narrative, propelling biased news and views. Sacking journalists from State owned Radio Nepal, less space to opposition and critical voices, and clarification sought from editors at the news agency are glaring examples to this. It has created the environment where spread of misinformation would be amplified.

RSS journalists working at the English desk of the news agency face the probe for translating and disseminating a wire report about the Dalai Lama being discharged from a hospital in New Delhi and his return to Dharamshala on April 27 after treatment.⁶

Journalists Prakash Bahadur Bam, Chakra Kunwar and Sunita Rawal working at Radio Nepal Regional Transmission Centre, Dipayal of the state-owned Radio Nepal for years, were dismissed without fulfilling any administrative procedures, without any prior notice.⁷

Still, as other sectors are, Nepali media are male dominated. It points out need of more number of women in media house to diversify media contents. Women's presence in media can work a step ahead for media pluralism, which serves better to the public.

Electronic Transaction Act (ETA) is always a serious concern since its inception, as it is misused often to harass journalists with arrest. The Act made to check financial transaction, has been used to panic media sector too. For long, the ETA has been decried. But the State agencies have been continuously using it to apprehend journalists and common citizens for exercising freedom of expression online.

Editor of the Tandav news weekly, Arjun Giri, was arrested in April for writing a news story about financial fraud involving a business person in Pokhara city. With the complaint of businessperson, editor Giri was arrested in Pokhara and brought to Kathmandu for a cybercrime case under the ETA Section 47.

Non-disclosure of information is deep rooted in Nepali public agencies. At a time when the local and provincial governments are expected to be pro-active in the federal set up, the non-implementation of RTI is upsetting here. Although it is appreciative that Nepal has institutional and constitutional mechanisms to amplify the right to information regime for good governance by building informed citizenry, harassment to information seekers is still unabated. Freedom Forum had the story:

A local Rambabu Mandal was beaten by Ram Shankar Paswan, Chairperson of Ward No 18 from Janakpurdham Sub-Metropolitan Office for seeking information relating to the

⁶ <https://kathmandupost.com/national/2019/05/12/three-journalists-face-probe-over-publishing-dalai-lama-news>

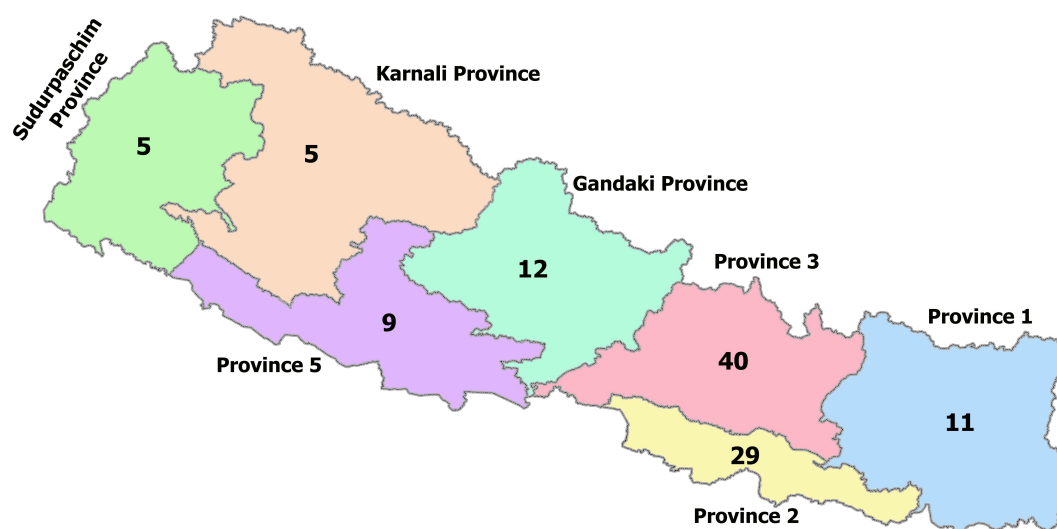
⁷ <https://thehimalayantimes.com/kathmandu/fnj-protests-against-sacking-of-journalists/>

*activities of the Sub-Metropolitan Office. As the monitoring story stated, Mandal was beaten by his own Ward Chairperson Paswan in the presence of Mayor Lal Kishor Shah.*⁸

Another worth noting here is non-action—no commitment from government side on the SDG 16.10. (a and b) which are related to journalists' rights and effective implementation of right to information. Even the baseline on these was not prepared. It warrants serious attention.

Long pending issues of impunity relating to crimes against journalists who were killed and disappeared in the past is yet to be addressed. Verbal commitment from political leadership has further aggravated the condition of the family members of the journalists victimized in the past.

G. How many violations in your province?



H. Professional Safety of Journalists

In addition to the restrictive laws, Nepali journalists are facing various other problems including low professional skills and knowledge, negligible payment, which, they argue, have affected professionalism. Misuse of media persons for the news on one's favour has grown. News is killed in the field, as the media persons out of the federal capital said:

⁸ <http://nepalpressfreedom.org/main/issue-single/1105>

*We, journalists, are being used/misused by political leaders and people's representatives and spoiling professional integrity. Journalists as press coordinator are killing news from the very sources/field.*⁹

Nepali media is largely concentrated in cities, especially the federal capital. It has posed huge gap in terms of journalist's capacity, sustainability of media and strength of media advocacy for public good.

It is welcome indeed that Nepali media have gradually given space to women.¹⁰ However, no concrete action and commitment has come from the government side for the safety of women journalists.

I. Social Media

Social media- internet based media and social networking sites- has big role to create public sphere in Nepal. These are the tools to democratization of society and the system. But, in the name of regulation and digital taxation, efforts to control Facebook and YouTube are upsetting. Hefty fine, mandatory provision to register social networking sites, blanket approach adopted in the name of curbing 'indecent materials', vigilance on ISP, and surveillance of critical commentators with mobilization of ardent followers of government, would obviously shrink citizen's space to freedom of expression online. It is estimated that more than 10 million Nepalis are Facebook users, and over 1 million in Twitter. The internet penetration has reached near 70 percent of the total population. These are appreciative developments. But at a time when new broader policy and law is needed to address various issues including FoE online, the law to this are drafted exactly reverse.

J. Observation and projection

The above mentioned points paint grim picture of Nepali media. Increasing adversity to working journalists is upsetting development. Overall trend indicates that rule of law is getting replaced by 'rule by law'. Suppressing press freedom with stringent law marks this year. At a time when new policies and laws are required to fit the changed contexts along with technological advancement, the government step to spoil entire internet ecosystem is appalling. So, time has come for all sides of FoE - media, academia, CSO, law practice- to work together to protect and promote freedom of expression and journalists' rights to nurture democratic values in Nepal. A strong solidarity among FoE advocates and practitioners with robust cooperation is a present day necessity to protect FoE from the systematically coordinated efforts against it.



⁹ <http://freedomforum.org.np/download/media-mission-report-ii-2019/?wpdmdl=3923&refresh=5e09c3b4312801577698228>

¹⁰ <http://freedomforum.org.np/download/women-in-news-a-report/?wpdmdl=4045&refresh=5e0b164ddb9a1157784909>