

# PROTECTING THE FREEDOM OF EXPRESSION AND MEDIA FREEDOM UNDER COVID-19

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## Introduction

As the novel coronavirus has reached nearly every country on earth, there has also been mass circulation of falsehoods that have spread as fast as the virus itself. These lies have helped pave the path for the infection, and they have sewn mayhem in how societies are responding to the pandemic. Recognizing the danger, United Nations Secretary-General António Guterres has warned that “our enemy is also the growing surge of misinformation” (Journalism, press freedom and COVID-19, 2020).

Independent media has never been so important. The work of journalists and media outlets around the world during this crisis of COVID-19 enables the general public to stay informed about statistics, the evolution of the pandemic, and the measures being taken by governments and other international bodies. This information is vital for people’s ability to protect themselves and each other. It is evident, however, that under the guise of fighting COVID-19, some governments are working to stifle the freedom of expression and crack down on legitimate dissent (Media Legal Defense Initiative, 2020).

## What is meant by “Protection?”

The Cambridge Dictionary defines the term “protection” as the act of keeping someone or something safe from injury, damage, or loss, or the state of being protected.

### The Freedom of Expression

The freedom of expression is a cornerstone in any functional democracy. In Sri Lanka, the freedom of expression is guaranteed under the 1978 Constitution of the *Democratic Socialist Republic of Sri Lanka*. It states that every person is entitled to freedom of thought, conscience and religion including the freedom to have or to adopt a religion or belief of his choice under Article 10 and Article 14(1) (a) stipulates that every citizen is entitled to the freedom of speech and expression including publication.

Everyone has the right to communicate his or her opinions and ideas and share information in whatever form. In human rights, this is called the including freedom of expression. It prohibits the state and other people in society from engaging in censorship and it can be restricted only for very serious reasons (The freedom of expression & media, 2018).

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The including freedom of expression covers the scope of all the ways which you can express yourself regardless of the content of the message or the tone of the message. It enfold all:

- places (public and private)
- purposes (political, artistic and commercial)
- forms (words, pictures and sounds)
- media (films, cartoons, radio, television and social media).

The freedom of expression is a matter of law, but also a question of ethics and morality. Ultimately, it concerns the intrinsic equality of human beings, as set out in the UN Universal Declaration of Human Rights. The freedom of expression, like universal suffrage, is based on the fundamental value and rights of individuals. Utterances, however, can inflict injury on individuals, groups of people and societies, which can give rise to demands for interventions to limit the freedom of expression (Carlsson and Weibull, 2018).

Not only in Sri Lanka, but also in most other jurisdictions too, the freedom of expression is granted through principal legislative enactments.

The United States safeguards this right through the First Amendment to the *U.S. Constitution*, which provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress

of grievances” (The freedom of expression in the United States, 2013).

The *Europe Union Charter of Fundamental Rights* states under Article 11 regarding the freedom of expression and information. It stipulates that “everyone has the right to freedom. This right shall include the freedom to hold opinions and to receive and impart information and ideas without interference by public authority regardless of frontiers and the freedom and pluralism of the media shall be respected.

Chinese authorities which have historically considered the freedom of expression as a privilege rather than a right and that limited freedom of expression enables the government to better monitor potentially problematic social issues (referred to as "舆论监督"), have in recent years begun to tolerate criticism, but only from certain categories of people, a kind of "free-speech elite," and only in government-controlled forums (The freedom of expression in China: A Privilege, Not a Right | Congressional-Executive Commission on China, 2020).

## Media Freedom

The freedom of expression gives special rights and duties to the media. The media informs society on matters of public interest and creates an important platform for public debates, scrutiny and reflection. Therefore, independent media and quality journalism are considered to be the “watchdog” of a democratic society (The freedom of expression & media, 2018).

Freedom of various kinds of media and sources of communication to operate in political and civil society. The term *media freedom* extends the traditional idea of

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*freedom of press* to electronic media, such as radio, television, and the Internet. The term acknowledges that the media in modern societies consist of more than print sources. Media freedom is generally held to be necessary for democratic societies. Individuals generally cannot get sufficient information on their own to make informed decisions on public matters, so they rely on media to provide information (Media freedom, 2020).

Media freedom implies media responsibility and accountability. If free media are going to fulfill their vital functions, then the public needs assurance that the media are seeking the truth and acting to guard the public interest. Government regulations on media seek to ensure that media act within the parameters of public interest. However, many argue that all or many government regulations interfere with media freedom and violate the public's right to choose and own media sources. On the other hand, government regulations may be necessary to control corporate media outlets that dominate the public's access to information (Media freedom, 2020). For the purpose of this study, the focus will be on the online media platforms such as Facebook, Twitter and news that appeared during this period of pandemic.

### **What is COVID -19?**

Coronavirus Disease 2019 (COVID-19) is an infectious disease caused by Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-Cov-2). It was first identified in December 2019 in Wuhan, China, and has since spread globally, resulting in an ongoing pandemic. As of 9th May 2020, more than 3.93 million cases have been reported across 187 countries and

territories, resulting in more than 274,000 deaths.

Common symptoms can include fever, cough, fatigue, shortness of breath, and loss of smell and taste. While the majority of cases result in mild symptoms, some progress to Acute Respiratory Distress Syndrome (ARDS), multi-organ failure, septic shock, and blood clots. The time from exposure to onset of symptoms is typically around five days but may range from two to fourteen days.

The virus is primarily spread between people during close contact, often via small droplets produced by coughing, sneezing, and talking. The droplets usually fall to the ground or onto surfaces rather than remaining in the air over long distances. People may also become infected by touching a contaminated surface and then touching their face. On surfaces, the amount of virus declines over time until it is insufficient to remain infectious, but it may be detected for hours or days. It is most contagious during the first three days after the onset of symptoms, although spread may be possible before symptoms appear and in later stages of the disease. The standard method of diagnosis is by real-time reverse transcription polymerase chain reaction (rRT-PCR) from a nasopharyngeal swab. Chest CT imaging may also be helpful for diagnosis in individuals where there is a high suspicion of infection based on symptoms and risk factors; however, guidelines do not recommend using it for routine screening (Coronavirus disease 2019, 2020).

## **What does Journalism or Media do?**

Professional journalism helps us monitor what we think we know and what we do not know for sure. It also helps us track the evolving science about the virus, and about prevention and treatment, and the policy responses being adopted.

For example, in countering the conspiracy theory that 5G cellular networks have helped spread the coronavirus, news reporting has demolished this myth and delved into who is driving it.

Independent media enables the public to hold public authorities to account, as well as ensuring evidence-based policy and transparent practical steps about the crisis. In contrast, transmitting government messages in state-owned media is not effective if there is a lack of trust in these outlets (Journalism, press freedom and COVID-19, 2020).

## **What are the specific limitations of the Freedom of Expression and Media Freedom?**

Even under normal circumstances, the freedom of expression and media freedom are not absolute rights. There are very strict requirements on how the freedom of expression and of media freedom can be restricted (legality, necessity and proportionality, legitimacy). In emergency situations, states can derogate from their obligation in relation to the freedom of expression and of media following the general rules. States must justify this by meeting two essential conditions: the situation must amount to a public

emergency that threatens the life of the nation, and the state must have officially proclaimed a state of emergency and notified other countries through the Secretary General of the United Nations (Pírková, 2020).

## **How the Prove Freedom of Expression and Media Freedom is affected by the COVID-19?**

“A free press is especially vital during times of emergency. There should be no state censorship or other undue restrictions on the free flow of information”

-Freedom House, a U.S.-based democracy watchdog wrote in a statement-

On January 26 of 2020, Malaysian journalist Wan Noor Hayati Wan Alias wrote three posts on Facebook. In one of them, Hayati warned about the potential threat posed by 1,000 Chinese nationals that were allegedly arriving in Malaysia on a cruise ship. Little did she know that those posts could land her in jail.

A few days later Hayati was charged on three counts, for causing “public mischief.” If convicted, she may face up to two years in prison. Hayati is not the only journalist arrested because of the COVID-19 outbreak. Li Zehua, a journalist based in China, left CCTV, the country’s state-owned broadcaster to be able to report freely about the real situation in Wuhan, the Chinese province where the first new coronavirus outbreak had been identified. Li, who published his videos on various social media channels, was arrested on February 26, 2020.

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In China, news websites have been shut down, social media protests criticizing authorities have been clogged and citizen journalists have been targeted directly.

Nevertheless, as the virus spread worldwide, there was hardly a day in the second half of March without news about restrictions of media freedom in an increasing number of countries, according to reports from the International Press Institute (IPI), a Vienna-based NGO. These restrictions include intimidation and/or other forms of harassment like arrests, attacks and legal threats that make the work of journalists more difficult if not impossible. (Nemeth, 2020).

However, in this time where communicating with the public, sharing data and information is more important than before, journalists in many places are finding their voice. In Pakistan, journalists who long dealt with a hostile government, have found a new, more critical voice. Even pro-government outlets have begun to ask tougher questions about the official response to the crisis. In South Africa, Spain and the UK journalists have been designated key workers and have been able to travel down to report, even as much of the rest of the population remains in lockdown.

But as the case studies below show, COVID-19 poses a new threat to press freedom at precisely the moment it should be defended (Selva, 2020).

In Sri Lanka, the Inspector General of Police has ordered the police to arrest those who “criticize” officials involved in the coronavirus response, or share “fake” or

“malicious” messages about the pandemic. According to the order, issued on April 1, officials “are doing their utmost with much dedication to stop the spread of COVID 19,” but “those officials’ duties are being criticized, minor issues are being pointed out,” and messages are being posted that “scold” officials, thus “severely hindering” their duties (Ganguly, 2020).

## **Protecting the Freedom of Expression and Media Freedom under COVID -19**

Protecting the freedom of expression and media freedom in times of a pandemic is of vital importance. In almost all the countries around the world, people have been living in confinement for almost two months, a situation which has a profound impact on the communities, economies, families and daily lives. People have, more than usually, been relying on the media for news and information to better understand the COVID-19 crisis, ways to protect themselves and their families, and wider implications of the outbreak, as well as to evaluate the responses of the governments and the global community.

The crisis intensified the need for people to be able to access reliable news that they can trust, a quest made challenging enough by the digital information overload, indiscriminate use of various communication tools and news sources and the accompanying phenomenon of information disorder. Journalists have responded with resolve to fulfil their enhanced responsibility of informing the public and mitigating health and other risks stemming from the virus (Protecting the

freedom of expression and media freedom in times of pandemics, 2020).

The freedom of expression, which includes the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, through any media, applies to everyone, everywhere, and may only be subject to narrow restrictions. In this connection, the following can be directed:

Firstly, it is essential that governments provide truthful information about the nature of the threat posed by the coronavirus. Governments everywhere are obligated under human rights law to provide reliable information in accessible formats to all, with particular focus on ensuring access to information by those with limited internet access or where disability makes access challenging.

Secondly, internet access is critical at a time of crisis. It is essential that governments refrain from blocking internet access; in situations where internet has been blocked, governments should, as a matter of priority, ensure immediate access to the fastest and broadest possible internet service. Especially at a time of emergency, when access to information is of critical importance, broad restrictions on access to the internet cannot be justified on public order or national security grounds.

Thirdly, the right of access to information means that governments must be making exceptional efforts to protect the work of journalists. Journalism serves a crucial function at a moment of public health emergency, particularly when it aims to inform the public of critical information and monitor government actions. We urge all governments to robustly implement their

freedom of information laws to ensure that all individuals, especially journalists, have access to information.

Fourthly, we share the concern that false information about the pandemic could lead to health concerns, panic and disorder. In this connection, it is essential that governments and internet companies address disinformation in the first instance by themselves providing reliable information. That may come in the form of robust public messaging, support for public service announcements, and emergency support for public broadcasting and local journalism (for instance, through government health advertisements).

Resorting to other measures, such as content take-downs and censorship, may result in limiting access to important information for public health and should only be undertaken where they meet the standards of necessity and proportionality. Any attempts to criminalize information relating to the pandemic may create distrust in institutional information, delay access to reliable information and have a chilling effect on the freedom of expression.

Fifthly, we are aware of growing use of tools of surveillance technology to track the spread of the coronavirus. While we understand and support the need for active efforts to confront the pandemic, it is also crucial that such tools be limited in use, both in terms of purpose and time, and that individuals' rights to privacy, non-discrimination, the protection of journalistic sources and other freedoms be rigorously protected. States must also protect the personal information of patients. We strongly urge that any use of such technology abide by the strictest

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protections and only be available according to domestic law that is consistent with international human rights standards (Protecting the freedom of expression and media freedom in times of pandemics, 2020).

## Conclusion

Journalists are still doing extraordinary work, putting themselves at risk to report on a pandemic that is turning global systems upside down on an unprecedented scale. This pandemic must be documented, analyzed and recorded. People's stories must be told and politicians must be held to account if societies are to rebuild themselves. It is vital that journalism continues (Selva, 2020).

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