

## ETHNICITY, DEMOCRACIES AND INTIMIDATION OF JOURNALISTS: THE CASE OF SRI LANKA

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### ABSTRACT

The World's Press Freedom Index for 2014 is disturbing, especially for established democracies for it points to a dangerous trend in countries like the United States, Britain, India and Sri Lanka but for different reasons. If reasons of national security has been used freely by countries like the United States, Britain and India to gag the press or attempt to bully the industry to part with information, in the case of Sri Lanka the concoction of the poison is even more dangerous—a mixture of perceived national security interests and singling out journalists based on ethnicity for “special” treatment, a move that has come in for some sharp focus and debate in South Asia and elsewhere. This paper aims to analyze the case of Sri Lanka where the violence against Tamil journalists has to be seen not only in the perspective of security but also in the political comfort of the powers-that-be.

**KEYWORDS:** Freedom of Press, Harassment, Intimidation, Journalism, Sri Lanka, Media

### INTRODUCTION

The Press is generally seen as the fourth pillar in any democracy; and yet established democracies have been taken to task for flouting constitutional provisions on press freedom and expression that has been so cherished and for decades. In the United States, which prides itself in freedoms of speech and expression, those who had witnessed the McCarthy era in the United States in the 1950s can attest to how the anti-communist self styled crusaders terrified the journalistic community and not just during the elections era. Edward Alwood's *Dark Days in the Newsroom: McCarthyism Aimed at the Press* provides a vivid account of conflict and personal sacrifice of journalists and those in the newsroom especially as it pertained to protection of sources and the First Amendment.

This intimidation comes in a variety of forms such as threats, harassment, outright detention and in some instances even disappearances. In the aftermath of 9/11, it has indeed become fashionable for governments to hold out the so called national interest / national security trump card to brazenly muscle free speech and expression. To say that only governments in the developing world resort to these gimmicks is false.

It has been close to 15 years since 9/11 and the horrors of terrorism where in one strike more than 3000 people died in the attacks on the United States, in New York, Pennsylvania and Virginia. And yet in the name of security and terrorism successive governments in Washington have attempted to muzzle the media outlets. In the 2014 Report, the United States fell 13 places to a rank of 46—a significant decline, for a large part due its obsession with whistle

blowers and leaks in the realm of national security. The flight of National Security Agency analyst Edward Snowden aside, the determined conviction of Private Bradley Manning showed the Justice Department's determination to come down hard on leak of sensitive information even if such information could be seen in many quarters to be in the domain of public interest. The 2014 Index prepared by Reporters without Borders also points to several departmental agencies in the United States actively going after individuals and investigative reporters to force them to name their sources.

Other established democracies like the United Kingdom were also rapped for the kind of pressure put on reputed media houses. "Both the US and UK (ranked 33<sup>rd</sup>) authorities seem obsessed with hunting down whistleblowers instead of adopting legislation to rein in abusive surveillance practices that negate privacy, a democratic value cherished in both countries"<sup>i</sup> (2014 Report). And Japan too was not spared for its Special Intelligence Protection Bill that was passed in late 2013 that reduced transparency in such issues as nuclear power. Listed 59<sup>th</sup> in the Press Freedom index, Japan is increasingly been seen as a nation that is more concerned with preventing embarrassing revelations than protecting the interests of journalists.

And the story is not different when it comes to the contemporary era in South Asia where the supreme irony has been the rapid expansion of the media, especially electronic outlets and a perceived tightening of the grip of the government under one pretext or another. In fact Human Rights organizations have been making the point that under the guise of internal security measures, governments in South Asia have not hesitated to come down on the media houses.

For a democracy like India where the media largely operates unhindered, the country which is listed at a very low 140 in freedom index saw at least eight journalists killed in 2013. RSF makes the point that while no region in India is spared of violence against journalists the states of Kashmir and Chattisgarh see violence and censorship in an endemic fashion. "Those responsible for threats and physical violence against journalists, who are often abandoned by the judicial system and forced to censor themselves, include police and security forces as well as criminal groups, demonstrators and political party supporters"<sup>ii</sup> the 2014 report has maintained going on to make the point that in Kashmir, mobile internet and communications are suspended in response to any unrest.

### **Sri Lanka: One of the Worst Countries for Journalists?**

Reporters without Borders in its 2014 ranking of press freedom index had Sri Lanka in the 165<sup>th</sup> place out of a total of 180 countries making that democratic island nation closer to countries like North Korea, Turkmenistan and Eritrea. On Sri Lanka the point was made that the "...The army shapes the news by suppressing accounts that stray too far from the official vision of "pacification" in the former Tamil separatist strongholds"<sup>iii</sup>.

Last November Reporters without Borders (RSF) and Journalists for Democracy in Sri Lanka (JDS) condemned the "detention and harassment" of the International Federation of Journalists, the Director and Deputy Director of the Asia Pacific. "Although they were accused of violating visa regulations, the authorities have allowed them to fly out of the country without any charges," the organization maintained. "The high-handed action by the defence and immigration authorities yet again reflects the dreadful state of media freedom in Sri Lanka, which has already been recognized as a one of the worst countries for journalists.

The situation for journalists and media workers is still shockingly precarious, four years after the Sri Lankan government formally declared an end to the civil war," the two organizations said in a joint statement<sup>iv</sup>.

On Sri Lanka the argument was made that “Continued conflict also remains one of the main challenges for the development of a socially responsible media. Three journalists from the Tamil community were killed as a result of the factional war in the LTTE. *Virakesari* journalist Nadesan was killed by the Karuna faction and *Thinamurusu* journalist Bala Nadraja was killed by the LTTE. Both these groups have not respected freedom of expression and dissenting voices meet with harsh punishments. Dharmaratnam Sivaram 'Taraki', editor of the news website *TamilNet* and *Daily Mirror* columnist was probably targeted because of his uncompromising coverage of the political and military situation, particularly since the emergence of the pro-government Tamil militia headed by Colonel Karuna”<sup>v</sup>.

### Departure from Constitutional Protections

To say that democratic societies like Sri Lanka have had no protections for free speech or journalists is wrong. In fact the Island nation has had freedom of press guaranteed by Article 14 of the country’s constitution. And this includes speech, expression and publication; but the country has been under the lens of the international community not just since the end of the bloody civil war in 2009. **The Sri Lanka Campaign for Peace and Justice** in a 2010 report makes the point that the country’s constitution allows for freedom of expression to be “limited” in the context of the “interests” of the nation and hence a long history of restrictions on press freedom<sup>vi</sup>.

“... but the situation has deteriorated significantly under the Rajapaksa regime. Amnesty International, the Committee to Protect Journalists and Human Rights Watch document cases spanning the last two decades of attacks on journalists, government control of publications, censorship, lawsuits and arrests of those accused of 'violating harmony' under the country's Emergency Regulations”<sup>vii</sup>. The point has also been made that government’s restrictions and repression of press freedom came about during the JVP uprising when between 30,000-60,000 people were killed mostly by the armed forces”<sup>viii</sup>.

The current point of contention with Sri Lanka is the treatment of journalists and media outlets critical of the government since the end of the ethnic conflict. Non-Governmental organizations and human rights groups have consistently made the point that environment of operations by the media has been tightened by the day. “The local media continue to operate in a climate of fear knowing that phones and e-mails are tapped and practice self-censorship when it comes to stories that expose the regime. Threats and intimidation are common and those who challenge the government risk their lives. Media outlets such as Sirasa TV and The Sunday Leader have experienced attacks on their premises, and several journalists have been abducted or attacked... Last year, Lasantha Wickrematunge, founding editor of *The Leader*, was assassinated in broad daylight in a 'high security zone' patrolled by the army”<sup>ix</sup>. The Sri Lanka Campaign for Peace and Justice makes the point that no cases of violence against journalists or attacks on media houses have either been properly investigated or for that matter even been prosecutions. Even in 2010 the point was made that “ draconian emergency regulations and counter-terrorism legislation are still in place a year after the end of the war... The current regime has allowed the culture of impunity to flourish and tightened its grip on the media with journalists continuing to face threats and harassment”<sup>x</sup>.

From an academic perspective writing in the *Virginia Journal of International Law* in 2013, Clare Boronow argues that the Sri Lankan Constitution itself fuels self-censorship and in the process hindering reconciliation<sup>xi</sup>. “The current administration, headed by President Mahinda Rajapaksa, proclaims that the country is a free and democratic society that is finally moving forward, putting its long and bloody history behind it. As evidence of that progress, the President claims that “Sri Lanka has . . . committed itself to ensure media freedom as part of its democratic values.” On its

face, Sri Lanka's legal regime appears to support this statement. Article 14 of Sri Lanka's current constitution, adopted in 1978, guarantees "the freedom of speech and expression including publication" to "every citizen," and, as a party to the International Covenant on Civil and Political Rights (ICCPR), Sri Lanka is bound by Article 19, which requires that States respect and protect freedom of expression<sup>xii</sup>.

"Yet interviews with Sri Lankan journalists, editors, activists, and attorneys reveal a pervasive culture of fear-induced self-censorship among the Sri Lankan media that prevents the full and open discussion of the Government and the recent war. It is clear, therefore, that despite its express guarantee of freedom of expression, Sri Lanka's Constitution is failing to protect that right in practice. More problematic, however, is that the Constitution itself is facilitating the violation of freedom of expression, thereby encouraging self-censorship and undermining the post-war reconciliation process"<sup>xiii</sup>.

"...the Constitution facilitates those violations in four ways. First, the Constitution, as interpreted by the Sri Lankan Supreme Court, directly undermines freedom of expression by permitting vague and overbroad restrictions on freedom of speech on the grounds of national security. Second, the Constitution handcuffs the judiciary by preventing it from hearing cases alleging violations of freedom of expression and from striking down laws that violate freedom of expression. Third, by establishing a powerful executive, the Constitution makes it easier for the Government to violate the right and more difficult for it to be held accountable. And fourth, by promoting Sinhalese supremacy, the Constitution tacitly approves the Government's pro-Sinhalese stance, which encourages the self-censorship of Tamil and other minorities"<sup>xiv</sup>.

In a media profile of Sri Lanka in 2013, the *British Broadcasting Corporation* (BBC) pointed out that many of the top media houses are state owned, including television stations, radio and newspapers in Tamil, English and Sinhala. This aside there were also privately owned media outlets in television, radio and print<sup>xv</sup>. "At the height of the civil war Sri Lanka was described as one of the most dangerous places in the world for journalists. The state of emergency imposed at the beginning of the conflict was lifted in 2011, but Reporters Without Borders says that murders, threats and censorship continue, with top officials "directly implicated" in serious press freedom violations"<sup>xvi</sup> the report said.

"The government is particularly sensitive to accusations of human rights abuses in the closing phases of the civil war and subsequently. In 2012, a minister said "mudslinging" would not be tolerated. In April 2013, Amnesty International said that Sri Lanka was still violently suppressing dissent and that journalists were among the targets of "government-sanctioned abuse"<sup>xvii</sup>.

Just a few months before and ahead of the visit of the Commissioner of Human Rights Ms Navaneetham Pillai on a fact finding mission both the RSF and the JDS called on the top United Nations envoy to be "uncompromising in her search for accountability on grave crimes committed against journalists and media freedom" pointing to the attack on the President of the Sri Lanka Journalists' Trade Union<sup>xviii</sup>. "Media workers have been killed, abducted, made to disappear and forced to flee the country while media institutions have been bombed and burnt" the organizations maintained pointing to the fact that the Jaffna based '*Uthayan*' alone, has come under brutal attacks over 37 times and at least five of its journalists have been killed since 2002<sup>xix</sup>.

While all these crimes were committed in an extremely militarized area, no one so far has been brought to book. "As long as crimes against the media and its workforce go unpunished, while perpetrators feel safe with the implicit assurance of impunity, media freedom in Sri Lanka is facing a grave threat," RSF and JDS said in their statement to Ms

Pillay<sup>xx</sup> going on to make the point that the unwillingness of the Government to address threats to the media is nothing more than an extension of the repressive policies during the ethnic conflict<sup>xxi</sup>

To say that criticism of the functioning of the Sri Lankan government toward the media comes only from non-governmental organizations or persons with vested interests is also misleading. A country like the United States that has been sharply critical of Colombo in the last three years especially as it pertained to reconciliation process, accountability and media freedom.

“The government attempted to impede criticism through the year, including through harassment, intimidation, violence, and imprisonment. The government monitored political meetings, particularly in the north and east. There also were credible reports that civilian and military officials questioned local residents and groups who met with foreign diplomats regarding the content of their meetings”<sup>xxii</sup>. The issue to be pursued with Sri Lanka has one to do with the attitude of the powers-that-be towards media in general—domestic and foreign—even some five years after the end of the bloody ethnic conflict. If during the course of the 28 year tortuous conflict the government in Colombo hid itself under the cloak of fighting terrorism to keep media outlets in check, since May 2009 the reconciliation process is said to be taking a beating with the government further gagging and muzzling the media’s right of free speech and expression. But the operating environment in Sri Lanka appears to be one of brazenly taking on the ethnic media and Tamil journalists just because they had a different point of view.

### **Presidential Elections of 2010 and Beyond**

In all these generalized statements from non-governmental organizations what has also not gone unnoticed is that things have become difficult for the journalist community since the Presidential elections of 2010. A report of the School of Journalism of the University of Queensland, Australia has this to say: “Sri Lankan journalists, for whom intimidation, threats, assault and killings seem to have become unavoidable professional hazards, are bracing themselves for a fresh confrontation with the government as curbs on reporting intensify. Since Sri Lanka’s January 26 presidential election (won handily by the incumbent President Mahinda Rajapaksa) freelance cartoonist and columnist Prageeth Eknaligoda has disappeared, *Lanka* Editor Chandana Sirimal watte has been detained (ostensibly for terrorism offences), and a newspaper has been sealed, only to be forced open by a court order. In addition, several employees of government-owned media institutions have been victimized, and a number of journalists and media workers have gone into hiding”<sup>xxiii</sup>. The Report also made the point that while there had been a sense of freedom during the political campaign; but as the authorities were worried of an opposition surge, the intimidation resumed.

Colombo faced yet another serious test in September 2013 with the elections to the Northern Provincial Council; and this test came in a number of ways including how the media environment had been shaped in the run up to the polls as also on polling day. In his Letter of Transmittal to the Secretary General of the Commonwealth, the Chairperson and Members of the Commonwealth Observer Mission to the provincial elections remarked, “We have concluded... that while voters on Election Day were able to express their will, serious and fundamental shortcomings in the equally important pre-election period meant that in our overall assessment, the 21 September 2013 Northern Provincial Council Elections did not fully meet key benchmarks for democratic elections. We were impressed by the determination and resilience of voters to exercise their franchise in the context of a compromised electoral environment”<sup>xxiv</sup>

The Observer Mission went on to make the point that media interest in these elections were extremely high both within the country and elsewhere but at the same time recorded some of the restrictions that prevailed during the time. “The Mission noted specifically that *Al Jazeera* was blocked on Election Day, due to its coverage of the elections in the Northern Province. The Media Minister confirmed this blockage. The Mission also noted that access to the *Colombo Telegraph*, an online news source often critical of government, was restricted in the weeks and days leading up to the election. The Mission notes, in the context of media freedoms in the Northern Province, the multiple attacks against the popular Tamil paper, *Uthayan*. Earlier in 2013, *Uthayan* distribution offices and staff were attacked<sup>xxv</sup>.

### **Media Outlets and the Reconciliation Process**

It is not just an issue of scrutinizing Colombo on one or two aspects related to media freedom but that the Government there has been under intense pressure, especially in the aftermath of the end of the bloody 26- year old conflict, to seize the opportunity and bring about a genuine national reconciliation process. And in this larger process countries like the United States—both in Washington and through its Embassy spokespersons in Colombo-- have been pushing for freedoms of speech and expression.

Washington is both unfazed and unimpressed, as is its wont, to the argument that it should be the last country to be talking about war crimes or crimes against humanity given what has transpired in Vietnam, Iraq and Afghanistan as also in the innocent killings of people through drone attacks in the northern frontier agency of Pakistan, in Yemen and other places. The Obama administration told Colombo in no uncertain terms that if credible and tangible progress is not seen shortly, it will be moving yet another Resolution in Geneva at the Human Rights Council Meeting scheduled for March 2014. And Washington did, forcing Colombo to work overtime in Geneva, Colombo and other world capitals to deflect the American stance.

The point that has been put across to the government of Sri Lanka is that if it is not going to set up credible internal mechanism to address issues that have been raised by the international community—and this goes far beyond genocide and war crimes to include protecting freedom of speech and expression—then the push will have to come from the outside. Or as Ms Pillay put it in an interview to the *Australian Broadcasting Corporation* in 2013, “...all this stems from the commission set up by the Sri Lankan Government itself, called the LLRC, the lessons learnt, and the rehabilitation committee. It's their own committee who made various recommendations including the investigation of crimes, during the conflict, and justice for victim, reparation for victims and memorial to be erected for all those who lost their lives. And this is where the human rights council comes in, they have urged Sri Lanka to implement their own recommendations and I then reported to the council that that has not happened. Now, the LLRC recommendations fall short of our expectations on what should be done for proper accountability<sup>xxvi</sup>”

At Geneva in 2013 and 2014, there were frayed tempers and for many reasons. On the one hand there were emerging details of horrifying civilian deaths during the closing stages of the civil war in 2009 leading to vigorous calls for war crimes trials; and on the other hand delegates were witness to the workings of the international media that exposed some of the bone chilling moments of what Calum Macrae calls the Killing Fields. If some thirty years down the line the original Killing Fields of Cambodia refuses to go away from memory, it is a mere five years or less in Sri Lanka to come to terms with what unfolded at the end of the conflict. If national and international journalists were largely kept out of the war zones during the turmoil, Colombo must be more than forthcoming in coming away with clean hands on what transpired in the closing stages of the war

## CONCLUSIONS

It is fashionable in academic and intellectual circles to talk about sensitizing the journalist to issues of society and the polity including the elections process. That is indeed a valid expectation of media houses and academic institutions who are in the process of fine-tuning young journalists or making students interested in the field of journalism. At the same time much of the onus is on societies as well, especially those established democracies and those claiming to be one, to provide a proper and credible environment for a journalist to perform their duties in the absence of a climate of fear and intimidation. It would be meaningless as a profession to look at a one way street.

And that enabling was well spelt out at the Bali Democracy Forum in 2013 when representatives of editors, journalists' groups, press councils and media support bodies from 24 countries called for creating an enabling environment *to support free media and independent journalism, without any form of legal or political pressure, must be a priority for all governments committed to democracy; that governments must avoid imposing forms of regulation that may curb independence of journalism and must protect and nourish the rights of media and the information rights of citizens and journalists, including free expression and freedom of association and that a transparent, professional and independent self-regulation of journalism across all platforms should be created.*

## End Notes

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<sup>i</sup>Reporters without Borders, Freedom of the Press Index, 2014.

<sup>ii</sup>Ibid P. 6.

<sup>iii</sup>“Civil Society Organisation and Media Freedom”, The Human Rights Watch, Report on Sri Lanka, 2014.

<sup>iv</sup>“Detention of IFJ Directors Reflects Dreadful State of Media Freedom in Sri Lanka”, Reporters Without Borders, Nov 4, 2013 and updated Nov 4, 2013.

<sup>v</sup>Ibid

<sup>vi</sup><http://www.srilankacampaign.org/welcome.html>.

<sup>vii</sup>Ibid

<sup>viii</sup>Ibid

<sup>ix</sup>Ibid

<sup>x</sup>Ibid

<sup>xi</sup>Boronow, Clare. Silencing the Media in Sri Lanka: How the Sri Lankan Constitution Fuels Self - Censorship and Hinders Reconciliation, *Virginia Journal of International Law*, Volume 53, No.3, 2013

<sup>xii</sup>Ibid P.723

<sup>xiii</sup>Ibid P. 723

<sup>xiv</sup>Ibid P.723

<sup>xv</sup>BBC Sri Lanka Profile, May 16, 2013

<sup>xvi</sup>Ibid

<sup>xvii</sup>Ibid

<sup>xviii</sup>RWB and JDS address Open Letter to Navi Pillay, Reporters Without Borders, August 27, 2013

<sup>xix</sup>Ibid

<sup>xx</sup>Ibid

<sup>xxi</sup>Ibid

<sup>xxii</sup>Annual Human Rights Report, Department of State Section on Sri Lanka 2011

<sup>xxiii</sup>“Sri Lanka’s Election After Shock - Media Under Attack”, School of Journalism, University of Queensland, Australia

<sup>xxiv</sup>Report of The Commonwealth Observer Mission, Sri Lanka’s Northern Provincial Council Elections, September 21, 2013; Page iii in the Letter Transmittal

<sup>xxv</sup>Ibid P.15

<sup>xxvi</sup>*Lateline*, Interview with Ms. Navi Pillay, Australian Broadcasting Corporation on September 27, 2013 / Transcript posted on October 10, 2013

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