

## **SECURITY CHALLENGES FOR JOURNALISTS AND THE MASS MEDIA IN ADVANCING FREE SPEECH IN WAR TORN COUNTRIES: THE CASE OF AFGHANISTAN**

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*The challenges faced by journalists and mass media in war torn countries are serious. The same could be said to be the case in Afghanistan. Though freedom of speech and of the mass media are among the on-going struggles of the Afghan people after the fall of the Taliban regime, it is worrying that the initial success against the Taliban or other new enemies not irreversible. Threats of violence against journalists and the mass media come from militant groups, politicians and government apparatus. The objective of this paper is to examine the security challenges involving the exercise of free of speech by journalists and the mass media in Afghanistan. The situation also requires the analysis provisions of the constitution and relevant legislation to see if they are equal to the threats. On the other side of the question, the paper also examines violations of the rights of journalists by the government machinery. This paper applies the doctrinal method wherein the research examines the laws of Afghanistan relating to the freedom of speech and freedom of the mass media. The quest of the paper among others is about the adequacy of the relevant provisions of the constitution and legislation. Lastly, the paper makes recommendations to improve the safety of journalists and the mass media.*

### **INTRODUCTION<sup>1</sup>**

Most would consider freedom of expression as the pillar of a democratic State. Democratic countries believe that the best way to discover needs, and to diagnose errors is through freedom of speech and freedom of the media. Freedom of speech and media

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gives citizens the opportunity to express what they think about the country and to air their dissatisfaction, and for the citizens to be aware of the function of the government at different levels and to be able to access information.

The aim of the article is to examine the security challenges for journalists and the mass media in advancing free speech in war torn countries with specific reference to Afghanistan. The article looks at the international conventions that specifically provide for freedom of speech. Furthermore, the paper also looks at the Constitution of Afghanistan and the Afghanistan Mass Media Law, 2009 (AMML, 2009). Although there are provisions of the Afghanistan constitution and laws on the mass media that guarantee the right to free speech and media, such rights continue to be violated. This article describes the groups that have put the lives of journalists at risk for infringing their rights to practice as journalist. The activities of the group present security challenges to the nation as well as the citizens. The absence of manifest concern from the government could signify the reluctance of the government to uphold the law.

Freedom of speech and freedom of media are recognised as fundamental human rights in most societies. Freedom of speech and freedom media is a right that is considered essential for the support and observance of other rights in society. When the observance of freedom of speech is violated, all other rights will be affected. The right to freedom of speech is recognised as one of the most essential pillars of democracy by a large number of countries. Apart from international conventions that guarantees for the right to freedom of speech and freedom of media,<sup>2</sup> the constitution and other laws of most countries have clearly guaranteed the right to freedom of speech and mass media.<sup>3</sup>

### **FREEDOM OF SPEECH IN ISLAM**

From the perspective of Islam, freedom of expression is a human twin,<sup>4</sup> and the other twin is the media. Freedom is a virtue of humanity; limiting freedom is a divine right that requires rational and revelatory reasoning and justification.<sup>5</sup> Therefore, it is natural

to say that Islam has been responsible for the preservation of human freedom and stands firmly against any slavery of the mind or body or spirit.<sup>6</sup> However, Muslim thinkers limited freedom of expression for any but Islamic purposes. The Quran as the most complete and the last divine speech says in Surah Al A'raf states: "Those who follow the Messenger, the unlettered prophet, whom they find written in what they have of the Torah and the Gospel, who enjoins upon them what is right and forbids them what is wrong and makes lawful for them the good things and prohibits for them the evil and relieves them of their burden and the shackles which were upon them. So, they who have believed in him, honoured him, supported him and followed the light which was sent down with him - it is those who will be the successful" (Quran, Surah Al A'raf, Verse 157).<sup>7</sup> Similarly, Umar ibn Khattab, the second Caliph of Muslims, addressed those who were taking people as slaves and told them: "Since when have you turned men into slaves? Whereas they are born free of their mothers".<sup>8</sup> In addition, Ali ibn Abi Talib the fourth Caliph of Muslims stated: "do not make yourself a slave of others while God has created you free".<sup>9</sup>

One of the types of freedoms that Islam granted is freedom of speech. That is, a person can freely express his ideas, beliefs, feelings and emotions in consistent Islamic way because a human being is not an inanimate structure; he is a moving, mobile organism, and he reacts to his surroundings and expresses his inner self.<sup>10</sup> Islam as an overriding political authority religion has never done anything to silence the souls and kill the spirit of people. Hence, Muslims are rich in creativity: literature and music, art and architecture, music and poetry. Significantly, throughout history, there were many contending groups that expressed their dissenting views from the norm but within the broad framework of Islam without oppression.<sup>11</sup>

Therefore, the words of Allah (*s.w.t.*) are used in two senses. One is the meaning of what human beings say in verbal communication with each other, which is one of the characteristics of humankind. As in the Quran, Surah Al Rahman, Verse 4 states: "After the creation of mankind, states, (and taught him eloquent

speech)".<sup>12</sup> Here, the speech has been used in its literal meaning. In addition, the second meaning of speech from the perspective of the Quran is Allah's Speech itself. In this regard the holy Quran states in Surah Ali 'Imran, Verses 138 as: "This Quran is a clear statement to all the people and a guidance and instruction for those conscious of Allah".<sup>13</sup>

According to a Muslim source: "The extent to which the individual can determine his own destiny and act as he wishes, is unconstrained by others".<sup>14</sup> Freedom of speech means 'the absence of restraints upon of individuals or groups to communicate their ideas to others, subject to the understanding that they do not in turn coerce others into paying attention or that they do not invade other's rights essential to the dignity of the individual. Therefore, Mohammad Hashim Kamali in his book titled "Freedom of Expression in Islam" states regarding the scope and character of freedom of speech under the *Shari`ah* differs broadly from other laws in respect of detail. The *Shari`ah* does not convey a great deal of awareness about the state authority and political interests or of its agencies and institutions. To that extent, the *Shari`ah* is egalitarian and fundamental; in the sense that attention is paid to actual values rather than to institutional interests. However, being a religious law, the Islamic law is only expected to be emphatic about moral and religious values, which might mean imposing restrictions on freedom of expression in areas where this might come into conflict with the principle of Islam.<sup>15</sup>

## INTERNATIONAL CONVENTION ON FREE SPEECH

The concept of freedom of speech is globally accepted and recognised under international laws. The foundation of these rights can be found in the Universal Declaration on Human Rights (UDHR), which was adopted by UN General Assembly in 1948.<sup>16</sup> The right to freedom of speech was set out in the UDHR and clearly identified as among the rights. It is considered and recognised today as part of customary international law and some even consider it as *jus cogens*.<sup>17</sup> The core underlying principles of freedom of speech are enshrined in five international human rights

conventions namely, the International Covenant on Civil and Political Rights (ICCPR),<sup>18</sup> the International Covenant on Economic, Social and Culture Rights (ICESCR),<sup>19</sup> the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),<sup>20</sup> the Convention on the Rights of the Child (CRC),<sup>21</sup> and the International Convention in the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW).<sup>22</sup> The article will briefly discuss some of these conventions that Afghanistan has ratified.

When the United Nation was founded in San Francisco in 1945, there was pressure on the delegates to the founding conference to include an international bill of rights to cover four essential freedoms namely freedom of speech, freedom of worship, freedom from want and freedom from fear. These was included by the drafters of the UDHR in its preamble where we could find that “the freedom of speech, freedom of fear and want have been proclaimed as the highest aspiration of the common people”.<sup>23</sup> The UDHR is categorical on freedom of speech and provided under Article 19 that: “[E]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.<sup>24</sup>

To provide substance to the right of freedom of speech, the United Nations General Assembly unanimously adopted the International Covenant on Civil and Political Rights (ICCPR) in 1966, and Afghanistan ratified this convention in 1983.<sup>25</sup> The right to freedom of speech is expressed in Article 19 of the International Covenant on Civil and Political Rights (ICCPR) under the same broad terms as in the UDHR. Article 19 of the ICCPR includes the right not only to express opinions and ideas, but also to receive information.<sup>26</sup> Article 19 states: “(1) Everyone shall have the right to hold opinions without interference. (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”.<sup>27</sup>

## POSITION OF FREE OF SPEECH IN THE AFGHANISTAN CONSTITUTION AND THE MASS MEDIA LAW

The mass media are the main guardian of freedom of speech in Afghanistan. Freedom of speech and freedom of the media is one of the accomplishments of Afghanistan after the fall of the Taliban regime.<sup>28</sup> The Constitution of Afghanistan in Article 34 guarantees the right to freedom of speech for Afghan citizens and provides that freedom of speech is safe from invasion, and gives right to citizens of Afghanistan to express their thoughts and views through speech, writing, image or other means.<sup>29</sup> In addition, the Afghanistan Constitution in Article 16 commands that the state shall design and apply effective programs to foster and develop all languages of Afghanistan.<sup>30</sup> The usage of all current languages in the country shall be free in press publications and the mass media. Academic and national administrative terminology and usage in the country shall be preserved. Article 24 of Afghanistan Constitution provides that the constitutional rights are natural right of human. Furthermore, the government is obliged to respect and protect freedom and human dignity.<sup>31</sup>

The Afghanistan Mass Media Law 2009 also provides protection for freedom of speech under on Article 2 of the law. Every Afghan citizen has the right to think and express his thoughts and pass it to others. The second paragraph of this article protects journalists' rights and provides free environment for media activities.<sup>32</sup> Since the fall of the Taliban regime in 2001, the number of media and journalists in Afghanistan has grown very large and unprecedented. In addition, thousands of journalists and hundreds of radio and television networks and newspapers, weekly newspapers, monthly newspapers are in operation in Afghanistan.<sup>33</sup> All these achievements in the field of media are assertions of the right.<sup>34</sup>

Although international laws, the Afghanistan Constitution and the Afghanistan Mass Media Law guarantee freedom of speech and mass media, Afghanistan is not a safe haven for practitioners of the mass media. In 2016 national and international institutions

rated Afghanistan as one of the most dangerous countries for journalists, in which journalists are faced with all kinds of risks even death.<sup>35</sup> Over the past years, concerns over the restrictions on freedom of speech, freedom of mass media and mass media activities is increasing. Besides, there are some problems facing the media in Afghanistan such as violations of the rights of journalist by the law enforcement agencies in Afghanistan and the unwillingness of government officials to provide information.<sup>36</sup> Other restrictions involved the enforcement agencies disallowing journalists to cover suicide attacks and political leaders restraining journalists by not disclosing sensitive information as well as the non-democratic forces threatening journalists by arresting them.<sup>37</sup>

## CHALLENGES

The main problem in the exercise of freedom of speech by mass media in Afghanistan is the violation of the right by enforcement agencies such as ministries, members of Parliament, Governors and Attorney General in different parts of Afghanistan in their seemingly well-meaning efforts to ensure the law is observed properly. Mass media activities are restrained in various ways, such as threats or harassment of journalists in performing their duties. They are threatened, and most of the time they are ruthlessly killed or kidnapped.<sup>38</sup> A human rights organisation reported that in Afghanistan most of violence against journalists are perpetrated by the government.<sup>39</sup> In 2015, a report shows that Afghanistan is a dangerous country for journalists.<sup>40</sup> The challenges are categorised into violence by government agencies; violence by insurgent; and violence by foreign military.

### *Violence by Government Agencies*

According to the Afghanistan Journalists Association, from 2016 until 2017 in Afghanistan, the government committed most of the violence against journalists. In all 107 violent instances during 2016 until 2017, 60% of violence was committed by government, and another 40% of it was committed by Taliban and unidentified groups, in different parts of the country.<sup>41</sup> The human rights

organisation expressed concern about the position of journalists in Afghanistan, saying that violence against journalists by government officials jeopardised the achievements of free media.<sup>42</sup> Journalists in Afghanistan whose publications are critical of the authorities and the government often face with censorship, harassment, and violence. The perpetrators of violence by government in most the cases is the Afghan national security forces and Members of Parliament and Governors in the provinces of Afghanistan. To dissuade journalists from reporting on sensitive topics such as corruption and human rights violations, journalists have been threatened, detained, and attacked.<sup>43</sup> Human Rights Watch's Asia Division alleged that the work of journalists in Afghanistan had become more dangerous. Although insurgent groups also play a role in violence against journalists, the main challenge against journalists is the threat posed by government officials. Most of the violence against journalists are committed by those who are working the high levels of government.<sup>44</sup>

The use of threats, beatings, murder, insult, and detention are challenges faced by journalist in Kabul and other provinces.<sup>45</sup> On June 9, 2016, the Afghan National Security Council sent a guideline to the Ministry of Interior and other security agencies, regarding the generally prohibited use of drone cameras for media activity. On 18 June 2016, Parwiz Safi, the Shamshad TV operator in Qalha, Zaman Khan was beaten by Kabul police and they threatened to kill him.<sup>46</sup> On the same date Ghazi Rasoli reporter of One TV, Khowaja Tawfiq Sediqi reporter of Radio Shamriz was subjected to beating by the Kabul police.<sup>47</sup> In July 2016, Hassan Haqyaar, director of the Mahazi Meli weekly newspaper, was arrested and jailed by the National Security Forces.<sup>48</sup> After his release from jail, he argued that the reason for his imprisonment by the Security forces was his criticisms of government in the free debate on television. In addition, Masood Ansari reporter of radio, threatened to kill by the presidential office, Nasrat Parsa reporter of Aryana News Agency threatened by Office of the Chief Executive Officer<sup>49</sup> and managers of Bokhdi and Kukcha news agency beaten and threatened to die by Zeyah Masood representative of the



President in 2017.<sup>50</sup> The above cases are some of the cases that occurred in Kabul, which also occurred in all provinces of Afghanistan where journalists face challenges in practicing free speech.

### *Violence by Insurgents*

Along with the Afghanistan government, the Taliban and Daesh, Muslim armed group leaders and foreign military also create security and safety obstacles for journalists in exercising free speech.<sup>51</sup> Media practitioners in Afghanistan sometimes face challenges that are unexpected, which does not give any chance for the media to react, confront or mediate the hurdle. Taliban and opposition groups of the Afghan government, in arresting journalists in battlefield may kill the journalists on the belief that Afghan's media personnel and journalists are agent of foreign countries, and that journalists are trying to promote un-Islamic culture in Afghanistan. Since 2001, Taliban and opposition groups have arrested a large number of journalists in the battlefield and killed them. They also destroyed a large number of government and private media facilities in the provinces.<sup>52</sup>

Sometimes the challenges faced by journalists in advancing free speech arise from personal interest of influential individuals and most of them are armed group leaders who are powerful in their province or area.<sup>53</sup> Personal preferences and personal views of such individuals have caused huge problems in the field of media as seen over the past 17 years from 2001-2017 in Afghanistan.<sup>54</sup> In this regard, one may have an armed group commander, government officials or a powerful person issuing a notice to media offices not to broadcast a program or news and may take action against the media for an alleged offence of illegally broadcasting a program. Sometimes, they arrest the journalists and unlawfully inflict physical harm. The media outlets were reluctant to publish or broadcast the program of political parties due to threats by the opposition or armed group leaders. This resulted in information not being disseminated appropriately and many airings of programs resulted in violence reactions.<sup>55</sup>

According to media reports, from 2001 to the end of 2016, 900 cases of violence against journalists occurred in Afghanistan. Some 68 Afghans and foreign journalists died in terrorist and criminal incidents. According to the Nai Institution's statistics, the Taliban group is at the top of this list and responsible for 30 assassinations and killing of Afghan and foreigner journalists in the past 16 years. After the Taliban groups, there is the "unknown people" category and others known as "suicide bombers" in second place with 29 incidents of journalists' murder.<sup>56</sup> In addition, the powerful and influential individuals made threats against the media and journalists in the past 17 years (2001-2017). In most cases, when journalists made reports about human rights violations, they were threatened.<sup>57</sup> Indeed, the duty of the Afghanistan government is to take action against those individuals.

#### *Violence by Foreign Military*

Foreign armed forces were responsible for the murder of three journalists in separate security and military events in Afghanistan.<sup>58</sup> They are Sultan Munadi in 2009 in Aliabad district of Kunduz province,<sup>59</sup> Zabiullah Pashtonyar in 2016 in the centre of Kunduz province, and Anjanaaderin Gauss in Khost province.<sup>60</sup> The Journalists' Security Committee and the Journalists' National Association of Afghanistan are not pleased with the investigation and the working of the judicial organs of the government in respond to these murders. They believe that the investigations were lackadaisical. In connection with the killing of Zabiullah Pashtonir, journalist of Kaihan radio who was killed in 2016 as a result of the US Air Force bombing of the Doctors Without Borders Hospital in Kunduz Province,<sup>61</sup> local authorities wrote in response to journalists' National Association, that they have not yet investigated the case. In the case of Shekiba Sanga Amaj, journalist of Shamshad TV, who was shot dead by unknown gunmen in the fifth district of Kabul city on 20 April 2007,<sup>62</sup> less than 10 years of this case, the Kabul primary court sentenced two people to jail. One of them was sentenced to 16 years in jail and the other one-year.<sup>63</sup>

Similarly, in the cases of Sultan Mohammad Munadi and

Stephen Farrell reporters of New York Times in 2009, the journalists went to the area of the Rahmat-Bai Forest in the Aliabad district of Kunduz province in order to take photographs from the tankers that were burned by ISAF air Bombardment. They were captured by the Taliban, and Mr. Stephen Farrell was later abandoned,<sup>64</sup> and Mr. Munadi, the Afghan journalist was killed by a Taliban group. The incident happened in 2009 and there is no report on the investigation of the murder case from the government. In 2016, the Attorney General of Afghanistan in an official letter ordered the Security Council of the Islamic Republic of Afghanistan to examine this case. The research teams from the Security Council of the Islamic Republic of Afghanistan found that Mr. Sultan Mohammad Munadi was shot dead by British Special Forces. Since then, the Attorney General's Office has yet to issue a decision on the case.<sup>65</sup>

In the first six months of 2017, the Afghanistan journalists Committee registered 73 cases involving murder, injury, insult, humiliation, and threat and arrest.<sup>66</sup> This figure shows an increase of 35 percent compared to the six months of 2016,<sup>67</sup> in which 54 cases occurred. During this period, 10 journalists and media workers have been killed,<sup>68</sup> which seriously raised the safety committee concern about the high rate of journalists' murder in the country. The Taliban and Daesh are responsible for all incidents of murder in first six months of 2017. They killed these journalists directly or in indiscriminate attacks. In an attack on the National Television of Nangarhar by Daesh on May 2017, four journalists died.<sup>69</sup> In March 2017, in an attack launched by Daesh on Afghanistan Parliament,<sup>70</sup> two journalists died, and in the bomb attack against the German embassy in Kabul, four journalists and media workers lost their lives.<sup>71</sup>

#### **EXTENT OF VIOLENCE AGAINST JOURNALISTS AND GOVERNMENT RESPONSE**

In six months of 2017, government officials and security forces carried out more violence against journalists, just like the previous government. They are accountable for 34 cases of violence that

makes 46 percent of all cases of violence. The violence perpetrated by government officials is mostly due to journalists unveiling the illegal activities of these individuals and entities.<sup>72</sup> The increased threat to the media and the efforts of terrorist groups to control media contents through threats has raised serious concerns about self-censorship and media freedom.<sup>73</sup> Terrorist groups have threatened the media not to publish news on the activities of the government and they also chose what kind of information to publish especially regarding the security forces announcements. Broadcasting entertainment programs, music and women's voices may result the media being subject to attacks.<sup>74</sup>

Recognising the high level of violence against journalists, the Afghanistan government has taken some measures to ensure their safety by creating a joint committee for the security and safety of journalists.<sup>75</sup> The Joint Committee is created and consists of Media Committee and National Security under the chairmanship of the Second Vice-President of Afghanistan. However, due to weaknesses in the administration of the government, these measures have not achieved the optimal results.<sup>76</sup> The joint committee failed to solve the security challenges of the media and journalists and this failure has reduced the impact and the image of the Committee in the eyes of Afghan community. The security forces' failure in providing security to the media personnel, especially after receiving threats, resulted in the death of innocent citizens.<sup>77</sup>

## CONCLUSION

The examination on the fate of the mass media in war-torn countries is important in considering challenges outside the black letters of the law. The implementation of the constitution and other domestic laws in a country is the duty of the government. If the constitution of a country is not respected by government officials, then the government's credibility will be questioned. Based on the Afghanistan Constitution and the law on the mass media, the protection and support for freedom of speech is the duty of the Afghanistan government. Moreover, Afghanistan has ratified an international convention that provides the guarantee

for freedom of speech which includes providing the security of the media personnel.

Unfortunately, the government not only failed to protect media personnel, they are also complicit in the transgression. The creation of the Joint Committee for Safety of Journalists is a step in the correct direction. It is a way to stop or reduce the Taliban, Daesh and armed group leader's threats against media personnel. The Joint Committee should have explicit legal authority in the event of a threat to the media and journalists. Maintaining media independence would enhance the cooperation of security organs with the media.

#### Notes

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