

The Chhattisgarh Special Act for Protection of Journalists and Human Rights

Defenders

Preamble

The Freedom of Speech and Expression is one of the cherished Fundamental Rights granted by Article 19 of the Constitution of India. In the past several decades since the two World Wars, the freedom of the press and its security have been recognized as one of the crucial cornerstones of peace and democracy worldwide and have already been enshrined in Article 19 of the Universal Declaration of Human Rights. In the last decade the spurt in targeted killings and attacks on journalists, particularly in situations of war or corporate resource grab have been well documented by the international organization – the Committee for Protection of Journalists - which has also established that less than 7% of such attacks result in effective prosecution. The UN Security Council Resolution 1738 passed a decade ago specifically condemned the attacks on journalists in conflict situation.

In the past several years, India has become one of the most dangerous countries in the world to practice journalism and defend human rights. A sub-committee of the Press Council of India (PCI) – a quasi-judicial authority - has prepared a detailed report on the attacks faced by working journalists, after visiting 11 states. The report states that 80 journalists were killed in India since 1990 and in most instances, except the Shakti Mill gang rape case, all other cases are still pending in the courts and in some the police are yet to file charge sheets. With four journalists dying in the line of duty in the duration of just over a month, the Press Council of India (PCI) had demanded in this report that a separate law be enacted for the safety of journalists across the country. The PCI report was submitted to the Union Minister for Information and Broadcasting, Arun Jaitley, during the 2015 monsoon session of the Parliament.

As part of its recommendations on creating a new law, the PCI report has stated that attacks and intimidation of journalists should be made a cognizable offence and such cases should be investigated by a special task force, or by a national level investigation agency such as the CBI, under the supervision of the PCI. The report also recommends that these cases be investigated in a time-bound manner and be tried in special courts. The report further recommends that families of such journalists be awarded compensation of Rs 5 lakhs in cases of grievous injuries, and Rs 10 lakhs in cases of murder. The PCI report has also recommended that all state governments constitute high-powered committees with representation to investigate cases of attacks on journalists or fraudulent cases filed against them.

Chhattisgarh has seen a fair amount of violence against journalists, especially those working in the conflict zones of South Bastar. On February 12, 2013, Chhattisgarh-based freelancer Nemi Chand Jain's body was found the morning after he had left his home for Nama village in Sukma district of Chhattisgarh suspected to have been killed by Maoists. On April 11, 2012, local political activists attacked the District Bureau Chief of the Hindi daily Rajasthan Patrika, Kamal Shukla, at his office with iron rod in Kanker, Chhattisgarh. On December 20, 2010, some assailants shot dead Sushil Pathak, a

journalist with DainikBhaskar, at close range while he was returning home in Bilaspur Chhattisgarh, after a late night shift. In January 2011, Umesh Rajput a reporter with the Nai Dunia newspaper was shot dead at his home in Village Chhura, District Gariyaband. Several journalists have been facing malicious prosecution and defamation cases because they reported on misdeeds of corporate or powerful bureaucrats. Certain newspapers who reported against powerful vested interests also faced sponsored physical violence.

In the past year, four journalists in the Bastar Division have been incarcerated. Santosh Yadav, was arrested by police on September 29 2015 and Somaru Nag, an Adivasi journalist, was arrested on July 16 2015, from the Darbha block of Bastar District, on charges of supporting Maoists whereas they were known for reporting against police excesses. On March 21, 2016 journalist Prabhat Singh was picked up by the police and charged with offences under the Information Technology Act for a WhatsApp message making fun of a senior police officer. Later, he was also booked under other offences. Soon after, on March 26, 2016, journalist Deepak Jaiswal was also arrested as a co-accused of Prabhat Singh in a seven-month old case, accusing the duo of assaulting and obstructing public servants in a school, while they were reporting against institutionalized cheating.

Seeing these arrests as politically motivated, and as retaliation for the reporting by arrested journalists , journalists of Chhattisgarh have formed a Patraakar Suraksha Kanoon Sanyukt Sangharsh Samiti (United Struggle Body for the Security of Journalists), demanding that the arrested journalists be immediately released, and that the state create conditions for reporters to work and travel freely, without fear or harassment. As part of this initiative, the journalists are also demanding that the state implement an Act that protects the journalists from physical violence and arbitrary arrests.

In response to this, the Chhattisgarh PUCL is proposing the following draft bill for consideration.

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The Chhattisgarh Special Act for Protection of Journalists and Human Rights Defenders

1. This Act shall be applicable throughout the State of Chhattisgarh.
2. By this Act the **Chhattisgarh State Commission for Protection of Journalists and Human Rights Defenders** (hereinafter, the Commission) shall be constituted in the State of Chhattisgarh as an autonomous body with a legal personality and its own assets, and technical and managerial autonomy and quasi-judicial powers for fulfillment of its objectives.
3. **Purpose of the Commission:** The Purpose of the Commission shall be:
 - a. to ensure that the State Government effectively fulfills its responsibility to protect, respect and guarantee human rights of people who are at risk as a result of their exercise of freedom of expression and the professional pursuit of journalism in the state of Chhattisgarh and the defense and promotion of human rights ; and

- b. to promote public policies, training and coordination of various state agencies in this regard, and to prevent actions of public authorities and private players that violate the aforesaid rights.
4. **Definitions** – For the purpose of this Act, the following expressions shall be defined and understood as below -

(a)Assault: Any conduct that violates in any way the life, physical, psychological, moral or economic integrity, liberty or security; as well as the property or rights of journalists and collaborating journalists, human rights activists, and their family or other persons linked to them in the performance of their activity.

(b)Beneficiary: the person or persons who are granted Preventive Measures, Protective Measures, Measures for Immediate Protection, and Social Measures referred to in this law.

(c)Collaborator or journalistic collaborator: Anyone who makes the exercise of freedom of expression and / or dissemination of information their primary or significant or substantive activity, either on an intermittent or regular basis, whether with or without union registration, compensation or any accreditation for such exercise.

(d)Extraordinary Procedure: Procedure resulting in urgent protection measures in order to preserve life, freedom and integrity of the beneficiary.

(e)Freedom of expression: It is the right of every person to disseminate information and publish ideas or opinions of any kind, either personally or collectively; without being subject to any administrative or institutional or private obstruction or assault, directly or indirectly, only for the reason that persons who wield administrative, social or political authority or power are adversely affected by such information or opinions; and to not be discriminated against for reasons of race, caste, community, religion, gender, sexual orientation, language, national origin, ethnicity or political persuasion for such dissemination or expression through any form of media.

(f)Human Rights Defenders: Individuals who acting individually or as members of a group, organization or social movement, as well as moral persons, groups, organizations or social movements, paid or unpaid, whose purpose is the promotion and / or protection of human rights and who require certain guarantees in order to create these positive conditions, such as their freedoms of assembly, association, opinion, expression, demonstration, protest and documentation; access and communication with national and international human rights institutions; access to public resources and public bodies to promote, develop and discuss new human rights ideas and to access justice and information through acts of administration and enforcement of justice, and any other required for the exercise of their activities.

(g)Journalist: Any person who makes the exercise of freedom of expression and / or dissemination of information, his primary, substantive or significant activity; or any individual, whose job is to collect, store, generate, process, edit, comment, review, disseminate, publish or provide information through any media or any communication that can be printed, broadcast in a digital or image form, or an individual who has the experience or qualification to practice journalism.

(h) Media: Any means of communication used regularly for purposes of dissemination of information and expression of views and opinions such as the print media – newspapers, magazines and journals; audio-visual media such as radio, community radio, video magazines, electronic media including state sponsored and private television channels; and digital media including web magazines etc.

(i) Petitioner or Petitioners: A person or persons applying for preventive measures, protection measures or urgent protection measures before the Commission established in this Act.

(j) Preventive Measures: Set of actions and means aimed at preventing assaults against journalists and human rights defenders, including developing policies and programs aimed at reducing risk factors for such assaults, combating the causes of such assaults, and preventing repetition of such assaults.

(k) Protection measures: A set of actions and security measures for dealing with risk and protecting the rights to life, integrity, liberty and security of the beneficiary.

(l) Protection Plan: The set of actions to increase capacity and reduce vulnerability, threat and risk exposure of the beneficiary, for which guidelines, preventive measures and / or protection measures would be provided, as appropriate, by the mechanism of the Commission, in order to ensure her/ his capacity to carry out her/his work or profession.

(m) Social measures: Set of actions and means to support the security, survival and sustenance of the beneficiary and her/ his family if necessary, in a particular district.

(n) Urgent Protection Measures: A set of actions and means to immediately protect the life, integrity, security and freedom of the beneficiary.

5. **Institutional Structure** - The Commission shall consist of six organs:

- a. Governing Board;
- b. Executive Council;
- c. Unit for Admitting Cases and Rapid Reaction;
- d. Risk Evaluation Unit;
- e. Unit for Prevention, Follow Up and Analysis
- f. Special Investigation Unit

6. **Powers of the Commission** - The Commission shall have the following powers:

- a. To propose and promote legal initiatives, regulations or public policies aimed at strengthening the comprehensive protection of journalists and journalistic collaborators, and other human rights defenders;
- b. To promote the recognition and exercise of the right to defend human rights and freedom of expression;
- c. To promote, coordinate, evaluate and review with the various departments of the State Government, public policies that guarantee the right to defend human rights and the exercise of freedom of expression;
- d. To direct, coordinate, evaluate and review with the various departments of the State Government, specific actions that ensure that those journalists, collaborators, and other

human rights defenders who are at risk in the performance of their work or profession, are given the conditions to continue their activities;

- e. To enquire and investigate into assaults upon journalists, collaborators or other human rights defenders or threats and risks to them in order to pass appropriate directions to the concerned state authorities for their protection;
 - f. To summon state authorities and call for relevant documents in connection with enquiries and investigation, the passing of appropriate directions of protection and prevention, and the evaluation and review of such orders;
 - g. To promote the specialized training of public servants people on the right to defend human rights and the right to freedom of expression, including sensitization towards the rights of marginalized persons, minorities and the issues of gender and sexuality;
 - h. To establish partnerships with public, private and social organizations and promote legislative and administrative initiatives that guarantee the right to defend human rights and the right to freedom of expression;
 - i. Any other powers that may be granted to it by the State Government from time to time.
7. **Scope of the Commission** - The Commission shall exercise its powers for the protection of the following –
- a. Journalist or Journalist Collaborator, or Human Rights Defender who is facing assault for defending human rights or for practicing the freedom of speech or expression
 - b. Partner by marriage or otherwise, any next of kin or dependents of the journalist, collaborator, or human rights defender in part (a) above;
 - c. Persons that participate, collaborate or associate in the same or similar activities from the same group, organization or social movement as in (a);
 - d. Property, goods or other objects belonging to the person, group, organization or social movement, and;
 - e. Other people that are specified in the risk analysis.
8. **The State shall ensure that the Commission shall function effectively by**
- (a) Providing the Commission adequate and regular funds from a designated source to create and maintain a permanent infrastructure, and have a permanent body of staff to man the same;
 - (b) Deputing sufficiently senior officers with experience, training and perspective in regard to protection of human rights from the Ministries dealing with Home Affairs, Information and Broadcasting, Education and Culture, Tribal Welfare and Social Justice to man the various Units of the Commission on the recommendation of the Governing Body which shall also have the powers to recommend the extension or discontinuation of such period of deputation after affording an opportunity of hearing to the officer concerned.

- (c) Ensuring the strict implementation of the recommendations of the various organs of the Commission by various authorities in the administration and police departments.

9. **Admission of cases** - Any journalist, journalist collaborator or human rights defender facing Assault or threat of Assault as defined in Section 4 as a result of his or her activities, or a third party on behalf of such a person, may apply or communicate with the Commission through the Unit for Admitting Cases and Rapid Reaction, giving details of the assault or the threat of such an assault.

- a. The Commission may take *suomotu* cognizance of cases brought to its notice where a journalist/ journalist collaborator or a human rights defender is facing a threat to her/ his life, liberty, physical integrity or security, and forward this information to the Unit for Admitting Cases and Rapid Reaction.
- b. Any criminal cases involving arrest or imprisonment of a journalist/ journalist collaborator or human rights defender will be placed before the Unit for Admitting Cases and Rapid Reaction by the concerned police department, and no arrest can be made unless it is sanctioned by the Commission. The evaluation as to whether the accused in a criminal case qualifies to be a journalist/ journalist collaborator or human rights defender shall be made by the Commission.
- c. The Unit for Admitting Cases and Rapid Reaction will accept the application of the Petitioner, or information forwarded to the Unit by the Commission, and will conduct an Evaluation for Immediate Action.
- d. If it is determined that a person's life, physical integrity or liberty is in imminent danger, then Extraordinary Procedures will be employed in the case.
- e. If it is determined that there is a prima facie assault or a threat against a journalist or a journalist collaborator, or a human rights defender but no person's life, physical integrity or liberty is in imminent danger, then Ordinary Procedures will be employed.

10. **Extraordinary Procedures** – Once the Unit for Admitting Cases and Rapid Reaction has determined that Extraordinary Procedures have to be employed, then

- a. The Unit for Admitting Cases and Rapid Reaction will determine the Urgent Protection Measure to be used, no later than 3 hours after receiving the application or the information.
- b. The Unit for Admitting Cases and Rapid Reaction will implement the Urgent Protection Measure no later than 9 hours after they have been determined.
- c. The Unit for Admitting Cases and Rapid Reaction will conduct a simultaneous evaluation of the Urgent Protection Measure
- d. The Unit for Admitting Cases and Rapid Reaction will inform the National Executive Council about the case and measures adopted.
- e. The Unit for Admitting Cases and Rapid Reaction will forward the case to Risk Evaluation Unit for determination of the Protection Plan, as in Ordinary Procedures.

11. **Ordinary Procedures** – Once the Unit for Admitting Cases and Rapid Reaction has determined that Ordinary Procedures have to be employed, then

- a. The Unit for Admitting Cases and Rapid Reaction will forward the case to Risk Evaluation Unit for determination of the Protection Plan.
- b. The Risk Evaluation Unit will conduct the Risk Assessment Study, which is an instrument through which an analysis is made of the factors that determine the degree of risk to which the applicant or a potential beneficiary is subject, and whether Preventive Measures or Protective Measures are needed. Such study should always incorporate the gender perspective and the principle of equality and non-discrimination. The Risk Evaluation Unit will forward this study to the Governing Board, no later than 10 days after the receipt of the application.
- c. The Governing Board will determine the Protection Plan on the basis of the Risk Evaluation Study, no later than one week after the receipt of the Study.
- d. The Governing Board may determine to send some cases requiring investigation to the Special Investigative Unit for further investigation. Cases pertaining to the complaints against the administrative and police officials, whose complicity or connivance in the harassment, threats, intimidation or assault of the affected journalists and human rights defenders is suspect, may be referred to the Special Investigative Unit. The Special Investigative Unit will revert with a report on the case no later than 2 months after the referral, and in this case, the Protection Plan may be determined 7 days after the receipt of this Report.
- e. The Governing Board will share the Risk Evaluation Study and the Protection Plan with the beneficiary, or the applicant, at least 48 hours before communicating the Protection Plan to the Executive Council, so that the Petitioner or the Beneficiary is able to respond to the same and provide informed consent to the Protection Plan. In case the potential Beneficiary is unable to provide consent because of some serious condition, his/her next of kin should be contacted for consent, and the Beneficiary's consent taken immediately as it becomes practicable.
- f. The Governing Board will forward its resolutions to the Executive Council for implementation.
- g. The Executive Council, within 72 hours of the receipt of the resolutions from the Governing Board, will communicate its resolutions and decisions to the appropriate authorities and the state government.
- h. The Executive Council will monitor the implementation of the Protection or Preventative Measures. It will also inform the Governing Board about progress made in the implementation of these Measures.
- i. The Governing Board and the Executive Council will provide information on the case, the measures, their implementation etc. to the Unit for Prevention, Follow Up and Analysis.

12. Governing Board

(1) The Governing Board is the main body for decision-making on the powers indicated in items Section 6 of this Act. In particular, the Governing Body may

- a. Order, evaluate, suspend, and if necessary, modify Preventive Measures and Protection Measures, and
- b. Evaluate, suspend, and modify Urgent Protection Measures

(2)The resolutions issued by this body shall be binding on other organs of the State Government and local authorities whose intervention is necessary to meet the measures provided for in this Act.

13. Composition of Members -

- (1) The Governing Board shall consist of 8-12 members, comprising of representatives from
 - a. The Home Department
 - b. Members of the Press
 - c. State Human Rights Commission
 - d. Civil Society Organizations with a mandate for securing Human Rights
 - e. Retired Judges from the Chhattisgarh High Court

14. Functioning of the Governing Board

- (1). The Governing Board will be presided over by a Retired Justice of the Chhattisgarh High Court. The representative of the State Human Rights Commission would be the Secretary of the Governing Board. At no time would the number of representatives of the Home Department exceed half of the total number of members. At all times, there should be at least 2 representatives of the Press as well as 2 from the Civil Society Organizations, who have worked in this field for at least 7 years and have experience in the defence of freedom of expression and the defence of human rights defenders.
- (2) The Governing Board shall hold its sitting as and when necessary, and at least thrice in a month, and in between such sittings the Executive Council would implement the decisions of the Governing Board.
- (3) The Governing Body shall constitute the Unit for Admission of Cases and Rapid Reaction; the Risk Evaluation Unit; the Prevention, Follow up and Analysis Unit; and the Special Investigative Unit each consisting of 5 senior officers deputed from various departments in the Government who have experience, training and perspective in the issues of protection of human rights. It may for this purpose lay down appropriate Rules.
- (4) The Governing Body shall also hear complaints in the manner of the functioning of the Commission from applicants and beneficiaries.

15. Executive Council - The Executive Council is the organ that implements the decisions of the Governing Board.

- (1) It shall be a permanent body of the Commission and shall hold its sittings as and when required and at least twice in a week.
- (2) It shall communicate the directions, guidelines and resolutions of the Governing Board to the corresponding authorities, and provide follow up.
- (3) It shall consist of 2 members each from the Unit for Admission of Cases and Rapid Reaction; the Risk Evaluation Unit; the Prevention, Follow up and Analysis Unit; and the Special Investigative Unit, and shall be presided over by the Secretary of the Commission.

16. **Unit for Admitting Cases and Rapid Reaction** - The Unit for Admitting Cases and Rapid Reaction is responsible for –

- a. Receiving applications for consideration by the Commission, receiving information from the Commission on cases of which it has taken *suo motu* cognizance, and receiving information from the police where a journalist or a human rights defender faces imminent arrest
- b. Conducting the Study of Immediate Action to determine whether cases require Ordinary or Extraordinary Procedures
- c. Defining and implementing Urgent Protection Measures

17. **Risk Evaluation Unit** - The Risk Evaluation Unit is responsible for –

- a. Conducting the Risk Evaluation Study
- b. Defining the Protection and Preventive Measures
- c. Following up on the Protection and Preventive Measures, and recommending modifications, continuations, conclusions, etc.

18. **Prevention, Follow Up and Analysis Unit** - The Prevention, Follow Up and Analysis Unit is responsible for –

- a. Proposing Preventive Measures and public policies
- b. Systematically organizing information about the Commission
- c. Evaluating the effectiveness of the Measures

19. **Special Investigative Unit** - The Special Investigative Unit is responsible for –

- a. Carrying out investigations in cases, especially those where the complaint is against local police and administrative authorities for assaulting a human rights defender or a journalist/ journalist collaborator
- b. Providing reports in a timely manner to the Governing Board.

Miscellaneous Provisions

20. **Awarding of Damages and Compensation** - The Protective and Preventive Measures mentioned in this Act will include but not be limited to awarding of damages and monetary compensation for damages to life, liberty, property, health etc. to the journalist or human rights defender by

the state government in the event of an assault. The government shall also be responsible for all medical expenses of the journalist or human rights defender following an assault, and any rehabilitation that may be required. The government may recover this amount from the person/ persons found to be guilty of carrying out the assault.

21. Special Courts

(1) For the purposes of providing a speedy trial, the State Government shall, in consultation with the Chief Justice of the High Court, designate for each district, a Sessions Court to be the Special Court before which all cases pertaining to an assault against a journalist or a human rights defender, or cases in which a journalist or a human rights defender is facing criminal charges, are tried.

(2) While trying an offence of the type mentioned in subsection (1), a Special Court may also try any other offence [other than the offence mentioned in subsection (1)] of which the accused may be charged, in the same trial.

22. **Privileged Communication** - Notwithstanding any other Act currently in force, no journalist or journalist collaborator, while engaged in a news-gathering capacity, shall be compelled to disclose in any legal proceeding or trial, before any court, before the presiding officer of any tribunal, or before any committee of the Legislature or elsewhere, the sources of any information procured or obtained by him and published in the newspaper, periodical or website, broadcast by any broadcasting station, or televised by any television station in which he is engaged, connected with or employed.