

Open letter to the Chief Justice of India

Saturday 12 February 2022, by [SAINATH Palagummi](#) (Date first published: 23 December 2021).

The CJI rightly observes that investigative journalism is vanishing in India. But doesn't the judiciary need to confront the reality that press freedom is at its lowest ebb in independent India's history?

Dear Chief Justice of India,

Thank you for your most [pertinent observation](#) that "the concept of investigative journalism is unfortunately vanishing from the media canvas...When we were growing up, we eagerly looked forward to newspapers exposing big scandals. The newspapers never disappointed us."

Rarely in recent times have truer words been said about the media. Thank you for remembering what was, if only briefly, your old fraternity. I went into journalism just months after you did when you joined *Eenadu* in 1979.

As you recalled in your recent speech at a book release function – in those heady days, we woke up and "eagerly looked forward to newspapers exposing big scandals." Today we wake up, sir, to reports of journalists exposing those scandals being charged, even jailed, under draconian laws like the [Unlawful Activities Prevention Act \(UAPA\)](#)

. Or even the appalling misuse, which you have recently strongly criticised, of [laws like the Prevention of Money Laundering Act \(PMLA\)](#) .

"In the past," as you observed in your speech, "we have witnessed newspaper reports on scandals and misconduct creating waves leading to serious consequences." Alas, the serious consequences these days are for the journalists doing such stories. Even for those doing straight reporting. [Siddique Kappan, who was arrested on his way to Hathras](#) to meet the family of the gang-rape victim in that appalling atrocity in Uttar Pradesh, has languished in jail for over a year now, unable to get bail and watching his case bounce around from court to court, while his health swiftly deteriorates.

With that example before us, surely a lot of journalism – investigative and otherwise – will vanish.

You say quite rightly, Justice Ramana, as compared to the scam and scandal exposures of the past, that you "don't recall any story of such magnitude in recent years. Everything in our garden appears to be rosy. I leave it to you to arrive at your own conclusions."

With your deep knowledge of both law and media and being a keen observer of Indian society – I wish, sir, you had gone a little further and laid out the factors that have overwhelmed not just investigative, but most Indian journalism. As you have invited us to arrive at our own conclusions, may I offer three sets of causes for your consideration?

Firstly, the structural realities of media ownership concentrated in the hands of a few corporate houses pursuing mega profits.

Secondly, the unprecedented levels of the state's assault on, and ruthless repression of, independent

journalism.

Thirdly, a decaying of moral fibre and the eagerness of numerous very senior professionals to serve as stenographers to power.

Indeed, as one who teaches the craft, I ask my students to choose which of the two remaining schools of thought in our occupation they would wish to belong to – Journalism or Stenography?

For about 30 years, I had argued that the Indian media are politically free but imprisoned by profit. Today, they remain imprisoned by profit, but the few independent voices amongst them are increasingly politically imprisoned.

It is crucial to note, is it not, that there is so little discussion within the media itself of the awful state of media freedom. Four leading public intellectuals, all of them connected to journalism, have been assassinated in the past few years. Of these, veteran journalist [Gauri Lankesh](#) was a full-time mediaperson. (Of course Shujaat Bukhari, editor of Rising Kashmir also fell to the bullets of gunmen). But all the other three were regular writers and columnists in the media. [Narendra Dabholkar](#) founded and edited a magazine fighting superstition that he ran for almost 25 years. [Govind Pansare and M.M. Kalburgi](#) were prolific writers and columnists.

All four had this in common: they were rationalists and also journalists who wrote in Indian languages – which increased the threat they posed to their killers. The assassinations of all four were carried out by non-state actors obviously enjoying a high degree of state indulgence. Several other [independent journalists are on the hit lists](#) of these non-state actors.

Perhaps the abject state of journalism could be somewhat improved if the judiciary confronted the reality that press freedom is at its lowest ebb in independent India's history. The capacity for repression of the modern technological state – as you doubtless observed in [dealing with the Pegasus case](#) – dwarfs even the nightmares of the Emergency.

India [plummeted to rank 142](#) in the World Press Freedom Index put out by the France-based Reporters Without Borders in 2020.

Let me share my direct experience of this government's approach to press freedom. Furious with the humiliating 142 rank, the Union cabinet secretary, no less, called for the formation of an Index Monitoring Committee that would set the record straight on press freedom in India. Asked to be a member, I accepted on the assurance that we would be more focused on the real state of press freedom in India than with rebutting the WPFJ ranking.

There were 11 bureaucrats and government-controlled-institution researchers in a committee of 13. And just two journalists – in a committee dealing with freedom of the press! And one of those never spoke a word in the couple of meetings he attended. The meetings went off smoothly, though I found myself the only one speaking up, raising questions. Then a 'draft report' was drawn up by the working groups, notable for the absence of the word 'draft.' The report reflected nothing of the serious issues raised in the meetings. So I submitted an independent or dissenting note for inclusion in it.

At once, the report, the committee, everything – **vanished**. A committee set up on the directions of the country's top bureaucrat – who reports, perhaps, to only the two most powerful men in India – disappeared. RTI enquiries have failed to unearth the report – on freedom of press! I do though have my copy of that 'draft.' The original exercise was not even investigative journalism – it was **investigating** journalism, as it functioned in India. And it disappeared at the drop of a dissent note.

There are many in journalism eager to do the kind of investigative reporting you were nostalgic about in your speech. Investigation of scams and corruption in high places, particularly in government. Most journalists attempting this today fall at the first major hurdle – that of the interests of their corporate media bosses who are so closely interlocked with government contracts and powerful people in high places.

Those giant media owners making a lot of money from paid news, obtaining licenses for exploitation of public-owned resources, from government privatisation orgies handing over thousands of crores of public property to them, and who handsomely fund the election campaigns of ruling parties – are unlikely to permit their journalists to upset their partners in power. Having reduced a once-proud Indian occupation to just a revenue stream, often smudging the distinction between Fourth Estate and Real Estate, they have no appetite for a journalism that speaks the truth **about** power.

I think you will agree with me, sir, if I say that the public of this country have never needed journalism and journalists more than they did and do in this pandemic era. How did the owners of the powerful media houses respond to that desperate need of the public, including their own readers and viewers? By sacking anywhere between 2,000-2,500 journalists and many times that number of non-journalist media workers.

The ideal of serving the public has vanished. The economic collapse of 2020 made the media even more dependent than they had been on government advertising. And so today, we have large sections of media, forgetting their own (admittedly few) stories on COVID-19 mismanagement and playing to the government myths of India having performed brilliantly in fighting the COVID-19 pandemic, leading the world in just about everything.

This period also saw the formation of the opaque ‘PM Cares Fund.’ It bears the words ‘Prime Minister’ in its title, displays his visage on its website, [but argues it is not a ‘public authority,’ nor subject to RTI](#) and in fact “is not a fund of the government of India.” And that it is not bound to submit to any institutional audit by an arm of the state.

It was also the period, sir, when some of the most regressive labour legislation in this country’s independent history were rammed through first as ordinances by state governments, [then as ‘Codes’ by the Centre](#) . Some of the ordinances promulgated set Indian [workers back by a century](#), by suspending that gold standard of labour rights – the eight-hour day. Obviously, there is little space for investigating any of these in a media owned by corporates employing many workers. And several of those journalists who would have been game to take this on – are jobless, having been thrown out by their media owners.

What troubles me equally, your honour, is that I did not see the judiciary stepping in to stop this mayhem, whether on governmental corruption, on the mass retrenchment of journalists, the gutting of labour rights, or the misuse of the PM’s title to raise funds free of any kind of transparent audit. I fully admit to the intrinsic and structural faults of the media that have reduced it to such a compromised and payer-friendly phenomenon. But surely, the judiciary’s intervention in some of these matters could help journalists breathe better?

The raids on offices of independent media, the intimidation and vilification of their owners and journalists as ‘money launderers,’ the relentless harassment of these entities proceeds at a furious pace. Sure, most of these cases will collapse in court – the agencies executing the government’s diktat know as much. But they’re working on the principle: the process is the punishment. It will take years, and many lakhs of rupees in lawyers’ fees, and promises bankruptcy for the few independent voices in the media. Even that rare independent voice in Big Media – *Dainik Bhaskar* – [was raided like a den of the underworld](#). No discussion of that in the rest of a very frightened Big

Media.

Perhaps, sir, the judiciary could do something to deter this conscious abuse of law?

Alas, the judiciary did not distinguish itself on the issue of the now repealed farm laws either. I never studied law but always understood that one vital duty of the senior-most constitutional court was to review the constitutional validity of such contentious legislation. Instead the court formed a committee, ordered them to produce a report with solutions to the farm law crisis – and has since consigned both report and committee to oblivion.

With this, it added to what was essentially a ‘death-by-committee’ sentence with the death **of** the committee itself.

Again, the conflicts of interest in the ‘mainstream’ media on the farm laws are huge. The [individual corporate leader set to gain the most from the laws](#), is also the biggest media owner in the country. In the media he does not own, he is very often the biggest advertiser. So it was not surprising to see the ‘mainstream’ media serving as shills and touts for the laws in their editorials.

Would any of them tell their readers or viewers that the two corporate behemoths the farmers named in every other slogan – that the [combined worth of those two gentlemen](#) was far greater than the Gross State Domestic Product of either Punjab or Haryana? That just one of them had amassed a personal wealth, according to *Forbes* magazine, rivalling the GSDP of Punjab? Surely such information would have given their audiences a better chance of arriving at an informed opinion?

Very few journalists now – in even fewer media outlets – have the capacity to do the kind of investigative journalism you expressed a nostalgic longing for in your speech. Fewer still are engaged in what we call investigation of the human condition – reporting on the social and economic situation of hundreds of millions of ordinary Indians. I write as one of those who has mostly practised that latter track for 41 years.

But there are others who investigate the human condition – and try their best to improve it – even if they are not journalists. Precisely those non-profits and civil society organisations that the government of India has declared war on. [FCRAs cancelled](#), raids on offices, accounts frozen, charges of money laundering – until they’re devastated and bankrupt – or about to be. Especially on groups dealing with climate change, child labour, agriculture and human rights.

So there we are sir, with the media in the abysmal state they are – but with the institutions that should be protecting them also failing to do so. It was those brief but insightful remarks in your speech that made me write you this letter. That the media need to do better is unquestionable. May I suggest the judiciary could help it do better – but also needs to do better itself? I believe both our institutions, and all of us, will be judged harshly by each additional day that a [Siddique Kappan spends in jail](#).

Yours sincerely,
P. Sainath

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