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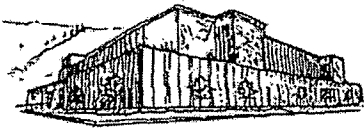
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POLITICAL CENSORSHIP AND ITS IMPACT IN NEPAL

by

Rajendra Dev Acharya

BA Tribhuvan University 1980

presented in partial fulfillment of the requirements


for the degree of

Master of Arts

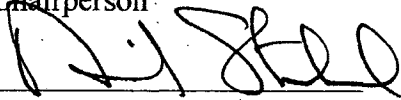
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Acharya, Rajendra Dev M.A., May 2006

Journalism

Political Censorship and its Impact in Nepal

Chairperson: Clemens P. Work *CPW*

This thesis is an attempt to draw some conclusions on political censorship in Nepal, on the basis of theoretical and practical reasoning. It focuses on the period after the restoration of democracy in 1990, when political instability, internal conflict and violence created severe hurdles in the smooth functioning of democracy. The study shows that political censorship can easily be imposed where the literacy rate is low, society is regulated by cultural traditions and political leaderships have not yet realized the spirit of freedom of expression. Despite this fact, the pace of a rapidly changing society, the development of information technology and the speedy growth of journalism are some factors that are contributing in transforming Nepalese society from conventional values and practices. What has been seen through this study is that the ultimate goal of journalism is finding of truth. Truth can only be acquired from open and unbiased ideas and the free flow of information and this can be attained through the norms of constitutionalism that is based on democratic values.

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Special thanks go to my brothers Dr. Upendra Dev Acharya and Surendra Dev Acharya, and also to renowned journalist and friend Gary Moseman.

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Finally, I would like to express my gratitude to my whole family for their constant support and love during the course of my study.

DEDICATION

This thesis is dedicated to my father, Satya Dev Acharya, a pioneer journalist; and to my mother, Sabitri Devi Acharya, a constant source of great inspiration.

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INTRODUCTION

Bolstered by recent political and legislative initiatives in the past 15 years, both political censorship and freedom of press have flourished in Nepal. Until 1990, journalism in this Asian kingdom was fairly dull. Most of the pre-1990 practices of journalism were either censored or dictated. Moreover, the press enjoyed no special protection from the executive, judiciary, or legislative branches of government. All this has been transformed by the liberal political movement of 1990, which has resulted in a flood of news media, in part due to the awareness of the Nepalese people and the development of information technology.

This paper does not cover other types of censorship and focuses only on the political aspects. Political censorship occurs when a government begins to lose its grip on power, and presents the greatest challenge to the development of independent journalism. It not only threatens news production, but also pressures journalists to censor themselves. Political censorship has been one of the major obstacles to the freedom of speech and also to the process of the right to know and of the right to be informed as well.

This thesis focuses on an example of political censorship in a persistent political conflict, where alignments among different political poles keep changing unpredictably to meet their vested interests. As a result, the state becomes instable. The thesis sketches political censorship as a force in the circle of conflict between the governors and the governed, and between the power holders and the power seekers.

This analysis is based on the research conducted at the University of Montana and the experience achieved from my work in print and broadcast journalism for about three decades in Nepal. This review focuses on the period of journalism from 1990 to present

when the foundation of a newly born democracy was badly shaken by the rapid events of political instability and the insurgency by Maoists.

Political circumstance in Nepal became unstable due to the mishandling of the country's democratic constitution by inexperienced leaders and also due to the conspiracy of other interest groups. The democratic system suffered from corruption, nepotism, power struggles among the parties and among influential elites and unprivileged classes. Social inequalities were another important factor that dragged the country into violence, conflict, armed insurgency and terrorist activities. The state's response to the rebels has created many political complications that contribute to censorship.

Political censorship is an act of obstruction against freedom of speech. Journalism prefers to unveil the hidden activities of authorities, whereas authorities prefer to stay away from the media. Thus, the fundamental conflict between the media and authorities begins with the "hide and search" game of the information. The job of the press is to serve the people by providing the facts with which they can lead their lives and assess the competence of their government. And the responsibility of a government is to be accountable by revealing such facts. But, to fulfill this task honestly is not easy. Authorities not only try to hide information but also try to manipulate facts for their support. Similarly, the news media often prefers to sensationalize and manipulate information to boost publication sales, and also sometimes for propaganda purposes. Both of these tendencies contribute political censorship. Notes the prominent American journalist Bill Moyers:

The founders of our government didn't think it a good idea for the press and state to gang up on public opinion. So they added to the Constitution a Bill of Rights, the First Amendment of which was to be a kind of firewall between the politicians who hold power and the press that should hold power accountable. The very first American newspaper was a little three-page affair whose editor said he wanted to cure the spirit of lying. The government promptly shut him down on grounds he didn't have the required state license.¹

¹ Moyers, Bill. "The Media, Politics and Censorship." 10 May 2004. <<http://www.commondreams.org>>

Freedom of expression is a fundamental democratic right that is inherent in democracy, even though governments do not like to entertain or listen to criticism. A free and independent press enhances the system of checks and balances by preventing the monopoly and tyrannical behavior of the authorities. That is why Thomas Jefferson, the primary drafter of the American Declaration of Independence, insisted that the U.S. Constitution include the public's right to free speech, a free press, and public assembly. He wrote in 1787, "Were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter."

Ellen Hume, the director of the Center on Media and Society at the University of Massachusetts in Boston explains "four essential roles that a free press serves: holding government leaders accountable to the people, publicizing issues that need attention, educating citizens so they can make informed decisions, and connecting people with each other in civil society."² A free and independent media is undoubtedly a media that is free from censorship.

Despite this fact, the notion of freedom of the press is being ignored in many ways, particularly in new democracies where there is a need to maximize political stability, economic growth and democratic values. In these countries, the function of the press fits the model of the press explained by Siebert, *et al.*:

- "Mass media are used...as instruments of the state and the party. The media are closely integrated with other instruments of state party,
- The media are used (to bring) unity (to) the state and party. (The media) are used (for)...party revelation.

² Hume, Ellen. "Freedom of Press." Dec 2005. <<http://usinfo.state.gov/journals>>

- (The media) are used almost exclusively as instruments of propaganda and agitation,
- (The media) are characterized by strictly enforced responsibility.”³

Describing the press in one emerging democracy, Zambia, Robert Moore notes:

“As a fully owned and controlled organ of government, the media are kept close to the power elite... Truth is a “top down” function... Truth is what the government says is true.”⁴

A similar situation is being faced by new democracies where the media and the government are fighting for the exercise of free and independent press and power. There is a belief that the media has to work for the development and the integration of the nation, respecting its traditional and cultural values and institutions. Freedom of speech is thought to be irrelevant during this crisis period and only the government can be the master of media or information. On the pretense of safeguarding national integration, security, and social values and to promote national development, most of the world governments prefer to regulate news media. But the development of technology and the spread of education have not only changed media practices but also the attitude of people. Such changes have created more conflict between the media and power elites than ever before in history and the issue of political censorship has become more prominent.

The world community is struggling for equity, justice and democracy. People are striving for security, development and mutual existence. To achieve these goals, they are also fighting against poverty, terrorism and exploitation. This struggle requires an integrated and active role of the people and the press is indispensable. The expected goals

³ Fred S. Siebert, *Four Theories of the Press*, (Chicago: University of Illinois Press, 1956), 121.

⁴ Robert C. Moore, *The Political Reality of Freedom of the Press in Zambia*, (Maryland: University Press of America, 1992), 28.

of democracy and development cannot be achieved if government or authorities suppress the media or manipulate the information. Despite this knowledge, one can find a lack of pluralism and openness in the media as well as in government.

II. THEORETICAL OVERVIEW

A. Censorship: Definitions and Dimensions

The meaning and the function of the word “Censorship” have different connotations in various fields. In journalism, censorship implies “the denial of freedom of speech or freedom of the press or the prohibition of publication and distribution, usually for reasons of morality or state security.”⁵ The application of censorship and its general standards is ever changing according to the socio-politico-economic parameters of a particular society. Similarly, the pattern and practices of social values and the attitudes of social decency, individual liberty, political liberalism and the status of social beliefs may have diverse meanings and implications for censorship. For example:

Respect for the diverse beliefs and values of the American public is necessarily defined with reference to religion, politics, racial or ethnic attitudes, and attitudes about human sexuality, among other beliefs and values. Within each of these spheres, there is ample potential for discordant views and attitudes, depending upon the point of view of the person doing the evaluating.⁶

In a country like Nepal, where there is illiteracy, poverty, a culturally tolerant but backward society and politically exploited people, media censorship can easily be imposed. Over the last two decades, international rights groups have also focused on such countries’ cases to exert pressure against censorship. As societies have been developing along with the pace of technological development and a new international political and economic order, the practice and the definition of political censorship is also changing. The development of online communication is gradually redefining the traditional perception and the practice of censorship:

⁵ D. Oran, *Oran's Dictionary of the Law*, 3rd ed. (London: West Publishing Company, 1999), 495.

⁶ *National Endowment for the Art v Karen Finley et al.*, Number 97-371, October Term 1997, February 6, 1998. (Amicus brief). <<http://supct.law.cornell.edu>>

It is precisely the difficulty of political censorship on the Net that has been an invaluable tool for activists and journalists involved in sensitive political topics. However, this freedom of expression made possible via the Internet poses a serious dilemma for authoritarian regimes as it threatens to undermine their control structures.⁷

Open satellite signals are another example of the free flow of information that have internationalized the issues of close societies and also have threatened prohibitory actions of authoritarians. The changing patterns of censorship are being practiced by both the informal and the formal method. Formal practice of censorship can be regulated by legal acts whereas informal practice can be implied through personal influence and psychological pressures. Self-censorship is perhaps the best example of informal practice. "Informal censorship is generally personal, in which, a more powerful person influences a less powerful one often without explicit instruction, to present information that will not displease the more powerful one."⁸ Daily explains that the problem that arises is ascertaining the capability and authority of a person in determining the content of censorship:

The superman who can do the censoring is always representative of an elitist group and acts on its behalf that believe in hiding usually the facts unpalatable to an elitist group. None of the cruelties found in the literatures of sadism are worse than of those practiced in the name of religion, the government or a privileged class.⁹

Questions are raised as to the morality, authenticity and quality of the censor. Even if information is protected and preserved for national security and social welfare, there is no requirement for the censor to be equally qualified in determining the parameters of censorship. Censorship in general is always regarded as an action that is

⁷ Shirin Madon. *The Internet and Socioeconomic Development: Exploring the Interaction*. Information Technology and People 13 (Jun 2000), <<http://www.emeraldinsight.com>>

⁸ Kent R. Rasmussen, ed., *Censorship*, vol. 1, *Abelard, Peter-Front, The*, by Lawrence Amey (California: Salem Press, Inc., 1997), 124-125.

⁹ Jay E. Daily. *The Anatomy of censorship*. (New York: Marcell Dekker Inc., 1973), 319.

done haphazardly and its impact is often harmful and unjust, because censorship blocks the opportunity to choose from all possible alternatives, and thereby violates intellectual freedom. This coincides with the democratic belief that a democracy can exist only so long as an enlightened citizenry is contributing new ideas for the guidance of the government and is participating in shaping the decisions that are being made. The varied opposing views in regard to a single issue, as carried by different media can be observed in many ways. “While examining these conveniently edited opposing views, readers can develop critical thinking skills such as the ability to compare and contrast author’s credibility, facts, argumentation styles, use of persuasive techniques and other stylistic tools.”¹⁰

An author or editor generally used to have personal opinion in the basis of his upbringing, peer pressure and social, cultural or professional bias. However, the present day audience has developed a critical approach in receiving media in terms of multi-disciplinary aspects as its complexities entangled with their lives.

Generally, censorship in news media means a restriction in the flow of information and ideas by state authorities. In other words, censorship is used “to examine information content in order to suppress or delete anything considered objectionable.”¹¹ The act of a government intended to crush freedom of speech and to prohibit access to public information can be taken as an act of censorship. Thus freedom of expression, in general, is understood as unrestricted access of information and ideas in the society.

One encyclopedia defines censorship as:

¹⁰ Thomas Strock. *A case for censorship*. New Oxford Review (May 1996),

<<http://www.newoxfordreview.org/>>

¹¹ Merriam-Webster’s Collegiate Dictionary. <<http://www.merriam-webstercollegiate.com>>

Supervision and control of the information and ideas circulated within a society. In modern times, censorship refers to the examination of media including books, periodicals, plays, motion pictures, and television and radio programs for the purpose of altering or suppressing parts thought to be offensive. The offensive material may be considered immoral or obscene, heretical or blasphemous, seditious or treasonable, or injurious to the national security.¹²

Merriam Webster's Collegiate Dictionary's definition stresses control and the repressive aspect of the censorship: "The institution, system or practice of censoring; the actions or practices of censors; esp.: censorial control exercised repressively."¹³ An organization called Morality in Media, which works for obscenity and decency standards for the media, stresses prior restraint: "The word "censorship" means "prior restraint of First Amendment rights by government."¹⁴ Fast Times' Political Dictionary defines censorship as: "the prevention of publication, transmission, or exhibition of material considered undesirable for the general public to possess or be exposed to."¹⁵

Some scholars have explained censorship as an abstract issue. Thomas Storck, in his attempt at neither defending nor advocating the factors of censorship, argues "there is nothing intrinsically wrong with censoring." He further explains that "censorship simply is the restriction, absolute or merely to some part of the population (e.g. to the unlearned or to children), by the proper political authorities, of intellectual, literary or artistic material in any format."¹⁶ According to Storck, the government can censor erroneous ideas that hamper society. "Censorship can both prevent harmful acts and facilitate society's intellectual pursuit of truth."¹⁷ Does that mean that a government, in order to

¹² Encarta Encyclopedia, 2005. <www.encyartamsn.com>

¹³ Merriam-Webster's Collegiate Dictionary. <<http://www.merriam-webstercollegiate.com>>

¹⁴ Morality in Media. <www.pbs.org>

¹⁵ Fast Times' Political Dictionary (Fast Times is a nonpartisan publication on contemporary world affairs & media with no political, ideological, or religious affiliation of any kind)

¹⁶ Thomas Storck. *A case for censorship*. New Oxford Review (May 1996), <<http://www.newoxfordreview.org>>

¹⁷ Common phenomenon

protect a community, has the right to restrict and direct a person's actions when he is a threat physically, intellectually and culturally to a particular society?

In conclusion, censorship is an action against freedom of speech, imposed by government, authority, groups or an individual on the media. The reasons behind imposing censorship could be fear of the public or audiences, conservation of power, dignity, ego, individual morality, social values or cultural beliefs. But this thesis focuses on political reasoning.

B. History of political censorship and theories of the press.

Political censorship in news media is not a new thing. Censorship has been in existence throughout the history of mankind, imposed by either religious or secular authorities. In Egypt, as early as 3400 B.C., guidelines for artistic expression were issued, which went virtually unchanged for more than 3,000 years. The early history of Rome and Greece is also full of censorship. "In ancient Rome, Emperor Augustus exiled the poet Ovid, accusing him of offending the moral sensibilities of royalty through his writing *Ars Amatoria*."¹⁸

"History is filled with censorship tales . . . freedom of expression and of publication, and underlying both, freedom of thought."¹⁹ When books were handwritten and few people could read, no government had feared from the recorded word. However, when the circulation of books and literacy began to increase, control over public opinion through regulation was initiated. Although the printing press was introduced in 1476 in Britain, the first English newspaper did not appear until 1621. But before that Henry VIII

¹⁸ Nancy Day. *Censorship or Freedom of Expression?* (Minneapolis: Learners Publications Company, 2001), 19-28.

¹⁹ Richard L. Darling. *Censorship-An Old Story, The First Freedom Today*. Ed. Robert B. Downs and Ralph E. McCoy, (Chicago: American Library Association, 1984), 109-114.

proclaimed a licensing system in 1534 for publications that might endanger the throne. This was perhaps the first official beginning of censorship by authority in England. This authorization was given to the Court of the Star Chamber. However, the aspiration to freedom and the implementation of freedom were two different things. Various forms of political censorship have been determined by practices of political philosophies throughout history.

Authoritarianism

Authoritarian regimes have disregarded the importance of freedom of expression in the past and even in the present. The authority of government was long regarded as supreme and absolute. "Prior to the English Revolution of 1688, the crown had unqualified sovereignty; subsequently, the same power was vested in parliamentary authority. Any criticism of the government was considered not only objectionable but a dangerous heresy that must be ruthlessly suppressed."²⁰

Authoritarian doctrines have existed across the world since the beginning of human history. The doctrine is intended to control and limit the rights and freedom of people or institutions that are harmful and obstructive to the society and the nation. The followers of this doctrine think that they alone can better society and are authorized to apply laws accordingly. In this way they think of themselves as powerful bodies and try to ignore dissenting voices, thus violating the norms of human rights by controlling and limiting freedom. They also prefer to decide what has to be known by people and what should not be known. Goebbel's propaganda theory in Nazi Germany was a product of this authoritarian notion.

²⁰ Ralph E. McCoy. *Freedom of the Press and Unbelief*. Ed. Robert B. Downs and Ralph E. McCoy, (Chicago: American Library Association, 1984), 8-17.

For almost two hundred years after the spread of printing in the western world, the authoritarian theory furnished the exclusive basis for determining the function and relationship of the popular press to contemporary society. Most of the European countries, religious sects, and the monarchies of the world utilized the basic principles of authoritarianism as the theoretical foundation for their systems of press control. The classic thesis of the press describes the media as always influenced by "the form and coloration of the social and political structures within which it operates."²¹ In an authoritarian regime, ownership of printing remains mostly in private hands, but broadcasting and cinema usually remain in the hands of government. In the present day authoritarians prefer to call their policy "developmental."

Developmental Theory

In ancient Greece, authorities banned reading materials that did not deal with topics related to the people, such as agriculture and commerce."²² These ideas resemble the theory of emerging press, which is followed by many governments of developing countries, on the theory that all means of mass media should be mobilized for the greater task of nation-building and the welfare of the people.

A major aspect of this theory is that the media should be supportive of authorities and not challenge them. If the society or state needed to control media, individual rights of expression and other civil liberties are somewhat irrelevant to the overwhelming problems of the country and authority can use their power to control them, because the flow of information is a top-down process, or can be viewed as the property of the government.

²¹ Fred S. Siebert, *Four Theories of the Press*, (Chicago: University of Illinois Press, 1956), 121.

²² Nancy Day. *Censorship or Freedom of Expression?* (Minneapolis: Learners Publications Company, 2001), 19-28.

The evolution and the legality of the principles of human rights and its practices have evolved along with the development of the concept of limited power of authorities and the unlimited rights of citizen from the beginning of 12th century when King John decreed the *Magna Carta* of English liberty on June 15, 1215. None of these provisions were directly concerned with freedom of speech but the provisions in the decree were helpful to forcefully reduce the power of the English feudal monarchy. "While the liberties enumerated in the *Magna Carta* may seem minimal to us today, the concept of limited sovereign power became the foundation of modern libertarian theory."²³

"Freedom of press is a necessary condition to free expression. Without the press to inform, investigate, and opine on matters great and small, public discourse is impoverished."²⁴

The early foundation of libertarian ideals that argued for intellectual freedom without government control can be found in "*Areopagitica*," an essay published by John Milton in 1644:

And though all the winds of doctrine were let loose to play upon the earth, so Truth be in the field, we do injuriously by licensing and prohibiting to misdoubt her strength. Let her and Falsehood grapple; who ever knew Truth put to the worse, in a free and open encounter?²⁵

This ideal is closely related to the free press theory, which states that all are not only free to express or publish their ideas whatever way they like but they are also fully free to criticize government policy and are encouraged to do that. In the contemporary world there are very few countries that are close to this libertarian media system.

²³ *ibid.* p 1-16

²⁴ Sheila Suess Kennedy. *The Free Press: A necessary Irritant*. Ed. Sheila Suess Kennedy, Free Expression in America (London: Greenwood Press, 1999), 211-279.

²⁵ Ralph E. McCoy. *Freedom of the Press and Unbelief*. Ed. Robert B. Downs and Ralph E. McCoy, (Chicago: American Library Association, 1984), 8-17.

Libertarian theory

The famous essay *On Liberty*, written by John Stuart Mill in 1859, explains libertarian thought in depth. The thinkers of modern democracy have correlated his thoughts with freedom of expression and censorship:

If all mankind minus one were of one opinion, and only one person was of the contrary opinion, mankind would be no more justified in silencing that one person than he, if he had the power, would be justified in silencing mankind. The peculiar evil of silencing the expression of an opinion is that it robs the human race, posterity as well as the existing generation. If the opinion is right, they are deprived of the opportunity to exchange error for truth; if wrong, they lose what is almost as great a benefit - the clearer perception and livelier impression of truth, produced by its collision with error.²⁶

Skjerdal presents Mill's ideas in the form of four arguments against censorship:

If we silence an opinion, for all we know, we are silencing truth; a wrong opinion may contain a grain of truth necessary for finding the whole truth; commonly held opinions tend to become prejudices unless forced to be defended; unless commonly held opinions are contested from time to time, they lose their vitality.²⁷

Freedom, however, cannot be absolute and democracy cannot function in disorderliness. In the contemporary world there are very few countries that are close to the libertarian media system- some Scandinavian countries, the Netherlands and to some extent the United States.

When war or a crisis affects a nation, journalism can be deterred and government tries to control media and supplies limited information through authorities. In this situation, instead of taking the trouble to obtain independent information, journalists often give up their professional approach and go for self-censorship. For example, after Sept. 11, 2001, the American media started limiting information, supporting the government policy of war on Iraq until 2003-4, instead of using an objective approach

²⁶ John Stuart Mill. *On Liberty*. Ed. Elizabeth Rapaport, (Indiana: Hackett Publishing Company, 1982), 16.

²⁷ Terje Steinulfsson Skjerdal. *Siebert's Four Theories of the Press: A critique*. <<http://www.geocities.com/CapitolHill/2152/siebert.htm>> 1993.

when dealing with issues with an objective approach, journalists were seized with nationalism. They gave an impression that greater secrecy could lead to greater security. This example not only created a debate about the dividing line between self-censorship, nationalism and professionalism in media but also became a pioneer illustration to many developing countries that wanted to change their national media policy in the name of national crisis. Thus, a permanent feature in the discussion of the media is whether its role should be compulsorily supportive to government, as in the “developmental theory” or should it stand for the civil liberties concerns when the nation is in crisis.

Totalitarian theory

Different types of media doctrines have been developed along with the evolution of western political theories and practices. The media has been persistently experiencing different forms of political censorship along with the evolutions of the philosophies developed by the ancient Rome and Greek scholars, Renaissance thinkers, and those philosophies practiced by churches as well as authoritarian, totalitarian, libertarian and revolutionary leaders, the changes brought by wars, Communist industrial revolutions, the improvement made by democratic systems, the competitiveness created by capital economy, and the instabilities, violence and fearfulness instigated by terrorism. Whichever the philosophies and regimes, and in whatever the way rulers have attempted to guide media, we can classify them according to two features: the bureaucratization and the democratization of media. The contradiction between these two processes has created the struggle for media freedom. The process of bureaucratization of media is both the authoritarian and totalitarian practice of media by the state in the name of so called interests of the nation and people.

Political censorship of the news media has always been regarded as inevitable in any regime where the government is totalitarian, believing in regulating every aspect of public and private behaviors. "Totalitarian regime holds power by means of secret police, propaganda through the state controlled mass media, regulation and restriction of free discussion and criticism, and widespread use of terror tactics."²⁸

In the context of the uprising against absolute monarchy during the period of the French revolution of 1789-99, the Jacobin government asserted that it needed to abolish the media's freedom and use the media for propaganda for a certain period in order to boost the political and moral education of the people for the enhancement of republican and democratic values against tyrannical rulers. The Jacobins also subsidized books, publications and newspapers that were involved in the dissemination of republican propaganda. This was a model of totalitarian thought towards the media. Everyone had to be dependent on government media and no one was permitted to invest in media, however, people were free to express their opinion through government media. After 1917, this theory of limited press freedom was brought into practice by Lenin and the Bolsheviks to fight against the Russian Empire. The media was used to attack ideologically corrupted Russians for the establishment of participatory democracy in the long-term.

Crucially, the Bolshevik leader believed that the primary task of this dictatorship was the elimination of incorrect ideas among the Russian workers and peasants. Therefore, after their seizure of power, the Bolsheviks systematically suppressed all opposition newspapers, including those run by Marxists and anarchists. Alongside these repressive measures, they also greatly expanded their own media to indoctrinate the Russian people in their own ideology.²⁹

²⁸ <<http://en.wikipedia.org>>

²⁹ Richard Barbrook. *Media Freedom: the Contradictions of Communications in the Age of Modernity*. (London: Pluto Press, 1995), 218.

The purpose of a centrally controlled media was to resolve the contradiction between political and economic rights and to institute a system of a one-way flow of propaganda from the ruling party to the population. During the period of 1920 to 1930 all forms of media were repressed under the shadow of the totalitarian system; all journalists and broadcasters became workers of the communist government. Once again in the Nazi regime of 1933, the totalitarian media theory came into practice as an organized propaganda system. Western countries are not necessarily opposed to a totalitarian press, as long as it serves their interests. This hypocritical pragmatism is explained by William Blum, who writes about the impact of long contested propaganda between communist and non-communist countries was:

It is interesting to note that as commonplace as it is for American leaders to speak of freedom and democracy while supporting dictatorships, so do Russian leaders speak of wars of liberation, anti-imperialism and anti-colonialism while doing extremely little to actually further these causes, American propaganda notwithstanding. The Soviets like to be thought of as champions of the Third World, but they have stood by doing little more than going "tsk, tsk" as progressive movements and governments, even Communist parties, in Greece, Guatemala, British Guiana, Chile, Indonesia, the Philippines and elsewhere have gone to the wall with American complicity.³⁰

But, "in democracies, the current popular condemnation of propaganda arises out of the ethical abhorrence for selected, partial information disseminated in the interest of the cause of the disseminators."³¹ Whatever form it is in, propaganda is the making of deliberately one-sided statements to mass audience, "but it is distinguished from closely allied uses of communications as instruction, information and inquiry. It is advocacy to

³⁰ William Blum. *Killing Hope: U.S. Military and CIA Interventions Since World War II.* <www.killinghope.org>

³¹ *Encyclopedia Americana*, vol. 22, (Chicago: The Encyclopedia Americana Corp., 1957), 658-9.

editorialize or to select the content of channels of communications for the purpose of influencing attitudes on controversial issues.”³²

There are different media strategies that are being used by governments to protect their regimes throughout the world. Governments use physical, psychological, editorial, legal, financial, and technical methods against journalists and the media to control them.³³ But in the developing countries, media houses and journalists do not have that

³² Antony Buzek. *How the communist Press Works*. (New York: Fredrick A. Pager, inc., 1964), 13-37

³³ While explaining the governmental arsenal of weapons of the state versus the press, freedom advocate and journalist Leonard Busman also has mentioned weapons of the press versus the state, in his book *Power, The Press and the technology of freedom*.

Weapons of the state versus press

Physical, against journalists, [kidnap reporters, torture, and crossfire]

Physical against media: [Attack, raid, destroy, impound (gerau), jam, occupy, news rooms cuts by government of Physical facilities, license].

Psychological, against the journalists: [Threaten, physical harm, threaten loss of job, detain without charge]

Psychological, against the media: [Threaten to shut down the print or broadcast facility, threaten to imprison management, Expel from leadership community; hamper the media by supporting or withholding language in multilingual country.]

Editorial against journalist: [Government controls domestic news agencies: establishes the facts and tone of media coverage's. Setting guidelines, mandate the area of coverage. The slant or bias, and the "responsibilities" of the news media to advance political, economic, developmental, socialist and other objectives. Favoritism in controlling access to official news, indoctrination, handling of press clubs for canvassing the governmental thoughts, Surveillance, monitor]

Editorial against the media: [Dependency on information ministry, favoritism releasing information, Incoming foreign news admitted only through government agency, Invoked to withhold information or avoid embarrassment. Confiscate certain edition, Pressure to publish full text, Calls, guidelines to editors and publishers giving direct orders to cover or not cover certain events. Disinformation, the use of known falsity, or planned distortion.]

Legal against journalists: [Official censorship, Legislation re: abuse of publishing, contempt, security, confidentiality, official secrets, arms control, anti terrorism, anti protest, military protest, anti-communism, defense of socialism, defense of the revolution, demeaning the president or his family, Contempt, citations, Forced correction and retractions, Libel laws, particularly for criminal libel', Withdrawal of journalist's license, monitor, imprison, detain, ban expel from profession, expel from country, deny access to geographic or sensitive area. demand sources under threat of imprisonment, bar entry to country, refuse or delay in offering facilities to file news, surveillance.]

Legal against the media: [Suspend, confiscate, ban, license, monitor, government ownership of the media, banning opposition party papers, source disclosure made publisher's editor's responsibility, search editorial office for documents.]

Financial against the journalists: [Bribes, firing, loss of carrier or demotion for unwanted coverage.]

Financial against the media: [Increment in newsprint prices; control in distribution and circulation, subsidies to favored media, Favoritism in government advertising, Tax rate adjusted to favor or harm press, Subscription to favored newspaper, ownership of major media by pro government industrialists.]

Technical against the media: [Deny satellite use for domestic or foreign feed.]

Consequence of governmental pressures: [Self censorship by journalist and managements, [Media councils created by government, Labor union pressures, Influence on content of the media. Domination of government and corporate media.]

ability to counter government. Even if they attempt they will have hard time to make survive their profession and institution.

C. The crisis of journalism.

There are very few differences between the authoritarian and totalitarian models of the media. Both believe in a top-down information process. But things have changed dramatically. In the past, viewership and readership of media was limited. The choices of media were also limited. Today, the level of media consumption is much higher. Factors such as the public approach towards media, the treatment of public issues by media and the mechanization and localization of media have combined to change authorities' minds, not because journalists have become more powerful but because media ownership has become more influential and media have become more pervasive:

Currently, the politics of globalization is at its height. Nation-states are striving to pursue power. Multinational firms are seeking profits for their shareholders. International commercial networks are rapidly changing social values and norms. The resistance against changes in society and government ranges from the non-violent to the murderous, and billions of ordinary people are struggling to feed their families and secure their futures in a rapidly changing world.³⁴

Similarly, in the rapidly growing capitalist market society, news has become a commodity, and the truthfulness of events has become most doubtful. The growth of

Weapons of the press versus the state

Legal: reveal corruption in government in media, Secure injunctions from court to get information from government through freedom of acts: Mobilization of Private broadcasters, Chain networks of media houses, Politically supporting or opposing government policy, Editorial and broadcast commentary on candidates or officials, Exit poll Editorial campaign, Investigative reporting, Publish or broadcast sensitive secrets, Denial of broadcast political figures].

³⁴ Mark Rupert and Scott Solomon. *Globalization and International Political Economy: The Politics of Alternative Futures*. (Maryland: Rowman and Littlefield Publishers, Inc., 2005), 192.

advertisement, dependency of media houses on business companies, ownership of business houses over media and commercials as major earning source are some principle factors that have changed the shape and tone of the modern media. In this context, the threats of direct and indirect censorship not only from state but also from corporate interests have become apparent. The professionalism of journalists is becoming more of a challenge than ever before. Journalists' professional skills are being utilized commercially in the markets instead of utilizing their professional ethics for a specific social cause. Journalism is being converted into a commodity and journalists into promoters of business. After the shift to an information industry, there was a question of social responsibility, from the 1950's to the 1980's, not only by journalists and governments but also by corporations. Both government and corporate institutions today are limiting the role of journalists in the media.

Is there any middle ground where the government and media can function on an equal footing in the absence of government domination and corporate monopoly? Can a journalist be sovereign in his profession? Many political theories and regulations were imposed against press in the past. Now there has been an imposition of economic pressure in addition to existing political pressure. Whatever theories are being practiced, the main thing is that there continues to be censorship in the media, restrictions in freedom of speech and limitations to civil liberties. Moreover, there is a big challenge to independent, ethical journalism. The protection of journalistic rights, economically independent media and journalists, the culture of the democratic spirit of government, corporations and the possession of media through independent trusteeships can be observed as safeguarding factors to promote and protect ethical journalism that can lead

journalists towards the path of self regulation rather than any other pressures as imagined by principles of modern ethical journalism.

III. POLITICAL CENSORSHIP IN NEPAL

A. Nepal: A Brief Introduction

Nepal is a small landlocked country situated between the two most populous countries in the world—China to the north and India to the south, east and west. Nepal includes 147,181 square kilometers, 885 km from east to west and an average of 193 km north to south. Nepal is generally divided into three parallel zones running east to west. The Terai, a flat tropical area bordering India is an extension of the Indo-Gangetic plain. This strip of land has an elevation of just 70 to 300 m. It includes about 14 percent of Nepal. The mountainous northern part of the country covers about 43 percent of Nepal. Eight of the world's ten highest mountains, including the highest, Mt. Everest (8884 meters), are in this region. Between the mountains and the Terai are "the hills." This region, consisting of deep valleys and hills with an elevation of 300 to 3,000 meters, is a transition zone.

Nepal's 23 million residents include more than 200 ethnic groups. Most live at subsistence level and a few of the ethnic groups are under a bonded labor (a kind of slavery) system. Forty percent of the population 6 years and older is literate. Although 53 percent of the men are literate, only 24 percent of the women are. The population is growing at 2.51 percent a year.

Nepal is one of the poorest countries of the world, with a per capita income of U.S. \$210. The country's lack of access to seaports, its limited natural resources, difficult topography, poor infrastructure, poor levels of education and health, and rampant government corruption are major obstacles to economic development.

Agriculture is the main economic base of the country, accounting for 85 percent of employment. The largely un-irrigated farmlands depend on seasonal rains for healthy crops.

Nepal was under the rule of the barbaric Rana dynasty for 104 years until the democratic revolution in 1950. The country was governed by disorganized political parties and a king until 1959. From 1960 to 1990, Nepal was ruled under a “partyless” system with an absolute monarchy. In 1990, Nepal became a constitutional monarchy with many political parties. Despite the promise of “democracy,” Nepal has suffered at the hands of shortsighted, corrupt, inexperienced political leaders and power-hungry political elites.

B. Historical Overview

Publishing got its start in Nepal during 1851 when Prime Minister Jung Bahadur Rana visited London and bought a hand press. Through the early 20th century, most presses were used to publish government documents and the works of individual authors.

Magazine journalism got its start in July 1898 with the publication of “Sudha Sagar,” a monthly.¹ The first newspaper, the official weekly, “Gorkhapatra,” was published in 1901 with the permission of Rana Prime Minister Dev Shamsher. “Gorkhapatra” became a daily newspaper 60 years later and remains one of Nepal's largest newspapers. No other newspapers were authorized to publish during the Rana regime. This prohibition was an early form of political censorship. Not only did the Rana regime limit circulation of “Gorkhapatra,” it did not allow free expression.² The paper

¹ Dhruvahari Adhikari. *Daily Newspapers: In Quest of Greater Professionalism*. Ed. P. Kharel, *Media Nepal 2000*, (Kathmandu: Nepal Press Institute, 2000), 1-47.

² Somanath Ghimire. *Strides Over the Years*. Ed. P. Kharel, *Media Nepal 2000*, (Kathmandu: Nepal Press Institute, 2000), 51.

had to publish felicitations, appreciations, gratitude, and other “news” supporting the regime. Political debate was not allowed.

Meanwhile, along the Indian border, Nepalese-language newspapers, magazines, and pamphlets were being published and slipped into Nepal. These publications contributed to the downfall of the Rana regime and showed the importance of freedom of expression.

After the regime’s collapse, a number of magazines and newspapers were founded in Nepal. The first private-sector daily newspaper, “AAWAAZ,” edited by Siddhi Charan Shrestha, was published in 1951. It became the first private-sector newspaper circulated nationally.³ A number of weekly, fortnightly, and monthly papers were launched from Kathmandu and from cities in outlying districts.

Laws governing the media first began to be enacted during the late 1940s. Until then, the ruler’s word was law. In 1947, the first constitution was written. It attempted to address freedom of expression as a human right, with limitations based on ethical and social values. This constitution was never adopted.

A 1947 [B.S. 2004, using the Nepalese calendar] act prohibited publication of material that violated ethical and social values.⁴ In 1950, an interim constitution guaranteed freedom of press and expression as a basic right, but even these rights were not free from limitation. Authorities enacted additional measures to regulate the publications, marking the beginning of traditional political censorship in Nepal and limiting freedom of expression. The notice was issued to publications and managers of

³ Grishma Bahadur Devkota. *Nepalko Chapakhana ra Patrapatrikako Etiha*. 2d ed. (Kathmandu: Shajha Publications, 1992), 31-32.

⁴ Kapil Kaphle. *Patrakarita Dot Khoj*. (Kathmandu: Suprabhaha Prakasan, 2005), 305-352.

publications by the then department of the home secretary.⁵ The notice also compelled submission of two copies of all printed material to the department of the home secretary.

In 1952, the government enacted the “Press and Publication Registration Act”.⁶ In 1953, this Act was amended to add more regulatory provisions, or simply put, more censorship. The amended legislation limited press freedom and provided penalties for journalists who did not comply.⁷

In 1954, the government issued the Civil Rights Act to protect the rights of freedom of expression and freedom of the press. The Nepal Press Council was established in 1956 to further the interests of journalism in Nepal. The council presented a number of suggestions and recommendations in 1957. Most of the suggestions related to economic development, legal protection, rights to access the sources of information, and a liberal publication policy. The Council also suggested that the government not run newspapers for propaganda. The suggestions of the Council were not implemented.

C. Political Situations and Censorship

Nepal has experimented with different types of political systems in the past. Democracy was introduced to Nepal in the 1951 Delhi Settlement, ending the century-old family oligarchy of the Ranas, and reinstating the power of the king, King Tribhuvan. According to the settlement, the interim government was formed to hold elections for the constituent assembly. Those elections were never held. His son King Mahendra assumed

⁵The notice reads: “You need to be cautious that the printed materials published from your press are not violating the norms of the law and orders of the country.”

⁶ The act provisioned that the publication of unauthorized materials, which are against national interest, are subject to be seized by any government authorities in any part of the country, and if the publications are found guilty of violating law can be banned and the publisher will be penalized.

⁷The amended provision reads: “. . . published materials that are aimed to create hatred or disrespect towards the King and Royal Family, envoys of Nepal or the envoys based in Nepal, the government constituted according to law, and the judicial, and anything that may create misunderstanding and jeopardize the harmonious relations among peoples of various castes, religions and communities shall be considered as crime and publishers as criminals.”

the throne in 1955, approving a constitution with a parliamentary system of government based on the Westminster model and holding parliamentary elections.

However, after 18 months of experimenting with parliamentary constitutional government, he exercised his royal prerogative and used military power to overthrow the system in December 1960. The duly elected government was dismissed, parliament was dissolved, political parties were banned, and political leaders were detained.⁸

The period from 1960 to the reinstatement of democracy in 1990 will be discussed in the following section. However, here it is important to begin considering the role of the media in Nepal after the reinstatement of democracy in 1990 and the different manners in which journalism is practiced in developing and developed countries.

The value of democracy in Nepal has been viewed more importantly than ever before after its reestablishment in 1990 and the eruption of organized violent insurgency in the country by Maoists. However, justice, freedom, democracy and development are urgent needs that are not realized by the people.⁹ The Nepalese media has been struggling to address the issues faced by the people, but the long history of censorship stifles their ability to affect change. While the growth of media in Nepal has been rapid, particularly since the Constitution of 1990, it appears that¹⁰ Nepal has gained a free press, which

⁸ Excerpted from a symposium on the "subversion of democracy by the monarch in Nepal" The future of democracy, Krishna Khanal, *Democracy derailed*. April. 2005, # 548

⁹ An American philosopher, John Rawls discussed two basic principles: 1. Citizen of a just society must have the same basic rights, and 2. there should be a fair equality of opportunity and inequalities in power, wealth, income and other resources must not exist unless they benefit the worst-off. It is to be noted that approximately one third of all the present members of the United Nations, including Nepal, are threatened with ethnic violence, rebel movement and insurgency. Cf. Subhabrata Dutt, *On the Theme of Peace, Justice, and Social Work: A vision for Asia Pacific in the 21st Century*, www.jassw.jp/17th_apswc.

¹⁰ According to the report of Press Council of Nepal-2005, there are all-together 2181 newspapers are registered in the kingdom. Out of them 307 are daily, 21 bi-weeklies, 1559 weeklies, and 294 are fortnightlies. Number of 1080 newspaper is registered alone in Kathmandu, the capital of Nepal, which are about 49.51% in total.

¹¹ Dharma Nath Adhikari. *Media and Democracy in Nepal: A Case for Public-Oriented Journalism*. Global Media Journal, Fall 2005, Vol. 4, issue 7, <<http://lass.calumet.purdue.edu>>

quickly became opinion shaping in close consonance with the major political and social conflicts following the wake of the change from an agrarian to a modern society. Still, an estimated 25 percent of city people rely on newspapers for information.

The city's per capita income of \$400, which is double the national average, is an indication of greater purchasing power of the public as compared to people from the rural areas. But, unfortunately, newspaper sales are extremely low. Even the largest selling dailies do not exceed a circulation of 100,000 copies. The combined copies of all dailies may not even reach 400,000 copies a day.¹¹

Government-owned media in Nepal are of significance in disseminating information, because they possess national television, radio, national news agency and two broadsheet newspapers. They serve as public service media as directed by government policy. These media are reliable for government's message, public information and educational materials but not necessarily for the independent political content. In order to control the government media, the authority constitutes a board of directors with heavy domination over the official representatives. It has become a common phenomenon that the party in government has a special prerogative to control the government media to implement their party manifesto, even though government media is supported by public tax money. For instance, the government has appointed ten different chairmen on the board of directorate in the 15-year period at the state run Nepal Television (NTV). This state run television provides the greatest audiovisual accessibility to the common people in the country.¹² During this period, the Nepali Congress and the

¹² Since the last twelve years its audience has grown from 2000 viewers in the capital, Kathmandu, to approximately 2.5 million viewers across the country spread mostly in the southern plains and the urban areas. The biggest drawback for NTV to have its signals reach to as many people as possible has been the difficult terrain of the country, 75% of whose land area consists of hills and mountains extending from east to west. The remaining 25 % of the land area in the south bordering India is the only stretch which is easily accessible to all kinds of communication. NTV's transmission, which was available only to the capital in the beginning, now reaches 42% of the total population. However, the total number of viewers is far less

Nepal Communist Party (United Marxist-Leninist) were the major parties running the governments. Even though both parties claimed to be champions of democratic values and norms, they freely appointed personnel close to their parties as chairmen when they were in power. This has been the case not only in NTV but has occurred in other media as well. Effective media in Nepal remained a dream. Such practices of partisan media do not promote democracy and cannot generate freedom to its full potential.¹³ Often, political parties and the leaders, who are supposed to be a vehicle for democracy and human liberty, do not hesitate to use the news media as their puppets. Thus, the relationships between government and political powers and the news media conflict in terms of freedom and their co-existence. Governments in developing countries like Nepal, have an attitude that the media should play a sociopolitical role and work as a soldier of development and nationalism.¹⁴

There is a distinct difference in the approach and practice of journalism in developed and developing countries. The governments of developing countries expect journalism to be development-friendly model. Referring to the role of the journalists of developing countries, an Indian journalist Dilip Mukerjee explains:

Our need is urgent and acute: we belong to societies that are in the process of restructuring and reshaping themselves. In our environment there is, and will be for a long time to come, much that is ugly and distasteful, if we follow the western norm, we

due to the unavailability of electricity. Only 15% of the total population of the country have access to electricity.

¹³ The effective media can be judged in three measures, independence, quality and reach. Democracy promotes free media and the free media can promote democracy unless it is mishandled. However, Partisan media can promote democracy but they cannot generate freedom at its full potency. They can be best tool for boosting their manifesto and shaping social consciousness as well. Parties can advocate for freedom of press. If they do not do so they cannot disseminate their critical message to the people. But in doing so, they also manipulate the media for their vested interest. The people of the society where consciousness level is low they hardly can judge the nature and the difference of the news, between party's interest and independent.

¹⁴ The role of government in these countries is nothing more important than development, News and communication are considered so vital in promoting it." (Ed, Horton, 1978, P.42).

will be playing up only these dark spots and thus helping unwittingly to erode the faith and confidence with which growth and development are impossible.¹⁵

While the underlying values of western journalism are derived from the concept of the eighteenth century's individual freedom, the modalities and practices of journalism have been changed over the years along with the process of globalization that demand different paradigms. As Tom Brislin aptly states:

Multiple models of citizen-press-government relationships grow legitimately out of indigenous value systems and are enduring within the forces of globalization. Globalization has produced several major paradigm shifts in world societies, not the least of which is increasing degrees of autonomy of both the individual and the citizenry to encourage a wider participation in both the governing and economic process.¹⁶

After a decade long practice of the democratic system in Nepal, it has yet to realize the constitutional guarantee of a free and independent press. Contrary to the empowerment of citizenry expressed above, the people in Nepal remained passive audiences of democracy in paper, freedom of speech in the text of constitution, and use journalism as a tool to impose the agenda of the government and political parties. This is because of cultural lifestyles and philosophies instilled in the nation. Generally, Nepalese people believe that performing duties without expecting results is their culture.¹⁷ The majority of the populous remains illiterate, non-aggressive, tolerant, and passive. The government and political culture of Nepal never let the people realize the value of individual freedom within the reach of their rich culture. Ignorance and the submissive nature of the people were exploited by the elites over the centuries.

¹⁵ Roger Tartarian, *News Flow in The Third World: An Overview*, Ed. Philip C. Horton, *The Third World and Press Freedom*, (New York: Praeger Publishers, 1978), 42, quoting Dilip Mukerjee, *The Illustrated Weekly of India* (October 10, 1976).

¹⁶ Tom Brislin. *Empowerment as a Universal Ethic in Global Journalism*. *Journal of Mass Media Ethics*. 2004 Vol. 19, 130-137.

¹⁷ *Karmandye badhikaraste ma faleshu kadachana and paropakara pundyaya papaya parapidanam* are the philosophies Nepalese people adhere to. The text in italics are from the Sanskrit text of Gita.

IV. REGULATORY SCHEME AND POLITICAL CENSORSHIP IN NEPAL

A. Panchayati Period 1960-1990

After the end of the Rana oligarchy regime in 1950, the number of newspaper publications of the newspapers alarmingly increased. In 1950 alone, 12 newspapers came into publication. However, this was just a symbol of an enthusiasm to entertain the freedom of speech. Due to lack of economic strength and technical know how, only a few newspapers could survive.

The political move of 1960 not only dissolved parliament and banned political parties but also prohibited the newspapers supported by the parties, citing that no newspapers shall be published under the party banner. This was the era when politically critical journalism was discouraged and politicians encouraged the kind of journalism that only backs the development agenda of the government. The Panchayat system coined its journalism motto as "Communication for Development" to make the press supportive of the government. On the other hand, news media were facing different kinds of problems, such as low readership, problems of accessibility, lack of advertisers, unskillful and undereducated journalists, the absence of managerial skill, lack of professionalism, recognition of personal journalism rather than institutional, and the lack of technology and skills.

In an attempt to address the basic problems of the media, government launched different package programs. In the beginning, these focused on the problems of irregularity, inaccessibility and the survival of the press. The government classified the newspapers according to their number of published copies and a policy initiated that allowed the administration to purchase and distribute the papers in the different parts of the

country through the Information Department. This policy helped journalists to continue their profession but did not encourage freedom of rights. If a newspaper, criticized government policy, newspaper became ineligible to receive financial aid. For the first time in history, the government established a “Press council of Nepal”, in order to monitor media in Nepal. In addition, the government provided grant for media that strongly supported the government agenda. Therefore the Panchayat government was focused on advancing its agenda to the people through the media, as opposed to promoting freedom of speech and expression. Censorship was the only characteristic of news media during this period.

“The Press and Publication Act of 1965 insisted on dignity of the monarchy and system, development of country, law and order of the society, and harmony among communities and promotion of nationality.”¹⁰ The act promised that the government would grant loans and facilities to newspapers that contributed to “. . . healthy journalism, with full loyalty to the nation, the king and the Panchayat system and with the national viewpoint and national interests in mind.” Among punitive actions available to the government under this act were the powers to fine, confiscate or cancel newspapers registrations, to confiscate security deposits of newspapers and require new ones, and to ban news stories the authorities thought would disturb the peace or relations Nepal had established with other nations.

The Press and Publication Act of 1975 gave the government sweeping powers against journalists and publishers, banning critical writing about the king, royal family, the government and its agencies and diplomatic representatives. The Act also forbade attempts

¹⁰ Bholu B. Rana, *Nepal, Newspapers in Asia: Contemporary Trends and Problems*, ed. John A. Lent, Heinemann Asia, Hong Kong, 1982 p. 395-412

to weaken the moral fibers of society through libelous, baseless, and unwholesome comments, and use of words, symbols or illustrations and materials likely to encourage racial prejudices. In addition, it called for censorship of works of foreign journalists and the government was authorized to close newspapers without giving a reason. Introduced to bring about changes towards a national press, the provision also promised that the government would financially support newspapers that favored “healthy journalism”, which was defined similarly as in the 1965 act. The act was also used to close irresponsible newspapers.¹¹ Originally, The Press Council of Nepal was established with the intention to allow the public to make complaints against the press. The Press and Publication Act of 1983 (amended) created more barriers. It provided provisions for a compulsory bank guarantee for newspaper registrations and the newspapers were bound to print their publications from the same district where they were registered. The act also prescribed the qualification of the editor.

¹¹ The Act of 1975 sought to discourage and control those newspapers, which are oblivious to the ethics of journalism and take undue advantage to blackmail and harm the interest of the country.

The Panchayat constitution required the media to be non-partisan and on this ground; the government revoked registrations of a number of newspapers without any warning and without any provision of complaints. In the face of these severe restrictions, the number of newspapers during the period of the first two decades (1960-1980) fluctuated between 27 to 84, while state-sector media organizations flourished. During the period of 1980 to 1990, control on the registration of newspapers was relaxed which resulted in a five-fold increase of newspapers, but censorship was still imposed. The private sector media had to struggle for survival by comprising their stakes with the authorities in power.¹²

B. POST-CONSTITUTIONAL PERIOD 1990-2005

After the restoration of democracy in 1990, Nepal had a high expectation for democracy and development. The people felt relieved after the collapse of the thirty-year Panchayat system. The new constitution was adopted with strong provisions for the protection of freedom of press and expression. The Constitution of 1990 guaranteed the right to information, press freedom and freedom of expression.¹³ After promulgation of a new constitution, two ideas changed the trend of journalism in Nepal: the massive

¹² Gopal Pokharel. *Civil Society in Nepalese Context: Media Perspective*. Nepal News, November 27, 2002 <<http://www.globelpolicyforum.org>>

¹³ Articles relating to the right to information, freedom of press and expression of the new constitution, 1990 reads: Article 12. Right to Freedom: All citizens shall have the following freedoms: (a) freedom of opinion and expression; Article 13. Press and Publication Right: (1) No news item, article or any other reading material shall be censored Provided that nothing shall prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty and integrity of the Kingdom of Nepal, or which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes or communities; or on any act of sedition, defamation, contempt of court or incitement to an offence; or on any act against which may be contrary to decent public behavior or morality. (2) No press shall be closed or seized for printing any news item, article or other reading material. (3) The registration of a newspaper or periodical shall not be canceled merely for publishing any news item, article or other reading material. Article 16. Right to Information: Every citizen shall have the right to demand and receive information on any matter of public importance; Provided that nothing in this Article shall compel any person to provide information on any matter about which secrecy is to be maintained by law.

incremental rise in the number of publication of newspapers, and, secondly, the recognition of the media as a profession and business by the private sector.

There are also two reasons that hindered the ethics of independent journalism: the tendencies of authoritarian control over media by the government and parties, the monopolization in information dissemination by big media houses.

Nonetheless, this state of free press environment boosted Nepalese media to start playing its critical role. They responded to the freedom provided by new constitution by acting as guardians of the newborn democracy. At the same time, freedom of press was challenge to the Nepalese media. To be critical or supportive of the system was not sufficient any more. They needed to have a quality of correctness and fairness in their product and un-biased in their character, concepts which were lacking in the prior Nepalese journalism. Publication of independent news and views remains a key factor to the development of independent journalism. These factors were overshadowed by the domination of state controlled information, monopolization of private publication, and the heavily influenced and politically partisan press, which obstructed the development of independent endeavors in Nepal. The constitutional balance test between free press and responsible press regarding national integrity and security was and has been a greater challenge to the Nepalese journalism.

Explaining the state of media practice in Nepal after the promulgation of the new constitution, the former president of the Federation of Journalist Association (FNJ), Tara Nath Dahal, is of the opinion that the state was not supportive in promoting promote freedom of press in the country. During the past 10 years, several discouraging actions have been taken against the people's right to enjoy the free press and freedom of expression

guaranteed by Article 13 of the Constitution. An undeclared censorship has been imposed over published materials. The state has initiated illegal action against certain section of the press. If the state coerces the press even in a democratic polity, anarchy prevails.¹⁴

Violence in Nepal has been a serious problem since 1996. It has created instability in politics and the economy. Different governments have attempted peace processes but have failed. After the governments' unsuccessful efforts in resolving the problem, governments began blaming journalists and the media as a major cause of its failure. Existing practices of journalism are labeled as frenetic, opportunistic, and politicking by party leaders. Such blames and labels have made free press and censorship problems more complicated.

The fact is that journalism cannot function in an eventless state. It needs to have some basic occasions, events and characters to cover. It is always better to control the origin of the problem rather than blaming and suppressing the media. It is not necessary that all readers construct their opinion according to media. People can be informed, educated, entertained and influenced by media for their activities but it cannot be a sole reason for the consequences of an event. The Supreme Court of the United States wrote in a case:

When the government defends a regulation on speech as a means to . . . prevent anticipated harms, it must do more than simply posit the existence of the disease to be cured. It must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way.¹⁵

A writer insists that debating the meaning and consequences of journalism and media stories in the 21st century,

The media are the air we breathe; people can hardly imagine politics, art or even religion without the media. In such an environment, it is as crucial to debate the meanings and consequences of the stories journalism show, sing and send through

¹⁴ Tara Nath Dahal. *Right to Information for Good Governance*. Center for Human Rights and Democratic Studies (CEHUREDS), Kathmandu. May 2001.

¹⁵ *Turner Broadcasting System Inc v FCC.*, Number 93-44, 512 U.S. 622, 1994.
<<http://supct.law.cornell.edu>>

cyberspace as it is to grapple with the threat of violent aggression in a country where weapons are plentiful.¹⁶

The finding of this study on violence and censorship suggests that the cure for problem created by speech is more speech, not censorship. The finding is applicable in Nepal too.

However, the post 1990 democratic era did not create a smooth road for free press and free speech as people had expected. The freedom of press and expression, in reality, was far-fetched and deplorable. In the recent ten years, there has been an increase in numbers of news media readers still disappointed in the quality of information provided to them by the media. It is because of excessively politicized media and excessively politicized media was the result of desultory, self-serving politics.¹⁷

C. PRESENT SITUATION 2005-2006

On 9 October 2005, His Majesty King Gyanendra promulgated an “Ordinance Amending some of the Nepal Act Related to Media” (the “Ordinance”), which amended six

¹⁶ Judith Levine. *Shooting the Messenger: Why Censorship Wont Stop Violence*. The Media Coalition Inc., New York, 2000. <www.mediacoalition.org>

¹⁷ Continuous squabbling among the parties led country towards anarchy and instability. Because of the battle between intra party factions Nepali congress could not led country for the full term. In 1994, Prime minister resigns and calls for new elections after losing a parliamentary vote due to the abstention of 36 members of his own party. New elections in November resulted in a hung parliament; CPN-UML (Communist Party of Nepal-United Marxist-Leninist), which emerged as the single largest party in the parliament and formed a minority government. For the first time in the history of Nepalese politics The Nepal Communist Party (CPN-UML) was able to capture the government. However, it could not last long due to its internal division. After nine months, the minority government of CPN-UML could not face the challenge of the no-confidence motion and went for the dissolution of the parliament. Another faction of the Nepali Congress led new coalition government. Once again, because of conspiracies of the rival faction of the Nepali Congress in the no confidence motion, government was forced out. This was the period when Maoists started insurgency when the government was failed to meet the 40-point agendas presented by them. It was also co-incidence that after the collapse of Communist government, this was the first time that the radical leftist group, the Nepal Communist Party (Maoist) demanded began insurrection in rural areas aimed at abolishing monarchy and establishing People's Republic. In 1998, the third general election was held in eight years. The full term of an elected government is five years, Somehow Nepali Congress was able to secure majority in the election, but the internal dispute of the party could not maintain stability and changed its parliamentary leaders three times with three different prime ministers.

of Nepal's key pieces of media-related legislation. The amendments entrench restrictions imposed on the media by the Government during the three-month state of emergency that ended in April 2005, and impose new limitations that will further undermine freedom of expression, press freedom and the right to receive information in Nepal. The government moved swiftly to enforce the Ordinance after it was promulgated. On 21 October the authorities raided Kantipur FM's radio station and seized satellite uplink equipment for allegedly relaying broadcasts without the permission of the Government.

Freedom of expression is not absolute. However, any restriction on freedom of expression and opinion is only legitimate if it fulfils a three-part test.¹⁸ The restriction must

¹⁸ The three-part test is based on the Article 19 of the International Covenant on Civil and Political Rights (ICCPR) sets out the right to free expression in the following terms: 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. Under international law, the right to freedom of expression and opinion is not absolute and may be subject to restrictions. However, to be legitimate, such restrictions must satisfy a strict three-part test, which is set out in paragraph (3) of the same Article: The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals. As explained by international jurisprudence, the test requires: (1) that restrictions be imposed in accordance with a law or regulation ("prescribed by law"). A restriction is prescribed by law if it is expressly provided for by statute or regulation and is not overly broad or vague. The way the restriction is described must be clear enough to be a standard that can guide behavior; *See*, European Court of Human Rights in the case of *Hashman and Harrup v United Kingdom* (1999) 30 ECHR 241, para.256: "A norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct. At the same time, whilst certainty in the law is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances; (2) the purpose of the restriction must be the protection or promotion of a legitimate aim. Paragraphs (a) and (b) of Article 19(3) set out what constitutes a legitimate aim: respect for the rights and reputations of others, the protection of national security or public order, or public health and morals. Article 10 of the ECHR recognizes two additional legitimate aims, namely: prevent the disclosure of information received in confidence, or to maintain the authority and impartiality of the judiciary; and (3) the restriction must be necessary to achieve that aim. That is, it must address a "pressing social need" and the severity of the restriction be proportionate to achieve the legitimate aim. *See*, for example: *Handyside v. the United Kingdom*, 24 ECHR (Ser. A) (1976); *Sunday Times v. the United Kingdom*, (1979) 2 ECHR 245, 271. The right to freedom of expression and the test for permissible restrictions are set out in similar terms in the European Convention on Human Rights (Article 10), the American Convention on Human Rights (Article 13) and a number of national constitutions and bills of rights. European Convention on Human Rights (ECHR), E.T.S. No.5, entered into force 3 September 1953; American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S 123, entered into force 18 July 1983; African Charter on Human and Peoples' Rights, adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev.5, 21 I.L.M. 58 (1982) entered into force 21 October 1986. The articulation and

be properly set out in law and cannot be overly broad or vague. It must have as its purpose one of a very limited number of legitimate aims recognized under international law.

Finally, the restriction must be clearly necessary and not disproportionate to achieve that aim. The Government has reportedly stated that its motivation behind the ordinance is not to silence the media and stifle freedom of expression, but to instill “discipline.”¹⁹

However, the amendments in the Ordinance do not meet the three-part test and also violate Nepal’s own constitutional guarantees of freedom of expression. Many of the vague and ill-defined provisions open the door to arbitrary and abusive applications of the law. The ordinance seeks to provide a legal cover for unlawful practices and restrictions used by the government to illegitimately suppress freedom of the media and the right of Nepalese people to receive information, by prohibiting news broadcasts, suppressing criticism of the government and discussions in the media that are seen as politically sensitive for the government, severely limiting access to foreign media and enabling the government to bar journalists from working professionally.

Since February 1st, 2005, journalists have challenged the attempt by the government to silence a forthright media. Through this ordinance, the government is using the law to roll back some successes journalists have had in defending their legitimate democratic space for reporting, analyzing and commenting. Enforcement of the new law will have a chilling effect on the media and its application will lead to greater self-censorship as journalists try to predict when the authorities will act to silence a newspaper, broadcast or

application of the test has also been repeatedly confirmed by both international and national tribunals. Most recently the Human Rights Committee has delivered its opinion in *Rafael Marques v. Republic of Angola*, 18 April 2005, CCPR/C/83/D/1128/2002. See also: *Castells v. Spain*, 14 ECHR 445 (1992) and *Sunday Times v. United Kingdom*, 26 April 1979, 2 ECHR 245, para. 62.

¹⁹ Kantipur Online, 18 October 2005. <<http://www.kantipuronline.com/kolnews>>

close down whole media operations. Freedom of expression is a right and is always vital, but perhaps especially now in Nepal, at a time of crisis, to allow critical reflection about how to address the conflict and underlying political, constitutional, economic and social issues.

This next section of this document analyses, in detail, the amendments set out in the ordinance. The impacts of these changes on the right to freedom of expression are assessed and recommendations are made as to how the ordinance and the affected laws can be made to provide limited censorship for effective freedom of press and expression.

License requirement as a tool to censor news broadcast

When the King declared a state of emergency on 1 February 2005, among the many restrictions imposed on the media by the government was a ban on FM radio stations reporting the news. The legal basis for the ban was said to be in Section 7 of the National Broadcasting Act, 2049 (1993) (the “Broadcasting Act”), which empowers the government to prevent the broadcast of any program, on any subject, for a period not exceeding six months at a time. The original ban on news programming, therefore, should have expired on 2 August 2005, but the government continued to enforce it.²⁰

After the Supreme Court issued an interim order on 10th August 2005 requiring the government to halt proceedings against Rainbow FM radio station for broadcasting news, many other FM stations also started broadcasting news programs. Circumventing the court order, the government adopted the new ordinance on October 9th and then on 18th and

²⁰ After August 2nd 2005, some of the FM stations chose to resume broadcasting the news, including Rainbow FM Pvt. Ltd., an independent private commercial radio station. On 3 August 2005, the Government sent a letter to Rainbow FM, demanding an explanation for why the station was broadcasting news in violation of the Government’s directive and asking the station’s operators to provide reasons for why its license should not be terminated, as contemplated by Section 8 of the Broadcasting Act. Rainbow FM filed a petition with the Supreme Court and on 10 August 2005 the Court issued an interim order instructing the Government not to restrict the broadcasting of news by the petitioner.

19th October, the Ministry of Information and Communications issued public notifications instructing every FM station to stop broadcasting news, on the grounds that Section 5 of the Broadcasting Act, as amended by the ordinance, makes such broadcasts illegal.

In fact, the Broadcasting Act does not directly make it illegal to broadcast news, rather, it prohibits the broadcast of any program without a license.²¹ Section 5 has been amended seemingly to exclude journalists from the group of broadcasters entitled to apply for a license.²² While previously any broadcaster of “news-based” programs was able to apply for a license, the ordinance replaces the words “news-based program” with “informative programs.”²³ The definition of “informative programs” does not include information about politics, government or foreign policy but, instead, is limited to programs “designed with a view to providing information or raising people’s awareness on health, education, population, environment, weather, road transportation or those related with development activities.”²⁴ Therefore, a broadcaster who intends to air news programs could be prevented from submitting a license application. If indeed this is the effect of the amendment to the Broadcasting Act, it serves to entrench the government’s repeated moves against the independent broadcasting stations. While the ordinance does not prohibit acts such as broadcasting news, it has the same effect by making it more difficult or impossible for news broadcasters to obtain, or maintain, a broadcasting license. The notification of

²¹ Section 4 of the Broadcasting Act of Nepal.

²² Section 5 of the new Act reads as -Application for license: Any person or body corporate who intends to broadcast any program by way of satellite, cable or other means of communication or to broadcast any didactic, entertaining and informative programs by establishing the frequency modulation broadcasting system in any place within the Kingdom of Nepal shall submit to His Majesty’s Government an application in such format and accompanied by such fee as prescribed.

²³ Section 5 of the new Act provides an explanation to the “informative program” which reads: For this Section “informative programs” denotes any programs on health, education, population, environment, weather, road transportation or related with any development activities with an objective of promoting information and public awareness.

²⁴ Section 11 of the Act Amending Some Nepal Acts Relating to Communications, 2057 (2000)

the Ministry of Information and Communication on 19 October 2005 to FM stations makes it clear that the aim of the government is indeed to restrict news broadcasting. However, Section 16(a) and (b) of the Broadcasting Act may prevent the government from prohibiting the broadcast of news since this provision states that all broadcasters, including FM radio stations, have the function of broadcasting news. This Section should prevail over Section 5, which, as described above, relates to the procedure for obtaining a license but does not actually prohibit any specific acts.²⁵

Censorship in receiving information

The legal and practical move to prevent the broadcast of news programs violates the right of Nepalese people under the constitutional provision of right to information. The right to information necessitates that the citizens of Nepal have access to as many sources of information as possible and as large a variety of information as possible.²⁶ Broadcasters should not be denied access to means of communication because they disseminate news programming. The citizens of Nepal have a right to receive this information and they have a right to receive information from a plurality of sources. In the case of *Tulsi Ram Niraula*

²⁵ On 21 October 2005, officials from the Ministry of Information and Communications arrived at the Kathmandu premises of Kantipur FM to check the satellite uplink. Later the same evening, the station was surrounded by security forces that entered the station and seized the satellite uplink equipment. On this occasion the Government claimed that it was enforcing, not Section 5, but Section 11 of the Broadcasting Act, which states that “no broadcaster may relay their broadcasting without permission of the Government.” On 26 October, the Ministry of Information and Communications issued a letter to Kantipur FM seeking an explanation as to why its license should not be terminated on the grounds that it was broadcasting news, in violation of the amendment to the Broadcasting Act. Similar letters were also issued to other FM stations. On 11 November the Supreme Court refused to issue an interim order instructing the Government to stop the implementation of the Ordinance.

²⁶ As stated by the United Nations Human Rights Committee: “Because of the development of the modern mass media, effective measures are necessary to prevent such control of the media as would interfere with the right of everyone to freedom of expression . . . 15” A recent meeting of the Ministers of the Council of Europe, which has 46 Member States, adopted a resolution reaffirming the importance of media pluralism to the full exercise of freedom of expression and information. Resolution adopted at the 7th European Ministerial Conference on Mass Media Policy, 10-11 March 2005, MCM(2005)005. *Power to silence: Nepal's new Media Ordinance December 2005.*

v. Ministry of Information and Communication and others considered by the Supreme Court on 30 November 2005, it was argued that the prohibition on the broadcasting of news programs on FM stations, as ordered by the Ministry on 19 October 2005, violated the petitioner's right to information. The Supreme Court issued an interim order instructing the Ministry not to implement its notice of 19 October 2005.²⁷ This ruling paved the way for nearly 50 FM radio stations around the country to resume news broadcasts, at least temporarily.

The new amended Media Act provides for a discriminatory licensing regime; yet another tool for censorship. The Radio Act 2014 (1957) ("Radio Act") institutes a licensing regime for all owners and operators of "radio equipment", defined to include all equipment used to transmit and/or receive broadcast programming. The ordinance amends the Radio Act to make it easier for some broadcasters to obtain a license, while maintaining the existing licensing regime for those broadcasters that transmit news. By inserting a new proviso in Section 3 of the Radio Act, the ordinance expands the category of persons who are not required to obtain a license under the Radio Act in order to use radio equipment. Previously, a person with a license granted under the Telecommunications Act, 2053 (1956) to operate a "telecommunications service", or a customer of such a person, did not need to obtain an additional license under the Radio Act. Under the new provision, only

²⁷ The Order issued by the Ministry of Information and Communication (herein after referred to as MoIC) on 19th October 2005 reads: "As the Ordinance to Amend some Media related Acts, 2062 has amended section 5 of the National Broadcasting Act, 2049 by replacing the term 'News Related Program' with the term 'Information Related Program', and moreover defined Information related Program as 'programs to inform and to aware people information about development and construction related subjects like health, education, population, environment, weather and road transportation', now all Frequency Modulation (FM) stations are informed through this notice not to broadcast any news programs. This notice is published to inform all concerned, that action in accordance to the National Broadcasting Act, 2049 would be taken against all broadcaster, broadcasting (news) against above mentioned law."

persons or corporate bodies licensed to broadcast programs through satellite, cable or otherwise air “educative, entertaining and information-oriented programs”, do not need to obtain a separate license under this Act. There is no definition of what constitutes educative, entertaining and information-oriented programs. However, in light of the amendment to Section 5 of The National Broadcasting Act, 2049 (1993), discussed above, it appears to exclude news programming. Therefore, while the amendment appears to lessen the administrative burden imposed on some cable and satellite broadcasters, it maintains the obligation on persons and corporate entities that broadcast the news – and their customers – to obtain licenses under the Radio Act.

The system of licensing created by the Radio Act is excessively onerous and seemingly arbitrary. The definition of what constitutes “radio equipment” is very broad, listing 14 categories of equipment that qualify, including radio transmitters, walkie-talkies, cordless phones and television equipment.²⁸ Furthermore, there are no criteria specified for obtaining the license and the government can arbitrarily exempt a person or a machine from the licensing requirement. Section 4 of the Act states that, “with or without specifying any terms”, the government may exempt any person, body or radio equipment from the requirements of the Act. The equipment covered by the Radio Act is essential to the exercise of the right to receive and disseminate information, recognized in Article 16 of the Constitution as an element of the right to freedom of expression. In Nepal, where a large percentage of the population depends on radio as a primary source of information, the

²⁸ By virtue of Section 18 of the Radio (Communications) License Rules 1992, ordinary radios and television sets are not covered by the definition.

importance of radio equipment to this right is particularly acute. People are and should be free to choose the form of media to information.²⁹

The prohibition on “holding, making and using” radio equipment without a license³⁰ is not a legitimate aim that would justify the limitation that the licensing requirement imposes on the right to receive information through any media. Internationally, the justification for licensing broadcasters has been the limited nature of the broadcast spectrum, thereby necessitating government oversight in order to maintain pluralism in broadcasting.³¹ No similar rationale exists in relation to the equipment used for broadcasting. The rationale for the Radio Act appears to be the establishment of Government control over the dissemination of information. The licensing regime also fails to be “prescribed by law”, since the criteria for obtaining the license are not set out in the law. Finally, the amendment to the regime contained in the Ordinance discriminates against news broadcasters, again for no evident legitimate purpose. It can be viewed that the failure to include news broadcasters within the amendment is consistent with other actions of the Government to censor the news media.

Censorship through prohibited content expanded for news media

The Ordinance introduces a number of amendments to both the Press and Publication Act, 2048 (1991) (“Press Act”) and to the Broadcasting Act, which serve to entrench and strengthen restrictions imposed on the media by the King during the most recent state of emergency. The amendments expand the range of subject matter that cannot

²⁹ By virtue of Section 18 of the Radio (Communications) License Rules 1992, ordinary radios and television sets are not covered by the definition.

³⁰ Section 3 of the Radio Act of Nepal.

³¹ Article 10(2) of the European Convention on Human Rights specifically contemplates the licensing of broadcasters on this basis.

be published or broadcast in Nepal without incurring a sanction. Expanding the categories of prohibited content is a form of prior censorship that constitutes inappropriate interference with and control over the media. The Constitution states, “no news item, article or any other reading material shall be censored.”³² The Article goes on to provide that laws may be introduced that imposes “reasonable restrictions” on expression in certain listed circumstances.³³ However, a restriction will only be “reasonable” if it complies with the requirements set out in the three-part test³⁴ for the legitimacy of limitations on freedom of expression. The content restrictions imposed by the Press Act and the Broadcasting Act, and expanded by the Ordinance, are not necessary and serve no legitimate purpose. Furthermore, given that the prohibitions are drafted using vague terms and concepts, which provide little guidance to the press on where the boundary lies between permitted and prohibited expression, they cannot be said to be prescribed by law.

Censorship of writing

Section 14(a) of the Press Act already prohibits the publication, in any book, newspaper or magazine, of material that will, “foment hatred, disrespect, contempt or malice toward His Majesty or the royal family, or undermine the dignity of His Majesty”. The Ordinance expands the prohibition to make it an offence to undermine the dignity of members of the royal family, and the King. Laws that prohibit the criticism of heads of state and other public officials have been repeatedly struck down by courts and tribunals around the world on the grounds that these constitute an unwarranted infringement on the

³² Article 13(1) of the Constitution of Nepal, 1990.

³³ Article 13 of the Constitution permits the adoption of laws that will impose restrictions “on any act which may undermine the sovereignty and integrity of the Kingdom of Nepal, or which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes or communities; or on any act of sedition, defamation, contempt of court or incitement to an offence; or on any act against which may be contrary to decent public behavior or morality.”

³⁴ See, *Supra* footnote 9.

right to free expression.³⁵ Sri Lanka, for example, repealed its criminal defamation law in June 2002, and Ghana repealed its law in 2001. Argentina, Peru, Costa Rica and Paraguay also repealed their *deseccato* laws within the last two years. The last time an action for criminal defamation was brought in the UK was in the 1970s, and it was unsuccessful.

The Nepalese Government's plan to arrest six journalists for the publication of a political cartoon, depicting the constitutional monarchy as a dead animal, provides an illustration of how Section 14 of the Press Act can be used in a completely disproportionate manner to violate the media's freedom of expression.³⁶ Even without carrying out the actual arrests, the mere threat of sanctions has a chilling effect on lawful expression. The media in Nepal already practice self-censorship to avoid attracting legal or other, less formal, sanctions. By fostering such a climate the Government is effectively in breach of its obligations.³⁷ The Ordinance also introduces a new paragraph (c) (1) to Section 14 of the Press Act, prohibiting the encouragement of "acts that are deemed as crimes under current laws". Article 13 of the Constitution of Nepal permits restrictions on the press that threaten the public order or public morals, but not all acts which are criminal threaten public morality or public order. Furthermore, the prohibition uses the broad and ill-defined term "encouragement". The Constitution employs a higher standard, by requiring that the

³⁵ The European Court of Human Rights decision in *Castells v. Spain*, Judgment of 23 April 1992, Series A no. 236, is one of many judgments in which the Court reiterates the principle that public officials and governments should tolerate more, rather than less criticism. Additionally, the U.S. Supreme Court decision in *New York Times Co. v. Sullivan*, 376 US 254 (1964), which held that the right to free expression protects even false statements made about public officials – absent any actual malice – has been cited with approval by courts around the world. Most recently, the United Nations Human Rights Committee stated that: "the right to freedom of expression in Article 19 [of the ICCPR], paragraph 2, includes the right of individuals to criticize or openly and publicly evaluate their Governments without fear of interference or punishment."

³⁶ Reported by the Committee to Protect Journalists, 25 August 2005. The cartoon was published in the papers *Kantipur* and the *Kathmandu Post*.

³⁷ Nepal as a party to the ICCPR has breached its obligation under Article 2 of the ICCPR to take positive measures to protect and promote the right to free expression.

behavior of the press can only be restricted if it amounts to “incitement to an offense.”³⁸

This language illustrates the very narrow circumstances in which it is permissible for the state to restrict press articles.

There could be concerns in the present context in Nepal, that the media is being closely monitored and heavily sanctioned by the Government, merely reporting on actual or perceived criminal activity could be interpreted as constituting “encouragement”. To be consistent with the Constitution Section (c) (1) it should, therefore, be reformulated. As drafted, the amendment serves no clear legitimate aim and it suffers from a lack of proportionality. It is not a reasonable or justifiable form of censorship. Section 16(1) of the Press Act has also been amended to empower the Government to ban the import of foreign publications if they are likely to produce any of the vaguely worded consequences listed in the provision. These include: (a) adversely affecting national interests and dignity; (c) undermining relations with foreign states and governments; (d) assisting, supporting or encouraging terrorist, terrorism and destructive activities. The amendment deletes paragraphs (b) and (e) of Section 16(1), which is positive, as these prohibitions were vaguely drafted. However, new prohibitions have been added, which serve to strengthen the government’s control over the dissemination of information within Nepal. The Ordinance now enables the Government to ban the importation of any material that is likely to have as a consequence assisting, supporting or encouraging terrorist, terrorism and destructive activities. None of these terms is defined and there is a risk of broad interpretation and application of the prohibition. Under international law, articles in the

³⁸ See also, Article 19 of the ICCPR. Similarly, Article 20 of the ICCPR provides that any advocacy of national, racial or religious hatred that constitutes “incitement to discrimination, hostility or violence” should be prohibited. < <http://www.ohchr.org>>

media can only be restricted for somehow assisting terrorism, if the words are likely to incite others to carry out terrorist acts. It is necessary to show a direct causal link between the words and the likelihood of terrorist acts being carried out. The Johannesburg Principles on national security, freedom of expression and access to information provide useful guidance on the relationship between freedom of expression and national security, within which counter-terrorism measures sit.³⁹

In practice it is only in highly exceptional cases that media articles could be said to fulfill this causal link. Criticism of government policy and discussion of controversial political views should not be confused with incitement to commit terrorist acts. Perhaps especially in times of crisis, as in Nepal now, freedom of expression and of the media are vital to allow critical reflection about the situation and how to resolve it. The amendments would bring a false legal cover to vague and arbitrary measures that would curtail legitimate political and social dissent and media discussion.

Restrictions on broadcasts

Section 15 of the Broadcasting Act previously banned the broadcast of any advertisement that related to prohibited matters. Prohibited matters include: matters adversely affecting political parties; vulgar materials, and matters of such a nature as to create unusual fear and terror in the general public. The Ordinance amends Section 15, expanding the prohibition to all programming, not just advertisements. Additional categories of prohibited content have also been added, including matters “contrary to the

³⁹ The Johannesburg Principles on National Security, Freedom of Expression and Access to Information provide: “Subject to (...), expression may be punished as a threat to national security only if a government can demonstrate that: (a) the expression is intended to incite imminent violence; (b) it is likely to incite such violence; and (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence;” Johannesburg Principles on National Security, Freedom of Expression and Access to Information, Principle 5.

non-aligned foreign policy of Nepal” and “matters or materials banned or prohibited for publication under current laws.”⁴⁰ There have been cases of seizure of equipments and detention of journalists under this provision.⁴¹ The amendment to Section 15 has also

⁴⁰ The amendment reads: Clause 15: Prohibition on publication: (1) Keeping in mind the national interest, His Majesty's Government, by publishing a notice, may issue orders prohibiting news, notice and any other reading materials on any specific topic or incident related to any region for a period of stipulated time, or issue orders to the effect that materials can be published only after it is scrutinized by a designated authority. (2) No one should publish, translate or refer to such news, notice or reading materials after orders have been issued as per sub-clause (1).

Clause 16: Control over import of foreign publications: (1) His Majesty's Government can issue orders to stop the import of foreign publications if they contain materials with the following intentions, or causing such possible consequences:

- a) Speaking against national interests or honor.
- b) Disrupting peace, order and security of the nation.
- c) Damaging relations with a foreign country or government.
- d) Creating enmity among the people of the various caste, religion, area, region community and spreading communal disharmony
- e) Hurting good intention, morality and social honor of the common people.

(2) If a concerned customs or postal official suspects that imported publications contains materials prohibited by sub-clause (1), he may restrict the consignment, open, inspect, and send two copies of the suspected publication to the local authority with an invoice and keep the rest.

(3) If the local authority finds there are grounds to restrict the publication from being distributed after receiving it from customs or postal official as per sub-clause (2), he may notify the importer, giving him the reasons for such an action; and if there are no grounds to stop the publication from being distributed, then he may issue order within 12 hours of receiving the said copies, to customs or postal official to release the publication held by them to the importer.

(4) His Majesty's Government may remove the restrictions imposed as per sub-clause (1) at any time if it feels necessary.

In Subsection (1) of Section 16

(a) Words "anything prohibited for publication pursuant to Section 14 and 15, news, information or any material, or" has been added

(b) Clause (d) has been replaced with following Clause (d)

‘(c)’: "Promoting or assisting Terrorist, terrorism and destructive activities"

(d) Clause (b) and (e) have been omitted.

(Original version)

Clause 17: No export, sale or distribution of banned or prohibited publications: (1) No one should export banned or prohibited publications.

(2) No one should deliberately print, sale, or exhibit banned or prohibited publications.

⁴¹ On 27 November 2005 a police team seized transmission equipment and detained four journalists at Radio Sagarmatha. The police handed over two separate letters reported to be from the Ministry of Information and Communication requesting the radio station to hand over transmission equipment and cease operations until further notice. In one of the letters the Government reportedly accused the radio station of airing programs that encourage terrorists and terrorism in violation of Section 15(d) and (i) of the National Broadcasting Act-2049 and the license provided to the radio station. The closure took place on the day the station was to air a BBC Nepali Service interview with Maoist leader, Prachanda. The journalists were released from detention the following day. Despite an interim order from the Supreme Court on 29 November, Radio Sagarmatha was not allowed by the Government to relay BBC Nepali Service. On 7 December the Supreme Court issued a second stay order to the Government instructing it to let Radio Sagarmatha air the BBC Nepali service broadcast.

resulted in the removal of paragraph (2) of that provision which protected the right of political opposition parties to disseminate information.

Content restrictions of the nature imposed by Section 15 constitute a form of censorship and thus, unless they can be justified in accordance with the three-part test, violate international human rights law. Most of the restrictions set out in the new Section 15 of the Broadcasting Act are vaguely drafted and cannot be said to be prescribed by law. The prohibition on broadcasting matters contrary to Nepal's "non-aligned foreign policy" is one such example. Given the dearth of news available within Nepal, it would be very difficult for any member of the independent press to determine what actually constitutes Nepal's "non-aligned" foreign policy, nor when one is making a declaration "contrary" to this policy. The potential for abuse of this provision because of its lack of clarity is significant and it should be redefined. The content restrictions also fail to satisfy any legitimate aim. For example, paragraph (a), which prohibits the broadcast of matters that might "adversely affect political parties" can be used to prevent reporting on official wrongdoing. Preventing the exposure of government incompetence and/or corruption is not a recognized legitimate aim, neither under the Constitution nor under the Article 19 of the ICCPR. On the contrary, this is precisely the type of dissemination of which is protected by the right to freedom of expression.⁴²

Censorship on dissemination of news from foreign sources

The National News Agency Act, 2019 (1962) ("News Agency Act") empowers the Government to create a state-owned and controlled news agency responsible for

⁴² See, for example, European Court of Human Rights, *Sürek v Turkey* (No 2), Judgment of July 8, 1999, Application 2452-22/94, para.29; See also Johannesburg Principles, supra, Principle 2(b) "In particular a restriction sought to be justified on the grounds of national security is not legitimate if its genuine purpose or demonstrable effect is to protect interests unrelated to national security, including for example, to protect a government from embarrassment or exposure or wrongdoing (. . .)".

disseminating news both within and outside Nepal. This agency, the *Rastriya Samachar Samiti* (National News Agency, RSS) is the official mouthpiece of the Government, required by Section 17 of the Act to abide by a number of content restrictions, including a prohibition against disseminating reports that create doubt or suspicion with regard to Nepal's friendly relations with other nations or world peace. The News Agency Act (Section 32(1)) prohibits any other news agency from collecting or distributing foreign news items about Nepal, inside Nepal. Foreign news agencies used to be prohibited from selling or distributing news items except through the RSS or the Government. Now, by virtue of an amendment set out in the Ordinance (new Section 32(2)), foreign news agencies are entitled to sell their news in Nepal, provided they obtain Government approval. No permission is needed for selling or distributing news to the RSS.

While the amendment constitutes a slight improvement on the original prohibition on foreign news agencies, the improvement is merely cosmetic. There is no specified mechanism through which foreign news agencies may obtain Government approval to sell their news, and in light of the onerous content restrictions imposed on the RSS, it is unlikely that meaningful news from the foreign agencies will reach the citizens of Nepal through this channel. Furthermore, the long-term effect of these measures is a likely reduction in the number of foreign news agencies operating in Nepal, thereby ensuring the progressive isolation of the country's citizens from the international community.⁴³

The Press Council in Nepal is an entity appointed and controlled by the Government. Its primary functions are to regulate the press through the enforcement of a code of conduct and to control access to the profession. Any entity charged with oversight

⁴³ Article 19 of the ICCPR provides that the right to free expression applies "regardless of frontiers". The amended Section 32(2) of the News Agency Act violates the rights of the foreign press in Nepal and also the right of Nepalese citizens to receive information, as guaranteed by Article 16 of the Constitution.

of the media should be independent from the government and must be recognized as independent by the people.⁴⁴ This, however, is not the case with the Press Council.

At the end of September 2005, Reporter Sans Frontières reported that the Ministry of Information and Communications issued a set of directives on the assignment of state advertising in which the Government asked all state entities to place advertising only with media that “respect the nation, the nationality and the monarchy”.⁴⁵ Five days before the Ministry’s announcement, the Press Council published a list of 322 publications, ranked according to circulation. A number of the publications that are critical of the Government were demoted from Category A to Category B, despite having large circulations. A couple of publications supportive of the monarchy were promoted to Category A, and consequently will have priority access to state advertising funds. On 24 September 2005, newspaper and magazine editors demonstrated outside the Press Council’s offices, protesting the ranking on the grounds of bias.⁴⁶ The Ordinance amends Section 12 (2) (d) of the Press Council Act, 2048. Prior to the amendment, the Press Council could recommend to the Government that a journalist who is in defiance of the professional code of conduct time and time again, should have any privileges or facilities received from the Government suspended in whole or in part. The amendment grants the Council the additional power to recommend the cancellation of the journalist’s representative

⁴⁴ A number of the mechanisms, which would ensure the independence of the Press Council are lacking in the Act. For example, the Council is required to obtain the Government’s permission prior to accepting funds from foreign governments and agencies (Section 13(3)) and the Government can prescribe how the Council’s fund is to be operated (s.13(4)).

⁴⁵ Reporters Without Borders. *Government Tries to Throttle Independent Media Still Holding Out*. 29 September 2005. <www.rsf.org>

⁴⁶ In February 2005, following the state of emergency but prior the promulgation of the Ordinance, the International Federation of Journalists (IFJ) estimated that at least 600 journalists had already lost their jobs in Nepal as a result of the restrictions imposed on the media and the general level of insecurity within the profession. Restricting access to advertising revenues and increased powers granted to the Press Council will further weaken this already fragile sector. See: IFJ Report, “Coups, Kings and Censorship”, released February 2005.

certificate. Given that the Press Council is not independent of the government, it seems more likely than not that the Government will adhere to any recommendation made by the Council. This additional power may be misused by the Press Council, as an arm of the Government. By having a certification system in place for journalists, which essentially functions as a form of licensing regime, journalists can be controlled through the threat to revoke their certificates.⁴⁷ A law that requires journalists to be licensed violates not only the individual journalist's right to seek and impart information, but also the public's right to receive information without any interference.

Censorship by banning cross-media ownership

The Ordinance introduces another troubling amendment to the Broadcasting Act through a new Section 6(a) that restricts media cross-ownership. Under the provision, no single legal entity will be entitled to obtain a license or operating certificate for more than two forms of media, out of three possibilities: radio, television and publishing. Any entity that currently possesses licenses for all three forms of media is required to surrender one of these within a year. Controlling the degree of media concentration in a society is recognized as an important mechanism for achieving the pluralism required for the full exercise of freedom of expression, as set out above. However, restricting media ownership (and thus access to the means of communication) does constitute an infringement on the right to free expression and it must, therefore, satisfy the three-part test for legitimacy. The burden lies on the government to establish that each limb of the test is met. The government has not made any attempt to establish that the degree of concentration of media

⁴⁷ The Inter-American Court of Human Rights has ruled that compulsory membership in an association prescribed by law for the practice of journalism is incompatible with Article 13 of the American Convention on Human Rights. (Article 13 contains the freedom of expression guarantee, in the same terms as Article 19 of the ICCPR.)

ownership in the country has reached such a level that it actually threatens freedom of expression in Nepal by undermining the concept of media pluralism. This measure is disingenuous given that, as events over the past four years have demonstrated, the government itself is one of the most significant threats to media pluralism and freedom of expression in Nepal. Currently there are only two companies that own and operate more than one form of media in Nepal: Image Channel and Kantipur. Image Channel has an FM radio station and a television station. Kantipur has print, television and radio operations. Furthermore, as the experience of countries with far more concentrated media markets, including in Italy, the United States and Canada, has shown the process of creating a more competitive – and hence more pluralistic – media sector is a complex one. Merely limiting entities to operating two forms of media will not eliminate the problems arising from excessive concentration of media ownership. Indeed, an entity could voluntarily opt to operate only broadcasting outlets and then establish a total monopoly on television stations.

Disproportionate sanctions for criminal defamation

The threat of fines is an effective means through which governments can control the press. Imposition of fines on a media organization, even for a series of minor offences, can effectively bankrupt the organization.⁴⁸ Furthermore, just the threat of sanction can have a chilling effect on expression. Fines, regardless of their amount, can constitute a disproportionate restriction on freedom of expression and thus violate international law.

The UN Commission on Human Rights has called on states to “refrain from the use of imprisonment or the imposition of fines for offences relating to the media which are

⁴⁸ The General Rapporteur on the Media to the Council of Europe’s Parliamentary Assembly noted the use of disproportionate fines in a number of countries, with the effect of bringing the media “to the brink of extinction.” Parliamentary Assembly, Council of Europe, *Freedom of Expression in the Media in Europe*, Doc. 9640 revised, 14 January 2003.

disproportionate to the gravity of the offence and which violate international human rights law”.⁴⁹ If and when penalties must be used against the media, the Government should employ a system of graduated sanctions to achieve compliance, starting with a warning and only using fines as a last resort. Such a system would respect the principle of proportionality. The Ordinance amends the sanction provisions in both the Press Act and the Libel and Defamation Act. In both instances, the new sanctions that have been introduced are disproportionate to the offences and therefore violate international human rights law.

Censorship through criminal sanctions

The Ordinance amends the sanction provisions in the Libel and Defamation Act, 1959 (“Defamation Act”) (Sections 5 to 8), by increasing potential fines and imposing prison terms of six months to two years. The Ordinance also amends Sections 27 to 30 of the Press Act, increasing by about ten times, the amount of the fines that will be imposed for any violation of Sections 14 through 17 of the Press Act. In some circumstances, for example if a defamatory statement is published, the person responsible for the publication can be both fined *and* imprisoned (Defamation Act, Section 5). Laws that criminalize defamation constitute a restriction on the right to free expression. The threat or imposition of criminal sanctions is a disproportionate response to the harm caused by defamatory speech. The experience of other countries demonstrates that such laws are not necessary, since the reputation of people can be effectively protected by other means, including application of civil remedies and the right of a person defamed to seek a correction of the statement and/or to be able to reply. There is a growing body of jurisprudence that supports

⁴⁹ Commission on Human Rights Resolution 2002/48, para. 19 (c).

the principle that criminal defamation laws cannot be justified.⁵⁰ Furthermore, a number of countries have repealed their criminal defamation laws within the past few years. In most countries that still have them, the laws have not been used in recent times.⁵¹ Since the Ordinance was promulgated at the beginning of October 2005, the chief editor, editor and manager of the Lamjung weekly paper *Karmada*, have been sued for defamation under the new provisions, for statements published in June 2005.⁵² At a time when the international community and international tribunals are rejecting the use of criminal defamation laws on the grounds that they constitute an unwarranted infringement on the right to free expression, anyone could be troubled by the Government's decision to legislate in the opposite direction.

⁵⁰ The UN Human Rights Committee, in a decision published in April 2005, made the following statement in upholding a complaint from an individual charged with criminal defamation: "Given the paramount importance, in a democratic society, of the right to freedom of expression and of a free and uncensored press or other media, the severity of the sanctions imposed on the author cannot be considered as a proportionate measure to protect public order or the honor and the reputation of the President, a public figure who, as such, is subject to criticism and opposition. Human Rights Committee, in *Rafael Marques v. Republic of Angola*, 18 April 2005, CCPR/C/83/D/1128/2002, para 6.8. The Inter-American Court of Human Rights, in two landmark rulings, has also held that the application of criminal defamation laws constitutes an unwarranted and unjustifiable restriction on the right to free expression. *Herrera Ulloa v. Costa Rica*, 2 July 2004, Series C, No. 107, and *Canese v. Paraguay*, 31 August 2004, Series C, No. 111. While the European Court of Human Rights has yet to make a decision on the validity of criminal defamation laws generally, it has repeatedly found that the sanctions imposed in particular criminal defamation actions violate the right to free expression and their application should be subject to careful scrutiny.

⁵¹ Sri Lanka, for example, repealed its criminal defamation law in June 2002, and Ghana repealed its law in 2001. Argentina, Peru, Costa Rica and Paraguay also repealed their *desecato* laws within the last two years. The last time an action for criminal defamation was brought in the UK was in the 1970s, and it was unsuccessful.

⁵² Kantipur Online, 20 October 2005. <<http://www.kantipuronline.com/kolnews>>

V. OBSERVATION OF CENSORSHIP IN NEPAL

Conflict among the media, the practice of partisan journalism, the authoritative tendencies of government, strong self-censorship by journalists, conflict and violence in the society, consistently low rankings for indicators of social development , and political instability are the primary factors that have limited the freedom of speech and hampered the development of professional and independent journalism in Nepal.

There is a competition between media favorable to and critical of the establishment. Although a new generation of journalists is attempting to establish the foundations of an independent media, the government believes that the critical press is biased and guided by partisan interests, while the opposition believes that the pro-establishment media is a propaganda tool for the government. This media conflict leaves the audience wondering whom to believe. Readers and viewers tend to select the media they agree with and may never be exposed to contrary views. In effect, they act as their own censor.

Because the government-controlled media, as well as the independent media that abhor the government's policies, present only their respective positions, their voices ring untrue.

The government media and big business media isolate the independent media, which leads to a form of censorship. The alignment of big business media with government has stifled independent journalism aloof, leaving many media as information sheets. Similarly, in the name of democratization of media, big business media have curtailed the sovereign power of independent journalism and individual freedom.

The 1990 Constitution of Nepal guarantees the right to information, press freedom, and freedom of expression. The new constitution changed the trend of journalism in Nepal in two ways:

An increase in the number of newspapers published.

The recognition of media as a profession and as a business in the private sector.

Nepalese media also began to exercise the rights of a free press. Journalists welcomed the freedom provided by the constitution and considered themselves the guardians of the newborn democracy.

The nature of political censorship in the news media depends upon a country's particular political philosophy and governmental behavior. Even under a democratic constitution, when a nation is undergoing transition, censorship is often inevitable. Transitions invite temporary instability and often result in political crisis.

During such crises, external and internal political powers attempt to fill the political void. Amid the turmoil, the media play a crucial role. This is why authorities and those seeking power try to manipulate and influence news media to serve their particular interests. This is the point where political censorship begins.

Nepal has entered the age of democracy and libertarian thought. But the social sentiment of authoritarianism and totalitarianism remains unchanged. In this situation, dreaming about objective journalism in a country like Nepal is almost impossible.

First of all, it is very difficult to get proper access to information. And even if journalists get access to important information, they find it extremely difficult to publish it. If a journalist is not free or is being dictated to by management during news production, he or she could be in a dilemma whether to give priority to the news or to management's

direction. This is perhaps the crucial point where self-censorship starts in Nepalese journalism.

Political censorship depends on the type of government. Conservatives argue that excessive access to information and media can create chaos and anarchy, while liberals contend that extreme control of information may give rise to tyranny. Conservative governments overlook values of freedom to protect social, cultural and traditional values, while liberal governments place freedom on an equal footing with social and cultural values when dealing with media policy.

Important issues arise when dealing media censorship, such as, political responsibility, national security, civil rights, tolerance, morality, decency, obscenity, sedition or even treason. For Nepalese journalists and authorities the toughest question is deciding whether to apply the developmental or libertarian approach to the media. Successful application of the libertarian approach in a traditional country like Nepal would be difficult because government behaviors are not as tolerant as needed for that approach.

The developmental approach also has difficulties, because national media have to compete with international media to disseminate their national voice to outside world could be an incompetent effort. If they go backward, external sources of information could dominate domestic audience. As long as Nepal remains a signatory to the international human rights charter, it would be better to settle this issue in compliance to its commitments and obligations as underlined in her international treaties, charters and protocols. Nepal's accession into International Covenant on Civil and Political Rights, in May 1991, under the international bills of human rights is perhaps an appropriate commitment to comply with.

Nepal became a war-ravaged country after the reestablishment of democracy. The ongoing battle between the government and the Maoist insurgents has fostered censorship even more. Most of the time, the only information source on the conflict, which are heavily censored and manipulated, are the government and the rebels. Information get censored for the following reasons:

Journalists are unable to verify information provided to them because the war-inflicted areas are under the direct control of the warring parties and journalist are discouraged to visit the locations.

Accessibility is further compounded by the lack of economical and technical insufficiencies on the part of media.

If and when a journalist somehow manages to visit locations and examine the truthfulness of the information, they will hardly be able to produce the actual details in an independent manner from fear of retaliation by the rebels or the regulations imposed by the government.

Even if they try to produce the news, it has to be carefully worded in a tolerable language for both warring parties, often times downplaying the significance and the actual sense of the information.

For instance, government insists that the media label the rebels as “terrorists,” a label that prompts rebel retaliation. On the other hand, the rebels want the media to use words like “feudal” and “tyrant” when referring to the existing system and the monarchy.

Government regulations prohibit the media from quoting the exact words of anyone the government has labeled a “terrorist.” If such prohibitions are followed, the context and

meaning of information may be lost. To their credit, journalists have not always followed this direction.

Security issues encourage the authorities to control information, contributing to censorship. But rigid control of information does not necessarily help a country achieve peace. Now, the government media get information about the war from the military authorities and the media that are close to the rebels get their information from the Maoists. There is little opportunity for journalists to get information independently.

During the past decade, violence has escalated and human rights have been deteriorating.¹ So it is equally important to have people involved in those issues that are important for national security, law and order, and harmony. This is possible only when the media is allowed to remain free from censorship function freely and independently.

In an uneducated society, rumor becomes the major source of information. When free and independent journalism is suppressed through censorship, rumor and heresy can create confusion and escalate the conflict.

The role of government over Nepalese media is always dominant as in other developing countries. The traditional bureaucratic mentality of government mechanism, the hegemonic concept of ruling elites, abuses of political slogans of nationalism in settling the problem of interest groups in the name of sovereignty and security of the nation, and the

¹ Government itself is accepting that there are grave results of human rights violations “the escalating violence and the indiscriminate terrorist atrocities perpetrated by the insurgents over the past nine years that have seriously undermined the basic rights of the people Over the last nine years, about 11,000 people have lost their precious lives.” (Ramesh Nath Pandey, Minister for Foreign Affairs at the Sixty-first session of the UN Commission on Human Rights, Geneva, 15 March 2005.) The royal government is claiming that it is fighting against ruthless, unstable and totalitarian rule of Maoist to protect democracy from their grip. Government is asking for greater understanding, sympathy, support and cooperation from the international community. Government and its supporters have also been arguing that the king in Nepal is as a symbol of national unity and custodian of constitution as imprinted in the constitution of 1990, had a duty and obligation to stop downward spiral of the country. The Royal decision of February 1, 2005 was a part of his obligation and was of temporary nature for three years of period.

Nor opposition parties neither international community seems convinced with government arguments. The proper role of media is not being recognized to this regard.

poor condition of journalism are some prominent factors that always allows government to intervene in media freedom. When the government itself is not open, one can hardly imagine its openness. There should be a regulation to promote the notion of “right to information” from authorities so that they can ease the flow the government information. They also need to know that they are not the masters of media.

Political censorship also depends upon the socio-economic-cultural nature of a country. Nepal’s adult literacy rate is 51.4 percent. That means about 48 percent of the people cannot read newspapers. They need some other means of mass media, such as radio and TV. The population below the poverty line is 42 percent. Some 82 percent of people are living below \$2 a day. That means they can hardly afford TV and radio. So long as 73 percent of population do not have access to improved sanitation level and more than 16 percent of population are deprived of any kind of sustainable improved water sources, they can hardly be aware of their information rights and freedom of expression. Only 16 people in 1000 have access to mainline telephone and only 2 percent have cellular subscription. With this poor example of telephone access one can easily imagine what minimal percent could be users of computers and the Internet. Extensive studies of this area have not yet been done. United Nations Development Program has studied the trend of human development with a composite index, measuring average achievement in three basic dimensions of human development: a long and healthy life, knowledge and a decent standard of living. Out of 177 countries Nepal lies in 136th position. (Statistics: based on HDR-2005, UNDP). Considering these facts how an environment for the development of independent media can be created is not an easy task. Both the government and the rebels say they need impartial and authentic news. When they find that the news and views are not

comfortable to them apparently they may impose censorship directly, but the examples of atrocities are enough to deter journalists and to compel them toward self-censorship. What has been experienced is that without a conducive and fear-free environment independent journalism cannot grow. Whoever enjoys freedom of speech is either working for a particular party or interest group or is supported by them.

After the declaration of insurgency in 1996, Maoists were involved in violation of the minimum standards of the human rights of the people and encroached upon the press freedom of the journalists including free expression activists through killing, arrest, disappearance, misbehavior and harassment. Similarly, with the declaration of emergency by democratic government on 26 November 2001 and the Royal move on February 1, media suppression has become graver when the government suspended several articles related to fundamental human rights conferred by the Constitution of the Kingdom of Nepal, 1990.

Because of this situation, there is a fear that the ignorant people, who were about to enjoy the fruit of democracy when it was re-established and are still pessimistic, might lose their faith in the system. Such dejection may lead the country towards a higher state of anarchy and open doors to further totalitarian and authoritarian regimes that will lead media to a tighter grip of censorship. Friends of democratic Nepal are equally worried about this possible misfortune.

The issue of political censorship is not only related to democracy and freedom but also to the broader political and legal system. On the one hand, censorship is an obstruction to democracy and freedom, but governments everywhere view censorship as a legal tool to serve the political system. Governments consider censorship to be an essential factor in

maintaining political discipline and protecting social norms and values. Despite the interest of governments in exercising censorship during times of conflict, censorship violates individual rights in the name of protecting social and cultural values.

VI. CONCLUSIONS

The challenge facing the Nepalese media is not only in overcoming censorship.

While the media have exercised their political freedom since 1990, they have been freer to violate government regulations than to free themselves from influence by political interests.

Generally, the governments of developing countries with legitimate democracies do not nationalize their media. Nevertheless, those governments tend to control or influence information and the media because they consider the media to be a tool to advocate the government's development and political agendas. However, the globalization of media and unrestricted access to the airwaves are gradually replacing this "developmental" notion with the western model of media. Today, if a society departs from this western model, the society will be considered either undemocratic or uncivilized. This is the situation facing Nepal.

Political censorship is a violation of the fundamental rights of citizens. In Nepal, there is a conflict over the implementation of media law and regulation. The only means of ending this conflict is through a democratic constitution. Because Nepal already has a democratic constitution, the government should act as a guardian of the constitution, rather than working to manipulate and regulate the media. By upholding the spirit of the country's democratic constitution, the government can resolve the issue of political censorship in Nepal.

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