



THE USE OF ANONYMOUS SOURCES IN PRINT: JOURNALISTIC PRIVILEGE IN INDIA

Divya Jyoti Randev

Department of Journalism and Mass Communication, GGSDS College, Chandigarh.

Abstract

This paper explores the advantages and limitations of using anonymous sources in news. While newspapers and journalists in India make use of these sources, there are often no set guidelines available. The Press Council of India's code of ethics is wanting of proper direction to practitioners. Also, during the course of their practice, since journalists often find themselves under threat, there is a need for proper legal provisions to protect them as well as their right to protect their sources.

Keywords: *Anonymous Sources, Journalistic Ethics, Journalistic Privilege, Whistleblowers.*

Introduction

Journalists often find themselves bound by the source which asks not be named. When journalists extract inside information from sources who do not want to see their names in print, they often promise them either complete or partial confidentiality. Anonymity of news sources is often frowned upon by both the journalistic community as well as the audiences. This is because it raises doubts about the credibility of the journalist as well as the publication. Journalists from well known publications around the world have been known to sometimes use these sources to support their own biases and also to completely fabricate news stories. In several investigative exploits, both journalists and sources may find themselves under threat. There is a need, therefore, to establish an atmosphere that preserves the freedom of the journalist and protects them and the source from harm. In India, we do not have a comprehensive and well established mechanism for the same.

Journalistic Privilege and News Sources

The media depends on its sources for information. If this information is sensitive in nature, sources may demand confidentiality. The source may fear for its family or job or may want to avoid being held as criminally responsible. Also, if the information is not yet official or the source is not authorised to reveal it, the source may seek anonymity (Vobic & Kovacic, 2015). Bagdikian (2005) explained that whistleblowers who report wrongdoings face retaliations on the job. They could also be fired or demoted. Sources who have access to information because of their high position in the hierarchy may also leak information if they feel that doing so is in public interest.

There may be fear of physical harm too. In 2003, Satyendra Dubey, an Indian Engineering Service officer, exposed corruption in the Golden Quadrilateral highway construction project in an anonymous letter to the then Prime Minister Narsimha Rao. He attached his bio data with the letter so that the matter would be taken seriously. Dubey's name was leaked and he was later murdered. This case was widely covered by the media and made evident the danger to the lives of whistleblowers. Two years later, Shanmugam Manjunath, a manager for the Indian Oil Corporation sealed a petrol pump in Uttar Pradesh as it was selling adulterated fuel. After a month, the pump resumed operations. Manjunath conducted a surprise check. He was murdered and the pump's owner was later found guilty of the crime. Journalists, therefore, many a time consider granting anonymity to protect the source (Keller, 2008; Eisenach, 2011).

Under certain circumstances, for example, when questions about the authenticity of information are raised, journalists may be pressurised to reveal their sources. But they have the right to protect them. It is in fact, their privilege. International organisations such The Organisation for Security and Co-operation in Europe, African Commission on Human and Peoples' Rights and Council of Europe have recognised the right of the journalist to protect their sources. The journalist's right to protect his sources is considered to be "one of the conditions for press freedom" (European Court of Human Rights, 1996, p. 1).

But the freedom of the press is never absolute, the journalist can be pressurised to break the confidentiality agreement with his source. Several journalists have also gone to jail as they refused to reveal their sources. Kaliprasanna Kavyabisliarad, Editor of the Hitzibadi, and Pepin Chandra Pall were both imprisoned.

The courts have in several cases known to favour journalists. In 1997, The Delhi High Court ruled against disclosure of sources in a case of contempt against The Pioneer newspaper after it published an article that stated, "...the judiciary was hindering the fight against the construction mafia by issuing stay and status-quo orders." (p. 74) The article was based on



information from an undisclosed source from the Delhi government. The Court, however, also stated that the press does not have absolute immunity against disclosure (Sharma, Tomlinson & Finn, 2009).

Absolute immunity is, in fact, not required. There have been many instances, where anonymous sources have been misused. Journalist Michael Kinsley (2004) states that sometimes anonymous sources “are truth-tellers exposing institutional lies. Sometimes they are promoting an institutional agenda and want anonymity because they are spreading lies.” Janet Cooke, Jack Kelly and Jason Blair fabricated news before being caught, much to the embarrassment of the organisations they worked for.

Many jurisdictions, therefore, balance the reporter’s privilege which allows for source confidentiality against the need to expose the source in public interest (Hanamirian, 2012).

Legal provisions

The Indian law does not recognise journalistic privilege. There is little protection for sources in India. Sharma et al. (2009) argue that decisions regarding disclosure are largely left to the courts [8]. The Evidence Act, 1872 grants immunity to public officers, magistrates, revenue officers, lawyers from disclosing confidential communication. There is however, no such provision for journalists.

In its 93rd report, the Law Commission of India (1983) suggested the addition of Section 132A to the Indian Evidence Act. It read as follows:

No court shall require a person to disclose the source of information contained in a publication for which he is responsible, where such information has been obtained by him on the express agreement or implied understanding that the source will be kept confidential. (p. 34)

Later, in its 185th report (2003), the Commission recommended the inclusion of Section 132A as follows:

No Court shall require a person to disclose the source of information contained in a publication for which he is responsible, unless it is established to the satisfaction of the Court that such disclosure is necessary in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to Contempt of Court or incitement to any offence. (p. 421)

Subsection (2) states that the Court “shall assess the necessity for such disclosure of the source as against the right of the journalist not to disclose the source” (p. 421).

In India, the Press Council Act, 1978 states that the Council cannot compel any newspaper, news agency, editor or journalist to disclose the sources.

Earlier, journalists were compelled to reveal their sources and confidential information under the Prevention of Terrorism Act (POTA), 2002 in India. The Act was repealed in 2004 but the courts had already set dangerous precedents with regard to disclosure of sources (Sharma, Tomlinson & Finn, 2009).

The Whistleblowers Protection Act, 2011 (which received the President’s assent in 2014) protects persons making disclosures with regard to corruption, misuse of power or misuse of discretion by a public servant. This act states that the disclosure made by the whistleblower must be in public interest and must be substantially true (The Gazette of India, 2014).

In January 2016, the Supreme Court of India directed the Centre to set up a mechanism to protect whistleblowers that help to expose malpractices in Government departments. Many a time, the identity of these anonymous sources of information is leaked, putting them in harm’s way. The Supreme Court bench urged the Centre to:

Take a firm stand on the time-frame within which you will bring administrative set-up to protect whistleblowers. This is part of the evolution of system to meet the need of people. The concept of whistleblower is a global phenomenon and has become a reality. They will be there and the government cannot wish it away. (Choudhary, 2016).

Conclusion

It goes without saying that public interest usually wins over the rights of journalists. That is also necessary. While the Whistle Blowers Protection Act, 2011 is a good step towards protecting our sources, it is only limited to the government sector. The Supreme Court’s directive demanding a mechanism to protect whistleblowers is apt.



Highlighting the importance of role of the judiciary in the protection of news sources, Lee (2008) states, ... courts should vigorously protect the right of the press to publish confidential information. In actions against leakers, courts and legislatures must be sensitive to the impact of their decisions on the practice of journalism and the flow of information to the public. (p. 1461).

Confidential sources can never be done away with. So, journalists too will benefit greatly from such a mechanism. So will democracy.

References

1. Bagdikian, B. H. (2005). When the Post Banned Anonymous Sources. *American Journalism Review*. Retrieved from <http://www.ajr.org/article.asp?id=3946>.
2. Choudhary, A.A. (2016, January 7). Set up system to protect whistleblowers: SC to government.
3. Eisenach, E. (2011). Why Anonymous Sources Are Used: Inside the Different Situations Calling for Reporter-Source Confidentiality. Masters thesis. College of Journalism and Mass Communications, University of Nebraska-Lincoln. Retrieved from digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1012&context=journalismdiss.
4. European Court of Human Rights (2016). Factsheet-Protection of journalistic sources. Retrieved 27 February 2016 from http://www.echr.coe.int/Documents/FS_Journalistic_sources_ENG.pdf.
5. Hanamirian J. (2012). The Right to Remain Anonymous: Anonymous Speakers, Confidential Sources and the Public Good.
6. Keller, B. (2008, June 9). Keller Memo on Anonymous Sources.
7. Kinsley, M. (2004, October 10). Sources Worth Protecting? *The Washington Post*.
8. Law Commission of India: 93rd Report (1983). Retrieved from <http://lawcommissionofindia.nic.in/51-100/index51-100.htm>.
9. Law Commission of India: 185th Report (2003). Retrieved from <http://lawcommissionofindia.nic.in/reports.htm>
10. Lee, W.E. (2008). Deep Background: Journalists, Sources, and the Perils of Leaking. *American University Law Review*, 57(5), 1453-1529.
11. Press Council Act (1978). Retrieved from <http://presscouncil.nic.in/OldWebsite/act.htm>.
12. Satyendra Dubey (2015). Retrieved 27 May, 2016 from https://en.wikipedia.org/wiki/Satyendra_Dubey.
13. Shanmughan Manjunath (2015). Retrieved 20 June, 2016 from https://en.wikipedia.org/wiki/Shanmughan_Manjunath.
14. Sharma, K., A. Tomlinson & M. Finn (2009). *Freedom of the Press: Using the Law to Defend Journalists*. New Delhi: Human Rights Law Network.
15. The Gazette of India (2014). Part II, Section 1. No. 19. The Whistleblowers Protection Act, 2011. Retrieved from http://persmin.gov.in/DOPT/EmployeesCorner/Acts_Rules/TheWhistleBlowersProtectionAct2011.pdf
16. The Indian Evidence Act (1872). Retrieved 3 July, 2016 from <http://ncw.nic.in/Acts/THEINDIANEVIDENCEACT1872.pdf>.
17. Vobic, I., & Kovacic, M. P. (2015). Watchdog Journalism And Confidential Sources: A Study of Journalists' negotiation Of Confidentiality with Their Sources. *Teorija in Praksa*, 52(4), 591-611.