

Whistle-blower & Journalist Protections: Safeguarding truth-tellers in conflict and peacetime

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ABSTRACT

Whistleblowers and journalists serve as vital conduits of transparency in India's constitutional democracy, yet they increasingly operate in a high-risk landscape marked by legal, physical, and digital reprisals. While Article 19(1)(a) provides a bedrock for free expression, the practical reality for truth-tellers is one of "process-as-punishment." This article evaluates the widening chasm between India's constitutional ideals and its operational statutory framework. It critiques the persistent non-notification of the Whistle Blowers Protection Act, 2014, and analyses the shift from colonial sedition to Section 152 of the Bharatiya Nyaya Sanhita (BNS) through the lens of the *Kedar Nath* incitement threshold.

By synthesizing empirical data, including India's 2024 record of 84 internet shutdowns⁸⁰⁹ and its decline to 151st in the 2025 World Press Freedom Index, this study maps the systemic "chilling effect" generated by mass surveillance and the weaponization of criminal defamation. Drawing on comparative legal frameworks from the European Union (Directive 2019/1937) and the United Kingdom's PIDA 1998, the paper proposes a five-fold reform matrix: (i) the immediate statutory operationalization of whistleblower protections with restricted national security exemptions; (ii) the introduction of a federal "shield law" for journalistic source confidentiality; (iii) a judicial warrant requirement for digital surveillance and device seizures; (iv) anti-SLAPP mechanisms to deter predatory litigation; and (v) an integrated safety protocol for conflict-zone reporting. The article concludes that without a codified rights-based regime, judicial pronouncements in *Anuradha Bhasin*⁸¹⁰ and *Puttaswamy*⁸¹¹ will remain symbolic rather than transformative.

Keywords: Freedom of Expression, Whistleblowing, Shield Laws, Surveillance, BNS Section 152, Internet Shutdowns, SLAPP, Constitutional Law.

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⁸⁰⁹ Access Now, *Keep It On: Internet Shutdowns in 2024* (2025).

⁸¹⁰ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

⁸¹¹ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

INTRODUCTION

The functional vitality of a constitutional democracy is inextricably linked to the efficacy of its "information-clearance" mechanisms. If transparency is the lifeblood of accountability, then whistleblowers and journalists serve as the primary conduits through which the state is held to its public-law obligations. Under the Indian constitutional scheme, the right to impart and receive information is an emanation of Article 19(1)(a), limited only by the "exhaustively enumerated" restrictions under Article 19(2). From the early post-independence era, the Supreme Court of India has consistently conceptualized the press as a critical instrument of democratic self-government, progressively striking down prior restraints and affirming that the freedom of the press is a "preferred right" within the constitutional hierarchy. However, the contemporary landscape reveals a profound "implementation gap" between these lofty judicial pronouncements and the lived experiences of truth-tellers. While the Supreme Court has extended constitutional protection to digital speech and criticized the opacity of "sealed-cover" jurisprudence, empirical indicators suggest a systematic regression. India frequently leads the global tally for internet shutdowns, a practice that cripples the newsgathering process and severs the lifelines of potential whistleblowers. Furthermore, the Whistle Blowers Protection Act, 2014⁸¹², despite achieving legislative passage and Presidential assent, remains functionally inert due to the Executive's failure to notify its commencement. This statutory vacuum, compounded by the escalating physical and digital risks to Right to Information (RTI) activists and investigative journalists, necessitates an urgent re-evaluation of India's protectionist architecture.

This paper navigates this crisis through a six-part analysis. Part II establishes the constitutional foundations, exploring the intersections of free expression, privacy, and the doctrine of proportionality. Part III interrogates the statutory landscape, focusing on the transition from colonial-era sedition to the contemporary Bharatiya Nyaya Sanhita (BNS) and the evolving digital media guidelines. Part IV addresses the specific vulnerabilities of journalists in conflict-affected zones, where the suspension of civil liberties often becomes the norm rather than the exception. Part V provides a comparative analysis of the European Union's Whistleblowing Directive (2019/1937) and the United Kingdom's Public Interest Disclosure Act (1998)⁸¹³ to

⁸¹² Whistle Blowers Protection Act, 2014, No. 17, Acts of Parliament, 2014 (India).

⁸¹³ Public Interest Disclosure Act 1998, c. 23 (UK)

identify global best practices. Finally, Part VI synthesizes these findings into a comprehensive reform blueprint that reconciles national security imperatives with the non-negotiable demands of democratic transparency.

CONSTITUTIONAL FOUNDATIONS AND STATUTORY GAPS: THE ENDURING TENSION

India's free speech architecture, rooted in Article 19(1)(a)'s expansive guarantee and cabined only by Article 19(2)'s narrow exceptions, has evolved through six decades of judicial refinement to protect dissenters and truth-tellers. The sedition saga exemplifies this trajectory: *Kedar Nath Singh v. State of Bihar* (AIR 1962 SC 955) fundamentally recast IPC Section 124A, confining it to speech inciting imminent violence or public disorder, a vital carapace for political critique and investigative journalism that endured until the Bharatiya Nyaya Sanhita's (BNS) 2024 overhaul. Section 152, targeting "acts endangering sovereignty, unity, and integrity," arrives cloaked as decolonial reform, yet its elastic terms, "financial means," "subversive activities," invite misuse in the absence of explicit codification of *Kedar Nath's* incitement threshold. Without this statutory anchor, the provision looms as a sharper tool for stifling whistleblowers exposing governance failures or journalists probing security narratives, evading the proportionality rigor now de rigueur in speech cases.

Parallely, privacy jurisprudence has crystallized a counterweight. *Justice K.S. Puttaswamy v. Union of India* ((2017) 10 SCC 1) enthroned informational privacy under Article 21, forging a "necessity-proportionality-balancing" triad that recalibrates surveillance against source shields, a direct heir to *PUCL v. Union of India* ((1997) 1 SCC 301)'s⁸¹⁴ telephone-tapping protocols. Pegasus spyware's 2021 exposures tested these limits, prompting the Supreme Court's rare appointment of a technical committee to pierce "national security" veils and reject blanket deference to executive opacity. For truth-tellers reliant on encrypted channels, this synthesis with *Anuradha Bhasin v. Union of India* (2020) 3 SCC 637) mandating internet access as speech's sine qua non and shutdowns' "least restrictive means" implies that digital intrusions demand legality, targeted necessity, and judicial guardrails, lest anonymity dissolve into panopticon peril. Statutory reality, however, betrays these advances. The Whistle Blowers Protection Act, 2014, exists as spectral legislation, Presidential assent granted, yet perpetually

⁸¹⁴ *People's Union for Civil Liberties (PUCL) v. Union of India*, (1997) 1 SCC 301.

unnotified, dooming disclosures to the Central Vigilance Commission's 2004 PIDPI Resolution, an executive Band-Aid devoid of binding remedies or anti-retaliation teeth. Satyendra Dubey's 2003 murder for flagging highway graft and Shanmugam Manjunath's 2005 killing over fuel adulteration stand as grisly exhibits of this void; even the Witness Protection Scheme greenlit in *Mahender Chawla v. Union of India* (2019) 14 SCC 615⁸¹⁵ remains criminally tailored, its extension to administrative whistleblowers fitful at best.

Journalists fare no better. Press Council Act Section 15(2)'s⁸¹⁶ source privilege confines itself to Council inquisitions, evaporating in courts or police stations, a chasm widened by Subramanian Swamy v. Union of India (2016)⁸¹⁷, which upheld criminal defamation sans robust public-interest defences. SLAPPs proliferate as economic warfare: distant fora, cascading costs, and remote defendants engineered to bankrupt resolve. Bombay High Court's 2024 evisceration of IT Rules' fact-check unit offered fleeting relief against platform censorship, but without a federal shield law exempting newsrooms from DPDPA's consent dragnet, the ecosystem frays. This doctrinal-statutory disconnect breeds precarity: luminous precedents illuminating legislative shadows. Bridging it demands not judicial heroics but parliamentary resolve, crystallizing *Kedar Nath* into BNS, breathing life into WBPA, and erecting source bastions. Until then, truth-tellers navigate a republic where constitutional promise collides with institutional inertia.

JUDICIAL INTERVENTIONS: THE CONSTITUTIONAL COMPASS IN ACTION

When statutes falter, and executive fiat runs amok, India's higher judiciary has stepped into the breach as the ultimate referee between state security claims and the free speech imperative. Over the past decade, this role has evolved from narrow textualism to a sophisticated proportionality jurisprudence that insists national interest cannot steamroll dissent without rigorous justification, a doctrinal pivot essential for whistleblowers and journalists navigating repressive headwinds.

⁸¹⁵ *Mahender Chawla v. Union of India*, (2019) 14 SCC 615.

⁸¹⁶ Press Council of India Act, 1978, § 15(2), No. 37, Acts of Parliament, 1978 (India).

⁸¹⁷ *Subramanian Swamy v. Union of India*, (2016) 7 SCC 221.

The Supreme Court's demolition of "sealed-cover" opacity in *Madhyamam Broadcasting Ltd. v. Union of India* (2023)⁸¹⁸ marked a watershed, overturning MediaOne's broadcast ban with a ringing endorsement of audi alteram partem even in sensitive security contexts. Rejecting the government's "trust us" mantra, the bench demanded a transparent nexus between threat and restriction, recognizing that procedural fairness isn't expendable when a news outlet's viability hangs in the balance. This builds directly on *Sahara v. SEBI* (2012)⁸¹⁹, where the Court circumscribed reporting postponements to "strictly proportionate" cases, underscoring that opacity breeds abuse and erodes public scrutiny, the lifeblood of democratic accountability. Penal boundaries have seen parallel refinement. The *Kedar Nath Singh* lodestar (1962), confining speech crimes to incitement of violence or disorder, found fresh vigour in *Patricia Mukhim v. State of Meghalaya* (2021)⁸²⁰, quashing IPC Sections 153A and 505 charges against a newspaper editor for critiquing communal violence and state inaction. As Bharatiya Nyaya Sanhita's Section 152⁸²¹ inherits sedition's mantle, this incitement threshold alone can prevent its weaponization against editorial independence, a recent study on journalist FIRs under the new code affirms. Digital frontiers test these principles acutely. *Shreya Singhal* (2015)⁸²² remains foundational, gutting the vagueness of IT Act Section 66A while tethering intermediary takedowns to judicial orders as a bulwark against private censorship. Yet IT Rules 2021's fact-check unit amendments provoked Bombay High Court's 2024 strike-down for their chilling overreach, exposing the void left by absent shield laws that cascade platform liability onto news content. Without statutory source privileges, digital journalists dangle precariously, safe harbours turning into sword points. Privacy jurisprudence offers constitutional scaffolding. *Puttaswamy* (2017) elevated informational self-determination to Article 21 bedrock, furnishing fragments for reporter's privilege despite statutory silence, while *PUCL* (1997) imposed interception guardrails later echoed in Pegasus litigation's expert committee mandate. The Court pierced state secrecy claims, insisting that surveillance bows to proportionality; yet, uncodified, these yield to device seizures and metadata trawls that shred source confidentiality. Most insidiously, courts confront "process as punishment." Siddique Kappan's two-year UAPA incarceration for a Hathras story relief arriving only via bail exemplifies pre-trial detention as an extrajudicial penalty, exhausting resources and inducing

⁸¹⁸ *Madhyamam Broadcasting Ltd. v. Union of India*, (2023) SCC OnLine SC 366.

⁸¹⁹ *Sahara India Real Estate Corpn. Ltd. v. SEBI*, (2012) 10 SCC 603.

⁸²⁰ *Patricia Mukhim v. State of Meghalaya*, (2021) 15 SCC 35.

⁸²¹ Bharatiya Nyaya Sanhita, 2023, § 152, No. 45, Acts of Parliament, 2023 (India).

⁸²² *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

self-censorship that guts Article 19(1)(a). When FIRs under draconian laws or look-out circulars ground truth-tellers, the judiciary's proportionality scalpel provides the sole check, demanding not blind trust but demonstrable necessity.

Collectively, these interventions forge a coherent compass: liberty as default, restrictions as tightly tailored exceptions. They illuminate statutory voids but cannot fill them, leaving the legislature to crystallize this judge-made resilience into enduring protections for those who dare illuminate power's shadows.

THE THREAT LANDSCAPE: SYSTEMIC VULNERABILITIES IN PEACE AND CONFLICT

The perils facing India's whistleblowers and journalists transcend isolated incidents, rooted instead in the republic's socio-political fault lines and institutional frailties. What distinguishes "peacetime" from "conflict" is less a qualitative shift in hostility than an escalation in the state's repressive arsenal from administrative harassment to outright digital and kinetic suppression. Empirical patterns, meticulously tracked by watchdogs like the Commonwealth Human Rights Initiative, expose a grim clustering: over 310 documented attacks on RTI activists since 2006, with fatalities concentrated in rent-extraction arenas like illegal mining, land grabs, and welfare diversion. Absent the Whistle Blowers Protection Act's statutory armour, these truth-tellers bear the full, privatized brunt of accountability's cost, transforming public-interest disclosures into existential gambles.

This vulnerability sharpens under digital siege. India, a global leader in internet shutdowns with 84 orders in 2024 alone (per Access Now), wields network blackouts as infrastructural weaponry. *Anuradha Bhasin v. Union of India* (2020) commanded publication, proportionality, and review, yet district-level fiat in Manipur (21 shutdowns) and Kashmir routinely defies these strictures, crippling newsrooms' fact-verification and source lifelines. The effect cascades: whistleblowers are isolated from journalists, official narratives fill the void, and constitutional speech guarantees are reduced to parchment. In conflict theatres, where curfews compound connectivity collapse, reporting doesn't merely stutter; it ceases, amplifying state monopoly on truth. Surveillance elevates this to existential dread. Pegasus spyware's infiltration of 300 Indian devices, including those of journalists and opposition figures, exposed not crude interception but total ecosystem domination: metadata trails, encrypted channel breaches, and

pre-emptive attribution. No statutory "reporter's privilege" or decryption resistance shields sources; IT Act Section 69's "public interest" warrants invite fishing expeditions, while DPDPA's government exemptions mock *Puttaswamy's* privacy edifice (2017). The panopticon thrives on anticipation: even in the absence of prosecution, the perpetual exposure risk enforces silence, rendering whistleblowers' boldest revelations stillborn. Global barometers confirm the hemorrhage. India's slide to 151/180 in the 2025 World Press Freedom Index (Reporters Without Borders)⁸²³ mirrors nine journalist murders and 33 assaults that year, per Free Speech Collective figures that understate self-censorship's stealthier toll. Weaponized FIRs under UAPA or BNS Section 152, coupled with look-out circulars grounding critics, weaponize "process-as-punishment": Siddique Kappan's two-year detention for a Hathras pursuit exemplifies resource exhaustion that reshapes editorial calculus. Facts perish not in publication bans but in precautionary omission, the ultimate democratic impoverishment.

Unchecked, this landscape breeds entropy: silenced graft exposés in peacetime Delhi, unverifiable atrocities in conflict-riven Manipur. India's democratic sinews fray when truth-tellers defect to self-preservation. The antidote demands not lamentation but legislative surgery, transmuting judicial warnings into shields that equalize the gamble.

COMPARATIVE PERSPECTIVES: GLOBAL BENCHMARKS FOR INDIA'S PROTECTION REGIME

Designing a credible protection framework for whistleblowers and journalists demands more than domestic introspection; it requires measured engagement with global paradigms that have wrestled with similar tensions between state secrecy and public accountability. Across mature democracies, effective regimes rest on a tripod of statutory clarity, procedural accessibility, and potent remedies, hallmarks that India's fragmented landscape sorely lacks. The European Union's Whistleblowing Directive (2019/1937) sets the contemporary gold standard, mandating multi-sectoral safeguards and, with a procedural masterstroke, requiring the employer to disprove any causal link to the disclosure once a whistleblower demonstrates *prima facie* retaliation. For India, where administrative "transfers" or subtle professional sabotage often cloak victimization, this reversal would galvanize the dormant Whistle Blowers Protection Act, 2014, converting paper promises into courtroom realities. The Directive's tiered

⁸²³ Reporters Without Borders, *2025 World Press Freedom Index* (2025).

reporting architecture, internal channels first, escalating to external regulators or public-interest disclosures, also provides a template for navigating institutional capture, ensuring whistleblowers aren't funnelled into the very bureaucracies they expose.

The United Kingdom's Public Interest Disclosure Act (1998) complements this with ruthless efficiency, vesting a "day-one" protection right that shields even probationary employees from the instant of disclosure. By channelling claims through nimble Employment Tribunals rather than lumbering oversight commissions, PIDA delivers uncapped compensation for unfair dismissal, financial redress that restores livelihoods while deterring employers. India, burdened by the Central Vigilance Commission's glacial pace, could transplant this model to sidestep enforcement bottlenecks, pairing tribunal recourse with interim relief to match the human costs of truth-telling. Across the Atlantic, the United States eschews pure altruism for pragmatic incentives, with the Securities and Exchange Commission's Whistleblower Program disbursing over \$255 million in 2024 alone to fortify disclosures in high-stakes financial and corporate arenas. Though cultural reticence might temper outright bounties in India, a calibrated "Truth-Tellers Safety Fund" targeted at extractive-industry or public-infrastructure whistleblowers could replicate the volume-boosting effect, subsidizing relocation, legal defense, and lost wages without commodifying morality.

Journalistic protections reveal parallel convergences. Few democracies afford absolute "reporter's privilege"; instead, qualified statutory shields prevail, as in over fifty U.S. states and EU jurisdictions under GDPR-inspired carve-outs. Compelled source disclosure yields only to a stringent triad: the material's centrality to a proceeding, exhaustion of alternatives, and overriding necessity to avert grave harm, echoing *Riley v. California's* (2014) warrant specificity. These regimes exempt journalistic data processing from privacy regimes, insulating newsrooms from the investigative dragnet that ensnares India under the IT Act or DPDPA. Globally, such frameworks don't coddle recklessness but liberate the press's democratic function, a void glaring between India's Press Council Act's narrow remit and *Puttaswamy's* untapped privacy mantle. These transplants aren't wholesale imports but normative catalysts, tailored to India's federal mosaic and institutional grain. The EU's burden-shift fortifies WBPA enforcement; the UK's tribunals accelerate remedies; America's incentives scale disclosures; shield laws cradle sources. Collectively, they illuminate a practicable path: statutory sinew woven from judicial fibre, yielding not vulnerability but democratic resilience. India does not

need to reinvent the wheel; it needs to refine it for its terrain, and truth-tellers will propel the republic forward.

FROM PRINCIPLES TO POLICY: A REFORM BLUEPRINT FOR INDIA

The transition from constitutional aspiration to institutional reality requires a legislative shift that prioritizes enforceable rights over executive discretion. First, the Whistle Blowers Protection Act, 2014 must be notified immediately, with its scope expanded to include private-sector disclosures that affect the public interest, such as environmental violations or systemic financial fraud. This statutory framework should be anchored by an independent Office of the Whistleblower, equipped with investigative autonomy and secure, encrypted disclosure channels to ensure the anonymity of informants. Second, India must enact a Federal Shield Law to codify the "Reporter's Privilege." This statute should insulate journalists from compelled source disclosure unless the state satisfies a strict, three-part necessity test: establishing that the information is essential to a specific proceeding, unavailable through alternative means, and critical to preventing imminent, grave harm. Third, the "Process-as-Punishment" phenomenon must be arrested through targeted penal reforms. This includes codifying the Kedar Nath Singh incitement threshold in Section 152 of the Bharatiya Nyaya Sanhita (BNS) and introducing Anti-SLAPP (Strategic Lawsuits Against Public Participation) legislation. Such measures would permit the summary dismissal of predatory litigation designed to silence investigative reporting and shift the burden of costs to complainants who weaponize the legal process. Fourth, the "surveillance panopticon" must be dismantled through a Surveillance Oversight Act that mandates prior judicial authorization for digital interceptions and device seizures, accompanied by independent oversight to prevent "fishing expeditions" into journalistic data. Finally, the principles of *Anuradha Bhasin* must be institutionalized through a Shutdown Accountability Act, ensuring that network suspensions are transparent, time-bound, and subject to parliamentary review. By synthesizing these statutory reforms with a rights-based safety infrastructure, including a National Journalist and RTI Safety Fund, India can transform its "information-accountability" landscape from one of personal peril to one of democratic fortitude.

CONCLUSION

India's constitutional court has methodically constructed a fortress of free-kedarion principles, each brick laid with deliberate precision over seven decades of jurisprudence. The

uncompromising rejection of prior restraints in *Romesh Thappar*⁸²⁴ and *Brij Bhushan*⁸²⁵ (1950) set the foundational refusal to tolerate pre-emptive silencing. *Kedar Nath Singh* (1962)⁸²⁶ drew the incitement line that separates protected dissent from punishable disorder, a boundary the Court has vigilantly patrolled through *Shreya Singhal*'s demolition of digital vagueness (2015) and beyond. Layered atop these are *Puttaswamy*'s consecration of privacy (2017), *PUCL*'s interception guardrails (1997), *Anuradha Bhasin*'s proportionality hammer on internet blackouts (2020), and *MediaOne*'s demolition of sealed-cover subterfuge (2023). This doctrinal armory, liberty as norm, restriction as aberration, equips the judiciary to shield truth-tellers from state overreach.

Yet doctrine, however luminous, gathers dust without legislative translation. The unfinished labour lies in forging these principles into statutory steel: operationalizing the long-dormant Whistle Blowers Protection Act, 2014, through notification and private-sector expansion; enacting a federal shield law with its three-part necessity test; codifying *Kedar Nath*'s incitement threshold into Bharatiya Nyaya Sanhita Section 152 alongside anti-SLAPP dismissal mechanisms; institutionalizing surveillance pre-authorization and shutdown accountability; and funding a National Truth-Tellers Safety infrastructure with relocation, helplines, and conflict-zone embeds. These are not concessions to chaos but investments in resilience fortifying institutions against corruption's rot, restoring citizen trust in governance, and harvesting the proven dividends of protected disclosure: cleaner markets, robust human rights, and accountability that reaches the powerful. Inertia extracts a steeper toll. Nine journalist murders in 2025, alongside 33 documented attacks, are not statistics but indictments of lives extinguished, stories stifled, and public reasoning impoverished. The chilling shadow of SLAPPs, Pegasus intercepts, and Manipur's 21 shutdowns in 2024 alone foreshadow self-censorship's creeping triumph. Democracy cannot endure half-lit; it demands unsparing illumination.

If sunlight is democracy's lifeblood, whistleblowers and journalists are its unrelenting conduits. India possesses the jurisprudence to protect them and the democratic maturity to act. The hour demands not rhetoric but resolve: enact these safeguards with the urgency they merit, ensuring

⁸²⁴ *Romesh Thappar v. State of Madras*, AIR 1950 SC 124.

⁸²⁵ *Brij Bhushan v. State of Delhi*, AIR 1950 SC 129

⁸²⁶ *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955.

truth-tellers, whether exposing peacetime graft or wartime atrocities, stand unbowed. Only then will the constitutional promise transcend parchment, illuminating a republic worthy of its founding vision.

