

In Defence of Media Freedom

Strategy Paper 2019-2022



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General Observation

1. Background:

Historically, CLAP Legal Service Institute, since its inception in 1982 as registered entity has been advancing Fundamental Human Right with Dignity through the instrument of law and the provision of legal recourse in India. In this regard, the CLAP Legal Service Institute has been using law, legal process and legal system in a comprehensive manner to build a conducive legal environment for promotion and protection of human right in its manifold manifestation. For the purpose of advancing human right and deepening democracy especially Rule of Law, the CLAP Legal Service Institute undertakes activities in a variety of meta-legal approaches such as Access to Justice, Legal Awareness, Juridical Advocacy, Legal Support and Legal Empowerment of Marginalised Communities.

The CLAP Legal Service Institute in its long journey over 35-years in the field of advancement of human rights with dignity, has considerably contributed to the society in various manner and accomplished many landmarks like bringing legal reform in legislations pertaining to human rights, enforcement of laws having bearing on human rights, enactment of new legal framework and last but not the least people's participation in demanding transparency and accountability in governance along with functioning of state agencies, challenging social norms that are derogatory to the dignity of individuals as well as internalisation of human rights law in the ordinary pursuits of life. By and large, the CLAP Legal Service Institute substantially contributed towards elimination of injustice and to ensure justice in the society.

The CLAP Legal Service Institute based on its 35-years of experience, reaffirms its commitment to realise Human Right with Dignity, Deepening Democracy and Strengthening Rule of Law for promotion of Good Governance. Bearing in mind it's commitment to advance Human Rights with Dignity, the CLAP Legal Service Institute builds the statement of strategic intent to showcase the Impact of its Intervention.

In 2017, the CLAP on completion of 35-years of its existence, formulated its statement of strategic intent; setting out the overall thematic priorities, directions and performance measures for the period 2018 to 2022 for a period of 5-years. Accordingly, the CLAP Legal Service Institute has contemplated a Strategy Paper for 2018-2022 based on which the work of CLAP Legal Service Institute shall be carried out. In this Strategy Paper, some key choices have been made such as, (i) Thematic Focus¹ (ii) Impact and Synergy, (iii) an

¹ It was resolved by the Management of CLAP to intervene strategically in the identified thematic focus area covering Fundamental Rights guaranteed in the Constitution of India such as Freedom of Expression, Freedom of Association, Right

Outcome Orientation, (iv) Achieving Leverage as programmes led to synergy among practice, knowledge and policy.

2. Thematic Focus

With this key choice focus and bearing in mind the outcome orientation, a start was made to develop strategy paper for a specified period rather than undertaking projects dispersed over different issues and timeline. The organisational strategy paper for the period 2018-2022 (5-years) has been further segregated into issue areas for implementable strategic plan. Accordingly, this strategy paper titled **In Defence of Media Freedom** in the issue area of Freedom of Expression has been coined with focus on Media Freedom. It covers a **period of 4-years from January 2019 to December 2022**. The issue area has been discussed at some length in the next Chapter titled Issue Area – Freedom of Expression. In this chapter a reference has been given for the reason for selection of the issue area and the present situation in India.

to Life and Liberty, Equality, Non-Discrimination and Prohibition of Exploitation on Persons especially Forced Labour as well as Child Labour.

Issue Area - Freedom of Expression -

The issue area “**Freedom of Expression**” has its focus on Media Freedom which inter-alia covers Journalists, Media Houses and Bloggers as well as Users of Social Media. This is usually a progression from Freedom of Expression to Media Freedom in Public or Collective spaces. The CLAP Legal Service Institute understands that Freedom of Expression entails Media Freedom for improved sharing issues of concern having bearing on Fundamental Human Right, Deepening Democracy and increased opportunity for Rule of Law. The Thematic Focus area Freedom of Expression has been chosen after a situational review which indicated that Media Freedom is widely transgressed by way of following actions by powerful lobby and influential person:

- Abusive law suits in the court proceeding mostly by people in positions of power to silence their critics by bringing legal action particularly when media reports alleged corruption, arbitrary action or human right abuses.
- Violence on journalists and media houses to create an environment of threat challenging life and liberty for free press.
- Civil Defamation, Criminal Defamation and Seditious charges are in regular use and often result in legal proceeding that drags on for years together.
- False criminal cases in various pretexts.

Accordingly, the Strategy Paper In Defence of Media Freedom has been formulated covering the following identified challenges for Media Freedom:

- 1) Defamation both Civil and Criminal.
- 2) Seditious Charges.
- 3) Contempt of Court.
- 4) Parliamentary Privilege.
- 5) Access to Public Information.
- 6) Protection of Sources.
- 7) Harassment or bodily harm by security agents.
- 8) Insult (Government or Official).
- 9) Other Criminal and Civil matters.

It has been planned to provide legal defence in the above areas which pose a threat to Media Freedom. The legal defence strategy covers broadly journalists, media houses and bloggers as well as people who are using social media to express their individual opinions. The Media Defence Strategy shall be applicable all across India, as a study conducted reveals that Media Defence is not a thematic priority of existing Civil Society or Human Right Organisations who are extending legal support in court proceeding or otherwise. The existing situation demands for a unique intervention for Media Freedom in India. Thus the

plan proposed in this strategy paper is a unique and one of its kind interventions to fulfil the existing void in the present situation.

Importance of Freedom of Speech and Expression:

Freedom of Expression assumes significance in all modern states as it is intrinsically connected to the individual's freedom of conscience and opinion. It is an individual right. A further exploration of the subject broadens out into issues where freedom of expression is considered to have a general social benefit. Specifically this is such a right which is viewed to be important for the functioning of a democratic society. It is a means of ensuring an open flow of ideas and holding authorities to account. This seemingly laudable subject received well recognition in all human right instruments.

The liberty to express one's self freely is important for a number of reasons. First self expression is a significant instrument of freedom of conscience and self fulfilment. From the point of view of civil liberty this is probably the important of the justification which can be offered for free speech. The freedom to choose between values and to live one's life according to one's choice is the essence of liberty. Freedom of Expression has an important role to play in this case. Second justification is Freedom of expression enables people to contribute to debates freely about social and moral values. A third justification for the free expression is that it allows the political discourse which is necessary in any country which aspires to democracy. Fourthly, freedom of expression facilitates artistic and scholarly endeavors of all sorts.

In view of these above cited reasons freedom of speech and expression finds a substantial importance in the present day discourses around fundamental human rights and democratic development.

A Commitment for Human Right:

Speech and expression is gift of nature to mankind. Through speech and expression every human being conveys his thought, sentiments and feelings to others. Freedom of expression has four broad special purposes to serve: (1) it helps an individual, to attain self-fulfilment; (2) it assists in the discovery of truth; (3) it strengthens the capacity of an individual in participating in decision making; and (4) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change. All members of society should be able to form their own beliefs and communicate them freely to others. Freedom of speech and expression is thus the natural right which a human being acquires from birth. It is therefore, a basic human right. A commitment from the individuals of the society and the state can make this right a reality. This strategy paper seeks to strengthen full realization of Right concerning Freedom of Expression through a strategic intervention at various levels. The overall goal of this strategy paper is to accomplish media freedom and free speech by way of extending legal support to enable journalists, media houses, bloggers and users of social media to express freely in public interest issues. With this commitment, the strategy paper is formulated.

Legal Position of Freedom of Expression

A subtle attempt has been made in this chapter to explore the existing human rights instruments to understand the human right dimension and dynamics of freedom of expression both in the international and domestic laws. References have also been made in this analysis to various judicial pronouncements having significant bearing on the theme of freedom of expression in India.

Freedom of Expression under International Law:

It was only with the formation of the United Nations and the construction of a human rights regime founded in international law that the Right to Freedom of Expression became universally acknowledged. Article 19 of the Universal Declaration of Human Right (UDHR), 1948 states: *Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.* At a later stage this right was enshrined in binding treaty law in Article 19 of the International Covenant on Civil and Political Rights (ICCPR). This was adopted by the UN General Assembly in 1966 and came into force a decade later. Article 19 of ICCPR echoes the wording of the UDHR, but adds some explicit grounds on which the right may be limited. It says;

Article 19 of ICCPR says:

- 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 of 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.*
- 3. 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 (order public) or of public health and moral.*

While freedom of expression is clearly protected by a considerable body of treaty law, it can also be regarded as a principle of customary international law, so frequently is the principle enunciated in treaties, as well as other soft law instruments. Most human rights treaties, including those dedicated to the protection of the rights of specific groups – such as women, children and people with disabilities – also make explicit mention of freedom of expression. One such example is freedom of expression guaranteed under United Nations Convention on Rights of the Child (UNCRC). Similarly, the European Court of Human Right has made this point repeatedly of expression constitutes one of the essential foundation of such (Democratic) society, one of the basic conditions for its progress and for the development of everyman. It is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend shock or disturb the state or any sector of the population. Such are the demands of that pluralism, tolerance and

broadmindedness society. The East African Court of Justice has held that the principle of democracy must off necessity include adherence to press freedom. It further says free press goes hand in hand with principle of accountability and transparency. Thus the benefit of freedom of expression is not only in the sphere of democratization and politics. The Nobel Prize winner Economist Amartiya Sen even went so far as to say that countries with a free press do not suffer famines.

Constitutional Norms:

In addition to the international instruments discussed above, freedom of expression is also protected in almost every national constitution. This obviously means that it will have supremacy within the law of the land, but also suggest that it should be seen as a general principle of law, applicable in all circumstances. In India, the Preamble of the Constitution *inter alia speaks* of liberty of thought, expression, belief, faith and worship. It also says that India is a sovereign democratic republic. It cannot be over emphasised that when it comes to democracy, liberty of thought and expression is a cardinal value that is of paramount significance under the Indian Constitution.

The Indian Constitution in Article 19 (1)(a) provides for Freedom of Speech and Expression. Article 19 (1)(a) says that “All citizens shall have the right to freedom of speech and expression”. Freedom of Speech and Expression means the right to express one’s own convictions and opinions freely by words of mouth, writing, printing, picture or any other mode. It thus includes the expression of one’s ideas through any communicable medium or visible representation, such as, gesture, signs and the like. The expression connotes also publication and thus freedom of press is included in this category. Thereby freedom of expression encompasses media freedom in India like many other countries of the world. It was an accepted norm in India that free propagation of ideas is the necessary objective and this may be done on the platform or through the press. Freedom of propagation of ideas is not only secured by press but also through freedom of circulation, which is well recognised in the judicial pronouncements.

However, the above freedom provided under Article 19(1)(a) is not absolute. This right is subject to limitations imposed under Article 19(2) which empowers the state to put reasonable restriction on the following grounds i.e. security of the state, friendly relations with foreign states, public order, decency and morality, contempt of court, defamation, incitement to offence and integrity and sovereignty of India.

This warrants a discussion of what is the content of the term “freedom of speech and expression”. There are 3-concepts which are fundamental in understanding the reach of this most basic of human rights. The first is discussion, the second is advocacy and the third is incitement. Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1)(a). It is only when such discussion or advocacy reaches the level of incitement that Article 19(2) kicks in. It is in this context that a law can be enacted curtailing the speech or expression that leads to inexorably to or tends to cause public disorder or tends to cause or tends to affect the sovereignty and integrity of India, the security of the state, friendly relation with foreign state etc.

Case Laws:

Freedom of Expression has been widely recognised in a wide range of judicial pronouncement by Supreme Court and High Courts in India. Here some landmark judgements concerning Freedom of Expression have been quoted for deeper understanding about the judicial opinion

about freedom of expression. Under our constitutional scheme, as stated earlier, it is not open to the State to curtail freedom of speech to promote the general public interest. In **Sakal Papers (P) Ltd. & Ors. v. Union of India**, [1962] 3 S.C.R. 842, the Apex Court said:

“It may well be within the power of the State to place, in the interest of the general public, restrictions upon the right of a citizen to carry on business but it is not open to the State to achieve this object by directly and immediately curtailing any other freedom of that citizen guaranteed by the Constitution and which is not susceptible of abridgment on the same grounds as are set out in clause (6) of Article 19. Therefore, the right of freedom of speech cannot be taken away with the object of placing restrictions on the business activities of a citizen. Freedom of speech can be restricted only in the interests of the security of the State, friendly relations with foreign State, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. It cannot, like the freedom to carry on business, be curtailed in the interest of the general public. If a law directly affecting it is challenged, it is no answer that the restrictions enacted by it are justifiable under clauses (3) to (6). For, the scheme of Article 19 is to enumerate different freedoms separately and then to specify the extent of restrictions to which they may be subjected and the objects for securing which this could be done. A citizen is entitled to enjoy each and every one of the freedoms together and clause (1) does not prefer one freedom to another. That is the plain meaning of this clause. It follows from this that the State cannot make a law which directly restricts one freedom even for securing the better enjoyment of another freedom. All the greater reason, therefore for holding that the State cannot directly restrict one freedom by placing an otherwise permissible restriction on another freedom.”

Various judgments of the apex court have referred to the importance of freedom of speech and expression both from the point of view of the liberty of the individual and from the point of view of our democratic form of government. For example, in the early case of **Romesh Thappar v. State of Madras**, [1950] S.C.R. 594 at 602, the Apex Court stated that freedom of speech lay at the foundation of all democratic organizations. In **Sakal Papers (P) Ltd. & Ors. v. Union of India**, [1962] 3 S.C.R. 842 at 866, a Constitution Bench of the Supreme Court said freedom of speech and expression of opinion is of paramount importance under a democratic constitution which envisages changes in the composition of legislatures and governments and must be preserved. In a separate concurring judgment Beg, J. said, in **Bennett Coleman & Co. & Ors. v. Union of India & Ors.**, [1973] 2 S.C.R. 757 at 829, that the freedom of speech and of the press is the Ark of the Covenant of Democracy because public criticism is essential to the working of its institutions. Equally, in **S. Khushboo v. Kanniamal & Anr.**, (2010) 5 SCC 600 the apex court stated, in paragraph 45 that the importance of freedom of speech and expression though not absolute was necessary as we need to tolerate unpopular views. This right requires the free flow of opinions and ideas essential to sustain the collective life of the citizenry. While an informed citizenry is a pre-condition for meaningful governance, the culture of open dialogue is generally of great societal importance.

Media Freedom Context in India

Freedom of Expression is one of the recognised Fundamental Human Right. The Constitution of India has given a fundamental right status to Freedom of Expression, although it is not absolute right. This constitutional recognition entails media freedom otherwise, media freedom as a subject is not separately discussed in the Constitution of India. Media freedom as a derivative right of Right to Freedom of Expression is substantially acknowledged under different existing statutes and judicial pronouncement. Such Freedom of Media paves the way for media to discharge its duty. There are several newspapers, journals and magazines etc. are being published in different languages in India. It is needless to say that India is a huge country with almost 29 nos. of States and 7 nos. of union territories. Millions of people live in each of the state. India houses 1.324 million of people. People of different regions speak different languages. As many as 22 languages are recognised in the Constitution of India. Besides, English and Hindi languages are also widely used as a medium of communication.

Apart from newspapers, journals and magazines, a huge chunk of Electronic Media operates in the country in the form of TV Channels. It is recorded that 882 numbers of TV Channels operate in the Country. Almost 80 % out of the above TV Channels is regional channels. In addition to it a wide chunk of population are users of Social Media and Bloggers. Thus, freedom of expression is widely ascertained in various medium. In the present context, digital media is also largely used and explored. Use of Information Technology is on steady rise.

However, as has been told earlier the freedom of expression is not an absolute right. Various restrictions have been imposed in lieu of reasonable restriction. Some of them which need immediate reference are defamation which includes civil and criminal defamation, charges of sedition, demand by law enforcement agencies to disclose sources, restricted public information, breach of parliamentary privilege, contempt of court and official secrecy. Even though a decade ago public information becomes a right in India, in many instances substantial public information is not disclosed on the ground of National Security or Sovereignty, National Economic Interests, Relations with Foreign States, Law Enforcement and the Judicial Process, Cabinet and Other Decision-Making Documents, Trade Secrets and Commercial Confidentiality, Individual Safety, Personal Privacy (Article 8(i) of Right to Information Act- Exemption from Disclosure of Information).

Besides, there is wide spread and increasing trend of litigation and legal actions against independent media as well as bloggers. The Information Technology Act which was introduced in 2000 facilitates Government action against Social Media. There is an instance where the court has imposed restriction on publication of news relating to involvement of lawyers in maltreatment of a woman on the ground that lawyers are integral part of

judiciary; hence, reputation of lawyers cannot be damaged in media². While free speech is protected to a fairly high standard, this is often not respected due to long drawn out proceeding and as judicial process take a very long time to come to completion. Often litigations are lengthy and costly. Appeals are preferred in most of the case against the decision of local courts. Besides, due to high level of corruption, abuse of power and apathetic attitude of Government official freedom of expression is widely restricted.

Legal Actions to curtail media freedom is widely used instrument in India. Although exact number of cases filed against media is not ascertainable as no official data is maintained about this aspect of human right; a threadbare analysis shows that 7000 to 10000 cases are filed in courts against media in a year. Out of it a substantial amount of cases are filed by abuse of power or misuse of legal provisions. It has also been observed that in the name of maintenance of law and order temporary restriction is imposed locally or regionally by the public authorities³.

In a recent development the Apex Court in India has given Right to Privacy the status of Fundamental Right. The apprehension is that it will have implication on Media Freedom in long run.

As there are several restrictions exist on media freedom a wide range of litigations and legal actions are possible. Though large media houses have mechanism in place to defend itself, a wide range of medium and small size media do not have fairly adequate support mechanism to defend them. Due to high cost of litigation and imposition of penalty there is always a threat to their existence. Besides, hardly any media houses have any mechanisms in place for safety of journalists and combating impunity. As a result media freedom as a derivative right of Freedom of Expression is curtailed to a large extent. This has serious consequences in free speech, democratic development and human right. It also impacts poverty and development as these issues could not be published due to restriction on media.

² High Court Bar Association, Odisha vrs. State of Odisha and 15 other Newspapers and Channels, Case No. W.P. (C) No. 2711 of 2017.

³ Restriction on Internet was imposed in Punjab and Haryana for a period of 72-hours to control mob in the context of pronounce of verdict against Ram Rahim of Dera Sect).

Key Problems and Causes

A threadbare analysis of media freedom context in India reveals some of the inherent problems with regard to freedom of expression for the media. When delving deeply into the matter the following problems at various levels are identified:

At the Level of Media Houses:

It has been identified at the level of Media House that there is no or very little understanding of importance of safety of journalists and combating impunity and the ways to achieve which conditions for a conducive environment. There is little awareness and mechanisms in place for safety of journalists.

At the Level of State Institutions:

The state institutions especially the Human Right Commissions at the national and state level are concerned about safety of journalists especially women journalists but there has been no demonstrative pro-activeness in cases of protection of journalists.

At the Level of Government:

When issues of safety of journalists arises the Government of the Executive Agencies become alert after commission of offence. However, preventive measures are inadequately taken. Cognisance is generally taken when there is a constant pressure from the media either singularly by the media house to which the journalist who are victims or at risk of offences are attached or sometimes in special cases when collective view of the media is expressed about the safety of journalists.

At the Level of Judiciary:

The justice system in India is so poorly equipped that it takes indefinite period to come to a conclusion in cases filed against journalist, media houses and bloggers. This is more relevant in cases of civil and criminal defamation. Besides, due to huge cost of litigation, it is impossible for journalist, media house or bloggers to defend any court of law. It is a fact that there is no special court exists with specialised knowledge to hear freedom of expression cases against journalist. The convenient approach in the lower courts does not very much recognise freedom of expression as a fundamental human right. Even state sponsored free legal service is not given in cases of defence in defamation cases.

At the Level of Journalists and Bloggers:

There has been a demonstrative inadequacy in terms of organised action by journalist and bloggers. There are association of journalists formed at various levels but these are very poorly organised and there is a hardly any attempt by them to express collective views about safety of

journalist. In fact, it is a fact that safety of journalist especially women journalist is not high on the agenda of the associations formed by journalists.

The above mentioned problems with respect to journalists, media houses and bloggers and their safety have roots in history and are interwoven with culture, organised actions and capacity of media houses, journalists and bloggers to bear the high cost of litigations. Keeping these in view three key problems and their causes are mentioned in the table below:

1. Key Problem: Inadequate Access to Justice.				
Causes	Most of the Media Houses, journalists and bloggers have no capacity to bear the huge cost of litigation.	The State sponsored legal services are not extended in cases of defamation – both civil and criminal.	The capacity of lawyers mostly at the lower court is very limited to establish Media Freedom as Freedom of Expression which is a Fundamental Human Right.	The conventional approach of lower courts does not recognise Freedom of Expression as a Fundamental Right and often the cases runs for several years.
2. Key Problem: Safety of journalists especially women journalist is not a priority for Media Houses, Government and State Institutions.				
Causes:	There is no organised association of journalists and bloggers.	The awareness level about safety of journalist, combating impunity and the ways to achieve this condition is inadequate.	State institutions do not have sufficient and proactive mechanisms to ensure safety of journalists.	Issues pertaining to Journalists, Media Houses and Bloggers are hardly documented and no national level data is maintained.
3. Key Problem: Inadequate implementation of existing International Standard on Media Freedom and Safety of Journalists.				
Causes.	There is no organised initiative either by Journalist and Media or Human Right Organisations for implementation of International Standards in the domestic sphere.	Apathetic attitude and low priority on safety measures for Journalist and Media by the State Agencies.	UN Coordination Mechanisms are not proactive and adequately strengthened.	Research and Documentation on Safety Issues are not adequately made.

Response of CLAP Legal Service Institute

Previous Intervention (2015-2018):

Keeping in view the media freedom context and also taking into consideration the key problems and causes the CLAP Legal Service Institute has designed its response to the issue of media freedom in India. It is pertinent to mention here that the response of CLAP Legal Service Institute planned in this document is built on the experience of CLAP Legal Service Institute over last 4-years in this area.

Over last 4-years CLAP Legal Service Institute has been endeavouring to strengthen and secure media freedom in India through a strategic intervention. In the year 2015, with the profound support of Media Legal Defence Initiative (MLDI) a capacity building of lawyers was undertaken. The intervention covered 9-states of India comprising of Odisha state and 8-North East states of India including Sikkim. Needless to mention here that, the North East states of India are located in a difficult geographic terrain. Hence, the state of media freedom and consequential legal defence is very limited. Accordingly, these areas were chosen for intervention. Under this initiative 11-lawyers had been selected for capacity building. The lawyers had undergone training in law in 2-phases consisting of Orientation Training and Refresher Training. They were given hands on experience to conduct media defence cases with skill and expertise. Apart from the training, the lawyers received a fellowship amount to gain knowledge from the field. The lawyers supported 30-cases of different nature including civil and criminal defamation.

Consequent upon it, in the second year (2016-17) CLAP had built network with journalist and media and supported 25-cases through a Media Legal Defence Centre with this background the present strategies have been formulated. In 2018, CLAP plans to support 50-cases with profound support of MLDI, UK. In this strategy document list of cases supported year-wise since 2015 is attached in the shape of Annex-1 for better appreciation of Legal Defence given in Media Freedom Issues.

Proposed Strategies (2019-2022):

Based on the experience of CLAP Legal Service Institute over last 4-years on legal defence for securing media freedom, a two fold strategy has been articulated. It consists of (i) Legal Service, (ii) Advocacy. The Legal Service shall have 3-specific components such as (a) Legal Advice, (b) Litigation Support in Court Proceedings and (c) Mediation for Amicable Settlement of Disputes. The Advocacy shall aim at (a) law and policy reform as well as (b)

attitudinal change among key stakeholders especially the media houses and the government. Broadly, the following nature of work shall form the core response of CLAP Legal Service Institute:

Improved Access to Justice;

Strengthening Safety of Journalists and Bloggers;

Implementation of International Standard in the Domestic Sphere.

Improved Access to Justice: During the strategic plan period from 2019-2022, CLAP Legal Service Institute shall render litigation support in cases where media freedom is severely hindered by abusive and manufactured litigation. The litigation support will be rendered pro-bono. Special measures will be undertaken to ensure high quality litigation support by engagement of skilled lawyers. The litigation support shall be provided at various levels starting from origin of the case to the level of apex court to defend media freedom. In this regard the following steps will be undertaken:

A Media Legal Defence Centre shall be operationalised to keep a close watch on media freedom issues and coordinate litigation against journalists, media houses and bloggers. The jurisdiction of the Media Legal Defence Centre shall be all over India covering 29 states and 7-union territories. The Media Legal Defence Centre shall provide litigation support to approximately 100 cases every year. Cases will be selected for litigation support taking into consideration the public interest issues involved, impact of the outcome of the litigation and matters which are in the nature of test cases.

In order to provide litigation support across the nation, a network of lawyers shall be built. There shall be facilitation service for exchange of legal information in the Network.

The capacity of the lawyers shall be built concurrently to provide high quality legal defence. To that end training of lawyers, exchange of experiences among them and legal advisory with case laws shall be provided to the network of lawyers. The lawyers of the network shall provide 3-types of services such as legal advice, litigation support in court proceeding and mediation for amicable settlement of disputes without compromising freedom of expression.

Strengthening Safety of Journalists and Bloggers: For the purpose of creating increased awareness of the importance of safety of journalists, media houses and bloggers and combating impunity, actions will be taken at various levels to achieve these conditions. In this regard the following steps shall be taken:

At the level of Journalists: CLAP Legal Service Institute shall catalyse organised effort of journalist to demand safety measures from their respective media houses, state institutions and government. The CLAP Legal Service Institute shall facilitate demand for safety norms and standard operating procedure and charter for protection of journalists from state

institutions like National Human Right Commission and Government. While making demand special focus shall be made for safety of women journalists in various situations.

At the Level of Media Houses: Similarly technical support will be provided to media houses for legal defence mechanisms for their respective journalists.

At the Level of State Institutions: Broadly those issues or provisions which substantially curtails media freedoms shall be taken up with Parliamentarian/Legislators, Executives and wherever required with Judiciary to challenge statutory norms. In addition to it systematic and concerted effort will be made with human right institutions of the state for formulation of Safety Measures in the form of Charter and Protocols for Journalists, Media Houses and Bloggers.

At the Level of Government: Intervention shall be made at the level of Government to contemplate standard operating procedure for safety and security of journalists. The response of the Law Enforcement Agencies of the State shall be improved through a systematic engagement with Law Enforcement Agencies. Protection of women journalists with their dignity shall be the thrust area in the entire process.

Implementation of International Standard in the Domestic Sphere: During the strategic period lobby with state institutions like Parliamentarian, Judiciary, Executive and National Human Right Institutions shall be consistently made for implementation of existing international standards at the national level through contemplation of legal framework and appropriate legal reforms. In this regard the following measures shall be undertaken:

A comprehensive legal research in the field of international law and state response in India shall be made to undertake evidence based advocacy.

Best practices and success stories will be compiled for wide dissemination.

Capacity Building measures amongst various actors including the criminal justice system and law enforcement machinery shall be undertaken.

Documentation of freedom of expression issues shall be undertaken to influence policy makers at various levels.

Alliance will be made with organisations working at various levels to amplify voices pertaining to freedom of expression issues.

Added Value and Leverage

(A) Added Value:

Defending Journalist in Criminal Cases: In most of the situation media defence initiative focuses mainly on defamation, sedition or contempt of court matter. Accordingly, legal defence is given in these areas. However, in our recent engagement in media legal defence we come across numerous instances where criminal cases have been lodged against journalists on false pretext just because they have exposed some issues. In such cases even the capable Media Houses do not support their journalist on the ground that it is an individual case. Hence in order to be proved innocent in such criminal cases special legal defence must be extended to journalists when it is demonstratively clear that due to exposure in media such false charges have been levelled. In such cases the legal defence is necessary for bail, quashing the criminal proceeding and defence during trial. Accordingly, the legal intervention strategy can be designed. The CLAP considers such legal defence as a major requirement under media legal defence.

Access to Justice: Media Legal Defence is more about access to justice for journalists, bloggers and also media outlets. Access to justice must be broad based. It must cover various stages of the case like the origin of the proceeding in the lower court, appellate forum and also exercise of Writ Jurisdiction as well as other miscellaneous proceedings. In course of legal defence access to justice must be available all through the stages as per requirement. Proactive legal action like filling a case in higher court to quash the original proceeding in matters of defamation, sedition, contempt of court and other criminal cases can be asserted or relied to prevent long drawn out proceeding in court. Therefore, the concept of Access to Justice for journalists, bloggers and media outlets may be systematically incorporated in the Strategic Plan. The Access to Justice is essentially required for small and medium newspapers or media houses.

Focus on Lawyers with Social Commitment or Human Right Lawyers: While we recognise high quality and professional legal defence by most competent lawyers, we feel that the issues of Freedom of Expression requires human right lawyers with social commitment not only to defend the media but also to highlight or upholding media freedom in a free society. This is important because mere emphasis on quality means very expensive to justice.

Aid Justice to Paid Justice: In some cases the media may bear the cost. They need only specialised legal defence. Hence, opportunity may be explored to convert initial aid justice to final paid justice. This means at the end of the case the media may be asked to reimburse

the cost accrued, so that, the fund becomes revolving capital. This idea can be reflected for a sustainable legal defence initiative.

Exchange of Success Stories and Best Practices: In order to make the legal defence of media a global movement, there is need for regular exchange of best practices and success stories.

(B) Leverage:

The CLAP Legal Service Institute visualises that through the present strategic intervention adequate leverage can be ensured at the international level. As a result of implementation of the present strategic plan it is expected that the UN Coordination Mechanism shall be strengthened and harmonised. The documentation effort and evidence based advocacy shall increase the impact of UN Human Right Bodies on the safety of journalists at the domestic sphere and the issues of impunity is systematically addressed.

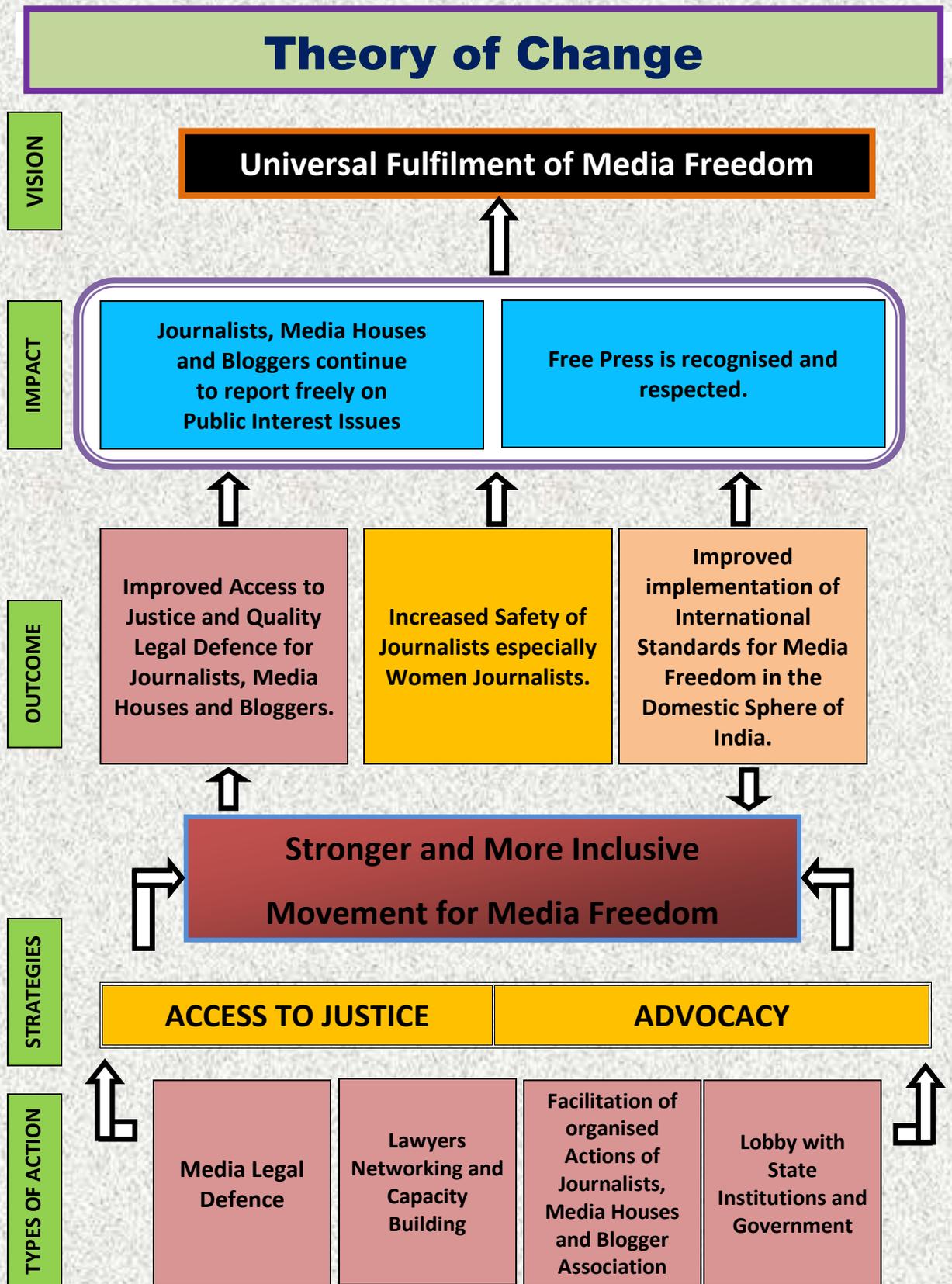
Similarly, the strategic plan shall substantially contribute to inter-governmental organisation and the work of inter-governmental organisation, UN System and other organisations such as professional association, media, academia and NGOs is reinforced and harmonised for wider impact.

Outcomes and Indicators

As a result of implementation of the strategy paper on media freedom, the following outcomes are envisaged to be accomplished. The Indicators for each of the outcomes are also identified to substantiate that the outcomes are accomplished.

Outcomes	Indicators
Improved Access to Justice and Quality Legal Defence for Journalists, Media Houses and Bloggers	<ul style="list-style-type: none"> • 400 Media Litigation against Media are supported with engagement of professionally skilled high quality legal defence. • A Network of Lawyers is formed and engaged to provide legal defence to journalists <i>pro bono</i>. • Capacity of a Network of Lawyers is built to deliver high quality legal defence.
Increased Safety of Journalists especially Women Journalists.	<ul style="list-style-type: none"> • Organised actions by formal and informal journalist associations demand safety of journalists. • Level of awareness at the level of Government, Human Rights Institutions, Media Houses and Journalists is increased about safety of journalist.
Improved implementation of International Standards for Media Freedom in the Domestic Sphere of India.	<ul style="list-style-type: none"> • Charter of Protocol and Standard Operating Procedure are adopted and brought into operation by State Institutions and Government. • Major Freedom of Expression issues are challenged in the Apex Court. • Reform of law and contemplation of new legal framework are made incorporating provision of International Standard.

Theory of Change



Goal and Sustainability

Overall Long Term Goal:

Legal Defence and Safety of Journalists, Media Houses and Bloggers have been increased and they continue to report freely and independently without any legal challenges on issues of public interest.

Sustainability:

The sustainability of the programme is pursued at different levels in the following manners: At the level of journalists and bloggers attempt will be made all through the programme to promote organised associations which will work towards sustainability by demanding safety from the state and media houses. The journalist associations shall be strategically engaged to ensure safety measures by their respective media agencies. Besides, the increased awareness about freedom of expression as a human right and the understanding of statutory protection will sustain the outcome of the programme.

At the level of media houses an attempt will be made for increased awareness about safety of journalists and development of legal defence mechanism within the media organisation to respond to litigations against them and their journalists.

At the level of state institutions particularly national and state level institutions the outcomes shall be made sustainable by engaging the institutions to create special mechanisms and regulations for safety of journalists. These institutions shall be effectively mobilised to contemplate guidelines for safety of journalists, media houses and bloggers.

At the level of government sustainability of the programme shall be brought about by way of engaging government to bring in place protocols and standard operating procedures for media freedom. As far as possible the international standards concerning freedom of expression shall be brought into implementation by statutory backup, new legal framework and seeking legal reform. Laws will be in place as a result of this programme for sustainability of the outcome of the programme by way of proactive role of the state.

At the level of judiciary the programme outcome will be sustained by coverage of media freedom issues in the state sponsored legal service mechanism. Besides, the judicial pronouncement on test cases which are planned to be undertaken under this programme strategy shall pave the way for a conducive legal environment for media freedom.

Outcome	Sustainability Strategy	Sustainability Conditions	Process for Monitoring Sustainability.
Improved Access to Justice and Quality Legal Defence for Journalists, Media Houses and Bloggers	<ul style="list-style-type: none"> • Raising awareness among media houses about safety of journalists and combating impunity. • Mobilisation of media houses to develop legal defence mechanism to support litigations against them and their journalists. • State sponsored legal service is sensitised to cover within its ambit the issues of legal defence of journalists, media houses and bloggers. 	<ul style="list-style-type: none"> • Media houses develop a sense of ownership of high quality legal defence of their journalists. • The Media Legal Defence Centre of CLAP Legal Service Institute generates the interest of Legal Services Authorities to upscale the model. 	<ul style="list-style-type: none"> • MEL System will be developed and operationa. • Documentation of media defence litigations and its wider dissemination. • Review of interaction with media houses and Legal Services Authorities of the state.
Increased Safety of Journalists especially Women Journalists.	<ul style="list-style-type: none"> • Raising awareness among journalists and bloggers about law and international standard about media freedom vis-a-vis freedom of expression. • Advocacy and lobby to make journalists and bloggers demand safety and quality legal defence. • Mobilisation of state institutions, government and media houses by journalists and bloggers for creation of safety measures by way of law and institutions. 	<ul style="list-style-type: none"> • Journalists and bloggers network and capacity for advocacy is strong. • Association of journalists and bloggers are able to mobilise its strength to demand safety. • State institutions and government are open to improve safety of journalists. 	<ul style="list-style-type: none"> • A baseline from the status of safety and legal defence is conducted. • Impact study will be carried out. • Various models of safety and legal defence is documented.
Improved implementation of International Standards for Media Freedom in the Domestic Sphere of India.	<ul style="list-style-type: none"> • Raising awareness among journalists, media houses and bloggers about international standards for media freedom vis-a-vis freedom of expression. • Lobby with Government by journalists, media houses and bloggers for implementation of international standard. 	<ul style="list-style-type: none"> • Journalists, media houses and bloggers form networks and capacity for advocacy is strong. • Government is open to bring in place laws for implementation of international standard. 	<ul style="list-style-type: none"> • An MEL will be developed and operationalised. • Review of progress of advocacy by associations or networks of journalists, media houses and bloggers.

Risk and Challenges

The following risks and challenges are foreseen in the process of implementation. Here an attempt has been made to bring in place contingency plan to overcome the foreseen challenges.

Risk and Challenges	Contingencies Plan to Overcome the Challenges
<p>Civil society engagement in the field of media freedom is demonstratively low in India. There is hardly any attempt by NGOs to ensure media freedom to a process of legal activism. This endeavour is going to be unique and one of its kind endeavour. Hence, there will be wider visibility of proposed actions. Thus, there is a possibility that powerful lobbies and busy bodies will move government to take action against the implementing organisations to close its programme. There is apprehended danger that if legal defence is provided in cases of sedition charges, government may take action on the ground of misuse of foreign contribution. This may affect the whole programme design.</p>	<p>From the very beginning of the programme steps will be taken to seek partnership of the state sponsored legal services, so that, the Legal Services Authorities realise the importance of the work. Once the collaboration is made with State Legal Services Structure, the possible challenges can be easily overcome.</p>
<p>Free Press and independence of media by and large depends on the type of government in power and its approach towards media freedom. Since, there are already legislations enacted to curtail media freedom particularly in the internet there is all probabilities to anticipate further curtailment of media freedom. In a situation like this further enlargement of scope of media freedom cannot be expected.</p>	<p>There will be a systematic advocacy for implementation of International Standards through statutory provisions. If laws are brought in place by the state with the change of government sudden restrictions on media freedom can be substantially prevented.</p>
<p>As the judicial process takes indefinite period to come to an end in cases of media freedom the whole process may get affected and the desired results may not be achieved on time.</p>	<p>A process of sensitisation of lower judiciary and the criminal justice system is planned under the programme to overcome the issue of delayed justice. Besides, appropriate legal action will be undertaken by using inherent power of High Courts to use directions for early disposal of cases. In addition to it attempt will be made for resolution of dispute through mediation.</p>

Monitoring, Evaluation and Learning

The Monitoring, Evaluation and Learning Division of CLAP shall monitor the programme and develop evaluation plan in a professional manner. In this regard the goal and outcomes stated in the programme strategy shall be taken into consideration both for monitoring and evaluation purposes.

For the purpose of monitoring, specific indicators have been developed which shall be taken into consideration for continuous monitoring. In addition to it there will be milestones which will be reviewed on a quarterly basis. Means of verification have been contemplated for each indicator and milestone for cross check the progress of the programme. Besides, the processes and achievements are required to be documented to understand what works and does not work. As a part of organisational learning, the success stories and best practices shall be widely disseminated among key stakeholders for effective communication.

For the purpose of evaluation impact study will be conducted at the end of the programme to evaluate the impact of legal intervention on media freedom in India. The evaluation will be done by an external agency having expertise in the field of media freedom.

Resource Required

An estimated amount of INR 2.4 crores (approximately 0.036 million US\$) is required annually towards the implementation of the programme strategy. A grand total of 9.6-crores (Approximately 1.48 million US\$) is required over 4-years to implement the programme and achieve the outcomes. A year wise budget shall be formulated with breakdown of expenses on each head. Approximately 15-20% of the total budget shall be spent on administration and management of the programme.

An overall breakdown budget is given here below:

Sl. No.	Activities	Annual Requirement	Total Requirement
1.	Legal Defence – Litigation Expenses.	6,000,000.00	24,000,000.00
2.	Facilitation of Demand Generation for Safety of Journalists and Bloggers.	5,000,000.00	20,000,000.00
3.	Advocacy and Lobby for implementation of International Standard and Documentation	5,000,000.00	20,000,000.00
4.	Capacity Building Training and Awareness Building of Lawyers and Key Stakeholders.	4,000,000.00	16,000,000.00
	Sub-Total	20,000,000.00	80,000,000.00
5.	Administrative and Overhead Expenses (20% of total Programme Cost)	4,000,000.00	16,000,000.00
	Grand Total	24,000,000.00	96,000,000.00

Partnership

It is proposed that CLAP Legal Service Institute will seek partnership of Media Legal Defence Organisation operating worldwide in different countries for the implementation of the Strategy Paper in India. It is expected that these organisations as a programme partner will act as an enabler and guide of CLAP Legal Service Institute to render high quality services to secure the overall goal of the programme to make a world better place of Journalists, Media Houses and Bloggers for coverage of public interest issues. The support of different organisations globally for free speech and media freedom shall create opportunity for cross learning and fertilisation of ideas apart from their involvement as a programme partner in collaborating in the implementation of this programme strategy.

Donor agencies, grant-making foundations and international aid organisations shall be invited to support this initiative with financial assistance to ensure media freedom in India. In this regard all legal formalities shall be fulfilled by CLAP and it will also enter into agreement or contract with the donor agencies. CLAP is eligible to receive foreign contribution from overseas organisations as per the Indian law governing foreign contribution. The CLAP shall maintain a flexible approach so that the present strategy paper is aligned with the thematic priorities and programme goal of different donors. It will also request for general contribution to partly cover the overall cost of the programme budget.

The CLAP shall also seek partnership of media houses to support and contribute to the programme strategy through a partnership mode. The support of media houses and federation of journalists is significant for realisation of overall goal of media freedom in India. Therefore, the CLAP shall strategically build partnership with them.