

Get out of jail card

Dubai's view on jailing journalists for defamation has changed. Amber Melville-Brown says the public should welcome the move

The diverse natural world is home to a plethora of methods of communication; bees dance to give directions to nectar-bearing flowers; birds display brightly coloured feathers to invite mates; squid flash red to indicate hostility; whales sing haunting songs of lyrical beauty. There are millions of creatures on the planet with their particular means of communication. And among them, mankind has his own – speech.

Man's use of language over the centuries has become more sophisticated as it moved from warning others of danger, to communicating words of love, to entertaining others and to spreading words of wisdom, culture and religion. In doing so, speech has developed around the world into thousands of languages and dialects and, together with the creation of tools, weapons and the wheel, it has set man apart from the rest of the natural world.

But speech is not only a force for good; it can be used to communicate man's every emotion and condition, including ignorance, foolishness and hatred. Governments have to create rules and regulations with which their citizens comply for the protection of society as a whole, not only to regulate, for example, the use of guns, which cause physical harm, but also the use of words, which can cause emotional and financial damage.

Hallmark of free society

Speech may be free, but that doesn't mean that we are entitled to free speech at the expense of our fellow citizens. The rights of others – for example, the right to reputation or to a fair trial – can require the imposition of restrictions on an otherwise unfettered right to free speech. And it is the level to which free speech is constrained that can be seen as one of the 21st century hallmarks of a free society.

Until recently, evidence that the UAE fell short of the mark could arguably be found in restrictions on free speech and the ability – and willingness – of the courts to imprison journalists found guilty of defamation. But that has recently changed. Dubai's ruler, Sheikh Mohammed Bin Rashid Al Maktoum, who is also the UAE's vice-president and prime minister, has issued an edict that journalists convicted of defamation in the UAE should not be imprisoned.

Libel laws differ around the world. It falls under the criminal, not civil, law in France, but it is punishable by a fine and not imprisonment. In the UK, it is theoretically possible for a defendant to go to prison for criminal libel where the libel is so serious that the defendant requires punishment by the state itself, but this is exceptionally rare and the European Court of Human Rights has made it clear that criminal libel proceedings are a draconian fetter on free speech and should only be used in the most serious of circumstances.

Those signatories to the European Convention of Human Rights do, after all, require their domestic courts – and ultimately the court in Strasbourg – protect the right of the individual to respect their family and private life, and their reputation. But they also require protection of their right to free speech guaranteed by article 10 of the convention.

Defamation law in the UAE is governed by the constitution and the penal code. The media in the UAE is free to publish anything backed by facts, and that is not intended to defame or malign a person or entity thereby breaching the bounds of responsibility that go with the freedom the constitution grants. The penal code makes it an offence, under article 372 to publish something that causes moral harm to another; and an offence under article 373 maliciously and intentionally to defame someone without concrete evidence. Until recently, punishment could include imprisonment.

It would appear that Sheikh Mohammed is aware of the draconian nature of imprisonment as a form of punishment and wishes to ensure that Dubai and his neighbouring emirates are at least seen to be adopting the standards exhorted by the world's modern and democratic societies.

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The only practical way to avoid defaming anyone is not to publish anything at all, or to publish only the most anodyne material that could hardly be considered worthy of the term “news” and/or “information”, and that is not practical for modern media organisations.

But when journalists do publish defamatory material that infringes the rights or upsets the sensibilities of individuals or groups in society, it is not usually born out of a malicious intent to harm. More often it arises from a lack of available information, being misled by sources, or as a result of a simple mistake. Is it right that in those circumstances, when the reporter is carrying out an important role in educating and informing the public, that he should lose his liberty? No, according to the new mood among the authorities in the UAE.

Two journalists at the Dubai-based English language daily newspaper, *The Khaleej Times*, were found guilty by the Dubai Court of First Instance of libelling a woman they said had been given a dowry cheque that bounced; each was sentenced to two months' imprisonment. On November 8, the Dubai Court of Appeal overturned the decision of the lower court and Sheikh Mohammed has ruled that journalists should no longer face imprisonment where they are found guilty of libel.

Positive reaction

Not surprisingly, media reports of this change have been positive, and include comment from the Head of the National Media Council, Sheikh Abdullah Bin Zayed Al Nahyan, that the move evidences the ruler's “deep belief in the freedom of the press and its role in society”.

In the summer of 2006, the UAE Journalists Association was welcomed into the International Federation of Journalists, the largest journalists' group in the world. Aidan White, IFJ general secretary, called this an important step towards bringing the “authentic voice of Arab journalism” into debate about the future of journalism.

On the shelves alongside the Arabian language newspapers and magazines are numerous foreign language titles and CNN, Dow Jones and Showtime have already taken residence in the free zone of Dubai Media City. The recent move by Sheikh Mohammed may have the effect of ensuring that the authentic voice not just of Arabian journalism, but also of international

media in the region is not quashed by the fear of imprisonment.

These foreign publishers are used to different laws and restrictions on free speech – not only different from those applied variously across the Middle East, but also different from each other. US-based publishers and broadcasters frown on the claimant-friendly UK libel laws where the burden of proof is on the defendant to prove that an allegation is true, where star-struck juries are not averse to finding against journalists and where legal costs, which often dwarf damages, are awarded against the unsuccessful defendant.

But the modern media world is such that it is not uncommon for a major publisher to have local bureaux in many different jurisdictions. And since the development of the Internet, allowing a defamatory statement to be published across the world at the touch of a button, lawyers advising international publishers not only have to be up to date with the news and politics of the countries into which they publish, and be sensitive to their cultures, but they must also be conversant with their laws.

A respectable media must take some responsibility for its actions if it is properly to serve its role as the watchdog of society and the eyes and ears of the public. In the UK, most newspaper and magazine publishers adhere to the voluntary Editors' Code of Practice implemented by the Press Complaints

Commission (PCC). The code does not deal specifically with defamation, as this is a matter for legislation and the courts, but it sets certain standards of responsible journalism, requiring, for example, that inaccurate material is kept to a minimum and corrected where found, and that sources, victims and subjects of articles are treated fairly.

The PCC cannot impose fines or other penalties and its only power is to require the publication of its adjudication where a complaint is upheld. This had led some to refer to the PCC as a dog with bark but no bite and to call for the end of self-regulation in the UK. But self-regulation nevertheless prevails and, like it or loath it, the British media is one of the most diverse in the world.

With the UAE government turning its back on imprisonment as a punishment and deterrent, the country's media seems to be turning its face towards a more western approach to media regulation.

Antidote to concerns

In October this year, editors-in-chief of several of the UAE's Arabic and English newspapers signed a code of ethics, prepared by the relatively new UAE Journalists' Association, which outlines their responsibilities and regulates their practices. The association's chairman, Mohammad Yousuf, said at the time: "Signing this code now does not mean that local

media is lacking in anything, but it clears the clouds for journalists."

Indeed, the code could be seen as an antidote to any concerns from the public that journalists will hang up their hats of responsibility and go on the rampage, defaming individuals and companies at will, now that they no longer face incarceration. It remains to be seen whether it, too, will be regarded as a toothless beast or whether it will serve as a useful tool for guidance for the media – national and international – operating in the UAE, as well as satisfying any concerns the public may have.

The code will be a work in progress – like its UK counterpart that has been finessed over the years – and will be voluntarily entered into. And much like the PCC code, it will cover matters including the right of the public to receive true and accurate information, the need to correct facts proved wrong, the respect for individual privacy. Additionally, it refers to the need to respect Islam and the divine religions.

According to the government-published *UAE Handbook 2007*: "The UAE Constitution guarantees freedom of speech and the government is actively encouraging a more dynamic media." The Ministry of Information and Culture was replaced in 2006 by the National Media Council, which is responsible for the Press & Publications Department, the External Information Department and the Emirates News Agency.

These changes, according to the government, are designed to "streamline the different and varied functions that previously fell under the remit of a single ministry". This is intended to reflect the rapidly developing media field in the country.

There is no doubt that Sheikh Mohammed and other UAE leaders have aspirations for the country to be a big economic and cultural force in the modern world, and he will not be able to achieve that if there is any suggestion that – despite its glitzy buildings and its business-hub status – it is languishing in a draconian era of speech and thought control. Indeed, Sheikh Mohammed will, no doubt, want to ensure that standards are adopted throughout the UAE so that his fellow emirates do not drag Dubai down.

Banning the imprisonment of journalists is a welcome, if a little late, move in the right direction and it suggests the UAE is intent on maintaining to the international community that it too has a free and dynamic media. But only those running publishing houses in the region actually know whether free speech exists in practice, or whether there is an undercurrent of insidious censorship or self-censorship generated out of fear of upsetting the authorities. ●

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