A paper on publication ban in cases involving accused officials in Egypt

We have something to hide!
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A paper on publication ban in cases involving accused officials in Egypt

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Methodology

This paper has relied on the data and news about publication ban decisions, as well as the local laws that regulate publication ban.

Introduction

The circulation of information and news about cases examined by courts is essential for the public to know how the course of justice proceeds. It is part of the right to knowledge, and this can be done by the media, or by citizens through social media or other means of communication. However, sometimes there are necessities to restrict this right to specific details of the case or for a specific period of time until a decision is made.

On top of these necessities is the protection of witnesses and the privacy of victims, especially in crimes of sexual violence. For example, victims of sexual offences in the English law are given lifetime anonymity which does not apply if they consent in writing to their identity being published. The English law also prohibits the media from publishing any personal data about children within the Youth Courts, whether the children are victims, witnesses, or defendants.1

The Egyptian law stresses the preservation of the private life of citizens and stipulates that postal and electronic correspondence, telephone calls, and other forms of communication are inviolable, and their confidentiality is guaranteed and they may only be confiscated, examined or monitored by a causal judicial order2. The law also bans publication in cases of divorce, separation and adultery.3

To cover up public officials, in order to allow them escape potential punishment, is not one of those necessities. Publication ban should not be expanded so it becomes a common thing rather than an exception. It should not go beyond its main purpose of protecting victims, and ensuring the impartiality and integrity of the litigation process. It is an exception that cannot be linked to

1. Judicial College, Reporting Restrictions in the Criminal Courts April 2015 (Revised May 2016), P.17
2. Article 57, Chapter Three, Social Rights, Freedoms and Duties, Right to Privacy, the Egyptian Constitution 2014
ordinary circumstances, or turned into a rule, and the legislator should deal with the laws that regulate publication ban in a way that fits the circumstances of each case.⁴

In this regard, the paper analyzes the use by the Public Prosecution and the investigating authorities of publication ban with a specific group of defendants, namely public officials. It stresses that publication ban is a restriction that should not be expanded or used arbitrarily.

The paper begins with a review of the regulation of publication ban in Egyptian law, and the definition of cases in which publication ban is absolute by the force of law and cases in which the ban requires a decision from the Public Prosecution or the judicial authorities. In the second part, the report gives some examples of publication ban in cases in which government employees face dishonorable charges, in addition to financial and administrative corruption, murder and torture charges.

This raises a question as to how publication ban can protect the national security in corruption cases. Does covering up these cases to protect the reputation of defendants actually protect the national security? Would it not be better to allow reporting on these cases in particular and to reveal them transparently to the public so that citizens can exercise oversight over these cases? This will weaken the influence of defendants in these cases if they think of using their influence to escape punishment.

The paper also looks into how some of these cases ended with acquittals, settlement or impunity. It then presents a set of recommendations that call for rationalization of the use of publication ban, making it an exception to the right to freedom of expression, and emphasizing that it should not be expanded or used arbitrarily.

First: The concept of publication ban and how it is regulated by Egyptian law

Publication ban can be defined as a decision that prohibits all parties concerned with a certain case, including the press, the prosecution, judges and lawyers, from reporting on the case in any print, audio, or visual media outlet. The ban shall be applied as per direct texts in Egyptian law or through a decision issued by the investigation authority, the Public Prosecution's office, or the court that examines the case.

Publication is originally permissible, as it preserves the role played by the media as a link between citizens and the authorities. Through publication, citizens can exercise their right to follow up what is happening in the country. If this right is absent or arbitrarily restricted, then we can say that the citizens’ constitutional right to access information has been violated.

The constitution highlighted this right in Article 68, which says: “Information, data, statistics and official documents are owned by the people. Disclosure thereof from various sources is a right guaranteed by the state to all citizens. The state shall provide and make them available to citizens with transparency. The law shall organize rules for obtaining them, rules of availability and confidentiality, rules for depositing and preserving them, and lodging complaints against refusals to grant access thereto. The law shall specify penalties for withholding information or deliberately providing false information.”

The right to access information is one of the rights closely related to freedom of expression and freedom of the press. It is also one of the political rights that the legislator may regulate in a way that does not affect the essence of this right. The legal regulation of publication ban is considered one of the aspects of interference practiced by the legislator to regulate freedom of expression.

In most legal systems, the legislator intervenes to ban the publication of some materials that affect the security and safety of the country, such as military maps and information, or materials that violate the privacy of citizens and affect their private lives. But the legislator sometimes intervenes to ban reporting on some matters and leaves them generalized and vague, leaving one of the state authorities to interpret these matters. And this is the situation in Egypt, where the

5. Osama Ahmed Abdel Moneim, Legal regulation of publication ban, year of publication: 2017
Public Prosecution and the judicial authorities have the power to ban publication without being restricted to the type of the case or the circumstances surrounding it.

There are many interpretations of publication ban as a restriction for freedom of the press. These include the argument that the goal is to preserve the course of investigations so that no outside opinions would affect the case in question, and to prevent any influence on the impartiality of the judiciary’s judgment to achieve justice. Another argument says the goal of publication ban is to protect the country’s national security, maintain confidence in the state institutions, and observe public order and morals.8

However, what happens on the ground is that publication ban is sometimes devoid of detailed reasoning, so the citizens do not know why reporting on these specific cases was banned. In some cases, publication ban contains reasons related to national security without clarifying further details, thus raising questions about these reasons that use general terms to justify the ban. For example, terms such as “national security, public order and morals, and ill will” are broad and unclarified.

Publication ban is implemented in Egypt in two ways: The first through exceptional decisions issued by the Public Prosecutor or the judicial body that examines the case, banning publication completely or banning the publication of specific information.

The second way is the one that takes place in cases in which publication is banned directly by Egyptian law, which is a complete and absolute ban that does not require exceptional decisions. In both cases, publication ban does not apply to the verdicts issued by the court. Reasons behind legalizing the ban vary. These include protecting private lives, guarding military secrets9, or other reasons related to specific institutions or times.

The legislator banned publication on secret and public sessions of parliament with ill will10. It also banned publication on the prosecution's primary investigations with ill will11, as well as secret and public court hearings12. But the legislator did not clarify what is meant by “ill will”, making the term subject to different interpretations. Whoever violates the publication ban shall be penalized with detention for a period not exceeding one year and a fine of not less than five thousand pounds and not exceeding ten thousand pounds. The term “ill will” has been used for more than once in the Egyptian penal code, but its meaning has not been clarified. We can find this term

8. Dr. Tariq Sorour, Publishing Crimes, Publisher: Dar Al-Nahda Al-Arabiya, year of publication: 2001
10. Article 192, Penal Code No. 58 of 1937, amended on 5 September 2020, by Law No. 189 of 2020
in Article 187 of the penal code, which penalizes anyone who publicly disseminates information that is “liable to influence” judicial figures or witnesses. We can also find it in Article 188 which penalizes the publication “with ill will” of false news, data, or rumors that are likely to cause harm to public interest.

All these articles that regulate publication ban exist in light of a basic principle stated in Article 187 of the constitution which stipulates that “court sessions shall be public, unless, for reasons of public order or morals, the court deems them confidential. In all cases, the verdict shall be given in an open session”. In this article, we can find another broad phrase, namely “reasons of public order or morals”, which the legislator did not clarify. The article, moreover, gives the absolute right to the judicial authority to hold secret sessions without taking into account the basic principle of the publicity of court sessions.

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15. Article 187, Section One: General Provisions, Chapter Three: The Judicial Authority, the Egyptian Constitution
Second: The use by official authorities of publication ban in cases that involve accused officials

In contrast to the law which allows publication ban in cases that affect the reputation of individuals or national security, we find that the Public Prosecution bans publication in cases of financial or administrative corruption, or dishonorable cases that include forms of sexual assault by government employees, as well as murders, torture, and others. The common factor in all these cases is that the accused are state officials, such as ministers, judges, officers, and senior employees. This part of the paper reviews cases in which publication was banned because they involved government employees.

Dishonorable charges (sexual assaults)

On 2 February 2021, a criminal court issued a publication ban less than 10 days after the reported kidnap and rape of a girl. This came after a judge and two of his friends were accused of committing the crime. The news, which was reported in the media, sparked condemnation and public debate over the reason for issuing a publication ban in the case, which evoked a long series of similar bans in cases in which state officials were accused.

Similarly, the Public Prosecution banned publication in a case in which the main suspect was Judge Ramy Abdel-Hady, who faced charges of requesting a sexual bribe from a woman in exchange for ruling in her favor in a case that he examined. The proceedings of the case were subject to blackout. The case was dropped after Abdel-Hady submitted his resignation, but the Supreme Judicial Council did not take any official action against him. Abdel-Hady said in a statement that the charges levelled against him came as part of a “systematic Muslim Brotherhood campaign” and that it was just an administrative mistake in the case which the council’s secretary should be held responsible for.

The Public Prosecution is not the only body that issues publication bans. In 2012, the head of the Military Judiciary Authority, Major General Adel Mahmoud Al-Morsi, issued a publication ban in a case known in local media as “virginity tests”. This came after army officers and soldiers arrested some female protesters, detained them arbitrarily in the Egyptian Museum in central

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16. Al-Shorouk newspaper: “In normal clothes.. the judge and his two friends accused of raping a girl entered the dock,” publication date: 2 February 2021, date of visit: 10 March 2021, https://2u.pw/zKOng

Cairo, and sexually assaulted them by subjecting them to forcible examination of their virginity.\footnote{Yumna Mukhtar, Al-Masry Al-Youm, activists resort to blogging to support “Samira” after banning publication in the “virginity tests” case, 11 February 2012, last visited on 31 March 2021, link: https://www.almasryalyoum.com/news/details/150936}

The publication ban came weeks after the Administrative Court affirmed that what the army officers and soldiers committed was a crime punishable by law.\footnote{Mohamed Asaad, Youm7, In video.. the administrative judiciary court: The “Military Council” admitted to conducting virginity tests for female detainees ... Shat its members committed is “a criminal offense” and a violation of the sanctity of the female body .. The armed forces must not breach the law in dealing with citizens, 27 December 2011, last visited on 31 March 2021, link: https://bit.ly/3m8AdFy}

Sexual assaults, including harassment and rape, as well as the abuse of power to get sexual bribes are all accusations that were included in cases in which publication was banned. It appears later that this ban was imposed not to protect the victims or those who survived the assaults, but rather because the other party in the case was a public servant.

### Financial and administrative corruption cases

During the era of late President Hosni Mubarak, the investigation authorities banned publication in at least 10 cases. These include the case of former secretary of the minister of culture Mohamed Fouda\footnote{Al-Masry Al-Youm newspaper, “Mohamed Fouda .. specializes in getting officials arrested on charges of corruption”, date of publication: 8 September 2015, last visited on 23 March 2021, https://2u.pw/AIU5D} who was arrested in 1997 along with the former governor of Giza, Maher Al-Gendy.

The Public Prosecution seized recordings between Fouda and senior state officials relating to corruption and bribery cases at the time. The prosecution banned the publication of any news or information on the case. Fouda was later convicted and sentenced to five years in prison.

After the January 2011 revolution that ousted Mubarak, Egyptians aspired to achieve justice, which was one of the key demands of the revolution. A number of cases emerged at the time. These included corruption, squandering of public funds, as well as the killing of demonstrators, in which former regime officials, mainly including Mubarak and his two sons Alaa and Gamal, as well as some state officials and employees were involved.

Instead of implementing transparency in these cases, which are mainly related to the achievement of transitional justice, the authorities maintained the same practice under the pretext of protecting the country’s national security. The head of the fifth chamber of Cairo Criminal Court, Ahmed Refaat, banned publication in the trial of Mubarak, his interior minister Habib al-Adly, and six of his aides on charges of killing demonstrators and squandering public funds by exporting gas to Israel.\footnote{Youm7 newspaper, 13 September 2011, “Sorry Mr. President [Facebook page] violates the publication ban in the Mubarak case by publishing [spy chief] Omar Suleiman’s testimony”, last visited on 13 March 2021, https://2u.pw/5MBaq} On 3 November 2012, the Giza Criminal Court decided to ban publication in the case
known in local media as “using police conscripts as free labor”, in which Al-Adly and a number of his aides were accused.

Publication bans continued under the rule of current President Abdel Fattah al-Sisi. For example, in June 2014 the Public Prosecutor banned publication in a bribery case, in which the head of the Port Said Ports Authority and six others were involved. In that case, the head of the Port Said Ports Authority was sentenced to five years in prison.22

In 2017, the acting public prosecutor banned publication in a bribery case that involved former minister of agriculture Salah Helal and three members of his family23. The former minister and his office manager were sentenced to ten years in prison and ordered to pay a fine of one million pounds.

The Public Prosecutor also banned publication in a case in which the head of Nasr City prosecution office, his brother who was a counsellor at the cassation prosecution office, and seven police officers were charged with smuggling antiquities. In 2016, the Public Prosecutor also banned publication in a case known in local media as “major bribery”, in which the director general of procurement and supplies at the State Council, Gamal al-Labban, was charged with receiving a bribe. Huge sums of money were seized at his home at the time. After this incident, Secretary General of the State Council Wael Shalaby submitted his resignation, and then he was arrested in the morning of 1 January 2017. Shalaby’s interrogation did not continue for a long time, as his death was announced in the morning of 2 January. It was reported that he committed suicide in his cell. On 13 September 2017, Al-Labban was sentenced to 25 years in prison.

Police officers accused of murder and torture

On 22 October 2011, the Alexandria Criminal Court banned publication in the case of the killing of Khaled Saeed by the Egyptian police. The two defendants in the case were sentenced to seven years in prison, but they appealed the verdict, and then they were released after the period of their preventive detention ended.

In 2015, the Public Prosecutor banned publication in the two cases of the killing of political activist Shaima al-Sabbagh and the killing of lawyer Karim Hamdy. A Central Security police officer was accused of killing al-Sabbagh during her participation in a peaceful protest. The officer

22. Al-Watan, April 2019, “Former customs chief sentenced to 10 years in prison, others acquitted in bribery case”, last visited on 14 March 2021, https://2u.pw/9gFCJ
was sentenced to 15 years in prison, but he appealed the verdict. A retrial was held and he was sentenced to 10 years in prison.

Defendants in the case of Karim Hamdy were acquitted. Two security officers were accused of torturing Hamdy to death. Ten months later, both defendants were sentenced to five years in prison, but they appealed the ruling. On 1 October 2016, the Court of Cassation accepted the appeal and decided to retry them before another criminal court. On 15 April 2017, the two were acquitted.24

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Third: How did the cases, which were subject to publication ban, end?

Some of these cases ended with the acquittal of defendants, as happened in the case of torturing lawyer Karim Hamdy to death, where the accused officers were acquitted. Other cases ended in an ambiguous and incomprehensible way, such as the case in which Judge Ramy Abdel-Hady was accused of requesting a sexual bribe from a woman. The case was dropped after Abdel-Hady submitted his resignation, and the Supreme Judicial Council did not take any judicial measures against him, nor did it refer him to trial or level a formal charge against him.

These cases raise a question as to whether publication ban is used with the aim of tampering with the pieces of evidence, thus allowing the perpetrators to escape punishment, undermining society’s right to justice and knowledge, and even wasting the value of law itself. This allows criminals to escape penalties that are meant to deter them and prevent them from repeating their crimes. The answer to that question may be “yes” or “no”, as publication ban usually raises doubts, instead of making information available and entrenching the public’s right to know details of cases examined by law courts, especially the cases in which state officials are accused.

Conclusion

Transparency cannot be achieved without providing correct information from its main sources, namely state agencies. The state should ensure the circulation of information and the availability of greater transparency, facilitate the citizens’ right to know details about various issues, and open space for discussions about these issues. One of the ways to make information available is to allow the media to report on cases being examined by the judicial authority. Therefore, legislation and official decisions are expected to deal firmly with any restrictions imposed on the freedom of publication in line with the constitutional rights established for citizens.

In view of the bigger picture of how the authorities deal with the concept of publication and freedom of expression, we find that the abovementioned publication bans are largely consistent with the general trend of the authorities that aims to restrict freedom of publication in multiple contexts and limit the publication to information that originates from a single source, namely the authorities themselves. Thus, the official narrative only prevails, while all others are forcibly disappeared.
After this review, it becomes clear that the legal regulation of publication ban in its current manner, which allows the investigation authorities to ban publication without specific definitions, has resulted in the issuance of decisions that might have exceeded the legal purpose of the ban. This represents an expansion in the use of this exception. It also violates the right to freedom of expression, access to information, and freedom of the press.

So, we recommend the following:

- The legislator should set clear definitions for broad terminology, such as the term “public morals” mentioned in Article 190 of the Penal Code No. 58 of 1937 amended on 5 September 2020 by Law No. 189 of 2020, as it is considered an entry point for assuming interpretations according to which penalties are imposed.

- The legislator should abolish the imprisonment penalty in case of violating the publication ban, and keep fines only as punishment for such violation.

- The parliament should urgently pass the freedom of information law, which has been deliberated since 2012.