

REPEAL OF THE CRIMINAL LIBEL LAW IN GHANA; CHALLENGES AND PROSPECTS FOR JOURNALISM

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Abstract

The repeal of the criminal libel received general acclamation by the public and journalists alike. The study is about the challenges and prospects of the repeal of the criminal libel in Ghana. It also determined if journalists have abused the freedom of expression that came with the repeal of the criminal libel. The simple random sampling technique was used to select 200 journalists from the ten regions of Ghana for interview, face-to-face and via phone for data. It was found among other things that journalists have not abused the freedom of expression that came with the repeal of the criminal libel. Among the recommendations made was that Ghana Journalists Association (GJA), and media owners should ensure that all journalists are professionally trained and schooled on the importance of the repeal of the criminal libel.

Key words: *Criminal Libel Law; Journalism; Challenges and Prospects; Ghana.*

Background

There have been clarion calls worldwide for the abolition of the criminal libel. According to the Committee to Protect Journalists (CPJ), laws that permit journalists to be prosecuted criminally for the content of their reporting are considered presenting a hazard to freedom of the press and the right of citizens to be informed (CPJ, 2017). International authorities on freedom of expression such as the UN Human Rights Committee, the Organisation of Security and Co-operation in Europe (OSCE) and the Organisation of American States (OAS) have all called on governments to abolish or consider abolishing criminal libel. While the European Court of Human Rights (ECtHR) has never explicitly ruled out the use of criminal laws with regard to criminal libel, it has criticised their use and suggested appropriate space for their use. Even so, the ECtHR has joined a very clear international consensus against even the possibility of prison sentences in libel cases. Moreover,

the Inter-American Court of Human Rights and the African Court on Human and People's Rights (ACHPR) have also issued decisions criticising the application of the criminal libel laws (International Press Institute, 2015). Consequently, as if to please the international community or score political points home, the New Patriotic Party (NPP) then in opposition campaigned to repeal the criminal libel in Ghana when given power in the 2000 Presidential and Parliament elections. The repeal of the criminal libel law was one of the major campaign promises of the New Party Patriotic (NPP) government during the run-up to the 2000 Presidential and Parliamentary elections (Daily Graphic, 2001).

But perhaps tasting power for the first time in a country where the media stop at nothing to subject to scrutiny actions of those holding power, it might have been uncomfortable for the NPP administration to honour its campaign promise. However, the criminal libel that had been used to incarcerate

many journalists like Kwaku Baako Jr and Haruna Attah was repealed on July 2001 and given presidential assent shortly after. According to Daily Graphic (2001), the repeal of the criminal libel received general acclamation by the public and journalists alike. Owusu (2011) suggests that media watchdogs including Article 19, the London-based organisation campaigning for the freedom of expression worldwide, praised the government's action as "a step in the right direction".

However, the recent sentencing of the Montie 3 to four months imprisonment by the Supreme Court for bringing the name of the court into disrepute and scandalising its work has made some Ghanaians believe the repeal of the criminal libel has occasioned irresponsible journalism and endangered society. Others though think the freedom of expression that came with the repeal of the criminal libel has rather enabled the media to provide citizens with accurate and timely information to help them make informed choices about their lives and so has made society safe. Some too simply say the Montie 3 saga is not enough to indict the repeal of the criminal libel for irresponsible journalism. This debate has informed the study to find out the actual challenges and prospects of the repeal of the criminal libel law in Ghana for journalism.

Criminal libel is the offence of making a malicious defamatory statement in a permanent form (Concise Oxford English Dictionary, 2006). According to the Reporters Committee for Freedom of the Press (2016), libel occurs when a false and defamatory statement about an identifiable person is published to a third party, causing injury to the subject's reputation. Originally meant to protect the monarchy or aristocracy from criticism or insults, criminal libel today serve all too often to obstruct scrutiny of the actions of those holding power and to deprive the people of the information they

need to make decisions that will affect their lives for years to come (<https://www.ifex.org>). The criminal libel law, which was seen as "inimical" to press freedom can be traced back to Ghana's first Criminal Code, the 1892 Criminal Code Ordinance and its subsequent amendment in 1934. This law had made it difficult for journalists to play their watchdog role effectively (Owusu, 2011).

Egypt is second only to China as the world's worst jailer of journalists in 2015. China is holding 49 journalists behind bars, while Egypt was holding 23 of journalists behind bars compared with 12 last year. 199 journalists were imprisoned worldwide by the close of 2015 while 456 of them have been in exile since 2008. The number of journalists incarcerated for their work reduced slightly in 2015. However, a handful of countries continue to use systematic imprisonment to silence criticism. Rounding out the top 10 worst jailers of journalists in 2015 are Iran, Eritrea, Ethiopia, Azerbaijan, Saudi Arabia, Syria and Vietnam (CPJ, 2015). The World Association of Newspapers and News Publishers (WAN-IFRA) has slammed a vast majority of African countries, which it said continue to jail journalists and close media houses on charges of libel or for insulting authorities or their policies. Meanwhile, Article 19's 2009 report *Civil Defamation: Undermining Free Expression*, revealed that African countries were among the most prolific in using criminal legislation to fine and imprison journalists. The worst countries on the continent by far are Mauritania, Cote d'Ivoire and Namibia. Courts in these countries awarded damages over US\$1 million between 2007 and 2008. The awards were particularly horrendous in Mauritania and Cote d'Ivoire which awarded damages in excess of 730 and 580 times the countries' GDP per capita (Sikiti da Silva, 2015).

The repeal of the criminal libel law has impacted very positively on the development of the Ghanaian mass media, freeing them from unnecessary self-censorship and promoting a robust and critical media. Consequently, it has contributed to the growth of a vibrant and critical media that has earned Ghana the reputation of having one of the most media friendly and liberal climates in Africa (Akufo-Addo, 2011).

Owusu (2011) observed the repeal of the criminal libel has won for Ghanaians freedom of expression; it has ended more than a century-old legislative regime which repressed free expression. It has given journalists and media houses the freedom to express their views on issues and activities in the country without being arrested or barred from operating as the past. He also alluded that the Media Foundation for West Africa (MFWA), an organisation, which promotes the rights and freedoms of journalists and the media said the repeal of the criminal libel would give journalists more space to operate without fear and harassment. Besides he contends Ghanaians have witnessed the full growth of the private media after the repeal of the criminal libel with a particularly rapid expansion of the electronic media. He argued further that now, in almost every district of Ghana, there is a local radio station; newspapers with national reach are also available and access to television stations is easy.

Criminal libel is used to attack those who highlight incompetence or wrongdoing. It breaches the right to freedom of expression. It is true that the media, in particular, can operate irresponsibly or even worse, vindictively and can sometimes cause serious harm to reputation. However, it is arguable that the civil defamation laws (the option of choice for those who genuinely seek to restore their reputations) provide sufficient redress. Moreover, the severe sanction which a criminal conviction may

unleash coupled with the serious social stigma associated with a criminal record is completely an excessive response to defamation. Besides the experience of the growing number of countries (Ukraine, Sri Lanka, Georgia and Togo) which have repealed entirely criminal defamation laws, shows that civil defamation laws provide adequate protection to reputation (The Guardian, 2007).

According to Index on Censorship and English PEN (2009), free speech serves to highlight areas where the state is failing in its duty to the people. Lack of a vigorous culture of free speech renders the state a stranger to the views of the people. However, Owusu (2011) argued, many people believe the repeal of the criminal libel in Ghana has opened the floodgates for irresponsible journalism. The media and journalists grapple with complaints and accusations of intrusion and invasions into people's privacy, libel, outrageous behaviour and unprofessional conduct among other things. Moreover, he contended the media have come under criticisms for fanning ethnic, religious and most of all, political tensions in the country. Some journalists have been accused of openly mounting political platforms to campaign when the Ghana Journalists Association (GJA) Code of Ethics sets the parameters within which journalists can operate.

The International Press Institute (IPI) believes that criminal libel can be employed by those in power to target and suppress legitimate news stories or to punish journalists reporting on matters of public interest. Even when it is applied in moderation, criminal libel often has a chilling effect on freedom of expression and imposes punishments including imprisonment, work bans and excessive fines that are disproportionate to the "crime" committed (<https://www.ifex.org>). However, the European Court of Human Rights (ECtHR) has reiterated that

any constraints on freedom of expression that might be necessary in a democratic society should be proportionate to the threat posed (Index on Censorship and English PEN, 2009).

Human Rights Watch, many governments and international authorities believe that criminal penalties are always disproportionate punishments for reputational harm and should be abolished. As repeal of criminal libel in many countries shows, such laws are not necessary: civil defamation and criminal incitement laws are sufficient for the purpose of protecting people's reputations and maintaining public order and can be written and implemented in ways that provide appropriate protections for freedom of expression (www.hrw.org/report).

Contributing writer for the First Amendment Centre, Gregory C. Lisby, said the problem with the criminal libel is that it is too often used as a tool for punishing criticism of those who direct the conduct of government. Furthermore, he advanced it does not promote or protect speech bearing even a tangential relationship to the requirements of self-government. It instead creates a "chilling effect" that makes speakers less likely to speak or criticise government in the future. Moreover, he said the impact of criminal libel is not only felt by those convicted, but also everyone else who cannot accurately judge the legal boundaries of free speech (First Amendment Centre, 2006).

The US Supreme Court has never expressly ruled out criminal libel unconstitutional. However, as early as 1964 (in the case *Garrison vs. Louisiana*), it viewed favourably both suggestion that criminal prosecutions for libel could no longer be justified in modern times and any existing criminal libel laws should be narrowly tailored to target only speech that vilified particular groups or that was likely to lead to a public

disorder (IPI, 2015). Besides in 2010, the African Court on Human and People's Rights (ACHPR) stipulated that criminal libel laws constitute a serious interference with freedom of expression and impede the role of the media as a watchdog (Sikiti da Silva, 2015).

Methodology

The study targeted journalists to gauge the challenges and prospects of the repeal of the criminal libel law in Ghana for journalism. As the study is of an exploratory nature, the simple random sampling technique was employed to sample 200 journalists from the ten regions of Ghana for interview, face-to-face and via phone for data.

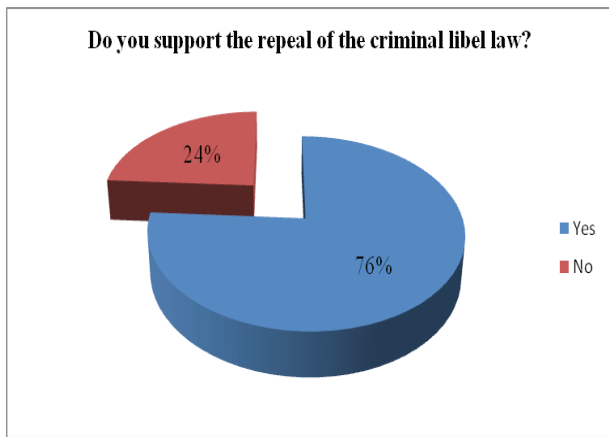
Respondents were asked if they support the repeal of the criminal libel law, whether the repeal of the law has benefitted the practice of journalism and how the repeal of the law has benefitted the practice of journalism. Furthermore, they were asked if the repeal of the criminal libel is responsible for irresponsible journalism. Moreover, they were asked to identify the irresponsible journalism that the repeal of the criminal libel has caused and if journalists have abused the freedom of expression that came with the repeal of criminal libel. Besides they were asked about their likes and dislikes about the repeal of the criminal libel. Finally, they were asked if they would campaign for a return of the law.

The interview was conducted on August 24, 2016 and September 15, 2016 by the researcher. All the 200 respondents, representing 100 percent response rate, answered the questions correctly.

Findings

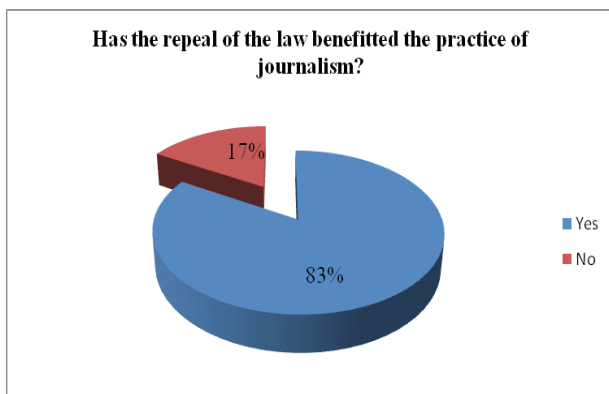
Do you support the repeal of the criminal libel law?

Do you support the repeal of the criminal libel law?	Frequency	Percentage
Yes	152	76
No	48	24
Total	200	100



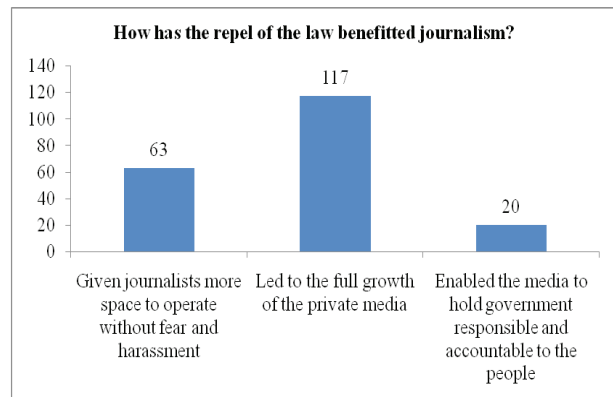
Has the repeal of the law benefitted the practice of journalism?

Has the repeal of the law benefitted the practice of journalism?	Frequency	Percentage
Yes	167	83.5
No	33	16.5
Total	200	100



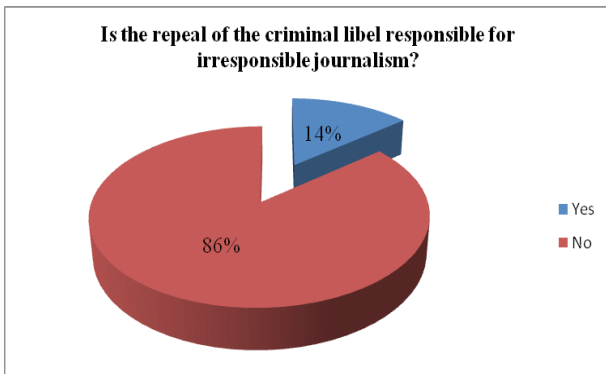
How has the repeal of the law benefitted journalism?

How has the repeal of the law benefitted the practice of journalism?	Frequency	Percentage
Given journalists more space to operate without fear and harassment	63	31.5
Led to the full growth of the private media	117	58.5
Enabled the media to hold governments responsible and accountable to the people	20	10
Total	200	100



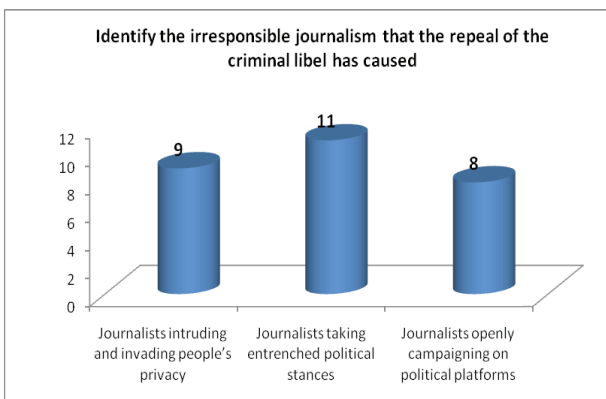
Is the repeal of the criminal libel responsible for irresponsible journalism?

Is the repeal of the criminal libel responsible for irresponsible journalism?	Frequency	Percentage
Yes	28	14
No	172	86
Total	200	100



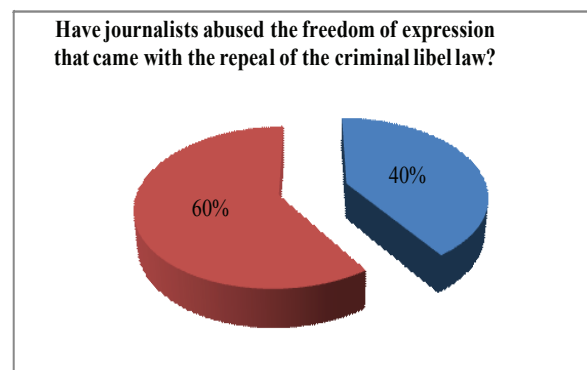
Identify the irresponsible journalism that the repeal of the criminal libel has caused

Identify the irresponsible journalism that the repeal of the criminal libel has caused	Frequency	Percentage
Journalists intruding and invading people's privacy	9	32
Journalists taking entrenched political stances	11	39
Journalists openly campaigning on political platforms	8	29
Total	28	100



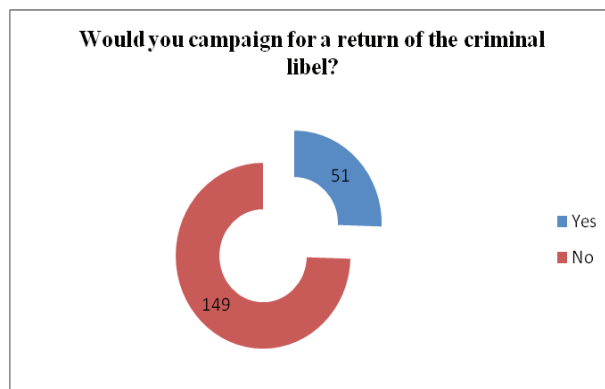
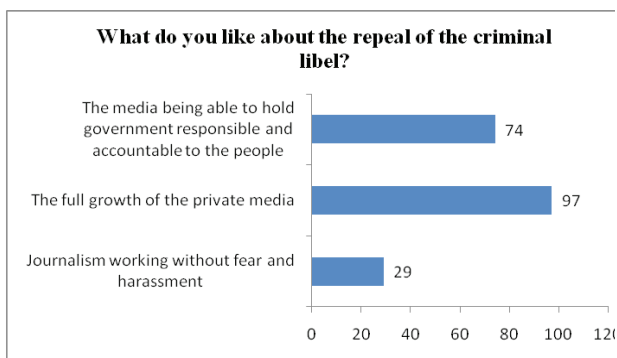
Have journalists abused the freedom of expression that came with the repeal of criminal libel law?

Have journalists abused the freedom of expression that came with the repeal of the criminal libel law?	Frequency	Percentage
Yes, they have	81	40
No, it is only a perception	119	60
Total	200	100



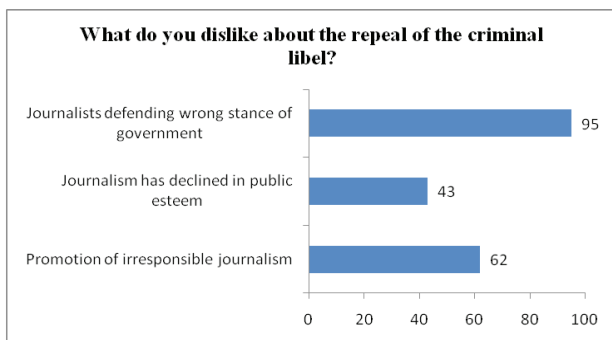
What do you like about the repeal of the criminal libel?

What do you like about the repeal of the criminal libel?	Frequency	Percentage
Journalists working without fear and harassment	29	14.5
The full growth of the private media	97	48.5
The media being able to hold governments responsible and accountable to the people	74	37
Total	200	100



What do you dislike about the repeal of the criminal libel?

What do you dislike about the repeal of the criminal libel?	Frequency	Percentage
Promotion of irresponsible journalism	62	31
Journalism has declined in public esteem	43	21.5
Journalists defending wrong stances of government	95	47.5
Total	200	100



Would you campaign for a return of the criminal libel?

Would you campaign for a return of the criminal libel?	Frequency	Percentage
Yes	51	25.5
No	149	74.5
Total	200	100

It was found that 152 out of the 200 journalists representing 76 percent of respondents said they support the repeal of the criminal libel law and 48 of them, comprising 24 percent of respondents indicated they do not support the repeal of the law.

The study also revealed that 167 out of the 200 journalists comprising 83.5 percent of respondents said the repeal of the law has benefitted the practice of journalism, while 33 of them indicated the repeal of the law has not benefitted the practice of journalism.

Furthermore, it was observed that 63 out of the 200 journalists, representing 31.5 percent of respondents said the repeal of the criminal libel law has benefitted the practice of journalism by given journalists more space to operate without fear and harassment; 117 of them comprising 58.5 percent of respondents indicated the repeal of the law has led to the full growth of the private media while 20 journalists, who consisted 10 percent of respondents said the repeal of the law has enabled the media to hold governments responsible and accountable to the people.

In addition, it was discovered that 172 out of the 200 journalists comprising 86 percent of respondents said the repeal of the criminal libel law is not responsible for irresponsible journalism and 28 of them, representing 14 percent of respondents indicated the repeal of the law is responsible for irresponsible journalism.

Moreover, it came to the fore that 9 journalists, representing 32 percent of respondents said the repeal of the criminal libel law has caused journalists to intrude and invade people's privacy; 11 of them consisting 39 percent of respondents indicated the repeal of the law has occasioned journalists taking entrenched political stances and 8 journalists, who comprised 29 percent of respondents said the repeal of the law has made journalists campaign openly on political platforms.

Besides it was established that 119 out of the 200 journalists, comprising 60 percent of respondents said journalists have not abused the freedom of expression that came with the repeal of criminal libel law; it is only a perception, while 81 of them who consisted 40 percent of respondents indicated journalists have abused the freedom of expression that came with the repeal of the law.

Again, it was realised that 97 out of the 200 journalists representing 48.5 percent of respondents said what they like about the repeal of the criminal libel law is the full growth of the private media; 74 of them comprising 37 percent of respondents indicated what they like about the repeal of the law is the media being able to hold governments responsible and accountable to the people and 29 journalists, consisting 14.5 percent of respondents said what they like the repeal of the criminal libel law is journalists working without fear and harassment.

What is more, the study revealed that 95 journalists comprising 47.5 percent of respondents said what they dislike about the repeal of the criminal libel law is journalists defending wrong stances of governments; 62 of them, representing 31 percent of respondents indicated what they dislike about the repeal of the law is the promotion of irresponsible journalism and

43 journalists who consisted 21.5 percent of respondents said what they dislike about the repeal of the law is that journalism has declined in public esteem.

Lastly and interestingly, it was seen that 149 out of the 200 journalists, representing 74.5 percent of respondents said they would not campaign for a return of the criminal libel law, while only 51 of them comprising 25.5 percent of respondents indicated they would campaign for a return of the law.

Discussions

The revelation that a staggering 76 percent of respondents said they support the repeal of the criminal libel, while only 24 percent of respondents indicated they do not support the repeal of the law, rallies support for the position by Daily Graphic (2001) that the repeal of the criminal libel received general acclamation by the public and journalists alike. It also portrays that though a vast majority of journalists condemned openly and widely the action of the Monite 3, they will resist attempts by governments every step of the way to have a return of the criminal libel, which Owusu (2011) claimed, had made it difficult for journalists to play their watchdog role effectively. Furthermore, it shows that journalists undoubtedly support the International Press Institute (IPI) when it says (2015) criminal libel can be employed by those in power to target and suppress legitimate news stories or to punish journalists reporting on matters of public interest. Moreover, it reinforces the fact that the chilling effects of the criminal libel on Kwaku Baako Jr, Haruna Attah and several others remain fresh in the minds of journalists.

Furthermore, the realisation that 83.5 percent of respondents said the repeal of the criminal libel has benefitted the practice of journalism, while 33 of them indicated the repeal of the law has not benefitted the

practice of journalism, resonates squarely with the observation by Akufo-Addo (2011) that, the repeal of the criminal libel has impacted very positively on the development of the Ghanaian mass media, freeing them from unnecessary self-censorship and promoting a robust and critical media. Consequently, it has contributed to the growth of a vibrant and critical media that has won Ghana the reputation of having one of the most media friendly and liberal climates in Africa.

The revelation that 58.5 percent of respondents said the repeal of the criminal libel has led to the full growth of the private media is also tenable in that per the records of the National Communication Authority (NCA) there were 27 licensed private television stations in Ghana as of the third quarter of 2011. Among the 27 television stations were TV3 Network Limited-TV3, Metropolitan Entertainment Television-Metro TV, Television Africa Limited-TV Africa and Net 2 TV Limited-Net 2 TV. Meanwhile, according to Ghanaweb, there are more than 3 radio stations in each of the ten regions of Ghana. What is more, there are 26 registered private newspapers in Ghana. 4 (Daily Dispatch, Daily Guide, Ghanaian Chronicle and The Statesman) out of the 26 newspapers are dailies, 15 of them are weeklies, 8 of them are bi-weeklies and 2 of them (Ovation and AGOO) are monthlies and quarterlies.

Again, the revelation resonates with the claim by Owusu (2011) that Ghanaians have witnessed the full growth of the private media after the repeal of the criminal libel with a particularly rapid expansion of the electronic media and that now, in almost every district of Ghana, there is a local radio station; newspapers with national reach coupled with easy access to television stations.

Moreover, having 86 percent of respondents said the repeal of the criminal libel is not responsible for irresponsible journalism and 14 percent of respondents indicated the repeal of the law is responsible for irresponsible journalism, challenges strongly the argument by Owusu (2011) that, many people believe that the repeal of the criminal libel in Ghana has opened the floodgates for irresponsible journalism. However, the 14 percent of the respondents who indicted the repeal of criminal libel for irresponsible journalism cannot be taken for granted. It portrays clearly that the repeal of the law has actually occasioned irresponsible journalism. But the fact remains undisputable: the good the repeal of the law has brought to the table with regard to the practice of journalism far outweighs the harm.

Again, the observation that 32 percent of respondents said the repeal of the criminal libel law has caused journalists to intrude and invade people's privacy; 39 percent of respondents indicated the repeal of the law has occasioned journalists taking entrenched political stances and 29 percent of respondents said the repeal of the law has made journalists campaign openly on political platforms is indeed, disturbing. The fact that the media provide citizens with happenings about the world around them does not warrant journalists to intrude and invade people's privacy. Most worryingly, when journalists who are seen as the guardians of democracy choose to be in bed with politics then society risks being endangered because democratic norms and ideals will be compromised and the ruled will eventually rebel, resulting in chaos and anarchy. Sadly, the Montie 3 is a classic example of journalists in bed with politics. But fortunately, the Supreme Court stepped in to forestall the unexpected.

Besides the observation that 60 percent of respondents said journalists have not

abused the freedom of expression that came with the repeal of criminal libel; it is only a perception, while 40 percent of respondents indicated journalists have abused the freedom of expression that came with the repeal of the law appears to simply reiterate the fact that though a vast majority of journalists slammed the action of the Monite 3, they will resist squarely attempts by governments to have a return of the criminal libel, which, Owusu (2011) said, made it difficult for journalists to play their watchdog role effectively. Nevertheless, because we did not record 100 percent of respondents saying journalists have not abused the freedom of expression that came with the repeal of the law, this argument may remain unconvinced.

The revelation from the study 48.5 percent of respondents said what they like about the repeal of the criminal libel law is the full growth of the private media; 37 percent of respondents indicated what they like about the repeal of the law is the media being able to hold governments responsible and accountable to the people and 14.5 percent of respondents said what they like the repeal of the criminal libel law is journalists working without fear and harassment, will also turn out be to relishing for those who campaigned tirelessly to have the criminal libel repealed. Nevertheless, the realisation that 37 percent of respondents said what they like about the repeal of the law is the media being able to hold governments responsible and accountable to the people is in fact debatable because until the Freedom to Information Bill (FIB) is passed, and journalists are empowered to access information which governments withhold from them, it will not be convincing to say the repeal of the criminal libel has enabled the media hold governments responsible and accountable to the people. Governments sit on tonnes of tonnes of information which makes it impossible for journalists to hold

them responsible and accountable to the people.

What is more, the observation that 47.5 percent of respondents said what they dislike about the repeal of the criminal libel is journalists defending wrong stances of governments; 31 percent of respondents indicated what they dislike about the repeal of the law is the promotion of irresponsible journalism and 21.5 percent of respondents said what they dislike about the repeal of the law is that journalism has declined in public esteem, confirms that there is actually some degree of irresponsible journalism with the repeal of the criminal libel, and so those who campaigned for the repeal of the law as well as civil society organisations must call to order media houses and journalists that perpetuate the irresponsible journalism.

Last but not least and interestingly, the revelation that 74.5 percent of respondents said they would not campaign for a return of the criminal libel, while only 25.5 percent of respondents indicated they would campaign for a return of the law, shows that nearly all journalists relish and value the repeal of the criminal law, and so concerted effort ought to be made to preserve the freedom of expression that came with the repeal of the criminal libel.

Conclusion

The survey examined the challenges and prospects of the repeal of the criminal libel law in Ghana for journalism. It was observed that majority of respondents support the repeal of the criminal libel, and they said the repeal of the law has benefitted the practice of journalism. Furthermore, it was revealed that majority of respondents said the repeal of the law has led to the full growth of the private media.

In addition, it was discovered that majority of respondents said the repeal of the criminal libel cannot be blamed for irresponsible

journalism. Moreover, it was established that majority respondents said the repeal of the criminal libel has caused journalists to intrude and invade people's privacy. However and perhaps strangely, it was seen that majority of respondents said journalists have not abused the freedom of expression that came with the repeal of the law; it is only a perception.

Besides it came to the fore that majority of respondents said what they like about the repeal of the criminal libel is the full growth of the private media. On the other hand, it was found that majority of respondents said what they dislike about the repeal of the law is journalists defending wrong stances of governments.

Lastly and interestingly, it was seen that majority of respondents said they would not campaign for a return of the criminal libel, while only minority of them (25.5 percent) indicated they would campaign for a return of the law.

Recommendations

The Ghana Journalists Association (GJA) must call to order journalists perpetuating the irresponsible journalism. Moreover, the National Media Commission (NMC) should name, shame and sanction media houses that abuse the freedom of expression that came with the repeal of the criminal libel.

esides the Ghana Journalists Association (GJA) and media owners should ensure that all journalists are professionally trained, and schooled on the importance of the repeal of the criminal libel.

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