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A draft discussion paper on communication ethics

Communication ethics in South Asia: the Sri Lankan perspective

Introduction

The week which began on Monday the 06th February, this year was to be an eventful week for the journalism culture in the Sri Lankan Island Republic. It in a sense broke the stony silence over assaults on journalists in the country which had lasted for a short period. More importantly, it brought into focus in this new era, the need for a closer look of the role of the society vis a vis the responsibilities of the media.

The assault on the Editor of the Sunday Leader, a popular English Sunday Paper, came at a time when the Government was taking steps to regularise the media in the country. Several committees had been appointed by the Government for this purpose and a Parliamentary Sub-Committee had been just appointed to consider the ethics for media personnel. Along with the attack on Friday, the journalists used the Sunday papers on the 12th February to blow out their pent up frustration.

Soon after this incident, the Editor of the Sunday Times, again a popular Sunday English Newspaper, was taken to the 4th Floor of the CID office for questioning. This particular office, as was explained in the editorial of the Daily News, a popular English daily, had acquired an unsavoury reputation. This questioning was based on a report which appeared in a gossip column in the Sunday Times making reference to the President Kumaratunga attending a Member of Parliament’s birthday party. This piece of news item was denied by the President.

These recent episodes brings out a burning issue of the decade, which is not just restricted to Sri Lanka but is common throughout South Asia. It indicates very forcefully, the concern over the communication ethics in a country. It is therefore relevant and appropriate to discuss the important issues and problems pertaining to this sphere in a country.
I. When we talk about media, this would broadly cover the newspapers, the Radio and the Television; that is the print and the electronic media. Out of these, generally the highest focus is levelled against the newspapers. Regardless of this it is a clear fact that as much as the need for the freedom to express their thoughts and views to the subscribers, it is essential that there should be some control over the media simply for the reason of balancing the mighty powers of the media and a government. Discussing a similar situation, Mahatma Gandhi has said,

> The sole aim of journalism should be service. The newspapers press is a great power, but just as an unchained torrent of water submerges the whole country side and devastates crops, even so an uncontrolled pen serves but to destroy. If the control is from without, it proves more poisonous than want of control. It can be profitable only when exercised from within.

The problem which would arise here will be the amount of control over the media by the Government and the method of its implementation. With regard to the print media, throughout the world and especially in the developed western world, newspapers are privately owned and cannot be controlled by the Government. However, the electronic media, in the third world countries are mostly owned by the Government making it feasible for a Government to keep a control on their activities.

The important question that would arise in such situations would be how much and what type of a freedom the newspapers, the Radio and the Television would be given over their functions. Would it mean that the freedom of press should be exercised in an extremely liberal fashion without any controls or would it be necessary to have some control over this freedom. Again, if we are to exercise a control over the media, who should be responsible for this function. Should it be handled by the Government, or else is it necessary that this should be handled by an independent authority.
The type of control a Government could impose over the media activities could be highlighted taking the Sri Lankan situation as an example.

The Constitution of the Republic of Sri Lanka contains provisions relevant to both print and electronic media. Accordingly, Article 10 of the Constitution guarantees to every person the freedom of thought, conscience and religion including the freedom to have or to adopt a religion on behalf of his choice. Although the fundamental rights are subject to certain express limitations, the right regarding freedom of thought is not subject to any express limitations specified in Article 15 of the Constitution. Instead what the Constitution specifies is that, if any laws which are inconsistent are to be enacted, that would need the two thirds majority vote of the Members of the Parliament and the approval of the people at a Referendum.

Article 14(1)a of the Constitution guarantees to every citizen the freedom of speech and expression including publication. However, this is subject to restrictions specified in Article 15(2). Accordingly, this guarantee is subject to restrictions that may be prescribed by law in the interests of racial and religious harmony or in relation to parliamentary privilege, contempt of court, defamation or incitement to an offence. This guarantee is also subject to restrictions that may be prescribed by law in the interests of national security, public order and the protection of public health or morality or for the purposes of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society. Further, this freedom in respect of the Armed Forces, Police Force and other Forces charged with the maintenance of public order, is subject to such restrictions as may be prescribed by law in the interests of the proper discharge of their duties and the maintenance of discipline among them.

This clearly indicates that although a guarantee is given with regard to both print and electronic media, there are restrictions laid down on this fundamental right to freedom of speech and expression. This raises the question, whether it is reasonable
to have conditions stipulated on this type of a right. It is suggested that if a right is granted for the freedom of speech and expression, it should have only reasonable limitations. These limitations should be able to strike a proper balance between the right which has been granted and the type of limitation enforced on it.

Hence, although it is not directly relevant to communication ethics, it would be of extreme use to assess the Constitutional provisions which includes freedom of the media as well as restrictions on it as a base line for a well developed set of ethics for communication in any country.

II. The role of the media, whether it is a newspaper, the Radio or the television, the basic function would be to impart information to the general public. The general masses, irrespective of the country they live in, would be curious to know what is happening around them. Therefore, it could be argued that the basic duty of the media personnel is to satisfy the thirst of the people for information, by providing them with information of incidents occurring around them. If this is the basic duty of the media personnel, no doubt that this would have to be carried out under several limitations. The most important out of these would be the rights of the media personnel to obtain and use this kind of information. There is no doubt that the people in a country should have the right to know as to what is going on around their surroundings. But, just because of this, would it be possible for a media man to use any piece of news for the purpose of informing that to the general public. Moreover, would the media person be given a right to interfere with citizens private lives in order to obtain information. In brief, would it be possible for the media to forget about the Right to Privacy, the Law of Defamation, the Official Secrets Act and the Parliamentary Privileges Act and most of all decency and morality. If this is the situation, it is clear that there would be two important items that should be given thought with regard to media and the ethics of it. As pointed out earlier, it is evident that people need to know what is happening and at the same time the individuals would have rights that should be taken into consideration. Along with this the Reporters would have to face a dilemma in deciding their parameters and their limitations.
Regarding the rights of individuals it is obvious that in the present context, communication processes have become highly complexed. Accordingly, it involves individuals, social groups, private interests, public authorities and international organizations. Out of these, as Justice Grover has pointed out, the most important concern would be over the rights of the individual. His rights according to Justice Grover would include four basic areas.

Firstly, the right to know; the right to seek information which may affect one’s life and work. Secondly, the right to impart; to give others the truth as he sees about his living conditions, his aspirations, his needs and grievances. Thirdly, the right to discuss communication should be an open-ended process of response, reflection and debate. Fourthly, the right to privacy so that the individual may be protected from intrusion into his personal life. Further, Justice Grover says that,

There can be no manner of doubt that journalists play the key role since they mostly furnish the information which ultimately reaches the public. Even if the reporting is straightforward professional skill and background knowledge are essential prerequisites. Most journalists have an urban upbringing which is a limitation in a country mainly with rural population; they often come from a social class in which familiarity with popular attitudes and ways of thinking is not common, particularly in developing societies.

Taking into consideration the Reporters dilemma, it is certain that the reporters life is a challenge. These challenges arise not only due to the changing shape and pattern of communication media and the technological advance regarding the collection, storage, processing and dissemination of news, but also owing to social and political tensions prevalent in a country. This process according to Justice Grover includes, freedom to collect news, to ensure its accuracy and to publish it. It is interesting as well as important to highlight the problem faced by the Indian Reporter on these issues, as it indicates the difficulties faced by the reporters in
most of the Asian countries. Discussing this fact, Justice Grover is of the opinion that,

unlike countries where a specific right of access to information has been conferred by statute, eg. Sweden, the USA etc., the Indian Reporter has no such specific right. He may have an accreditation card. But he has to depend on sources which may be extra legal - he has to turn to hearsay, rumour, alleged eye-witness account and what may simmer down from people who are supposed to be knowledgeable .... That is a most unenviable situation. If he blends the bits and pieces and uses his own imagination to create a story he may be transgressing the Official Secrets Act, contempt, defamation and a host of other laws. Thus he has to be a bold and nosy person who has to poke fearlessly and courageously into hidden places so that the citizens may see world as he has discovered it.

Nevertheless, the reporter has to present his piece of information without any distortion of facts, with a real and a true picture without any colouring of the version with one's own prejudices.

This means that a reporter would find it extremely difficult to obtain the news he needs without getting into difficulty. It could be argued that these difficulties were the main reason in fighting to obtain the right to information. A good example would be the failures faced in England in order to introduce legislation pertaining to right of access to information. On the other hand, although the right is available in the USA, it is not an exclusive right in which all the information regarding official documents are freely available. This too, emphasises the fact that even if there is freedom to use confidential information, it would simply be a restricted right.

Along with these important issues, several questions pertaining to communication ethics could arise. The basis of these would be on the need to inform the public and the dilemma of the Reporter to attend to it without stepping outside the four corners of the legal framework. On this background, it is essential to examine the Sri Lankan position regarding communication ethics.
III.In Sri Lanka, the Sri Lanka Press Council Law was enacted in 1973. This was a law to provide for the appointment of a Sri Lanka Press Council to regulate and to render advice on matters relating to the Press in Sri Lanka, for the investigation of offences relating to the printing or publication of certain matters in newspapers and for matters connected therewith or incidental thereto. Under this law, provision was made for the Council to make rules setting out a code of ethics for journalists. Acting on this the Sri Lanka Press Council made rules setting out a Code of Ethics for journalists in 1981. While the fact remains that there should be a balance between the individuals rights and the reporters rights, there are problems arising even from a Code of Ethics for journalists. These problems could arise in several forms. Firstly, the question would be whether there should be a Code of Ethics at all for journalists. By having a Code of Ethics it could be argued that the work could be carried out according to a set of regulation. This certainly would not leave room for unethical practices to continue. Also a Code of Ethics would help to keep a control on the media. However, then there could be a problem as to whether this type of control is necessary for the media in a country. Secondly a problem could arise whether the Code should be made by the Parliament or whether it should arise from the mediamen themselves. Finally, it would be necessary to analyse what type of ethics should be introduced for communication. For this purpose we could present the Code of Ethics for journalists in Sri Lanka for discussion and analysis.

CODE OF ETHICS

It is relevant to conclude this brief note by a statement made by the Rt. Hon. Lord Denning in A.G. v Mulholland and A.G. v Foster, two cases which were taken together. In these cases, the question of privilege of a journalist to refuse to give his source of information came before the court. Discussing this, Lord Denning stated,

The journalist puts forward as his justification the pursuit of truth. It is in the public interest, he says, that he should obtain information in confidence and publish it to the world at large, for by so doing he brings to the public notice that which they should know. He can expose wrongdoing and neglect of duty which would otherwise go unremedied. He cannot get this information, he says, unless he keeps the source of it secret. The mouths of his informants will be closed to him if it is known that their identity will be disclosed. So he claims to be entitled to publish all his
information without ever being under any obligation, even when directed by a court or a judge, to disclose whence he got it. It seems to me that the journalists put the matter much too high. The only profession that I know which is given a privilege from disclosing information to a court of law is the legal profession, and then it is not the privilege of the lawyer but of his client. Take the clergyman, the banker or the medical man. None of these is entitled to refuse to answer when directed to by a judge. . . . If the judge determines that the journalist must answer, then no privilege will avail him to refuse.

The journalist, this reminds, is not a person superior to other professions. He too should be governed by ethical norms and other regulations.

Professor Shirani A. Bandaranayake
March 1995.
PART I: SECTION (I)—GENERAL

Government Notifications

1. These rules may be cited as the Press Council Code of Ethics for Journalists (Rules) 1981.

2. Every journalist shall—

(a) use all reasonable means within his power to ascertain prior to publication the veracity of the contents of any article written by him for publication;

(b) refrain from reporting or causing to be printed or published any matter which he knows or has reason to believe to be false or inaccurate;

(c) refrain from distorting the truth by any act of omission or wilful omission;

(d) take all possible steps to correct within the shortest possible space of time any inaccuracy or incorrect information in any report or article for the writing or publication of which he is responsible; and

(e) refrain from publishing or causing to be published, any matter which may offend public taste or morality, or tend to lower the standards of public taste or morality.

3. Every journalist shall use all reasonable means at his command in any report or article he writes or causes to be printed or published, to draw a clear distinction between any statement of fact on the one hand and any expression of opinion or criticism on the other.

4. Every journalist shall observe secrecy regarding the source of information unless the person who gave such information authorizes the disclosure of his identity.

5. Every journalist shall respect the reputation of an individual, and refrain from reporting or causing to be printed or published any information or comment regarding an individual's private life unless the publication of the said matter is in the public interest, as distinguished from public curiosity.

6. (1) In reporting or causing to be printed or published accounts of crimes or criminal cases, a journalist shall not—

(a) name victims of sex crimes;

(b) name any young person accused of a criminal offence who to his knowledge is below the age of eighteen and to his knowledge is a person who has no previous convictions; or

(c) name any person as being a relative of a person accused or convicted of a crime for the sole purpose of informing the reader of the relationship between the person so named and the person charged, unless the public interest would be served by the publication of the said matter.

(2) In reporting or causing to be printed or published accounts of matrimonial causes or actions, a journalist shall refrain from publishing, or causing to be printed or published any matter that is obscene unless the public interest is served by the publication thereof.

7. A journalist shall not commit plagiarism.

8. A journalist shall not present any matter in a manner designed to promote sadism, violence or salacity.

9. A journalist shall not report or cause to be printed or published any matter that is obscene unless the public interest is served by the publication thereof.

10. A journalist shall not report or cause to be printed or published any matter for the purpose of promoting communal or religious discord or violence.

11. Every journalist shall safeguard the dignity of his profession. He shall not accept any bribe or money, kind or service for any matter connected with or incidental to his profession.