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MEDIA LAWS PROJECT

Freedom of Expression

by B.G. Verghese

Freedom of speech and expression is not a gift of government but inheres in life. Jefferson truly said, "the God that gave us Life gave us Liberty at the same time". Communication makes community and is the most powerful instrument of socialisation. Indeed, all language is itself no more than the codified memory of given societies as they evolve, each word symbolising a particular shared experience. Freedom of expression is properly a human right because it is there, and not because it was enunciated in the Human Rights Charter in 1948 or in any other instrument, national or international, either before or since.

It is a vital basis of society as it is the means by which the citizen holds all in authority accountable. More so in a democratic society in which it constitutes the organising principle by which public opinion, which is but a crystallisation of the freely expressed wishes of the people, is brought to bear on all aspects of governance and must ultimately prevail. Freedom of expression was always important; never more so in the present information age with the communications revolution providing every man and his neighbour an instant, global reach, heir to the marvels and dangers of surfing in cyberspace.

This was not always so. Exceptions apart, ready acceptance of freedom of expression is relatively recent. For information is power. Down the millennia, kings and tyrants have sought to control information and deny it to others for fear of being challenged. Information has everywhere traditionally been divided between Caesar and God, with the priestly class playing the latter role. In Europe, learning until the Renaissance was controlled by the clergy which thereby retained a cozy monopoly of power. Galileo was formally exculpated of heresy by the Pope only a few years ago even though the world had long come to accept that the earth revolves around the sun and thereafter eagerly followed the onward march of science.

Church and state have gone hand in hand in most other societies and civilisations throughout the world. The Reformation brought about a divorce between the two in Europe. But fundamentalism in various garbs is still being battled in many parts of the world, including the United States.

It is no surprise that the Renaissance should have been propelled by the invention of the printing press and movable type. The publication of books, journals, newspapers and a whole series of inventions speeded communications to bridge minds and men. The telegraph, telephone, wire services, rotary press, mass circulation papers and radio were precursors to television, the integrated chip, modern telecommunications
with switching devices, computers, satellites, data networks and Internet. The transformation has been extraordinary. At its heart lies communication which would never have developed at the speed it has but for more and more things to communicate. This has fed on the increasing ability to communicate expeditiously and relatively inexpensively in gargantuan volume.

This writer was a member of the McBride Commission set up by UNESCO in 1977 to consider the changing face of global communications. Decolonisation was nearing completion. Developing societies were on the move. The consolidation of the European Economic Community presaged the beginning of a new thrust towards globalisation. The communications revolution was gathering momentum. The question posed to the Commission was how to ensure freedom of expression in what might be projected as the world of tomorrow. Despite global consultation and the availability of the best expertise, none envisaged the scale and rapidity of the technological transformation that has since been effected. "Many Voices, One World" was published in 1979, not yet two decades ago but seems away.

In 1977 the issue was posed as between a "free" and "balanced" flow of information. That was perhaps inevitable at the height of the cold war. There was also the wide and, many feared, growing information gap between North and South leading to concerns about neo-colonialism, cultural hegemony (which even the French were to protest during the final GATT negotiations on the Uruguay round, and the Quebecois perhaps still do), and the deepening of a new global divide between haves and have-nots.

While a North-South hiatus is not without substance, there is a north-south divide within all countries as much as between any of them.

The concept of sovereignty is by no means dead even if some proclaim it obsolescent. The idea of government is, however, everywhere yielding to a broader sense of governance as people, non-government agencies, corporate and transnational bodies, and civil society generally come into their own. De-regulation has given individuals and communities far greater freedom of action. This perhaps places freedom of expression and of information in a new context as the State, from being the master-controller and regulator is more nearly becoming a player, though still perhaps more equal than others in a cybernetic environment. How is this to be managed?

The Commonwealth is a microcosm of the United Nations. Its 53 members, scattered through every continent, are extraordinarily diverse and in many stages of development. A shared colonial experience has given them broadly similar systems of government, legal frameworks and political traditions that bind them together in loose association. Freedom of expression is accepted as a core value though the struggle to retain and enhance it is being waged within it as elsewhere around the world.
India has a long-established newspaper tradition going back to pre-Mughal days. The first modern newspaper, the Bengal Gazette, was established by an Englishman, James Augustus Hicky, in Calcutta in January 1730. Being outspoken about the East India Company and its luminaries, it had run into difficulties by November of that year. The battle for press freedom, joined then, continues to this day. The Madras Gazette faced censorship in 1798 and the first instance of contempt dates back to 1799. Press regulations were instituted over the turn of the century with editors being liable to action on grounds of security of the state and prejudicial and scandalous writing. Fresh Regulations in 1823 provided for licensing of newspapers and stern penalties for infringement.

The noted reformer Raja Ram Mohan Roy, who was then also editing a Bengali paper, petitioned the Supreme Court in terms that ring true even today. He pleaded that "a complete stop will be put to the diffusion of knowledge and the consequent mental improvement now going on. Another evil of equal importance... is that it will preclude the natives from making the Government readily acquainted with the errors and injustice that may be committed by its executive officers... and communicating frankly and honestly (to the Sovereign) the real conditions of (his) subjects in this distant part of his dominions.... To secure this important objective, the unrestrained liberty of publication is the only effectual means that can be employed ."

The Indian Mutiny (1857) and the subsequent rise of nationalism based on a rising new middle class exposed to university education and local self government led the Government to promulgate the Vernacular Press Act (1878) mandating a security deposit liable to forfeiture in case of default. Some papers like the still extant Amrita Bazar Patrika and Ananda Bazar Patrika of Calcutta circumvented the Act by overnight changing their language of publication from Bengali to English. The Official Secrets Act followed in 1899, replicating a similar newly-adopted English law. The Indian Penal Code was also amended to penalise with transportation for life or imprisonment anybody bringing the government into hatred or contempt or exciting disaffection against authority or promoting hatred between various classes of people.

And so to Independence (1947). Several earlier laws have undergone limited amendment or have been re-enacted with modifications. This would be true of the Official Secrets Act and certain sections of the Indian Penal Code while other effete 19th century laws such as the Indian Telegraph Act and the Sea Customs Act have been dredged up to intercept mail, order phone taps and censor books by prohibiting their import.

The difference lies in the constitutional protection now available. The Indian Constitution incorporates a Bill of Rights and Article 19(1)(a) guarantees all citizens the right to freedom of speech and expression. The exercise of this freedom is, however, subject to "reasonable restrictions" in the
interests of "the sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence". There is a caveat. If a proclamation of Emergency is in force on grounds of a threat to national security in consequence of war or external aggression, the government has the power to restrict freedom of speech and expression and no appeal shall lie with any court.

The implication of the term "reasonable" in relation to restrictions on freedom of speech and expression is that the law or any executive order thereunder is justiciable. The courts can be petitioned to test the reasonableness of the restriction and may strike down arbitrary action. This has certainly been a most valuable safeguard as the High Courts (of the States or provinces) and, more particularly, the Supreme Court of India have repeatedly struck down assaults on the freedom of the press.

Article 19 merely refers to freedom of speech and expression. The courts have held this term to subsume freedom of the press as well as broadcasting. Successive judgements have in fact given the term wider and deeper meaning by interpreting it to include the right to know and the right to receive and impart information even beyond national frontiers. The Supreme Court has been zealous in safeguarding the freedom of the press, holding freedom of speech and expression to be a superior or anterior right in relation to other rights.

Among constitutionally-permissible grounds for imposing restrictions is contempt of court. Many Commonwealth countries have inherited contempt laws from Britain where they were introduced to protect the judiciary from attack, obstruction or defiance. This is understandable; but any embargo on writing on a matter of public interest on the ground that it is sub judice would be difficult to sustain today. Judges cannot be expected to shut their eyes and ears to what goes on around them, but, in the words of a famous jurist, would not be worth their salt if they were influenced by it. This is different from trial by the press which can besmirch the reputation of individuals even before they have been arraigned.

Parliamentary privilege is another ancient prerogative which has outlived its utility when used to place Parliament and parliamentarians beyond the pale of legitimate criticism. India’s Parliament for one has been very chary of codifying its privileges. The argument is that this could result in removing privilege in unforeseen contingencies where it might really matter and that the good sense and maturity of the House precludes misuse. Not all would agree. There have been instances, especially in State legislatures, where the need for codification has been evident.

India has a large, diverse and lively press though the diffusion rate is still modest (50 million circulation
in relation to the size of the population. A Press Commission appointed in the 1950s expressed fears about monopoly and bias stemming from ownership of important groups and chains by industrial houses which had purchased newspapers for collateral reasons. It therefore suggested delinking the press from large business houses and diffusing their ownership in a variety of ways. A section of political opinion and leftist elements in the press were soon in full cry and the further demand to protect small papers from unfair competition by powerful majors filled the air for many years.

This was, however, a false alarm and hardly consistent with the objective reality. Ideology intruded. The country being dependant on newsprint imports in a regime of foreign exchange scarcity, allocations were subject to a newsprint control order with a built-in preference for small and medium papers which were granted subsidised newsprint. This was acceptable but further pressures were protested and the Supreme Court was constrained to rule that newsprint control could not be allowed to degenerate into newspaper control. A further means of regulating competition and apportioning scarce newsprint was thought of through the devise of a page-price schedule which would link the price of newspapers to the number of pages they carried. This was also struck down.

A draft Bill to delink newspapers from big business and to diffuse ownership among newspaper employees and the general public also met with stout opposition and was compelled to be withdrawn. All this transpired in a supposedly socialist era but could not pass muster. The fact was that the press was becoming increasingly critical of the government. The declaration of an Emergency in 1975 tore off the mask. Pre-censorship was imposed, though later struck down as ultra vires; the code of conduct for broadcasting (though a Central government monopoly) with its equivalent of some kind of fairness doctrine, was discarded; the two national news agencies, the Press Trust of India and the United News of India, both cooperatively owned by Indian newspapers, were compulsorily merged by government diktat and put under a pliant management; a few journalists were arrested; independent newspapers were denied government advertising or otherwise pressurised to make them succumb. Some stood up; others survived; still others bent with the wind.

There is little doubt that censorship was the primary instrument of Emergency rule when India went through a short-lived mini-dictatorship. It destroyed community, isolated one individual and community from another, bred fear and uncertainty and filled the air with rumours. But opposition was mounting and Indira Gandhi, who had imposed the Emergency, was ignominiously defeated and the ruling Congress party routed in the general election that followed in 1977.

Three things became evident in the fallout. First, that ordinary people, much more than the elites or even the media,
realised that freedom of speech and expression was their most important fundamental right. Without that, all other rights were more theoretical than real. Secondly, as a consequence, it came to be appreciated that freedom of expression is a larger people's right of which freedom of the press is only a part, the media being essentially no more than the professional custodian of a collective social right belonging to all citizens. In other words, the freedom of the press is not so much a proprietorial right of publishers and editors as the epitome of the people's right to know. And thirdly, that when the press was sought to be muzzled, issues of delinking and diffusion were shown up as mistaken and irrelevant. Big and small newspapers, irrespective of their pattern of ownership, either stood up or succumbed. Those with lesser resources found themselves unable to hold out. The values of freedom of expression and the willingness and ability to defend them cut across the artificial lines that had been drawn by ideologues.

The Emergency was a painful experience for both press and people but proved highly educative. No surprise then that many years later when the Bihar government sought to enact legislation to deal with scurrilious writing and, later still, when the Central government mooted the idea of a new and more punitive defamation law to accomplish the same purpose, public opinion was inflamed. Parliamentarians, academics, trade unionists, lawyers and other professionals were in some ways ahead of the press in taking up cudgels against these proposed measures. It was their freedom they were defending. It would not be untrue to say that, in a sense, India won independence in 1947 but only truly won freedom with the overthrow of the Emergency in 1977.

No one can possibly condone defamation, and India has a long-standing defamation law. The legal procedures are, however, cumbersome and, what with huge court arrears and the dilatory tactics adopted by defendants, not too many citizens take recourse to it. The Government too has sought to shy away from filing suits and has preferred to look for other means of redress. One way, to which reference has been made, has been to seek to place sterner measures on the statute book. Another method advocated through a private member's Bill was to make the right of reply mandatory on terms that were felt to be too sweeping. The Bill was seen as something of a Trojan Horse and met with such wide opposition as to be withdrawn.

What is required is a revised defamation law that would make this a purely civil rather than both a civil as well as a criminal offence. Efforts should also be made to curb procedural delays by placing such cases on what could be a fast track. Freedom should certainly not degenerate into licence. It must, however, be said that there is much in the tone and tenor of sections of the press, including appeals to communal, caste, parochial and sectional prejudice, that are inflammatory and liable to excite passions, enmity and hatred. Such so-called "hate" writing can threaten any society and
needs to be discouraged. Plural societies with their rich and varied diversities are vulnerable to such sectional appeals which can be destabilising and undermine public order which is something more than what might ordinarily be understood as law and order. Developing societies by their very nature have fewer defences against such tendencies which can be manipulated by interested elements for collateral purposes.

Security of the state is often cited as reason for punitive or preventive action against individuals or the media. While this might appear to some to be a sufficient cause of action, the definition of what constitutes "security" or "friendly relations with foreign states" is open to question. On a close examination, the security of the state may be found to be no more than a cover for avoiding embarrassment to the government of the day or even a particular official or dignitary. Even in this democratic day and age egocentric leaders have been known to equate themselves with the state or to place themselves above it. Megalomania needs to be exposed and the role of the media in alerting society to such insidious threats is particularly important. Nor can a foreign policy gaffe or policy initiative, such as a treaty, be placed above criticism on grounds of upholding friendly relations with a foreign state. Debate and legitimate criticism cannot be barred from consideration of any policy. Where the line should be drawn may be a matter of argument but cannot be pre-ordained or pre-empted to muzzle the media.

Lively and independent though it may be, partly on account of a long tradition and what on the whole has been a vibrantly democratic environment, not all is well with all of the Indian press. The growth of competitive, mass-circulation papers and the emergence of a popular and more tabloid-orientated press catering to less sophisticated first-generation readers, has bred certain ills. Sensationalism, editorialising in the news columns that renders it difficult to separate fact from opinion, lack of objectivity in tracking and citing sources, failure to follow up stories, selectivity, and the arrogance of power that curtails the right of reply are among them. Captions may not always fit the story, thus misleading the unwary or casual reader who merely sees the headline and passes on.

It was to counter these trends that the Editors Guild of India in 1936 listed Seven Deadly Sins that are the enemy of good journalism. These were defined as:
- indulgence in yellow journalism and character assassination;
- sensationalism in any form, especially when dealing with sensitive issues and in times and situations when passions are or could be aroused;
- invasion of privacy and personal grief when this is not warranted by any real reason of public interest;
- falling into the trap of stereotypes which could result in labelling whole groups of people or communities in a manner that is unfair or offensive;
- trial by the press or condemning a person before he is fairly tried in court and has an opportunity to defend himself; and giving currency without due investigation and qualification to unverified allegations;
- delay or denial of the right of reply or legitimate correction;
- mixing comment with fact in a manner that makes it difficult for the reader to distinguish one from the other.

There is, however, another malaise that has seized sections of the Indian press. This is the tendency for certain reporters and even editors to turn activist. There is nothing wrong in social or political activism. But this clearly is not the role of a general interest newspaper and those working in it. This is as opposed to ideological papers or party organs which are there to espouse a given cause and attract a certain readership precisely for that reason. They play the role of crusaders or pamphleteers and possibly render a real service by so doing. But if the reporter or editor turns activist he is guilty of converting the newspaper into a propaganda sheet dedicated to selling or saving a given cause. He would then be breaking a solemn custodial trust and betraying the readers’ right to know all sides in relation to matters of public interest by excluding or playing down aspects that might lend support to sharply contrasting points of view. The expression of an editorial opinion is unexceptionable. But to plug a certain point of view to the exclusion of others in the news columns is not good journalism. This becomes particularly important when there is a clash of ideas and confrontation giving rise to passions. That is when objectivity and balance are most required so that public opinion is well founded.

A further problem has arisen with the seeming decline of the editor as certain industrialist-publishers seek to market papers like other commodities and have enhanced managerial powers at the cost of editorial autonomy. This just not justify the old diffusion-delinking syndrome but suggests the need for innovative measures to safeguard editorial independence. Various methods have been suggested from time to time: transferring ownership of newspapers to trusts or interposing a body of public figures as an editorial trustees to uphold the editorial integrity of the paper against business or other pressures; appointing a certain number of so-called public interest directors on the boards of newspaper; or having an ombudsman to respond to complaints and charges against newspapers by readers and, possibly, to look into complaints of managerial-proprietorial intervention. Are these necessary? Will they work?

The new information technology is a double-edged weapon. Its immediacy and reach make it a power for good. Yet, it can and has also become an instrument for spreading not just misinformation but disinformation. Governments, corporations and interest groups of many descriptions resort to such techniques. News is planted and gains such velocity of circulation that truth does not easily catch up with the first salvo which may have been doctored. This can only be countered by greater vigilance, better professional standards
and internal codes of conduct.

State and corporate patronage can be debilitating because they tickle the ego and the palate and can sometimes weight the purse. The temptations faced by financial and business journalists covering the markets and the corporate world are also considerable. Lavish entertainment, gifts, travel packages, and tips that could facilitate insider trading are not unknown. As developing economies open up and begin to take off, such baits must be expected and resisted. The Indian press is now becoming wary of these practices and at least one leading business journal has laid down a code of conduct for its employees to stem the rot.

This, however, does not take care of the efforts made by authority to cultivate particular papers or correspondents by selective leakages and favours such as housing, facilities to accompany dignitaries abroad and so forth. The courts have begun to intervene on matters like housing, though their concern here has been misuse of official housing quotas rather than freedom of the press. Papers that plead a lack of resources to house or fund the foreign travel of their reporters are, by creating dependencies, liable to discover that their watchdogs have become lap dogs.

There is a limit to what the law can do and in any event more laws do not necessarily make a better society. Training, traditions, and the discipline of professional associations are the best answer. Licensing by government through processes of selective accreditation would be anathema. The comparison sometimes made with the licensing of doctors and lawyers who are registered to practice is mistaken. Journalism lacks the well-defined boundaries of these other two learned professions. The sports commentator, theatre or music critic, security analyst, financial correspondent, crime reporter, columnist, editorial writer, photographer, and cartoonist are all journalists. Their training and responsibilities are vastly dissimilar. Even the system of accrediting correspondents in order to cater to their needs has begun to attract adverse notice although this is not necessarily intended as a means of regulating the press.

Another answer that some Commonwealth countries and others have taken resort to is the mechanism of the press council. The nature and constitution of these varies greatly. The Press Council of India is presided over by someone who has been or is eligible to be a justice of the Supreme Court. Its remaining membership consists of five MPs named by the presiding officers of the two Houses, a nominee each of the Bar Council of India, the University Grants Commission and the Sahitya Akademi (Academy of Letters), and 20 others drawn from different echelons of the press such as editors, other journalists, publishers, news agencies, small newspapers, and Indian language papers. It is charged with promoting and protecting the freedom of the press and the independence of newspapers, upholding standards, and making inquiries into complaints of infringement of journalistic ethics. It is a quasi-judicial body and can summon witnesses and compel
disclosure, but its procedures are informal. It does not exercise any punitive power, being essentially a court of honour concerned with ethics, taste and standards. It has only powers of censure and publication of its findings has no more than moral sanction.

The Council has heard complaints by the press against the Central and State governments and by governments, citizens, organisations and institutions against the press. Its adjudications have created a body of case law or a code of conduct. Those disappointed by the Council's "lack of teeth" and the occasional failure of guilty newspapers to publish adverse findings against themselves, have argued in favour of vesting it with punitive sanctions. The Government too has from time to time sought to persuade the Council to lay down a code of conduct for the press. The Council has resisted this and points to its statute. This enjoins it to "build up" such a code, which is what it says it has been doing. Its adjudications have been collated and updated from time to time in the light of more recent developments. It has been reluctant to lay down a code for fear that this could be misused as a basis for disaccrediting defaulting journalists or papers and become an instrument for licensing the press. This caution is well founded.

It has also good reason for not seeking punitive powers. Arming it with such powers would transform its character from a court of honour and a mechanism basically for "trial" by peers to becoming a subordinate court in the judicial hierarchy. At present, anyone filing a complaint before the Council has to affirm that the matter is not before a court and will not be taken before one. The object is to preclude anybody from having two bites at the cherry and to provide an alternative forum where honour and moral principles can be vindicated and standards upheld. If an issue before it happens to become the subject of litigation, the Council automatically withdraws. Should, however, the Council have punitive powers then, constitutionally, an appeal against its findings would lie in the High Courts and the Supreme Court and its verdicts would no longer be the last word. Little would be gained and something of value would be lost in consequence.

The Press Council has made a modest mark. This is evidenced by the fact that it was abolished during the Emergency even as it was seized of a case that would have shown up government pressures on the press. Its powers to address issues other than complaints and to do so on its own volition has enabled it to examine issues of public concern pertaining to the press. Thus, it looked at the role played by a section of the Hindi press in northern India in fanning the tensions surrounding the demolition of a historic mosque in Ayodhya by a communally-charged vigilante group determined to erect or allegedly restore a Ram temple on the site. It came out with a scathing report that shamed the offending papers into behaving with greater caution and responsibility thereafter. It likewise looked at the role of the media in the context of militancy and human rights in Punjab and Kashmir in 1992. This highlighted several sensitive issues in the matter
of reporting on and responding to terrorism and insurgency. It is currently looking at the structure and finances of the two major national news agencies with a view to seeing how their financial viability, quality, independence and global reach can be enhanced.

The Council has wrested an assurance from the Government that it shall be consulted on all legislation and regulations pertaining to the press. In this context, its views were sought on the sharp debate that raged through much of 1995 on whether or not foreign publications should be permitted to launch newspapers in India and whether international wire services should be permitted to sell their services directly to clients in the country rather than have them retailed through one or other Indian agency as is the case at present. In both instances it counselled caution, following a large body of media and public opinion which fears the cultural and political implications of foreign newspapers being started in the country. The import and circulation of foreign newspapers, magazines, books and journals is, however, free.

An articulate minority favoured allowing foreign media entry by granting them rights of publication or direct distribution of wire services subject to safeguards. These could include Indian participation in their shareholding and management and the stipulation of certain employment obligations. They buttressed their argument by pleading that the skies have long been open to the world services of international sound broadcasting organisations and that the onset of satellites has made television a global phenomenon. The BBC, CNN, Star TV from Hongkong, and Pakistan TV are already on the air and more services are likely to follow. There has lately been some concern that unrestricted penetration of Indian skies might be undesirable and that uplinking of international television services should be subject to regulation as in some other countries.

This digression has taken us to the realm of broadcasting which has been under a totally different regime in India than the press. Broadcasting was started experimentally in 1927 and All India Radio was established in 1935. It has always been a state monopoly since control of the airwaves, until recently a scarce natural resource, has been subject to allocation and control by the Ministry of Communications. It is understandable that broadcasting should have been retained as an official monopoly under the Raj, but it is somewhat surprising that this dispensation should have continued after Independence.

This possibly had its origin in acceptance of the paternalistic virtues of the new administration, wearing as it did the halo of the independence struggle. Broadcasting at that time was regarded as capital intensive infrastructure properly falling within the domain of a welfare state. But there possibly also was a mistaken impression of the implications of freedom of expression with reference to the media. It was officially suggested by none other than the then prime minister, Jawaharlal Nehru, a genuine democrat, that
India was not yet mature for an autonomous broadcasting organisation on the model of the BBC. The statement will not bear scrutiny. More likely, freedom of broadcasting, as of the press, was implicitly viewed as a proprietorial right with ownership and control going hand in hand. By the time that misperception began to fade, the honeymoon was over and the print media had begun to appraise the government more critically. For decades the argument ran that since the press was with the Opposition, the Government might appropriately retain control over the broadcast media.

This non sequitur prevailed in the national sub-conscious until further political polarisation and the election of non-Congress governments in some of the states showed up another ambiguity. Within a federal polity, the Central government held a monopoly of broadcasting leaving the state governments out in the cold. The Emergency brought home the truth that broadcasting should not remain an official trumpet, and an exclusively Central government mouthpiece at that. The battle for autonomy for broadcasting, even if under Central ownership, and for freeing the airwaves was joined. This sentiment gained greater edge with the growth of television and more than one committee urged autonomy for broadcasting and the decentralisation of what had become a very large system.

The tragedy is that in every round of elections, once the rascals had been thrown out, the new incumbents believed the danger had passed and that they themselves were on the side of the angels and could do no wrong. In the result, little happened until video newsmagazines hit the market with alternative news feature packages that told the country what the official media had not, or told it differently and more interestingly. These video newsmagazines were a peculiarly Indian innovation and established an alternative medium, playing the role of the samizdat or Soviet underground press, albeit on a limited scale. The coming of satellite television and cable produced a further transformation that compelled the Government to open up. The most recent blow came when the Supreme Court decreed that the airwaves could not be a government monopoly and ruled that an independent regulatory agency be established to licence broadcasters. The independent licensing authority is in the making. Meanwhile independent producers have proliferated and can be aired over a number of private satellite channels, some of them with international advertising support, if Doordarshan, the official channel, is not interested.

To the extent that broadcasting has opened up, and smaller domestic operators come on the air once the licensing authority gets to work, this is an advance. But it still leaves AIR and Doordarshan where they are as huge state monopolies and not yet autonomous corporations. Since they will continue to control the largest segment of Indian broadcasting, it is important that they undergo reform. This will call for greater autonomy in whatever form so as to release the creative and innovative talents of those working in them. Also far more decentralisation to regional and local stations to cater to all of India’s enormous diversity. And
greater devotion to local affairs, education, health, extension, development, the deprived sections of the population, neglected and backward regions, and special programmes for segments of the listening and viewing public that are outside the market and will receive little or no attention from commercial broadcasting. In other words, AIR and Doordarshan must become truly public service broadcasters. Freedom of the air will mean little or nothing for tens or even hundreds of millions of Indians unless this happens.

The shift from government to governance mentioned earlier also demands that people enjoy both access and participation. They must have access to the media, print as much as broadcasting, in order to articulate their views and aspirations. What this can mean was exemplified in a remarkable Satellite Instructional Television Experiment (SITE) conducted in 1976-77 in six clusters each of 400 remote villages in as many linguistic regions scattered throughout the country. They were provided news, extension, family planning, health, education and entertainment clips in a series of daily four hour transmissions from decentralised programme production centres that were directly uplinked and beamed down by the satellite for direct reception.

Access implies not merely access to the system but access to information. The record here is unsatisfactory. The Official Secrets Act prevails and its motto is dispensation of information on the basis of a selective need to know rather than on the premise of a universal right to know. Information is power. The discretionary right to give or withhold information vests subordinate officials and their superiors with power that is not easily surrendered. Discretion implies patronage which salves the ego and has a rental value. A good deal of data is also classified and thereby dilutes accountability and handicaps scholarship. Under the rules, all official documents are placed in the archives and are supposedly open to inspection after 30 years. Here too there are so many exceptions and discretionary powers that access remains barred.

Recent agitations on environmental impacts, project decisions and awards of contracts have been challenged on a variety of grounds. This has resulted in obstruction, agitation, delays, litigation and consequent cost escalation, much of which could have been avoided had there been greater transparency from the start. The facts: with regard to costs and benefits and their distribution, prices, technologies, environmental consequences, displacement, compensation, employment or whatever would be out in the open for all to study. There would be little cause for mistrust and suspicion, criticism could be answered, issues clarified and the project or contract refined to secure wider acceptance. More openness would reduce opportunities for corruption and make for greater accountability.

It was based on this kind of understanding that a previous Indian government in 1989 determined to legislate a freedom of information act. The governing philosophy was that
everything would be presumed to be in the open unless specifically declared confidential, in reversal of the Official Secrets Act which treats everything as confidential unless otherwise stipulated. The legislation would have incorporated a privacy law and dealt comprehensively with official secrecy, classification and defamation. The Canadian and Australian experience was studied with interest and a draft bill was in the process of formulation when the government fell. And there the matter rested.

Fortunately interest in this has revived with transparency in governance being seen as a key factor in curbing corruption and enhancing accountability all round.

Certain other issues have arisen meanwhile and need to be addressed. The most worrying among these is perhaps the spread of terrorism, insurgency and armed militancy, often by faceless and highly armed groups waging war against society and the state. Whatever their grievances, real, exaggerated or wholly imagined, resort to terror is unacceptable. The problem is that such situations go beyond the usual problems of law and order or breakdown of public order with which most governments are called upon to deal with from time to time. At the same time they fall short of war, civil war or even regular insurgency as guns and bombs are wielded by shadowy groups of ideologues, vengeance-seekers, soldiers of fortune or adventurers, religious fanatics and plain mercenaries who observe no rules. They may enjoy cross-border support and sanctuary in waging proxy wars. The common factor is resort to extreme violence, kidnapping, extortion and intimidation in a bid to impose their will on the populace through fear.

Much of South Asia currently confronts such violence. The role of the media is crucial here. Governments are not necessarily well informed of the ground realities in situations where their own acts of omission and commission may have contributed to the anger and alienation of the people. The normal channels of communication may have dried up with short shrift being given to "informers". The duty of the media in such times more than others is to report on developments and the underlying situation fairly and objectively so that the roots of the problem are properly understood and addressed. Seldom is the media’s mediatory role more important if public opinion is to be informed and efforts to seek a peaceful resolution are to be advanced.

Yet it is here that problems arises. The media may be torn between not wishing to embarrass the powers-that-be or to let the side down through a misplaced sense of patriotism. It may wish to play down excesses and human rights abuses so as not to tangle with authority. Or it may be coerced into not writing against militant groups in the face of threats of swift and brutal reprisal and be compelled to print their dictates, eulogising their actions, commemorating “martyrs”, and glorifying their bravado. Terrorist groups have need to
paint the "enemy" in the worst possible colours in order to justify their own perversities. They accordingly seek to alienate or heighten the alienation of the target community or people as a whole from the state or other "oppressor". Information is the prime instrument for this purpose and so the media is alternately wooed or targeted as the situation demands.

In Margaret Thatcher's famous phrase, terrorism thrives on the "oxygen of publicity". This is true and its practitioners tend to stake out a Robin Hood image. But the converse is not true. The press cannot be asked to black out news of terrorists and terrorism so as to deny them this "oxygen". The real question is where to draw the line between purveying news and being used? The dilemma is to determine just how much rope a democratic society must give its most extreme critics, knowing that the democratic process and ethos may be brazenly used to wage war against democracy.

What should be the response to emergency laws in such situations and to measures to regulate, punish, censor or ban the media? The problem is that the government is damned if it does and damned if it don't. These are delicate and extremely complex issues. Partisanship may prompt facile answers to such questions, but it is necessary to rise above such limitations for ultimately pet monsters can turn predator. Yet, ultimate safety lies in the greatest possible transparency, for a democracy can choke on the tactics of its enemies. This, let it be admitted, is easier said than done. But that should be the endeavour.

Some countries, India among them, permit preventive detention in certain situations subject to review by independent advisory boards. Such draconian measures are open to question and have been strongly condemned whatever the official justification advanced. Yet, the merits of such laws apart, it is necessary to distinguish between any action taken against an individual as a citizen and as an editor or journalist. Freedom of the press cannot be a cover for extraneous activities by newspapermen who thereby bring bad odour to the profession.

Gender equity has become another media issue in terms of news coverage, stereotypes and an undoubted male bias in much of the traditional ordering of society. This is a wider social issue, as the media often merely mirrors life, though it could do more to influence it. The use of women, or rather the female form, in advertising is also being questioned. Likewise coverage of sex and violence. Are societies, especially developing societies, becoming more prurient or are issues of sex and violence being more openly reported and discussed? Even if the latter, is the exposure promoting something that would be better avoided? Maybe television confronts this question more than print or radio.

Is there a right to pornography as a subset of freedom of expression? And to what extent can children be given or be denied the right to know, even against parental authority?
Developing societies face these questions more acutely as the modernising process in traditional communities can be traumatising without the aggravation of intrusions into social privacy.

The growth of vast media-information conglomerates with a national or even global reach raises other issues pertaining to freedom of cultural and political choice in a homogenising world. The media has become big business in view of mounting costs in news gathering and dissemination. Competition is driving small and marginal units to the wall. The West has seen this phenomenon and many countries in Europe have stepped in to subsidise the second paper and to prevent the stranglehold of cross-media monopolies.

Countering this is the remarkable divisibility of much of the new information technology which has resulted in desk-top publishing, ham radio and, now, cyber-inputting and cyber-surfin through Internet to create a whole new world of personal communication and human connectivity. Yet the horizontal and vertical integration of information and communication networks, increasingly combining both hardware and software, is creating new mega-gatekeepers, national and trans-national, with all that that could imply for freedom of choice.

In this information age, the role and responsibility of the journalist has assumed a new importance. The size and complexity of large information systems could well reduce most journalists to little cogs in vast machines, with none really aware of the big picture as were maybe the editors of yesteryear. Does this really matter? Or is this just nostalgia? Perhaps schools of journalism and communication and professional training need another look so that journalism and media-ition remains an art and is not entirely reduced to a craft. The media has a great agenda-setting role. They who set the agenda could in some way become the new conquistadors. Might history repeat itself?

The pace and transforming power of technological change has introduced a new dimension in relation to space and time. The outputs are tremendously impressive but who are the controllers that govern the inputs?

Take the Gulf War. It was a tightly controlled operation in which the media was for the most part less than a free agent but richly fed with the marvels of smart weapons and other gadgetry. It was long after the event that the world learnt that more Israelis were perhaps killed by friendly Patriot missiles than by the Iraqi scuds that they were intended to bring down. The media, with some exceptions, could only report what it was told. Peter Arnett, however, did portray something of the other side through CNN.

Many restraints on the media stem from considerations of national security. Relieving global insecurity could therefore go far towards liberating freedom of expression whenever or
wherever it is in chains. The development divide is also a significant factor in provoking envy or rage. Environmental security concerns us all as global warming and climate change may originate anywhere in time or space but puts everybody in common jeopardy. The media therefore has a most important role in promoting understanding and peace.

What then is to be the role of the media in any new world order? War and conflict have not been abolished though their character has undergone change. UNESCO’s motto remains as true today as when it was inscribed: wars begin in the minds of men. And hearts and minds are increasingly shaped by information, of which the greatest purveyor is the media. Conflict resolution in critical situations has in many cases hinged on shuttle-diplomacy and wider confidence building measures. There are constant calls for dialogue. No better means and process of dialogue than that by, of and for the people as governors of their shrinking world through freedom of expression.

Where does one begin? The Commonwealth nations should individually and collectively look at existing international instruments and covenants and ratify them where this has not been done. Mere ratification, however, will not suffice unless measures are taken to incorporate these codes into national law.

Thereafter, consideration might be given to the framing of regional charters that permit a freer flow of information between Commonwealth countries, as for example in South Asia or Africa, as a prelude to evolving a broader Commonwealth media charter incorporating best practice and higher standards.

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