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Role And Responsibility Of Media Monitors
From the Perspective Of Sri Lanka

By

Patrick De Alwis
In Sri Lanka newspapers have been published since 1834. That is how long journalism has prevailed there. Through the years since then, Sri Lanka has developed a media monitoring process as in other parts of the world. However, this process was mostly unofficial till the establishment of the Sri Lanka Press Council in 1973.

The freedom of the media is cardinal to the democratic process. Everyone has his own opinion about the role of the press, the power of the press, the usefulness of the press and the responsibilities of the press in a developing society.

In Sri Lanka anyone is at liberty to publish one's own newspapers or magazines and it has been the practice for individuals and organisations who think their views are not adequately reflected through the national newspapers, to publish their own newspapers. Consequently, there has been an abundance of publications expressing divergent views on national and other issues.

This is a good sign and an indication that the freedom of expression and of the press is entrenched in Sri Lanka. I think we can agree that modern society cannot live without newspapers. To most people newspapers are as important as food and drink.

In Sri Lanka there are ten national daily newspapers with an estimated total circulation of about 600,000 and eight weekend newspapers published on Sundays with a circulation of over one million.

The advantage the press enjoys over the legislature and the executive and other limbs of the modern State nowadays is that it can reach and communicate with millions of people every morning and afternoon, feeding them news and views.

This places a tremendous responsibility on the press, for in general most people form their opinions and collect their information from newspapers. This information and views can be affected not only by selection, omission and change of emphasis but also by carelessness and failure to verify and check up facts at newspaper offices.

Newspapers, however, have special responsibility, especially in developing countries because they are powerful engines of publicity generating forces for influencing the minds of men and women, not merely by what they say in editorials, what they publish as articles and letters, but also by the information they publish, the manner in which they publish it, and what they choose not to publish.

In an advanced country there are so many correctives: newspapers and periodicals of various shades of opinion, numerous radio and television stations, active societies dealing with every aspect of public and commercial life that the truth crystallises quickly even when feelings run high.

Walter Lippmann, one of the most respected journalists of New York Times fame once said: "As the free press develops, as the great society evolves, the paramount point is whether, like a scientist or scholar, the journalist puts truth in the first place or the second."
The press, for its part, has an obligation to the government in power. In a developed country, where the traditions of democracy are understood and well established and the patterns of government have taken shape over hundreds of years of trial and error, it is easy to build on foundations that are solid. In a developing country, the nation has to be created first. The battle has to be fought on many fronts: the safeguarding of democratic institutions, the economic struggle, racial, religious and linguistic divisions and class consciousness. Developing countries are never far from the brink of the precipice. The role of the press is that of upholding the rule of law, promoting national unity and political stability and working for social justice.

The press has also a duty to discipline itself. Like the priest, the journalist is always engaged in preaching to or telling the world Lord Devlin, one-time Chairman of the British Press Council, said at a meeting of the Commonwealth Press Union, that the press "must conform to certain standards of conduct." This did not mean a written code of rules enforceable by penalties, but it did mean that no journalist could decide for himself what standards he chooses to observe. He added that the press is free because the public as a whole wanted it to be free. This inevitably means that the public is concerned in the way in which the freedom is exercised.

Since the press has the last word, and is usually very sensitive to criticism, most people are rather reluctant to make any reflections on the press. In general, they are sufficiently vain to avoid giving the press any occasion to make them look ridiculous. But as you all are aware, in a newspaper office, newspapers are run by human beings, suffering from the weaknesses, failings and the ailments of other people even though the press must always claim superior wisdom and is given to pontificating.

A few years ago in Sri Lanka there was an ongoing public dialogue on "Free press and fair trial."

Among the views expressed was that the principle of free expression and the principle of non-interference in the due administration of justice are both important principles in a democratic society. But these principles reflect competing interests. So long as each principle operated in its own sphere, ritual veneration can be offered and lip service can be paid to both. When those two principles collide it is the judiciary that has to draw the line between them and it is the public that examines the debris that falls out of the collision.

Another view expressed was that conducting a trial by media "in parallel with a legitimate trial might hinder the legitimate trial."

Yet another view expressed was that of all the basic freedoms in the world today, the most precarious are the rights to express opinions and associate with like-minded persons for the purpose of opposing and eventually deposing the government in office.

The challenges and threats to these basic freedoms come in various forms and guises. Some of them are overtly authoritarian while others are more skillfully disguised and wear the cloak of legitimacy.

The real threat to the exercise of the citizen's fundamental right to freedom of speech and expression, however, lies in the possibility of proceedings being instituted not for any bona fide purpose but merely to stifle an inconvenient debate or discussion and thus avoid damage to the government's own popularity.
Under the circumstances, a new parliamentary enactment was urged to clarify some of the doubts that arise relating to the whole content of the law of contempt so as to permit a reasonable degree of public discussion even when judicial proceedings are pending.

Another matter that has been publicly focused is the confidentiality of sources of information resorted to by journalists.

At present there is no provision for a journalist to claim privilege and this has hindered the most beneficial kind of journalism in the Sri Lanka setting being practiced with vigour.

Opinion has been expressed that if the community seriously expects the press to play a fearless and creative role in exposing irregularities and malpractice in all areas of public life, the journalist should be able to claim privilege.

Particularly in investigative writing, journalists can get people to speak with candour only if they can convincingly be assured that their identities will not be disclosed.

The present position is privilege can be claimed not as a matter of inflexible right available to the journalist, but in the exercise of judicial discretion. What is recommended now is recognition of journalistic privilege as a matter of incontrovertible legal principle.

In some countries, the fundamental rules of the freedom of expression and the freedom of the press have their place in the Constitutions but the rest of the provisions exist in ordinary statutes.

In Sri Lanka the limitations imposed upon the freedom of expression are of the same kind as in most countries. They are meant to protect, for instance, the national interest, the social life, and the rights and interests of the individual.

The freedom and independence of the media is of course not to be seen as a privilege of the publishers, editors and journalists. It is most important that the freedom and independence is used in the interest of the citizens. The media are a tremendously mighty power in a democratic society. It is therefore the duty of the Parliament, Government and Judiciary (the law courts, the judicial system).

One cannot exaggerate the importance of free and independent media - with clever editors and journalists, of course - who can and dare to expose abuses of powers and evil practices and work for necessary reforms.

All this is of course to the benefit of the citizens. But what happens if the power of the media is misused to harass individuals? It is a frightful experience for a citizen to be the victim of an attack from a big newspaper or even several newspapers.

This brings us to the other side of the coin. There are areas where individuals must be protected from the media.

In Sri Lanka there is a civil law of defamation based on the Roman Dutch Law and a criminal law of defamation based on the Penal Code.

Defamation is the unlawful publication of anything which tends to injure the reputation of a person. Every person who takes part in publishing or procuring the publication of defamatory matter is prima facie liable to the person defamed. Thus, where defamatory matter is published in a newspaper, not only the writer but also the editor, printer, publishers and proprietor can all be sued in a civil action.

The three principal defences open in an action for defamation are Justification, Privilege, and Fair Comment.
Justification is a defence for the defendant to show that the statement complained of was true and the publication of it was for public benefit or in the public interest.

Privilege is the protection which the law affords to a person who makes a defamatory communication in the exercise of a right or the discharge of a duty.

Fair comment is a good defence for a defendant to show that the statement complained of is a fair comment on a matter of public interest. It is the right of every man to comment freely fairly and honestly on any matter of public interest.

To ensure that journalists follow certain norms in practising their vocation, rules were made by the Sri Lanka Press Council, setting out a Code of Ethics for journalists which was approved by Parliament and which became effective from 1981.

The code is as follows:

1. 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 commission or 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.

2. 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.

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

4. 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.

5. (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 reporting or publishing any offensive details.

6. A journalist shall not commit plagiarism.

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

8. 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.

9. 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.

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

As the main monitoring institution in Sri Lanka, the Press Council naturally will endeavour to ensure that journalists observe the Code of Ethics. However, this is not the only function of the Press Council.

According to the Sri Lanka Press Council Law, the objects of the Council shall be:

(1) to ensure the freedom of the press in Sri Lanka, to prevent abuses of that freedom, and to safeguard the character of the Sri Lanka press in accordance with the highest professional standards;

(2) to ensure that newspapers shall be free to publish as news true statements of facts, and any comments based upon true statements of facts;

(3) to ensure on the part of newspapers and journalists the maintenance of high standards of journalistic ethics, and to foster a due sense of both the rights and responsibilities of citizenship;

(4) to improve methods of recruitment, education, welfare and training in the profession of journalism;

(5) to promote a proper functional relation among all sections engaged in the production or publication of newspapers, and the establishment of common services for the supply and dissemination of news as may from time to time appear to be desirable;

(6) to undertake research into the use and needs of the press, to keep under review developments likely to restrict the supply of information of public interest and importance and developments in the Sri Lanka press which may tend towards concentration or monopoly, and to suggest appropriate remedial measures in relation thereto;

(7) to advise the government on any matter pertaining to the regulation and conduct of newspapers.
Additionally the Council may -

(1) require the proprietor, printer, publisher, editor or journalist of any newspaper to furnish to the Council such returns and information on such matters as it may deem necessary for the purpose of performing its functions under this Law;

(2) prescribe a code of ethics for journalists;

(3) study developments which may tend towards monopoly or concentration of ownership of newspapers, including a study of the ownership and the financial structure of newspapers, and suggest appropriate measures in relation thereto;

For the purpose of any inquiry held by the Council under this Law, the Council shall have all the powers of a District Court -

(a) to summon and compel the attendance of any person;

(b) to compel the production of documents; and

(c) to administer any oath or affirmation to any person.

In this Law, unless the context otherwise requires -

"Commissioner" means the Press Commissioner appointed under this Law and in relation to inquiries held under this Law and proceedings before the Council, includes any officer authorized in that behalf by the Commissioner;

"newspaper" means any paper containing public news, intelligence or occurrences, printed or published in Sri Lanka, but does not include any proclamation, notice, or other public paper printed and published under the authority of the Government, or any paper containing only lists of current prices, or the state of markets, or accounts of the arrival, selling or other circumstances relating to merchant ships or vessels, or advertisements of a commercial or like nature, or advertisements previously published in the Gazette; "prescribed" means prescribed by regulations made under this Law.

Hereby can be understood the nature and volume of work undertaken by the Sri Lanka Press Council in monitoring the media in Sri Lanka. As stated earlier, while the Sri Lanka Press Council is the main official body that monitors the media, there are several other organisations too that perform this function. However, it must be emphasized here that these other organisations are either detached or parochial in their outlook and outreach.

For example, there are the Courts of Law, they are not monitoring agencies; but when libel or related cases are brought to their purview, they naturally act as monitoring agents.

Then, there is Parliament, though neither in its official nor unofficial capacity is also drawn into the monitoring process whenever its attention is alerted over media excesses.

Contd...
The government itself, on occasion, monitors the media through the medium of press censorship. Particularly during times of national disturbance, government is known to have clamped down hard on the press through Emergency Regulation imposing Press Censorship. Sometimes covertly such censorship has been introduced for no valid reasons.

Fortunately, the present government in Sri Lanka has decided to go transparent and has vowed Press Freedom.

It was as recent as July 1st, that President D.B.Wijetunga himself addressed all who mattered in the national media — proprietors, editors and government information officials and emphasised his intention of not interfering with the Freedom of the media, however vicious they were in their onslaught on the government and its activities. He, however, appealed to them to be honourable in their interest of the nation and be balanced and objective in their reporting. This can be considered a very reasonable request by the President.

Next, we have journalist organisations in Sri Lanka who act as monitoring agents. The established associations and trade unions of journalists have their own outlook in such operations. Rarely have they known to be national in intent. However, their contribution though minimal is encouraging.

More recently, a movement comprising a configuration of personalities, including journalists, established a Free Media Movement and demonstrated in Colombo and outside against police and political harassment of media men. They were able to obtain national and international recognition for their efforts but little compensation for what they were fighting for. Their failure stemmed from their declared political affiliation to anti-government groupings.

Finally, we find the media itself acting as a monitoring agent, focusing on each other and in a veiled fashion, casting doubts on the performance of one another.

While ideal monitoring circumstances do not prevail in Sri Lanka there is acceptance of the findings reached at the AMIC, WACC (UK), and ICES(Colombo) sponsored, with support from FES (Colombo), Regional Seminar on Communication Ethics from a South Asian Perspective, last November in Colombo.

The findings titled “Towards a New Ethics for the Media Profession” were as follows:

1. There is a need to upgrade the professional competence and capacity of media practitioners throughout the region, since this is a necessary foundation for the raising of ethical standards in the media.

2. Existing codes of ethics, laid down by Press Councils, are in some ways obsolete and inadequate to meet present needs and have no effective means of enforcement to back them. These codes should be reviewed and revised to give them contemporary relevance.

3. Since most of the currently existing Press Councils in the South Asian region act in effect as Government agencies, they should be replaced by Media Councils, covering all media — print, audio and visual — and acting not as extensions of the State but as genuinely independent bodies and perceived to be so. Such Media Councils should comprise respected media practitioners and eminent persons from public life through a mechanism ensured by appropriate legislation.
A genuine problem exists in the absence of machinery for meaningful redress in cases of serious criminal libel in the media. Because of the phenomenal burdens on the judicial system justice is often denied by being delayed. The proposed Media Councils should therefore be vested with appropriate judicial powers.

It is urgently necessary that professional bodies of media practitioners undertake the task of monitoring coverage in areas of ethnic and communal violence and violation of human rights and the rights of minorities, women and children. These bodies should evolve a mechanism for corrective action whenever ethical standards are violated in these fields.

A New Framework for teaching Communication Ethics

1. Media ethics should be recognised as a specific course at the undergraduate and graduate levels at colleges and universities and centres offering training in both print and electronic media as well as becoming part of in-service training.

2. Media ethics should be looked at in a comprehensive way to assimilate emerging issues of ecology, gender, children and the like.

3. Codes of ethics of advertising for both national and transnational media need to be reviewed by professional bodies and citizens' movements, particularly in regard to portrayal of women and the commercial exploitation of the innocence of children.

4. In the development of curricula for media ethics, a series of case studies, for example of ombudsmen, in the practice of media ethics, should be highlighted for critical appreciation of a wide range of practical problems. In this respect, specialist training should be organised for teachers and trainers of media ethics.

5. It is imperative that the media, both print and electronic, make their ethical norms public and explain them to audiences and readers on a regular basis.

6. The introduction of media studies in secondary schools for understanding the nature and responsibilities of the mass media should be encouraged. This is crucial for the fostering of ethical awareness. The media should also cooperate with media reform movements which work for the greater public good.

7. The participants are convinced that three fundamental principles of media ethics are non-negotiable and must be adhered to at all times. They are:
   a) Commitment to truth,
   b) Respect for human dignity,
   c) Concern for the vulnerable, disadvantaged and oppressed.

8. The media must reinforce acceptance of socio-cultural pluralism in the understanding that a plural society strengthens democracy and safeguards national integrity.

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