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<td>Gunewardena, Victor.</td>
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<td><strong>Date</strong></td>
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<td><a href="http://hdl.handle.net/10220/3038">http://hdl.handle.net/10220/3038</a></td>
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Paper No. 9
COMMUNICATION ETHICS AND THE ROLE OF THE STATE

Victor Gunewardena

1. Introduction

This presentation seeks to identify the role of the State in promoting the observance of communication ethics by the various mass media of social communication and the rationale for so doing. Where the promotional role of the State is inadequate, the paper discusses what measures the State can take to afford redress to parties aggrieved by violation of ethical norms by publication, or other action which the State could take as being necessary in the public interest in order to bring offenders to book.

In examining the role of the State in this context, the paper looks at some Codes of Ethics for Journalists as they have evolved in South Asia and compares them with counterpart codes in some of the western democracies. In doing so, a distinction is sought to be made between codes that were the outcome of the initiatives of journalists themselves and those that resulted from the initial prompting or action by the State.

The paper also looks at institutions, either voluntary or set up by law, that monitor the observance of codes of ethics.

The nexus between the contents of codes of ethics and the general law or special laws relating to publication is also examined in so far as the State's enforcement role is an aspect of its function of good governance in the public interest.

2. Ethics an aspect of journalist's social accountability

By ethics in the present context is meant socially accepted values or moral norms, the observance of which is perceived as obligatory and as a necessary condition for the exercise of the right of freedom of expression, by whosoever who chooses to exercise that right. Where this right is exercised by journalists or other professional communicators it is presumed
that such exercise is within a framework of social values or moral norms, whether written or unwritten.

In most countries where newspapers have been published for over a hundred years there was no formal code of ethics, but only a legal framework. Nevertheless, newspapers appear to have been guided by an unwritten code.

In the US, for instance, Benjamin Franklin while stressing the importance of a free press wrote in an "Apology for Printers" (1731) that, "Printers are educated in the belief that when men differ in opinion, both sides ought equally to have the advantage of being heard by the public; and that when truth and error have fair play, the former is always an overmatch for the latter. Hence they cheerfully serve all contending writers...."¹

Bethell observes that the US theory of a free press is based on the assumption that it is best achieved by not vesting any public body with the power to impose standards of "responsibility" upon the press and that in the "marketplace of ideas" truth will win out over falsity and that good newspapers would drive out bad ones.

However, Bethell contends that while the inaccurate or misleading newspaper is much more likely to go out of business than the one perceived as being truthful, in the matter of taste, "especially in the matter of appeal to the prurient interest by publications of sexually explicit material", there is "good evidence that the bad is likely to drive out the not-so-bad....". Bethell goes on, "in that sense, then, there is no doubt that those publications who, for commercial gain, take the step from licence to licentiousness do thereby threaten the freedom of the press for everyone."²

2.a Two significant developments

In the immediate aftermath of World War II, two parallel developments occurred, one in Britain and the other in the US, which had a significant bearing on the theme of ethics in mass communication. In Britain, the Royal Commission on the Press (1947-49) issued its report, in the course of which it sought


² Ibid. p43.
to put the onus of formulating a code of ethics on those who were jointly engaged in the professional of journalism. The relevant section reads:

"Although the physical production of newspapers is an industrial process, their editorial production can properly be regarded as a profession. But journalism differs from other professions in that the direct responsibility which the individual practitioner normally bears to his client is in journalism indirect and diffused. The direct relationship is between the newspaper and the reader, and the responsibility is shared among all those who serve and shape the newspaper's personality, whether they are individual proprietors, directors, managers, or working journalists. We should like to see all those who share this responsibility regard themselves as members of a single profession, with the means of formulating and upholding a common conception of reputable professional conduct."

It is on the recommendation of the Royal Commission that the Press Council was set up in Britain in 1953. Among its objectives was to maintain the character of the British press in accordance with the highest professional and commercial standards. The work of the Council was largely concerned with complaints by individual members of the public, organisations and local bodies about the publication of errors of fact and contested opinions, intrusions by the press into the private lives of persons, and other breaches of professional conduct. The Council also promulgated its views on ethical concepts applicable to all newspapers. It had no statutory authority, but only powers of rebuke and publicity.

Lord Shawcross, a former Attorney-General of Britain, discussing the need for, and the practicability of, establishing professional standards for journalism in an interview with The Journal in 1964, thought the task should be undertaken by journalists for their protection. However, the Press Council being a more fully representative body, Lord Shawcross thought it could address the issue of the adoption and enforcement of professional standards.

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2.b Intervention by civil society

Coincidentally, the parallel development in the US was the publication in 1947 of "A Free and Responsible Press", which is a general report on mass communication. It was issued by the Commission on the Freedom of the Press, which comprised mainly American academics - Professors of Law, Political Science, Economics, History, Philosophy, Ethics and Anthropology. They confined their study to the role of the agencies of mass communication in the education of the people in public affairs. Their report deals with the responsibilities of the owners and managers of the press to their consciences and the common good for the formation of public opinion.¹

Unlike in Britain, the US intervention to ensure ethical standards in professional communications through the media was by a group of persons drawn from civil society. While the First Amendment is a Constitutional guarantee to the US citizenry of the freedom of expression to participate actively in political and social affairs without fear of government interference, nevertheless there are legal restrictions on freedom of speech such as those relating to libel, obscenity and the regulation of electronic mass communication. This last function is the responsibility of the Federal Communications Commission, which was set up under the provisions of the Communications Act of 1934.

2.c Concept of moral duty

The major concern of the 1947 Commission on the Freedom of the Press was on the moral aspect of freedom of expression, which is derived from the concept of duty, both individual and social.

For instance, the Commission states as a cardinal principle that the "tremendous influence of the modern press makes it imperative that the great agencies of mass communication show hospitality to ideas which their owners do not share. Otherwise, these ideas will not have a fair chance...." While the Commission contends that there is a moral right of free public expression, it also argues that such a right is not unconditional, so that the claim to that right is based on the

duty of a person to the common good and to his own thought. But the ground of the claim is invalid when this duty is ignored or rejected. "In the absence of accepted moral duties, there are no moral rights. Hence, when the man who claims the moral right of free expression is a liar, a prostitute whose political judgement can be bought, a dishonest inflamer of hatred and suspicion, his claim is unwarranted and groundless. From the moral point of view, at least, freedom of expression does not include the right to lie as a deliberate instrument of policy."

It is also interesting to observe that, as the Commission puts it, "the right of free public expression does include the right to be in error", but not the right to be deliberately or irresponsibly in error.6

Thus we see that the ethical consideration is also a professional norm in that facts are sacred, as the oft-quoted statement of C P Scott, editor of the then Manchester Guardian put it. The imperative of striving for accuracy is an aid to credibility. If a newspaper ceases to be credible, it loses the rationale for its existence, for what it purports to purvey as news is inaccurate and unreliable as information. Hence, its social usefulness is in question.

3. Freedom of expression: Provisions in international instruments

The dimension of human rights and their corresponding duties has been brought increasingly into focus since the adoption by the United Nations General Assembly of the Universal Declaration of Human Rights (UDHR) in December 1948. The UDHR constitutes an obligation for the members of the international community, and with the entry into force in 1976 of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) the formulation of the International Bill of Human Rights was completed.

Of special relevance to this discussion is Article 19 of the UDHR and Article 19 of the ICCPR, which both proclaim the right to freedom of expression. In the ICCPR Article 19 not only sets out the right but also the positive content of freedom of expression. However, it also sets out permissible restrictions in paragraph 2 and in paragraph 3 the

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6 Ibid.
requirements that the restrictions must comply with. The three-part test for legitimacy of restrictions comprises:

1. Any restriction must be provided by law

2. It must serve one of the legitimate purposes expressly enumerated in their texts

3. It must be necessary

The permissible restrictions by law must be those that are necessary -

a. for due recognition and respect for the rights or reputations of others;

b. for the protection of national security or of public order or of public health or morals.\(^7\)

Freedom of expression may also be limited by the right to a fair judicial hearing (Art 14, ICCPR) the right to privacy (Art 17, ICCPR) and restrictions on the advocacy of national, racial and religious hatred.

In Sri Lanka, the legal safeguards deemed necessary are provided for either under the general law or in specific enactments relating to publication. Restrictions on the exercise of freedom of expression in exceptional circumstances can be imposed by resort to regulations under a State of Emergency provided they are not inconsistent with the relevant Constitutional provisions.

4. Self-regulation: Press Councils and Codes of Ethics

Just as the UDHR and the ICCPR helped the international community clarify and enlarge human rights awareness and the corresponding obligations not only of member states of the United Nations but also of its citizens, the establishment of organisations to promote self-regulation in the press, defend press freedom and represent it to Government, Parliament and the public when press freedom was endangered, was a new phenomenon. The emergence of Press Councils was in some countries partly owing to the initiative of the State and in others the outcome of action by journalists themselves. For instance, the British Press Council which was set up in 1953 was a result of the Royal Commission Report on the Press (1947-49). But in Germany, journalists’ organisations took the

initiative to create the German Press Council in Bonn on 20 November 1956, which sought among other things to "remedy abuses by newspapers and magazines and to fight professional attitudes and practices which did not correspond to the press's responsibility to the public; this it was to do solely by appealing to the good judgement of journalists".  

Although the German Press Council did not formulate a Code of Ethics to be observed by journalists, there is express recognition by professional organisations of the relationship of duty to the public. The rule on care or the duty to check the truth, content and source of all news before publication is specified in all the state press laws. Besides, "the press is also subject to laws which apply to everyone".  

In Britain, the Press Council was replaced by the Press Complaints Commission in 1992. Its activities were to include "publishing, implementing and monitoring a comprehensive code of practice". The Commission has the task of adjudicating on complaints from persons directly affected by breaches of a code of conduct.  

The Commission was set up by the British Government under the chairmanship of Sir David Calcutt, QC, to report on privacy and related matters.

4.a South Asian experience

The Indian Press Council is the oldest of such bodies in South Asia. It was set up by an Act of Parliament (No 34) in 1965 and amending legislation was introduced in 1970 (Act No 6). Although empowered to draft a Code of Conduct for newspapers, news agencies and journalists "in accordance with high professional standards", the Council has refrained from doing so, which it believed would evolve from its own deliberations. It exercises the power of admonition of newspapers and journalists whom it has found have aggrieved persons or institutions by publishing particular items of news or comment.  

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9 Ibid, pp77-78.

In Pakistan, a Code of Press Ethics was a forced compromise between the then government and the Council of Pakistan Newspaper Editors (CPNE) and was drawn up and signed on 29 July 1965 as a condition for rescinding several of the provisions of the Press and Publications Ordinance of September 1963 and its subsequent Amending Ordinance. The Ordinance was repugnant to publishers, editors and working journalists. Some of the rescinded provisions were written into the Code and a Court of Honour presided over by a retired Judge was provided to implement it.

After protracted negotiations between the Government and the CPNE and the All-Pakistan Newspaper Society (APNS), the 1963 Ordinance was replaced in 1988 by the Registration of Printing Press and Publications Ordinance, which was said to create a relatively freer atmosphere for the press.\[11\]

In Nepal, the Constitution promulgated on 6 November 1990 guarantees freedom of expression and thought [Art 12 (a)] and press and publication rights of citizens (Art 13). The Press and Publication Act of February 1992 makes legal provision for the respective constitutional guarantees. Also in 1992, a new Press Council Act was adopted replacing the earlier Act of 1970. The old Council was set up by the Government to oversee matters relating to professionalism and press standards. The new Council enjoys quasi-judicial rights relating mainly to complaints alleging violation of ethical standards, prejudicial behaviour, etc. The Council has also formulated a Code of Conduct for journalists and newspapers.\[12\]

In Sri Lanka, eight years after the Sri Lanka Press Council was set up, under Law No. 5 of 1973, a Code of Ethics for journalists was drawn up by the Council under Section 30 (i) (a) of the Law, which provides for the Council to make rules (a) setting out a code of ethics for journalists. The rules were approved by Parliament under Section 30(3) of the Law and were published in a Gazette Extraordinary on Wednesday, 14th October 1981 under the hand of the Secretary, Ministry of State.

Here is the text of the Gazette.


1. The 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 commission or wilful omission;

(d) take all possible steps to correct within the shortest possible space of time any inaccuracy or incorrect information of 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 any source of information unless the person who gave him 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 18, 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.

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 in money, kind or service for any matter connected with or incidental to his profession.

This Code was formulated reportedly in consultation with the Editors of the mainstream newspapers at the time of formulation. However, there does not appear to be widespread public awareness of the Code. So much so that the present People’s Alliance Government recently appointed a committee of four Cabinet Ministers to report on and draft a Code of Ethics for newspapers. It was occasioned by newspaper articles that were critical of the life style of leading politicians of the present Government. It is alleged that some of the matters reported and commented on were factually incorrect.
The foregoing account of the South Asian experience suggests that the State played a major role in the setting up of Press Councils, which in turn were required to draft a Code of Ethics/Conduct. Nevertheless, there has been criticism that neither the Press Councils nor the Codes of Ethics have achieved the purposes that were desired. Often self-regulation has failed and aggrieved persons and institutions have had recourse to legal remedies provided for under the regulatory framework pertaining to publication.

5. Some voluntary Codes of Ethics

In the US, the earliest Code of Ethics, called "Canons of Journalism" was adopted by the American Society of Newspaper Editors (ASNE) in 1922. That Code was replaced in October 1975 by the Statement of Principles, which was adopted by the Board of Directors of the ASNE. The Statement enjoins journalists to observe a standard of integrity proportionate to the journalist’s singular obligation. The Statement deals with the subject of responsibility, freedom of the press, journalists' independence and integrity, truth and accuracy, impartiality and fairplay.

The Society of Professional Journalists adopted a Code of Ethics at a national convention in 1973. The Code was twice revised, in 1984 and 1987. It makes similar points as the ASNE Statement but spells them out in some detail.

The Associated Press Managing Editors in their Code, adopted in 1975, presents it as a model for journalists in the belief that they should adhere to the highest standards of ethical and professional conduct.

Also in 1975, the National Conference of Editorial Writers adopted in Philadelphia a Basic Statement of Principles that should guide editorial writers.

In 1987, the Society of Professional Journalists, Sigma Delta Chi adopted a Code which stresses the journalist’s obligation to perform with intelligence, objectivity, accuracy and fairness.

As observed by the APME in its Code, no code can prejudge every situation. "Commonsense and good judgement are required in applying ethical principles to newspaper realities".
But the major difference between the American journalistic experience and the South Asian one is a higher degree of professional organisation and independence from government. In South Asia the codes of ethics are required to be monitored by the Press Councils, which appear to have some nexus with the government of the day.

6. Codes of Ethics for electronic media

Both in the US and in South Asia the electronic media come under close State supervision and regulation in respect of advertisements and some aspects of entertainment.

For instance, in Sri Lanka there are government restrictions on electronic media in that no tobacco and liquor advertising is allowed, comparative advertising is disallowed and superlatives and absolute claims are generally not allowed. However, there are no restrictions on tobacco or alcohol advertising in cinema other than the health risk warning about tobacco. The Formulatory Committee on Pharmaceuticals maintains a tab on advertisements in the media which make spurious claims. Similarly, the Food and Cosmetics Act provides for state scrutiny on related advertising.

The Sri Lanka Broadcasting Corporation and the Sri Lanka Rupavahini Corporation (TV) enforce their respective codes stringently.

Bangladesh has even more restrictions on TV advertising than Sri Lanka. India and Pakistan have fewer than Bangladesh.

In the US, sources of consumer information, attitudes and health behaviour related to the electronic media are subject to regulation by the Federal Communications Commission. Advertisers are enjoined to adhere to codes. Besides codes of ethics, such state agencies as the Food and Drugs Administration, the Federal Law and Federal Trade Commission through their respective regulations seek to prevent illegitimate attempts at persuasion of consumers by advertising on electronic media. This is a sphere of consumer protection in which the State must play a major role in the public interest.

7. Conclusion

Codes of Communication Ethics are never fool-proof and cannot be expected to deal with every situation, especially in a
society in which rapid advances in technology tend to transform the mode and content of communication radically. As for the professional communicator, there is no substitute for a moral sense or framework of values perceived as obligatory and as a necessary condition for the exercise of the right of freedom of expression.

As for the State, it cannot adopt a non-interventionist attitude. Good governance requires enforcement of law, especially when the discipline of self-regulation fails or is disregarded, at times outrageously.

Nevertheless, the role of the State in ensuring adherence to communication ethics cannot be considered in isolation from each country's political culture. It is a fact that the press in each of the South Asian countries reflects the deep divisiveness within each of our multi-ethnic, multi-lingual and multi-religious societies. The factor of discord is compounded by other constraints - statutory, structural and functional - that impinge on the communications industry. The onus, therefore, of ensuring the observance of communication ethics is ultimately the shared responsibility of the professional communicator, the State and civil society.