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Mass Media Law In The Philippines

By

Benjamin V Lozare
Mass Media Law in the Philippines

Benjamin V. Lozare

It is important to recognize that the law as written could be very well different from the law as practiced, and that the noble intentions of lawmakers could also be quite far from the impact of the law. It is a basic premise of this paper that in understanding media law in a given country one also need to study and understand the following:

a) How laws are made

b) Who makes the law and what the characteristics and interests of the lawmakers are

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1 Preliminary discussion paper presented at the Asian Mass Communication Research and Information Centre Seminar on Mass Media Laws and Regulations in Asia.

2 Dean, College of Arts and Sciences, University of the Philippines, Manila
c) The social/political/economic context of the legal process
d) How laws are practiced
e) How laws are evaluated and revised

Using these dimensions, it is the aim of this paper to highlight important aspects of mass media law in the Philippines with the view of establishing a framework for discussion.

General Considerations

Laws are the quintessential manifestations of policy. (See Appendix A for a Conceptual framework on communication policy and law). The Philippine constitution, which is the foundation of Philippine policy guarantee the freedom of speech or of the press. In Sec. 9 of the Bill of Rights of the 1973 Constitution, the provision states that:

"No law shall be passed abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances."

Section 6 of the Bill of Rights give clear recognition of the citizens' right to be informed.
"The right of the people to information on matters of public concern shall be recognized. Access to official records and to documents and papers pertaining to official acts, transactions or decisions, shall be afforded the citizen subject to such limitations as may be provided by law."

Article XV, Section 7 rules that the ownership and management of mass media shall be limited to citizens of the Philippines or to corporations or associations wholly owned, and managed by Filipinos.

Section 2 of the same article states that the governing body of every entity engaged in commercial telecommunications shall in all cases be controlled by citizens of the Philippines.

The 1973 Philippine constitution, therefore defines three basic considerations of mass media law:

1) The inviolability of freedom of expression and of the press
2) The right of citizens to be informed
3) The use of mass media to promote the interests of its citizens through limitations of ownership.

All mass media laws, in theory, therefore, must be consistent with these three basic principles.
Who Makes the Law and How the Law is Made

Based on the 1973 Constitution, the law making power of the state rests on a parliament - The Batasang Pambansa or National Assembly composed of assemblymen elected by direct vote by citizens in defined electoral districts. A small number, however, is appointed by the President to represent various sectors such as the youth, labor and agricultural workers.

However, Amendment 6 of 1973 constitution gives the President broad decree-making powers and in practice, it has been observed that the President makes more laws through Presidential decrees than the Batasan at a ratio of more than 10 to 1.

An important legal controversy has not been settled under the present regime. Since the 1973 Constitution was "ratified" in a viva voce or show of hands in a "nationwide" gathering of citizen assemblies and not by secret voting, many Filipino constitutionalists argue that the 1973 Constitution (to include the Presidential decree making powers) is not valid and that 1935 Constitution which provides for a Presidential system and a two-party congress patterned after the American system, should still be in effect.
It is not difficult to perceive that Amendment 6, which supposedly gives the unlimited President decree-making powers to include the dissolution of Parliament, makes him in practice as the primary lawmaker.

Since this decree-making power includes the power to issue arrest orders, one can easily see its impact on the behavior of media institutions and practitioners.

The Social/Political/Economic Context of Mass Media Law

Like in many developing countries, Philippine government spokesmen present two basic premises regarding mass communication practice.

01. That "Western-style" concepts of freedom from external restraints should be held secondary to the basic freedom from want. Thus, the popularization of the concept of development communication has been pursued vigourously by the Office of Media Affairs as a "response" to the unique developmental needs of the country.

02. That the development programs of the government require a more cooperative relationship between media and government rather than the "Western-style" antagonistic watch-dog type of relationship.
Political scholars, however, note that unstable socio-economic conditions generally generate social unrest and tensions and oftentimes, the mass media are often used as a social stabilizing force rather than as an engine of progress.

Whether it is indeed valid that authoritarian governments are generally unstable and therefore use mass media primarily as propaganda vehicles for generating more public support, for scholars to demonstrate when data become available in the future. At present, we may simply present this as a hypothesis.

At the risk of being criticized for being too simplistic, let me describe the present Philippine situation as characterized by:

01. Mass poverty
02. Huge external debt
03. A deteriorating economy
04. A concentration of economic power in the hands of a few
05. A growing insurgency problem and increasing social unrest
06. An increasing tension between the government and the public as the government suffers from lack of credibility
07. A concentration of the ownership of mass media to persons identified with the present government
08. An increasing politicalization process where more and more people are getting involved in political activities.

09. The growth of an "alternative press" and "xerox journalism" and to a lesser extent the "betamax news" phenomenon.

10. Significant foreign interference in domestic affairs.

Discussing the implications of all these on mass media practice would take much time so I would rather leave these for the open forum.

Mass Media Laws

Philippine jurisprudence to a large extent follow the major lines of American jurisprudence. Thus, four aspects of the freedom of the press is recognize. These are:

01. Freedom from prior restraint
02. Freedom from punishment subsequent to publication
03. Freedom of access to information and
04. Freedom of circulation.

As described by Fernandez (1984), the constitutional guaranty extend to (a) discussion as well as to (b) advocacy, to (c) statements of facts as well as to (d) statements of opinion and ideas.
Freedom from Prior Restraint

Freedom from prior restraint is generally seen as freedom from government censorship of publications. It is assumed, under Philippine law that no license need to be obtained (except business licenses) before a publication can be printed. If any law or official require it, there is infringement of the constitutional right and remedy can be had at the courts.

In practice, however, limitations are exercised very subtly through media associations as in the case of print, through the Print Media Council. As this association is managed by "practitioners," rules of conduct and ethics which can be described as "self-censorship" operate more effectively than laws on censorship.

Under Philippine Law, prior licence is required, however, for broadcast media on the grounds that it is necessary to regulate radio and television traffic to prevent interference and confusion.

In the case of motion pictures, a Board of Censors issues a permit before a public exhibition of a particular is made on the grounds that movies have a tremendous capacity for evil, especially among the young and that a debate of the issue presented is well-high impossible (Fernandez, 1984).
Freedom From Subsequent Punishment

This aspect of press freedom preclude liability for completed publication of views traditionally held innocent. In theory, opinions on public issues cannot be punished when published, merely because they are novel or controversial or they clash with current doctrines (Fernandez, 1984).

However, Philippine laws cite the following grounds for subsequent punishment:

01. Scandalous or obscene matter
02. Sedition or disloyal writings
03. Libelous or insulting words

As expressed in classical literature on freedom of the press, freedom of the press embraces at the very least freedom to discuss truthfully and publicly matters of public concern without previous restraint or fear of subsequent punishment. As described by Fernandez (1984), discussion to be innocent, must be truthful, must concern something in which people in general take a healthy interest, and must not endanger some important social end which the government by law protects.

Under present conditions, it is difficult to demonstrate empirically what is happening. Without doubt, however, the Philippine Press Club, has expressed alarm over the increasing numbers of media practitioners
who die for reasons other than illness or accident. A number of media practitioners have disappeared without known reason.

Freedom of Information

A recognized aim of freedom of the press is to allow the widest possible broadcast of the best truth available on problems of public concern for the enlightenment of both rulers and the ruled.

Thus official records, reports and documents, unless held confidential and secret by competent authority in the public interest, are public records and are open, subject to reasonable regulation, to the scrutiny of the inquiring reporter or editor (Fernandez, 1984).

Under Philippine Law, information obtained confidentially may be printed without specification of the source and that source is closed to official inquiry, unless revelation is deemed by the courts or by Parliament Vital to the security of the state.

Given the socio/political/economic context described earlier, I need not comment on how these basic principles of law are operationalized or practised.
Freedom of Circulation

Traditional wisdom states that there must be unhampered distribution of print media and other media. Control, however, is usually made through requirement of a permit for distribution and an appropriate penalty if distribution is made without such permit. Another is the imposition of a fee or tax on the publisher or on the distribution, with the intent to limit or restrict circulation.

Fernandez (1984) notes that freedom of circulation in the Philippines seldom meets effective interference. According to him, it is doubtful whether the national government has made serious attempt to evaluate press freedom in this manner. However, censorship is usually not official.

More subtle means, which could be difficult to establish, such as control of newsprint supply and importation of print and broadcast machinery are claims made by opposition oriented media.

Occasional reports are made of publications being withheld "Voluntarily" by publishers but these remain undocumented nevertheless accepted as public knowledge.
SOME OBSERVATIONS

In general, one can make the observation that Philippine laws dealing with mass communication are essentially noble in intentions. However, what needs to be studied and documented is how the law is carried out. Present realities suggest that there is often a wide gap between the objective of the laws and what is being done.

As suggested by the conceptual framework in Appendix A, motivational policies which do not carry sanctions or threat of penalties also restrict the range of freedom of the press and perhaps should also be the subject of close study.

Little material is also available in the following areas and they deserve further study:

1. How a law is made and corrolarily, if one accepts the principle of participative democracy, how wider citizen participation in law making can be achieved.

2. How laws can be evaluated systematically and periodically and revised appropriately.

3. How laws can be communicated more effectively to the public for their guidance and observance.
Appendix A. Excepted from "Towards A Conceptual Framework for Communication Policy Development" by Benjamin V. Lozare

Forms of Policy

Stephen Chaffee (1977) presents a most lucid framework for understanding forms of public policy. He notes that policy may be either positive or negative. That is, it may be designed to foster the communication of a specific message or the development of a particular communication infrastructure, or it may be designed to curtail such developments.

Chaffee further notes that a policy may operate in an absolute fashion, or in a motivational one. Negative absolute policies consist of prohibition, and positive absolute policies, of requirement. Positive motivational consist of encouragement while negative motivational policies, of discouragement. Such a formulation can be put in a matrix form as illustrated in Figure 1.

Figure 1. Matrix of Public Policy Forms

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<th>Absolute Policies</th>
<th>Motivational Policies</th>
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<tr>
<td>Negative policies</td>
<td>Prohibition</td>
</tr>
<tr>
<td>Positive policies</td>
<td>Requirement</td>
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It may be assumed, of course, that the range of policy in most situations usually involve all types of policy although
one form would usually predominates. Going beyond Chaffee's formulation, I would like to suggest the following typology of policy orientations based on the dominance of one form of policy.

1) The "Ten Commandments" orientation -
   As depicted in the diagram, this orientation suggest a strong inclination for prohibition. There is very little positive policy and hardly any discouragement. In summary, policies are characterized by don'ts.

2) The "Liberal" orientation - Policies of discouragement dominate in this type. Rather than absolute don'ts, the don'ts are said with a "please".

3) The "Bureaucrat" orientation. As the name suggests, this policy orientation constitutes mainly of requirements, of do's rather than don'ts.

4) The "Seductive Lover" orientation -
   Like Sergio Mendez's lover, this policy orientation is suggestive of encouragements, of incentives, of offerings to induce concerned "others" to behave in the desired manner.
There could be many variants, of course, but the most relevant perhaps are:

5) The "Referee" orientation - Here only the rules of the game count. And rules spell out in black and white what one should do and what one should not do.

6) The "Persuaders" orientation - Everything is said with a gentle please e.g. "Please don't sensationalize crime and sex in media" ... "Please do promote development stories."

7) The "Electron" orientation - Like electrons, this policy orientation involves only negative forms of policy - the don'ts, either absolute or motivational.

8) The "Protons" orientation - Like protons, this policy orientation concerns only the positive forms of policy - the do's
What is the point in setting up this typology? Perhaps to make us aware that certain forms of policy could predominate depending of course on the nature of problems that policy is trying to solve, the relative power or clout that policymakers can throw around, and the nature of relationships among policy makers, policy implementors, policy critics and the public affected by the policy.

The issues then that could be raised include the following: Should we have more motivational policies than negative ones? Should we have more motivational policies than absolute ones? Which form of policy is most effective for a given set of conditions? What should be the optimal range of policy? What should be the optimal range of freedom?

To illustrate these issues, it may be necessary to look at Chaffee's conceptualization of the range of policy and the range of freedom. Figure 2 shows how the range of policy and range of freedom in three different areas of communication can be visualized.
Figure 2. Hypothetical Ranges of Policy and Freedom in Three Areas of Communication (Data Fictitious)

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<th>Entertainment</th>
<th>Advertising</th>
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<td>prohibit</td>
<td>prohibit</td>
<td>prohibit</td>
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<tr>
<td>discourage</td>
<td>discourage</td>
<td>discourage</td>
</tr>
<tr>
<td>Range of Freedom</td>
<td>Range of Freedom</td>
<td>Range of Freedom</td>
</tr>
<tr>
<td>encourage</td>
<td>encourage</td>
<td>encourage</td>
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<tr>
<td>require</td>
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From the figure shown above, we can see that the area not touched by any policy can be called the range of freedom, the residuum of behaviors...both actual and potential...that actors can explore. It follows, therefore, that when the range of freedom is expanded, the range of policy diminishes, and vice versa.

Chaffee (1977) raises some very important questions. What is the actual range of existing policy? What is the permissible range of policy under the Constitution? What is the practical maximum range of policy under various political
conditions?

Considering the Philippines setting, these questions need be preceded by more fundamental issues such as: How do we assess communication needs and problems? What are the possible sources of policy information? Who should participate in the policy-making process? How should policies be made?