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Media Laws And Regulations In Sri Lanka

By

Irvin Weerackody
SEMINAR

on

MEDIA LAWS & REGULATIONS IN ASIA

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Paper Presented

by

IRVIN WEERACKODY

on

Media Laws and Regulations in Sri Lanka
The Laws and Regulations that currently govern the practice of media in any given country, invariably reflect the historical evolution the country in question has gone through. In those traditional societies, that have developed their social and cultural institutions over long centuries, regulation of media practices registers that society's reaction to the increasing influence of the role of media and the changing attitude of the state and the people towards the process of communication.

The proliferation of Laws and Regulations in the field of media is a special characteristic of modern times. As institutionalized communication assumed an ever-increasing potentiality to affect the life of the masses, the functions and practices of media began to receive closer and closer attention of the State. In an open Democratic Society where life is led in a free and liberal atmosphere, the power wielded by media begins to rival even the authority of the State, in some instances. The exercise of the freedom to which media have a right, tends at times to interfere with the freedom of the individual citizen. These are some of the major reasons that dictate the enactment of laws and regulations to ensure fair media practice in a given society where the freedom of media and liberty of the people have to co-exist in a harmonious relationship.

In the far past, when societies were relatively free of the urgent social imperatives that govern life in a modern State, there was hardly any law or regulation that determined the practice of communication. This norm applies with emphatic validity to Sri Lankan society of the early days.

Viewed in retrospect the communications policies in Sri Lanka (if there were any) assume, rather early in the history of the land, the form of unwritten conventions, rendered important and almost sacred by communally upheld tradition. Since laws and regulations usually stem out of an articulated policy, the lack of such a well-defined policy in the field of communications practice invariably implied the absence of enactments and promulgations that laid down firm guidelines for media, (such as they were) in these early times.

Sri Lanka's ancient history, provides ample evidence to prove that a process of communication of some complexity existed at that time. The chronicles of Sri Lanka, which are a unique record in that they set down, without interruption, the history of Sri Lanka, spanning more than 2,500 years, are themselves a high-water-mark of advanced communication. These chronicles, characterized as Mahavamsa (the Great Tradition) and Chulavamsa (the Minor Tradition) are a written narration of the history of Sri Lanka from 543 BC, onwards. They are unequalled anywhere in the world. Archaeological finds continue to bear testimony to the authenticity of the historical record set down in these chronicles.

What is relevant to the present discussion however, is the fact that, though the Island's chronicles are witness to a vast and lively variety of communications activities in ancient Sri Lanka, they do not in any way indicate the existence of laws and regulations that governed the practice of communication in these ancient times.
In those ancient days of monarchical rule, all the laws and regulations that governed the life of the people, issued from the King. All the important enactments, promulgations and decrees were etched on material that lasted for centuries. Edicts and decrees carved upon rock and grants and royal declarations inscribed upon sheets of copper and even of gold have been discovered from time to time, in various parts of the Island. Although, these govern most fields of human activities, including fair-practice in business transactions, there is hardly any reference to an attempt to regulate the practice of communication.

The rulers of ancient Sri Lanka maintained a tenor of life fully appreciative of the areas in which their subjects were entirely free to go their own way. The masses, for their part, knew the limits beyond which they could not strain their freedom with impunity.

It was only a rare tyrant who would upset this meticulously maintained balance. In the long line of Kings of Sri Lanka, only three – Voharatissa, Magha and Rajasinghe – tried to impose curbs on the thoughts of the masses by burning books. Viewed objectively, this is a measure that is decidedly more stern than any law or regulation that has the restraining of the media as its end-aim.

Efforts to regularize the practice of media and communication were initially made, during the days of British imperial Rule in Sri Lanka.

However, even under the British, the media in Sri Lanka enjoyed a measure of freedom that in historical hindsight seems impressive. “Colombo Observer”, (later Ceylon Observer) one of the oldest English Language Newspapers in Asia, pursued a policy of liberal objectivity towards the government, and at times was extremely critical of measures imposed by the State. But, the British Rulers of the day never interfered with its freedom to express what it thought was right.

Rather belatedly in their rule, the British introduced legislation i.e. the PENAL CODE ORDINANCE OF 1883, and onwards, to make certain media practices or rather, mal-practices, offences under the law.

They are:

(a) Publication or verbal dissemination of any matter which excites or attempts to excite disaffection towards the Head of State or the Government; or hatred and contempt towards the administration of justice; or attempts to promote feelings of ill-will and hostility between different classes.

(b) Publication or dissemination of obscene matter.

(c) Publication or verbal dissemination of defamatory imputations.
3.

A direct legal restraint upon unauthorized and irresponsible publications was imposed by one of the earliest pieces of legislation governing media practice in Sri Lanka. This was the PRINTING PRESS ORDINANCE OF 1902, which made it mandatory for the proprietor of any printing press to make a declaration to that effect. It also required that every book or paper should carry the name of the Publisher and the date of publication.

THE PUBLIC PERFORMANCE ACT came initially into force in 1912. This was updated and revised subsequently. The purpose of the Ordinance was to make provision for the better regulation of public performance.

THE OFFICIAL PUBLICATIONS ORDINANCE, which provides immunity from civil or criminal proceedings in respect of publication or reproduction of unauthorized documents was promulgated in 1946.

OFFICIAL SECRETS ACT which came into force in 1955 sought to restrict access to official secrets and secrets documents and to prevent unauthorized disclosure thereof.

Most of these pieces of legislation were intended mainly to introduce discipline and order into certain activities affecting social life.

Legislative enactments which were more significant because of their greater political orientation and which exerted a more fundamental effect on the media, date from the political coming-of-age in Sri Lanka.

Sri Lanka (then Ceylon) became the first country to introduce Universal Franchise in 1931, only two years after Britain. In the ensuing period, the clamour for a greater degree of political freedom increased until after World War II. It was generally accepted that Independence could not be denied much longer and the politicians then in power were getting ready for the transfer of power within a political framework modelled on the British system of Parliamentary government.

Though the wave of unrest sweeping through all the countries in the region – India, Pakistan, Burma, Malaysia and Indonesia – was felt in Ceylon, there were, nevertheless, attempts to rock the ship of state on the eve of Independence in 1947.

Preparing for the worst, the then National Government under the British armed itself with special powers through the PUBLIC SECURITY ORDINANCE OF 1947. These laws remained in the Statute Book without the need to be enforced until 1953 when, in the face of a Marxist-inspired violent countrywide protest movement known as the one-day hartal, the Government invoked the provisions of the Public Security Ordinance for the first time. This Ordinance was further re-inforced by the Acts of 1949 and 1953 and the Ordinance of 1956.
4.

The Ordinance applies to the media in that it makes provision for the prevention or restriction by a competent authority, during proclaimed periods of emergency, of the publication of matters prejudicial to the interests of national security, the preservation of public order or the maintenance of essential supplies and services. Prevention and restriction under the Ordinance applies to news reports, editorials, articles, letters to the editor, cartoons, photographs, television, telegraph etc.

The regulations providing for media censorship were incorporated into the Ordinance in 1956 and it would be of interest to study the political developments that led to this step.

Communal politics in the multi-racial state of Sri Lanka recorded an upward swing in 1956. There were two main causes for this. Firstly, discontent was brewing within the majority Sinhala community due to the conviction that, despite national independence, they were still being deprived their just share of economic and social benefits, and secondly, the minority Tamil community was beginning to become apprehensive that they would be swamped under the numerical strength of the majority and lose many of the privileges they had enjoyed under British rule.

The Sinhala people attributed their disadvantaged position to the pre-eminent status of the English language and attempted to redress the injustice they perceived in this through the Official Languages Act of 1956, popularly known as the Sinhala Only Act which gave Sinhala Language the status of sole official language.

The enthronement of Sinhala Only provoked a reaction among the Tamils who, interpreted it as an attempt to establish the tyranny of the manority. They countered this by demanding effective parity of status for Tamils and the creation of a Federal system of government in Sri Lanka — demands which the Sinhala people viewed as grave provocation.

All this produced a situation which proved fertile ground for extremists on both sides and opportunities to sow the seeds of communal discord and the polarisation of racial groups. Those who were unified in their common struggle against British rule for 150 years and never considered communal distinctions, began now to identify themselves racially either as Sinhala or Tamil. Any injustice done to any one of this community came to be thought of as an injustice done to the whole community.

In such a volatile situation, false mischievous or biased publications were likely to provoke violence and bloodshed resulting in a breakdown of law and order — as indeed they did. It therefore became imperative to impose restrictions on the freedom to publish.

The logical result was the Public Security Ordinance regulations imposing censorship of news. The Ceylon Government, however, was careful not to impose any restriction on the freedom of Parliament or the Judiciary. It was, however, impressed on them that the publication of their proceedings could give rise to unfortunate, even catastrophic, reactions in the country.
The responsibility devolved on Parliament and Courts, therefore, to act as their own censors, thereby preserving their independance yet accepting the responsibility for keeping the people informed with a due sense of discretion.

The next milestone in legislation relating to the media was the SRI LANKA PRESS COUNCIL LAW OF 1973 which was an effort to satisfy the long-felt need for a mechanism to ensure that the press acted with responsibility and conformity with high journalistic ethics.

The prelude to the Press Council Law was the landslide victory in the 1970 polls of a three-party coalition headed by the Sri Lanka Freedom Party.

All three parties had often in the past levelled charges that the press in Ceylon and particularly the Associated Newspapers of Ceylon Limited (popularly known as the Lake House Group) had consistently used its power in an unethical manner in support of the United National Party during elections and in a manner calculated to damage the interests of parties opposed to the UNP.

An attempt had earlier been made by the previous SLFP government in 1964 to take over the Lake House Group of Newspapers the largest and most influential newspaper group in the country. On this occasion shrewd political strategy, however, resulted not only in this ill-fated piece of legislation being defeated but also the fall of the Government.

There was a measure of justification, at least, in the charge of unethical partisanship of the press and as soon as the 1970 coalition came to power, it lost no time in using its steamroller majority to pass the Associated Newspapers of Ceylon Limited Special Provisions Law providing for the acquisition of the Group.

Despite its partiality towards the UNP, the Lake House Group had pursued a vigorous and independent policy and had often been strongly critical of even UNP administrations of the past and there can be no doubt that the take-over has had serious repercussions on press freedom in Sri Lanka.

The Lake House take-over was quickly followed by the Sri Lanka Press Council Law of 1973 which provided for the appointment of a Sri Lanka Press Council with advisory and quasi-judicial functions.

The scope of the Council included the following:

To ensure press freedom and preventing abuses of that freedom;
To ensure the maintenance of high standards of journalistic ethics; And
To inquire into and take action on complaints of untrue, distorted or improper information, breaches of the code of journalistic ethics; and or instances of professional misconduct.
In short, the objective of the Press Council Law was to protect the rights of and privileges of the individual from being unnecessarily infringed by the press.

The Law was an invaluable instrument to help individuals who could not or would not resort to the courts of law to have their just grievances redressed in respect of such matters as defamation, invasion of privacy and the preservation of accepted standards of decency.

Sri Lanka's current ethnic crisis was the furnace in which the Prevention of Terrorism Act of 1978 was forged. Acts of terrorism and organised violence by Tamil separatist militants have continued to escalate over the past several years to a degree where parts of the country are continuously embattled and in a state of siege. In these circumstances, it became essential to ensure that secrecy should be preserved in respect of the governments anti-terrorist strategies and the movements of security forces engaged.

It was also considered necessary to prevent undesirable publicity being given to acts of terrorism and sabotage. The Prevention of Terrorism which meets these needs provides for prohibition of the publication of any matter which constitutes an offence under the Act unless publication has been authorised by a competent authority or of anything which is likely to incite violence or cause racial disharmony.

The restrictions that the three preceding enactments dealt with impose on the media present a conflict between the right of the people to know and the security of the state. The resolution of this conflict would seem to lie in striking an acceptable balance between freedom of publication and the demands of security of the state. The formula for this balance may vary from time to time and from situation to situation. The analogy may be drawn here of the conflict between the right of a patient to know the truth about his health and the right of this physician to decide how much of the truth it is advisable for him to know.

In Sri Lanka today, both the people and the government are aware of this problem. But it may sometimes happen that information is withheld and sometimes false information passed out, a situation fraught with grave danger which only the unflagging vigilance of the people can prevent.

It may be pertinent to mention here that the Constitution of the Democratic Socialist Republic of Sri Lanka enshrines as fundamental, the right of speech and expression including publication, but make provision for the restriction of this right by law in the interest of racial and religious harmony or in relation to Parliamentary privilege, contempt of court, defamation or incitement to an offence.

The post-1956 period also saw the enactment of legislation which falls into the category of laws designed to protect and promote the cultural and moral well-being of society.
These were:

THE PUBLIC PERFORMANCE ORDINANCE OF 1960 whose objective was to ensure that public performances were suitable for public exhibition;
THE PROFANE PUBLICATION ORDINANCE OF 1958 safeguarding the right of every individual to protect his religious beliefs from ridicule or malicious or vituperative attack;
THE CONTROL OF PUBLICATIONS ON HORSE RACING ACT OF 1961 whose objective was the prevention of illegal gaming on horse racing; And
THE INTELLECTUAL PROPERTY ACT OF 1979 providing for the protection of literary, artistic, scientific, dramatic and musical works.

We also have, of course, our own share of codes of ethics governing Advertising Practice.

A case in point is the code of advertising standards and practice stipulated for Television by Sri Lanka Rupavahini Corporation. I presume that this is more or less standard in Asia. It is however unfortunate that, restrictions which have become obsolete due to the current state of social urgencies, are placed by sound Broadcasting and Television media in Sri Lanka, on such products as contraceptives.

In conclusion it is my considered view, that in any dynamic society, one cannot in any way, think of once-and-for-all laws and regulations for media.

But still, even under grave national emergencies, some states in modern open democratic societies have exhibited an admirable readiness to allow the media their fundamental right to freedom of expression.

In such a context, the regulation of media practice should spring from within the media themselves through a deep recognition of their ethical obligations.

The crucial question is are the media, the world over, capable of shouldering this tremendous human responsibility.