

We publish below a general introduction to the reports of the four committees appointed by the government to make recommendations on the reforms necessary to ensure media freedom and summaries of two reports. These are drawn from presentations at a seminar organized by the Center for Policy Analysis and Research of the University of Colombo.

MEDIA COMMITTEE REPORTS: AN OVERVIEW

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It is now just over two years since the People's Alliance formed a government. It was heralded, like all changes of government are characterized, as ushering in a brave new age of freedom, democracy, prosperity, and ethnic amity.... It is not my business today to review the overall performance of the P.A. govt., but rather, to briefly look at the four reports commissioned by the Media Minister apparently in pursuance of the P.A.'s media policy, embodied in a section of the P.A. manifesto titled "For a secure prosperous society where human values reign, devoid of corruption and terror".

The P.A. therefore, attached the greatest importance to strengthening the media and providing a framework within which the media can function independently and without inhibition. This entails significant changes with regard to structures of ownership, policy objectives, the legislative instruments applicable, administrative policy in respect of such matters as facilities and the attitude of government to issues which are indispensable for a sound media policy.

In the course of the government's policy statement on media, it says the following:

The previous government's covert and overt control over most sections of the media, except the alternative press, and its complete dominance over the state-owned media, was one of the main reasons for its unpopularity, and its public image as antidemocratic. This control over the media also encouraged widespread corruption in the government, which the Peoples Alliance government is pledged to eliminate.

Media freedom is one of the key issues which dominated the general election campaign, particularly among the youth, and the hope that there would be greater media freedom under a P.A. administration led to the strengthening of the pro-democracy vote in the general election. The P.A. in its election manifesto has promised media freedom, as an integral component of the policy towards renewal of democracy in Sri Lanka. Media democracy can best be ensured by:

- i. Freeing the existing media from government/political control,
- ii. Creating new institutions, aimed at guaranteeing media freedom as well as raising the quality and standards of free media, both print and electronic.

- iii. Promoting a new democratic media culture, through new practices.

These are elevated and indeed for mere mortals like myself elevating intentions... The problem seems to be the gap between stated goals and implementation of policies.

The first report pertains to the legal framework within which a free and responsible media would function in Sri Lanka, particularly on the reform of laws affecting media freedom and freedom of expression. It is a comprehensive report that primarily deals with expanding the constitutional guarantees that would ensure freedom of expression, and other statutory provisions that will serve the same end.

The committee points out that Sri Lanka's constitutional guarantees of free expression need to be brought in line with its obligations under the International Covenant on Civil and Political Rights ratified in 1980. It suggests that the main deficiency in the constitutional protection of freedom of expression is the impermissible formulation of restrictions. It further suggests that the language of the covenant be used in respect of the right to hold opinions. "Everyone shall have the right to hold opinions without interference. "This would recognize the right to freedom of expression as flowing from the right to hold opinions.

The committee approves of the provisions pertaining to the definition of freedom of expression in the proposals made by the government in November 1994; however, it finds the subsequent formulation in the draft proposals on constitutional reform of May 1995 less preferable. The covenant permits limitations only on certain fundamental rights which are specified, and the additional restrictions proposed in the draft are felt to be in breach of Sri Lanka's international obligations.

Overall, the committee finds that certain provisions in the draft are too wide in their derogations in time of emergency, in its formulation of restrictions, and in respect of judicial review which it recommends should cover all past and future legislation. This indeed was commented on by the human rights committee which urged changes to section 16. The committee proposes therefore that these new constitutional proposals be brought in line with the definitions in the international covenant.

It seems perfectly fair that Sri Lanka's constitution reflect its international obligations in respect of freedom of expression. The

question is, should these provisions be part of a large constitutional package, or should they be pursued as a matter of urgency? As the constitutional reform package seems contingent on the resolution of the ethnic issue, it strikes me that subordinating other perhaps more achievable reforms to it is unwise. It would therefore, be better to seek broad bipartisan support for these changes and implement them, without delaying all because one problem is intractable.

The committee recommends the repeal of section 118 of the Penal Code which makes it an offence to bring the Queen/President into contempt, and amendment of section 120 so that its scope is narrowed and will not hamper peaceful and legitimate criticism of the government. Section 479 - criminal defamation - is a controversial section. This is not the least because of the nexus that seems to exist between the Attorney General and the government. The committee proposes that the decision whether or not to indict for this offence be made by a judge of the high court who will follow the following guidelines:

- (a) There should be a clear prima facie case;
- (b) The libel must be so serious that it is proper for the criminal law to be invoked; and
- (c) Public interest requires the institution of criminal proceedings.

There should be provision for the accused to be heard against the application for permission to indict.

I would like to suggest that generally in cases of defamation, knowing something to be incorrect at the time of publication be also available as a defense. I am not one who subscribes to the idea that the offense of criminal defamation be repealed. It must be available in instances of egregious wrong but should not be available as an instrument of political victimization.

In the opinion of the committee, the four amendments to the Parliament (Powers and Privileges) Act of 1953 should be repealed, as should sections 7 and 8 of the original act of 1953.

The committee has recommended a freedom of information act that would give meaning to the constitutional provision that guarantees it. It should include the following principles:

- (a) Disclosure to be the rule rather than the exception.
- (b) All individuals should have an equal right of access to information.
- (c) The burden of justification for withholding information rests with the government, not the burden of justification for disclosure with the person requesting information;
- (d) Individuals improperly denied access to documents or other information have right to seek relief in the courts.

A right to reply as a safeguard against the publication of factually incorrect information about an individual going uncorrected is another of the committee's proposals. This is appropriate as it focuses on the media's responsibility to be fair. A media council act which is comprehensive and covers both print and electronic media

has been suggested. This would be an autonomous body and would have the power to act on complaints it receives and also initiate action wherever necessary in relation to its objectives. The council should be a well respected body, this this would depend upon its members and its structure. It will then perform a vital role in ensuring ethical media practices, and enhance the image of the media overall.

The committee recommends at some length changes to the laws governing electronic media. This is an area which requires in my view, immediate attention, and where a change of thinking would be very much in order. A law setting out broadcasting policy should be enacted. It should recognize that public air waves are the property of the people of Sri Lanka, and should be freely and amply used in their interest. The policy must also recognize that state broadcasting is not an instrument of the political party or grouping that is in power at that time, but, is part of the nation's wealth. Broadcasting policy must recognize the multi ethnic nature of Sri Lanka, and the principle that private media institutions have a right to function freely. The implementation of broadcasting policy should be in the hands of an independent authority comprising eminent persons.

State media institutions have functioned for many years as the propaganda tools of the government. This concept seems to be dangerously internalized in public thinking. There is, I believe, a need to challenge the notion that the government of the day as of right could and should use the S.L.B.C., Rupavahini and I.T.N. as they please. These institutions have to be measured in terms of how well they perform the task of public service broadcasting. No public service broadcasting institution can be structured and run as for example the S.L.B.C. is. The governing body should be free of all government control and be obligated to fulfil the tasks it is charged with under charter. I urge therefore, that the Canadian Broadcasting Law., the B.B.C. Charter, and other legislation governing public broadcasting in the democratic world be carefully looked at, and a debate begun in the public domain about the need for a radical transformation of public broadcasting. The standards by which public broadcasting and privately owned institutions are judged would be different. While private institutions would have greater latitude in pursuing their editorial lines, public broadcasting institution would pursue well thought out and clearly defined national goals, largely safeguarded from the pressures of the market place. A fair representation of all points of view reflecting ethnic, linguistic and regional diversity etc. would be cardinal principles guiding public service broadcasting institutions.

As the committee recommends, allocation of licenses for private broadcasting institutions should be handled by the independent broadcasting authority, and not as a matter of favour by the government.

The next report deals with broadbasing the Associated Newspapers of Ceylon Limited (the Lake House group). The terms of reference of the committee, as set out by the Minister, empowered the committee to inquire into and make recommendations on the following matters:

(a) Existing regulations and structures of ownership, administration, publishing, recruitment and service of personnel and other functions and activities of the ANCL and measures to transform it into a free and independent media institution of professional and journalistic excellence.

(b) Broadbasing of its ownership with the objective of strengthening media freedom and media democracy.

The committee points out with reference to both the P.A. manifesto, the P.A. gov't's. media policy, and UNP candidate Gamini Dissanayake's Presidential election manifesto of 1994, that there was consensus across the political spectrum, that the present status of ANCL was unacceptable, and that its ownership should be broadbased. In fact, it points out that the 1973 law was to broadbase the ownership of Lake House, not nationalize it. The responsibility therefore of the present regime is not only in terms of its stated objectives in the manifesto, but of implementing the intent of the framers of the original legislation of 1973. If ANCL is to be a truly national institution, its ownership and management structure should reflect the same. Since the principle of broadbasing the ownership of ANCL has the support of the two principle political parties, the only question is of the formula that will be applied. As I see it, it is just a matter of the government's political will and its sincerity to its promise, whether it will proceed or not. If trade unions oppose this broadbasing, it would be helpful for them to air their concerns. Nonetheless, it is worth remembering that no trade union or similar body should thwart what is in the broader interest of the people of this country. It is also worth noting that the government in its privatization programme has not always been guided by the demands of unions. I find that the formula proposed by the committee for the broadbasing of ANCL to be helpful. If there is a need to change the formula, perhaps it could be discussed. The principle however of broadbasing the institution and restructuring it as a means of achieving a free and independent media institution of "professional and journalist excellence" and thereby "strengthening media freedom and media democracy" must be vigorously pursued.

The next committee report is on the establishment of a national media institute. Its terms of reference are as follows:

(a) The needs and requirements of journalists and other media personnel, in both print and electronic media, for the improvement and upgrading of their skills, training facilities and professional education.

(b) The role to be played by the proposed National Media Institute in fulfilling the needs as set out above.

(c) The goals, objectives, functions, activities of the National Media Institute,

(d) The structure, organization, administration, resources, finances and personnel etc. of the National Media Institute, as an autonomous body.

The National Media Institute should, as the committee has recommended, be set up by an act of Parliament as a national body entrusted with specific goals, objectives and functions, and vested with the powers and responsibilities as would enable it to conduct its activities as an autonomous body. It has been said that in its initial phase, it should provide training in journalism, while not supplanting the educational courses conducted by other institutions. The report also recommends that there be functional linkages between the NMI and training institutions like the SLTTI and SLBC training institute. This is an excellent idea, and perhaps what the NMI could do is to expand opportunities in these institutes for practical craft-oriented disciplines while concentrating on more theoretical courses which they might find difficult to provide. I see the NMI as an opportunity to have an apex body which should function as a forum where all media training is discussed, thus helping to improve curricula and training methods. It should also be a body that concentrates on regular seminars and discussions on a wide range of topics that would help improve the standards of journalism and the environment in which journalism is practiced. The focus for a start on training new recruits to journalism and those with an intention to make a career in journalism seems sensible. However, this should as suggested be expanded to cover other areas such as the provision of opportunities for ongoing discussion and evaluation of journalism in general, specific courses designed to help mid-career professionals, seminar opportunities for journalists to upgrade their knowledge base about international affairs, law, economics etc. and serving as an institution that would provide the forum for trainers of journalists to improve their courses. One final point, it is welcome that the core-curriculum of the NMI seeks to provide not just craft oriented training in feature writing, copy editing etc., but also, seeks to provide a basic knowledge of politics, international affairs, business and economic journalism etc. under the rubric of thematic journalism.

And finally, to the report on improving economic conditions, and status of journalists. The committee was directed to study and make recommendations on the following matters:

(a) Improvement of salaries, emoluments, of all journalists in the print and electronic media, including outstation correspondents.

(b) Formulation of a suitable pension scheme for journalists of all categories.

(c) Provision of facilities and privilege for all journalists to improve their terms and conditions of work,

(d) Reforming the existing taxation and advertising policies affecting media institutions to enable such institutions to disburse more resources for the provision of better facilities and benefits for journalists.

It is a fact that journalism is not as well paid a profession as it might be, and because it does not have as much recognition as other professions in the eyes of the public, that it fails to attract as many bright young people as it might. It is difficult for me to say exactly

where remuneration and recognition bisect each other. But certainly, there seems to be a connection. Equally, esteem apart, if the salaries of journalists were better, certainly, the quality of new recruits would improve. Therefore, I endorse the committees recommendation for an immediate 15% increase in the present wages paid to journalists in the various media institutions. I also find the recommended salary structure extremely attractive. This uniform structure would help reduce or eliminate the disparity and inherent discrimination that exists in the pay scales of English language journalists as opposed to those who contribute to Sinhala and Tamil journals. The question is how willing would the government be to implement the recommended pay scales, other emoluments such as bonus, gratuity, EFT and ETF, minimum pay for free lance journalists and outstation correspondents and a pension scheme. Equally important is how the various private media institutions would react to the proposed changes. It is beyond question that the situation of journalists is grave and their financial and professional status needs to be improved. Perhaps, as the first step, the 15% pay increase should be vigorously pursued, and the government asked to set up housing schemes on a no strings attached basis. The allocation of houses to journalists should be done in consultation with their respective employers, as the committee recommends. It should be provided that those discriminated against by their employers in the allocation of housing should have recourse to the law. Perhaps what might be discussed today is the priority list of the most quickly achievable facilities and privileges in travelling, equipment including car, loans, insurance, telephones etc. I suggest that it is well worth demanding that the government gives journalists the facility to purchase on a duty free basis, equipment such as typewriters, computers, cameras etc. Reform could also be sought in the areas of customs duty on news print, BTT on the sales of newspapers and journals, taxes on foreign books, newspapers and magazines, and taxes on equipment and advertising. In short, a first step might be to seek the changes that the government on its own can implement.

While I agree with the recommendation that the government should desist from withdrawing state advertising as a weapon to intimidate publishers, I find it hard to think of a mechanism for its achievement so long as there are state institutions that advertise. Finally, I find it laudable that the committee thinks it important that all journalists should have a good working knowledge of English. While it would be unfair to make it a condition of employment for Sinhala and Tamil language journalists, encouraging the acquisition of a knowledge of English can only help the journalist. The image of journalists as responsible professionals will be helped even more than by a recognized professional qualification if they are seen to be performing an important public role with dedication and efficiency. This will happen when people of high calibre in relatively comfortable circumstances perform their tasks in a democratic environment.

Finally, I would like to make two points. One is, that to make good the promises made by the P.A., there has to be incessant pressure

applied on the government. You would recall that the debate about the media environment and the lack of freedom emerged through the U.N.P. years and reached a high point under the Premadasa and Wijetunge Presidencies. This was as much a response to the existing difficulties faced by journalists and the general public as it was a result of some journalists and members of the public resolving to make them political issues. It is in this context that parties of the opposition decided to champion media freedom and freedom of expression. Arguably, if there hadn't been the intense discussion about the centrality of media freedom for democracy, and the aggressive demand for change, the P.A. manifesto would probable have looked different. Similarly, today, there is a need to hold this government to it's promises, by actively pushing for their implementation. The media is very well placed to do so. The question that needs to be answered by journalists is how important they consider the swift implementation of these changes. If the answer to that is yes, we should in the weeks and months ahead, see a full discussion at least in the press, if not in the electronic media, of the P.A.'s promises, the committee reports that sought to functionalise these promises and the importance of seeing those changes made. It should be a discussion that would engage and involve the ultimate beneficiaries of a freer culture of expression - the public at large. It would be interesting and entirely appropriate to see the kind of activism that was exhibited in the Premadasa and Wijetunga years. I dare say, this can cause doubts in the minds of the activists or potential activists. One legitimate question might be, would this campaign help undermine the P.A. and as such, help the U.N.P. which shows very little sign of reform or of regret for their misdeeds of their 17 years of government. My response to that would be, lets not lose sight of these structural changes that were considered necessary for the facilitation of media freedom and freedom of expression. Lets make sure that we bind in whatever way possible present and future governments to implementing those changes.

The second point stems from the fact there has been, since the government's assumption of office, an increasing shift away from talk about media freedom and freedom of expression, to complaining about the irresponsibility of journalists and the lack of ethical standards in the profession. The complaint has emanated from people powerfully placed in the government while the committee reports that sought to free the media have apparently been gathering dust. There seems to be an implication here that changes to the law and setting up new institutions alone will not necessarily improve the standard of journalism in Sri Lanka. I do not for a moment claim that changes to the law will immediately improve the standard of journalism and that we will wake up the Sunday after the changes, and read and watch intelligent, thoughtful, and responsible material in the media. The changes that were proposed and indeed felt necessary by the government while in opposition, and soon after it came to power, for the democratization process should be insisted on as constituting at least a basic minimum.