

Colombo Declaration on Media Freedom and Social Responsibility – 1998

Preamble

We, the undersigned,

Convinced that freedom of expression and freedom of information are vital to a democratic society and are essential for its progress and welfare and for the enjoyment of other human rights and fundamental freedoms;

Bearing in mind that it is imperative if people are to be able to monitor the conduct of their government, be politically informed and to participate fully in a democratic society, that they have access to information;

Recognising that the journalist performs a critical role in society in facilitating the above;
Considering that public officials by nature of their office should tolerate more intense levels of criticism than private individuals;

Convinced that debate on public issues should be uninhibited and robust and that some erroneous statements are inevitable in a free debate, recognise the necessity for legal protection of critics of official conduct, who given the current law of criminal defamation would be deterred from voicing their criticism even if it is believed to be true and even though it is in fact untrue, thus dampening the vigour and limiting the scope of public debate;

Recognizing that the application of censorship has often been arbitrary and erratic, and in violation of the public's right to know, and also in violation of international standards of freedom of expression;
Noting with concern the acts of intimidation and threat to media personnel which have adversely affected the conduct of their duty;

Desiring to promote a clear recognition of the limited scope of restrictions on freedom of expression and freedom of information that may be imposed in the interest of national security, so as to discourage the government from using the pretext of national security to place unjustified restrictions on the exercise of these freedoms;

Agree upon the following proposals and recommend that the appropriate bodies undertake steps to promote their widespread dissemination, acceptance and implementation.

1. Constitutional Provisions

1.1 Constitutional Guarantees of Freedom of Expression

1.1.1 Sri Lanka's Constitutional guarantees of freedom of expression need to be brought in line with the Country's international legal obligations, specially the ICCPR that was ratified by Sri Lanka in 1980.

1.1.2 A better formulation of the words defining the freedom of expression, opinion and information in the Constitution, more in keeping with the words of Articles 19 (1), 19 (2) of the ICCPR is needed. i.e. Article 19 of the ICCPR -

1. Every one shall have the right to hold opinions without interference.
2. Every one shall have the right to freedom of expression; this shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

The October 1997 Draft of the Government Proposals for Constitutional Reform Article 16(1) has been formulated to an extent, in line with Article 19(1,2) of the ICCPR. However the underlined requirements

(above) have been left out of this draft and is proposed that they be included as additional safeguard to freedom of expression, opinion and information.

1.1.3 The corresponding section in the draft Constitution (22nd November 1995) of the Minister of Justice and Constitutional Affairs which spells out this right in detail should be incorporated in the Constitution.

“This includes the freedom to seek, receive and impart information and ideas, either orally, in print, in the form of art or through any other medium of one's choice. The right of expression may not be restricted by indirect methods or means, such as, by the abuse of government or private controls over news print, radio broadcasting frequencies or implements or equipment used in the disseminating of information, or by any other means tending to impede the communication and circulation of ideas and opinions.”

1.2 Constitutional Restrictions on Fundamental Rights

As a broad liberal Constitutional provision on freedom of expression will be rendered ineffective if the executive is permitted to restrict such a right easily, it is proposed that;

(I) Government adopt a section similar to Section 36(1) of the 1996 South African Constitution, where such restriction should be reasonable, justifiable and necessary in an open and democratic society based on human dignity, equality, and freedom.

(South African constitution) Article 36(1) The Rights in the Bill of Rights may be limited only in terms of law of general application to the extent to the limit is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors including a) the nature of the right, b) the importance of the purpose of the limitation, c) the nature and extend of the limitation, d) the duration between the limitation and its purpose and e) less restrictive means to achieve the purpose.

OR

(II) That the Government confines restrictions on fundamental rights to only such restrictions as permitted under the ICCPR Article 19(3).

Article 19(3) of the ICCPR - (a) for the respect of the rights or reputation of others, and (b) for the protection of national security or of public order or of public health or morals.

1.3 Parliamentary Privileges

The provisions in the constitution and of the October 1997 draft setting out restrictions relating to parliamentary privileges should be removed as this is in violation of Article 19 of the ICCPR.

1.4 Derogation of Fundamental Rights in times of Emergency

Restriction to fundamental rights in times of emergency should be limited only to the restriction of the right of citizens to approach the Court for redress to the extent set out in Article 4 of the ICCPR, as modified where necessary to suit the Lankan con

text. These are;

- i. They must be made only 'in time of public emergency which threatens the life of the nation, the existence of which is officially proclaimed'.
- ii. They may only be 'to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law'
- iii. They must not involve discrimination solely on the race, caste, colour, sex, sexual orientation, language, religion or social origin.
- iv. Certain specified rights that is Articles 6,7,8 (paragraphs 1 and 2), 11,15,16 and 18 of the ICCPR can never be derogated from what ever the circumstances.

Article 6 – protects the inherent right to life of every human being and contains provisions with regard to capital punishment.

Article 7 – states “no one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment, in particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8 – states “no one shall be held in slavery, slavery and slave-trade in all their forms shall be prohibited.”

Article 11 – states “no one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.”

Article 15 – states that “no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time it was committed, nor shall a heavier penalty be imposed than the one that was applicable at the time when the offence was committed...”

Article 16 – states “Every one shall have the right to recognition everywhere as a person before the law.”

Article 18 – states “every one shall have the right to freedom of thought, conscience and religion...”

The October 1997 draft constitution in Article 27(1) has made provisions in keeping with requirements Articles 2-4 of the ICCPR. However it remains deficient in that it does not specify that the emergency must be limited to one that threatens the life of the nation.

1.5 Judicial Review of the Constitutionality of Legislation

The Constitution should be amended to permit judicial review of legislation at any time, of both existing and future law, on grounds of inconsistency with the Constitution and there should be no time limit on judicial review of enacted legislation. Article 16(1) of the constitution should be removed in order to make this possible.

Article 16(1) of the Constitution is as follows - “All existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the proceeding provisions of this chapter.”

This section and its reproduction in the October 1997 draft should be repealed as it violates a fundamental principle of constitutional law. This particular provision is unparalleled in constitutional democracies.

2. Newspaper and Press Laws

2.1 The Official Secrets Act which defines official secrets vaguely and broadly should be repealed and a Freedom of Information Act be enacted where disclosure of information will be the norm and secrecy the exception.

2.2 The Freedom of Information Act should reflect principles of transparency and open Government. Such Law should specifically list the types of information that maybe withheld indicating the duration of secrecy. Legal provision should be made for enforcement of access with provision for appeal to an independent body. Such Law should, therefore, make provision for exempt categories such as protection of individual privacy including medical records, trade secrets, and confidential commercial information, law enforcement investigations, information obtained on the basis of confidentiality, and national security. Provision should be made to appoint an Independent Authority empowered to investigate complaints of arbitrary denial of information. Secrecy provisions of other Laws should be subordinate to the freedom of information law.

2.3 Press Council Law of 1973, section 16 thereof which prohibits newspapers from publishing proceedings of Cabinet meetings, decisions or Cabinet documents, which is arbitrary and restrictive and cannot be justified should be changed to permit the publication of matters before Cabinet as well Cabinet decisions.

(insofar as it deals with official secrets and security related matters, the above observations on the Official Secrets Act would apply, Insofar as it deals with profane, obscene or indecent matter, this is already covered by the Profane Publications Ordinance.) Section 16 should be repealed in toto.

The Provisions dealing with criminal defamation - Sections 14 and 15 of the Press Council Law of 1973 should be repealed. The mechanisms by which citizens can seek redress for defamation should be strengthened.

2.4 Press Council Act

The Press Councils law of 1973 should be replaced with a new Press Council Act. This Act should articulate the freedom and responsibilities of the print media in terms of the requirements of the ICCPR.

2.5 Broad basing the ownership of the Associated Newspapers of Ceylon (ANCL)

The ANCL (Special Provisions) Law read as a whole unequivocally indicates the principle of broad basing and not nationalisation. The PA government pledged in its manifesto to broad base the ownership of the Lake House in keeping with the intention of the legislation. A committee appointed for the purpose chaired by Mr. Sidat Sri Nandalochana proposed a mechanism by which the company should be broad based.

It is therefore recommended that

The recommendations of the Nandalochana Committee be followed, or A modified version of these recommendations be implemented, Broad-basing the ownership of the Associated Newspapers of Ceylon (ANCL)

3. Offences under the Penal Code

3.1 Section 118 which makes it an offence to bring the President of the Republic into contempt by, "contumacious insulting or disparaging words (spoken or written)" should be repealed as it is sufficiently covered under the civil Law of Defamation.

3.2 Section 120 dealing with sedition, which is a 19th century formulation being too wide in scope, should be repealed or modified in keeping with International Human Right Laws.

3.3 It has been the practice of successive governments to use Section 479 dealing with Criminal Defamation against the media. This section should be repealed as it discourages criticism of Government Ministers and expression of political dissent. In its stead, provisions both in the Broadcasting Act and the Press Councils Act providing citizens with redress in the case of defamation should be strengthened, providing an adequate deterrent. It should also provide the right of reply according to internationally accepted norms.

4. Contempt of Court

There should be a Contempt of Court Act in order to clarify the substantive and procedural Law concerned, which would define precisely the scope of Contempt of Court and the Sub-Judice Rule, broadly structured on the lines of the UK Contempt of Court Act of 1981, which specifies, inter alia, the conditions under which non-divulgence of a source is permissible.

5. Banning of Publications

The Law should be clarified with regard to the banning of publications and the Customs embargo on importation of publications, in order to prevent interference, except on grounds that are constitutionally permissible and are compatible with the freedom of expression and information.

6. The 6th Amendment to the Constitution

The provisions of the 6th Amendment to the Constitution which impinge on the freedom of expression and prohibit and impose drastic penalties for the peaceful advocacy of secession, should be repealed.

7. Emergency Rule

7.1 Censorship and other restrictions under Emergency Rule

7.1.1 Expression shall not be subject to prior censorship except within the framework prescribed by the ICCPR and such regulations which restrict expression should be notified by Gazette, publicized in all sections of the media in all three languages immediately and should lapse if not approved by a resolution of Parliament within two weeks.

7.1.2 That the policy of censorship be guided by the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, 1st October 1995.

8. The High Cost of Newsprint

The exorbitant duties presently imposed on newsprint make the price of education and information through newspapers costly to the economically deprived. The import duty acts as a deterrent for better distribution and dissemination of knowledge. It is proposed that a zero rate of duty be levied on imports.

9. Public Broadcasting Service

9.1 All State funded and managed broadcasting services in Sri Lanka should be converted to publicly owned bodies and not subject to any form of State control.

9.2 Values of Public Broadcasting should be safeguarded by ensuring that the governing bodies of the Broadcasting Authority should have a balanced and independent composition.

10. Electronic Media

10.1 An Independent Broadcasting Authority

There should be an independent broadcasting authority which is genuinely independent of any form of governmental or non-governmental pressure to oversee the implementation of the broadcasting policy, and be responsible for the licensing of community radio, public and private broadcasting including technical aspects, the legislation should specifically state the public's right to receive information and opinion on matters of public interest, and specifically state the principle of maintaining a fair balance of alternative points of view. The selection process for the members of this body must be such as to ensure it is not dominated by any political group.

10.2 Community Radio and Television

A policy for the development of community radio and television should be set out in Law. A regulatory authority should ensure that at least 50% of the programming should be within the declared aims of the community service.

11. Protection of Sources

Legislation to protect the confidentiality of media sources should be introduced.

12. Review of Legislation

Laws should be reviewed and amended in keeping with contemporary internationally accepted norms. In particular, The Obscene Publication Laws of 1927, The Public Performances Ordinance of 1912, The Public Performance Board Act and the Profane Publications Act of 1958 should be reviewed.

13. Responsibilities of Media Institutions and Personnel - Voluntary Code of Ethics

1. All media institutions/personnel shall adhere to a code of conduct which should include - (a) The media shall be obliged to report news accurately and objectively (b) News shall be presented in the correct context and in a balanced manner, without intentional or negligent departure from the facts. (c) Only that which may reasonably be true having due regard to the source of the news, may be presented as a fact. Where a report is not based on fact or is founded on opinion, supposition, or allegations, it shall be presented in such manner as to indicate clearly that such is the case. (d) Where there is reason to doubt the correctness of a report and it is practicable to verify the correctness thereof, it shall be verified. When such verification is not practicable, that fact shall be mentioned in the report. (e) Where it is subsequently appears that a report was incorrect in a material respect, it shall be rectified forthwith, without reservation or delay. The rectification shall be presented with such a degree of prominence and timing as may be adequate and fair so as to readily attract attention. (f) All current and potential situations of Conflict of Interest faced by individuals and/or media institutions should be disclosed. (g) The media shall refrain from sexism and racism in the reporting of news as well as in comment. (h) The media shall strive to represent social reality in all its diversity, complexity and plurality, and shall strive to be sensitive to the aspirations of women, minorities and disadvantaged groups. (i) The media should exercise due care and responsibility in the presentation of programmes where children are likely to be a part of the audience. (j) the media should not without due care and sensitivity, present material which depicts or relates to brutality, violence, atrocity, drug abuse and obscenity. (k) The multiple sectors of the media should endeavour

to work together with mutual respect as equal partners. (l) The profit motive should not override media freedom, social responsibility and editorial freedom.

2) Privacy – Insofar as both news and comment are concerned, the media shall exercise exceptional care and consideration in matters involving the private lives and private concerns of individuals, bearing in mind that the right to privacy may be overridden by a legitimate public interest.

3) Right to reply – Provisions should be made for a right of reply, to protect individuals against factually incorrect statements that endanger respect for their reputation, dignity, honour, feelings and privacy, and to encourage a greater sense of responsibility in the exercise of the freedoms of expression, information and publication. The reply should be confined to the aggrieved person's version of the facts and should not be longer than is necessary to correct the alleged inaccuracy or distortion. This consensus does not preclude individual organisations from campaigning for reform over and above the provisions contained herein.

CONCLUSION

We welcome the fact that the symposium on Media Freedom and Social Responsibility was jointly organised by the Sri Lanka Working Journalists' Association, the Free Media Movement, the Editors Guild of Sri Lanka and the Newspaper Association of Sri Lanka together with the World Association of Newspapers and the Centre for Policy Alternatives, thereby demonstrating the highest spirit of co-operation and collaboration among the various sectors of the media.

We reiterate our commitment to further co-operation and unity in our efforts to promote the freedom of expression in general and media freedom in particular. We, therefore, call upon media organisations to overcome difference of opinion and divergences in style in order to work together to actualize this common vision.

The Editors' Guild of Sri Lanka

The Newspaper Society of Sri Lanka

The Free Media Movement

The Sri Lanka Working Journalists Association has given approval in principal for the above declaration but has withheld signing the document pending the approval of the executive committee of the organisation.