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MEDIA POLICY AND LAW IN SRI LANKA - PART I

***LEGAL, INDUSTRY AND EDUCATIONAL
REFORMS***

LAW & SOCIETY TRUST

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Media Policy and Law in Sri Lanka – Part I
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Editor's Note

The emergence, growth (and what appears to be now) the notable regression of media freedoms and media independence in Sri Lanka has had a chequered history. Given proud traditions of competent and skilled journalism in the early years following independence and much vaunted high literacy rates, the flame of media independence in Sri Lanka should have burned brightly and strong. Yet, this flame has spluttered and flickered, gathering strength only rarely and weakening to a veritable pinpoint of wavering light during the past decade in particular.

State violence generated as a result of conflict in the North and East due to the armed struggle carried on by the Liberation Tigers of Tamil Eelam (LTTE) until active fighting ended in May 2009 as well as the brief (in comparison) but equally violent insurrections in the South by predominantly Sinhalese youth militants in the seventies and in the eighties, have framed the theory and practice of media law and policy in Sri Lanka. Amidst deepening hostility between the state and the private media, journalists and editors have been threatened, intimidated and in some cases, have died in the pursuit of their profession and at the hands of state as well as non-state actors.

The very Constitution and subordinate laws have been used to compel media obedience to state agendas. Such extreme violence has been directed malevolently at the suppression of freedoms of expression, opinion and information within the confines of a relatively small media industry, as compared to its giant counterparts elsewhere in South Asia.

This Issue of the *LST Review* together with its companion double volume on the electronic media contains edited and shortened versions of a larger Study on Media Policy and Law in Sri Lanka. Both papers originate from the Media Lanka Reform initiative based at the Institute of Commonwealth Studies at the University of London, United Kingdom. While the larger Study will be published in full later on as an independent publication, these edited papers are meant to stimulate discussion on the tensions implicit in the clash of the Sri Lankan state with fundamental rights to freedom of expression and freedom of the press/media as well as broader questions on the nature of the Sri Lankan media industry.

Familiar questions of media law reform and excessive government regulation inevitably dominates the discussion. In some respects, these law reform questions have resonance elsewhere in the world; in the United Kingdom for example, a 1992 lament that 'it is none the less regrettable that so much of (prevalent laws) should impinge on public-interest reporting and so little of it work to eradicate discreditable press practices', (Media Law, Robertson and Nicol, 3rd Ed., Penguin Books, 1992, p xvii), still remains true to a large extent today.

Closer to home and despite laws governing the issue, neighbouring India still grapples with thorny questions of contempt being wielded as a weapon to restrain information regarding the due functioning of the judiciary. Right to information activists and media personnel have been targeted and sometimes even killed in pursuit of their fight for a less corrupt society. In Sri Lanka however, the worrying development is that the media law reform process appears almost to have come to a standstill and the battle is now on to retain even the little freedoms that the media had won following long and crucial struggles in the past. Threats and intimidation of journalists, unresolved killings and disappearances continue to haunt the media, stifling robust reporting and 'chilling' free expression, paradoxically in the post war years. These are some of the crucial issues dealt with in this paper.

The analysis also attempts to interrogate sensitive questions of editorial independence from management, the nature of free media activism, interactions between the academic teaching of media studies and professional courses, the explosion of web based media as well as the way forward in law, industry and educational reforms.

The objective is to move the debate from an exclusive focus on the excesses of authoritarian governments, (tempting as this may be in the current context where the threats posed by government to free media are painfully apparent), to a broader look at the very nature of the media industry itself, its successes and challenges. The objective is not to limit the discussion to matters of theory and analytical interest but to fuse the theoretical analysis with practical observations not only by media practitioners themselves but also by the public at large. Towards that end, a considerable number of interviews were conducted with those intimately involved with media practice, media management, media education/training and media regulation (government regulation as well as self regulation), which have certainly made the analysis richer in content.

Where the way forward for Sri Lanka's media is concerned, the link between these reform efforts and the overall democratic structure of governance is unquestionable. One particularly pertinent observation by an interviewee may be quoted in illustration thereof;

The success of any reform effort would be dependent on the restoration of basic democratic rights and accountability to the public at large by those vested with power. Furthermore, it is important to establish independent institutions in the form of judicial, regulatory and professional associations comprised of and led by men and women of integrity, independence, commitment and capability. Independent civil society groups need to be established to ensure intellectual, open and transparent debate in regard to issues of predominant concern to society. (see at page 45 of the Issue)

The above reflection is true in terms of the predominant need to restore rights of free speech and expression along with a plethora of concomitant rights through a combination of committed media groups and civil society. However, it remains an overriding responsibility of the media itself to drive this process. In the alternative, there is little doubt that the Sri Lankan media, once hailed as among the best in South Asia, will be driven to the ground, an immediate victim of its own loss of public credibility.

Kishali Pinto-Jayawardena



MEDIA POLICY AND LAW IN SRI LANKA – PART ONE

*Legal, Industry and Educational Reforms Pertaining to the Print Media**

*Kishali Pinto-Jayawardena & Gehan Gunetilleke**

1. Introduction

“Our liberty depends on the freedom of the press, and that cannot be limited without being lost.” - *Thomas Jefferson (1743–1826)*

“...the press, once thought of as an antidote to established power, is more likely to reinforce it, because access to the press- that is the mass media- is distributed as unequally as are other forms of power. It is not, of course, that the less powerful never speak in the mass media or that their doings are never reported or never sympathetically. But the deck is stacked against them, because the press is itself a formidable power in our society, allied intimately (although not simply), with other formidable powers.....”
- *Democracy and the Mass Media, Cambridge University Press, 1990, ed; Lichtenderg, pp. 102-105*

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- This Double Issue and its companion Double Issue on the electronic media contains edited versions of a larger Study originating from the Media Lanka Reform Initiative based at the Institute of Commonwealth Studies at the University of London, United Kingdom. The initiative is supported by the Ford Foundation. Its managers are Dr David Page and Dr William Crawley, Senior Fellows at the Institute of Commonwealth Studies, and Co-Directors of the Media South Asia Project (www.mediasouthasia.org) and its senior legal associate in Sri Lanka is Kishali Pinto-Jayawardena. The Initiative will publish the larger Study and its relevant recommendations later, along with essays by editors, legal practitioners, journalists and media analysts reflecting on the state of Sri Lanka’s media. The *LST Review* is grateful for the permission granted by the Initiative to publish advance versions of the two core papers in order to encourage public discussion. Due to constraints of space here, the Table of References relevant to both papers will be contained in the comprehensive Study.
 - Kishali Pinto-Jayawardena, LLB (Hons. Col), Attorney-at-Law has litigated in regard to civil liberties and has (during 2008-2011) authored/co-authored four books published locally and internationally on Sri Lanka’s Rule of Law systems in reference to the right to freedom against torture, the right to *habeas corpus*, the criminal justice system and Commissions of Inquiry. Involved in drafting laws on contempt of court on behalf of the National Human Rights Commission (2004) and the Bar Association of Sri Lanka (2006), she has published extensively on media law reform and served as a member of the government appointed drafting committee which finalized the 2004 draft Bill on the Right to Information. She is the Colombo based *Sunday Times*’ editorial (legal) consultant contributing a regular column on rights and the law and is also the (consultant) Deputy Director, Law & Society Trust. Gehan Gunatilleke, LL.B (Hons. Col); LL.M (Harvard), Attorney-at-Law is lecturer and coordinator of the Masters of Human Rights and Democratisation (Asia Pacific) Programme (jointly offered by the University of Sydney and University of Colombo) and visiting lecturer, University of Peradeniya. Law graduate Inoshi Weerasena and Attorney-at-Law Radika Guneratne conducted all interviews done in person.

Ideally, Sri Lanka's post war years should have heralded the encouraging of a vibrant media culture with all its potential to aid reconciliation between communities. Instead, almost the converse has occurred; stifled and effectively 'chilled' by an over mighty state and with traditional constitutional checks and balances against abuse of power negated to a large extent, Sri Lanka's media has struggled to retain its integrity and independence. Practices of self- censorship have become common posing an even greater threat to the credibility of the media than overt government censorship. Strong tensions between state media and the private media have continued with the state media, (broadcast as well as print), being wholly appropriated by the government of the day.

Meanwhile there has been increased soul searching within the media industry and the wider public space as to how independent the private media can really profess to be in the context of not only government but also corporate challenges being posed to the independence of the editorial room.

This paper discusses a range of issues relevant to media policy and law reform with its primary focus being the print media in Sri Lanka. The analysis is conducted from three distinct perspectives: legal, institutional and educational. The objective of the discussion is to examine the broad framework within which the Sri Lankan print media functions, in order to better understand where reform is most needed, and how such reform could be best achieved including in the area of media education and training. Hence, we begin by discussing some of the salient features of the media industry in Sri Lanka, thereby broadly defining the media landscape in the country.

Next, the paper deals with previous reform efforts by both state and civil society actors again with the focus on print media but incorporating electronic media reforms whenever appropriate as highlighting broader points of discussion. The intention of detailing such efforts is to contextualise the current status of the Sri Lankan media and define the approximate stages of its development.

Juxtaposed against previous successful and unsuccessful reform efforts, the paper then discusses contemporary issues faced by the Sri Lankan media. This particular section reflects on concerns that continue to challenge the industry and the profession today, hopefully uncovering the priorities for future reform efforts. Finally, we examine media education in Sri Lanka—its relationship to the media profession and its impact on reform efforts.

Published literature is primarily used to support the observations and conclusions of this analysis supplemented by interviews with publishers, editors, journalists, self regulators, media educators as well as with conversations conducted with media personalities in Sri Lanka. Given current repressive trends that have put the media on the frontlines of attack by government elements, considerable care has been taken in extracting excerpts of these conversations for the benefit of this analysis. The overall discussion is intended to identify the direction in which the media in Sri Lanka is heading and define the proper scope for future intervention at the legal, institutional and educational levels.

2. An Overview of the Print Media Industry in Sri Lanka

2.1. The Nature of the Media Landscape

The media landscape in Sri Lanka is reasonably well developed, though perhaps less sophisticated in comparison with India. This landscape is founded upon a long and established culture of harnessing the media for social debate and commentary.

The present Sri Lankan media comprises a wide range of providers both in the print and electronic sectors and has thus evolved into a fairly diverse industry. Recent circulation figures of newsprint are quite impressive, with a circulation of 493,000 copies for daily newspapers, and 720,000 for Sunday newspapers. This circulation amounts to approximately 25 copies in dailies and 36 copies for Sunday papers per 1000 inhabitants.¹ Readership figures are in fact six times higher than circulation figures, at least for the main dailies,² which suggests that on average, six people read every newspaper purchased. Radio and Television is also well distributed in Sri Lanka, though less so in rural areas.³

Based on such statistics, it appears that Sri Lanka possesses a society with abundant and diverse information and with advanced levels of literacy and reasonably sophisticated reading habits. The following table depicts the overall circulation in respect of the Sri Lankan print media.⁴ The figures, however, exclude circulation statistics from the Northern and Eastern provinces.

Group	Dailies	Circulation	Weeklies	Circulation
ANCL	Daily News (E)	85'000		
			Sunday Observer (E)	120'000
	Dinamina (S)	50'000	Silumina (S)	200'000
	Thinakaran (T)	14'000	Thinakaran Vara Manjare (T)	14'000
Upali Group	Island (E)	35'000	The Sunday Island (E)	55'000
	Divaina (S)	55'000	Sunday Divaina (S)	25'000
			Divaina (S)	
Wijeya Publ.	Daily Mirror (E)	85'000	Sunday Times (E)	80'000
	Lankadeepa (S)	100'000	Lankadeepa (S)	276'000
Leader Publ.			Sunday Leader (E)	40'000
			Irida Peramuna (S)	80'000

¹ World Association of Newspapers (WAN), *World Press Trends, 2006* (2006), at p.406.

² *Ibid.* at p.407, 8ba.

³ The Centre for Policy Alternatives (CPA) & International Media Support (IMS), *A Study of Media in Sri Lanka (Excluding the North and East)* (2005).

⁴ *Ibid.*

Express group	Virakesari (T)	14'000	Virakesari Illustrated (T)	90'000
			Mithran Varamalar (T)	40'000
Sumathi Group	Lakbima (S)	35'000	Sunday Lakbima (S)	125'000
			Lakbimanews (E)	
Thinakkural	Thinakkural (T)	32'000	Sunday Thinakkural (T)	50'000
Ravaya Publ.			Ravaya (S)	25'000
Udayan	Sudaroli (T)			
	Uthayan (T)			
Lanka Multi Publ.			Lanka (S)	
Lithira Publ.			Irudina (S)	
W.B. Mulin Per.			Peraliya (S)	
Shakti Publ.			Dinakaran (S)	
Rivira Group of Publishers			Nation (E)	
			Bottomline (E)	
			Rivira (S)	
			Mawbima (S)	
Standard newspapers Pvt. Ltd.			Colombo Post (E)	
			Business Standard (E)	

Table 1: Circulation of Sri Lanka's Daily and Weekly Newspapers

Generally, it is encouraging to note that the 2008-2009 global recession affected the South Asian media (including the Sri Lankan media) to a lesser extent than the Western media. A recent study by PricewaterhouseCoopers (PwC) revealed that revenues from print advertising plunged 47 percent in the hard-hit North American market, while the outlook for Europe, Middle East and Africa remained 'tepid'.⁵ Yet Asia's newspaper advertising is expected to steadily rise 3.1 percent annually throughout the period

⁵ Lanka Business Online, *Asia Defies Global Newspaper Meltdown*, available at <http://www.lankabusinessonline.com/fullstory.php?nid=1625284934> (last accessed on 10 January 2011).

2010-2014.⁶ The adverse impact of the global recession on Sri Lanka has accordingly been less noticeable.

Despite these reasonable levels of sophistication and economic resilience, the notion of an “independent media” in Sri Lanka requires further reflection.⁷ A closer look at the media institutions from their inception reveals that there were ‘ideological and material interests behind the operation of these bodies.’⁸ Hence Sri Lanka may still be a far distance away from establishing a truly “independent” media. This question will be interrogated further during the course of this analysis.

Meanwhile, a growing phenomenon during the recent decade in particular has been the emergence of ‘new media’ and the proliferation of news websites that have flourished whereas freedoms of the media have drastically declined in respect of the mainstream. On the one hand, the ‘website culture’ has provided badly needed space for the circulation of news and opinion without repercussions for individual journalists or publishing houses. On the other hand, unrestrained by the law⁹ or by effective self regulation¹⁰, gossip and slander masquerade as ‘news’ on some of these websites.¹¹ In the context of the

⁶ *Ibid.*

⁷ See discussion, *infra*.

⁸ Madeleine Elmqvist & Sunil Bastian, *Promoting Media Professionalism, Independence and Accountability in Sri Lanka*, Sida Evaluation 06/50 (2006), available at <http://www.sida.se/publications> (last accessed on 30 December 2010), at p.10. The authors comment: ‘Hence during the colonial period the interests of the plantation capital, indigenous capital, independence movement, and vernacular intelligentsia have played an important role in development of the newspaper. These currents have transformed themselves into political and nationalist interests in the post-colonial period.’

⁹ Laws, legislation and policy reforms have been justifiably critiqued as lagging behind technology and innovation. The inability to address rapidly changing technological advancements has been identified as the main reason for laws to be behind technology. “Cyber squatting” or registration of a domain name with a trademark of someone else provides a good example of how legislation failed in regulating cyber issues. Furthermore, the legislative or judicial measures are capable of controlling the physical layer but not the content layer of the new media. For some pertinent perspectives on this issue, see *National Conference on Self-Regulation: Speeches and Interactive Sessions* (September 2011), Press Complaints Commission of Sri Lanka (PCCSL), (hereafter National Conference on Self Regulation (2011)) Session on The Internet: A Licence to Slander?, at pp. 46-47. (presentation made by Jayantha Fernando, Attorney-at-Law).

¹⁰ ‘The Code of Practice of the Editors Guild of Sri Lanka addresses the online publications of the print media. But the effectiveness of this Code has not been measured in the industry as Sri Lanka does not have organisations such as the Internet Watchdog Foundation in the United Kingdom where internet service providers and the content hosting providers are compelled to remove any publication which is contrary to the codes of practice. (“notice and take down procedure”)’ *National Conference on Self-Regulation* (2011), Session on The Internet: A Licence to Slander?, at pp.46-47. (J. Fernando, *ibid.*). ‘Regulating the new media even by way of self-regulation has been resisted based on the contention that the success of the internet is inherent in its free nature which facilitates innovation. The attempt to regulate content as opposed to regulation at an engineering level would be superfluous as the ability of the new media to ensure a solid audience would be based on the accuracy of the information provided by such media. The inability to provide accurate information would result in the audience being diverted in to other sources readily available on the web.’ *National Conference on Self-*

consistent suppressing of conventional news gathering by the intimidation, threatening and killing of journalists, these developments have been unfortunate but hardly surprising.

In this section, we discuss some of the broader developments that have taken place in the media industry in Sri Lanka with specific attention being paid to the print media. Two issues may be of particular importance: first, the diversification of the Sri Lankan media; and second, the tension between the state and private media.

2.2. *Diversification of the Sri Lankan Media*

The Sri Lankan print media was initially very much the elite preserve of a few individuals who 'dominated both media and politics.'¹² The advent of a vibrant print media in Sri Lanka was largely due to private entrepreneurship. The Wijewardene family could be linked to all three of the country's largest and most powerful media institutions, namely the Lake House, the Upali Group and Wijeya Newspapers.¹³ Since the state monopolies on radio and television broadcasting were broken in 1984 and 1992 respectively,¹⁴ private investments increased and added to the diversity of Sri Lankan electronic media channels. Additionally, the public—albeit mostly the English-speaking public—has had reasonable access to international services such as BBC World and CNN due to the recent emergence of satellite and cable providers. These developments have collectively established a highly diversified media in Sri Lanka and have placed a broad range of media content at the consumer's disposal.

Where language diversification is concerned, it has been suggested that the new generation of Sinhala newspapers marked two significant milestones in the Sri Lankan media. First, it 'identified the nation's

Regulation (2011) Session on The Internet: A Licence to Slander?, at pp.54 -55 (Interactive session based on the presentation made by Nalaka Gunewardena, science writer and columnist).

¹¹ 'The imperative need to organize web managers to form an association and to have a self-regulatory mechanism has been advocated by the SLPI and PCCSL for the last couple of years.' [Imran Furkan, CEO of the Sri Lanka Press Institute, interviewed on 09th February 2012]. Furthermore as our interviews disclosed, the recent government initiative to ban five websites has been viewed as an impractical measure by most of the stakeholders in the media industry. This decision has been criticized for its lack of coherence, the inherent misunderstanding of the nature of new media as seen in such measures, the difficulty of enforcement and the existence of alternative pathways to view those banned websites which effectively increases the popularity of the banned websites.

¹² Linda Brady, *Colonials, Bourgeoisies and Media Dynasties: A Case Study of Sri Lankan Media*, *E Journalist*, Volume 5, Number 2, 2005, available at http://ejournalist.com.au/ejournalist_v5n2.php (Last accessed on 1 January 2011), at p.2.

¹³ *Ibid.* at p.3. Lake House was taken over by the government in 1973. Currently two major English daily/weekly newspapers (*The Sunday Island/Island* published by the Upali group and the *Sunday Times/Daily Mirror* published by Wijeya Newspapers) originate from the Wijewardene dynasty. More recent publishing houses include the Lakbima group, the Ceylon Today group as well as the Nation newspapers group, all with direct political or financial links to politicians in the government or in the opposition.

¹⁴ Stig Arne Nohrstedt, Sunil Bastian & Jöran Hök, *Journalism Training and Research in Sri Lanka* (2002), at pp.10-12.

rapid economic growth and the need for the Sinhalese to be in touch with the “news” in order to keep abreast of these developments.’¹⁵ Second, the emergence of the new Sinhala newspapers ‘marked an ideological awakening of the Sinhalese that suggested the centrality of media as the fourth estate [sic].’¹⁶ These developments appeared to have amplified the role of the press as a “fourth estate”, thereby transforming the media from being a mere tool of politicians to an institution and powerbase in its own right.¹⁷ The role played by the Sinhala ‘alternative’ press, (exemplified by the *Ravaya* and *Yukthiya*), in the eighties in combating the governments of the day under Presidents J.R. Jayawardene and Ranasinghe Premadasa, also emphasized the ‘vernacular’ media’s coming into its own as a significant opinion maker capable of generating informed public debate and even bringing down governments.

Concurrently, the Tamil-speaking community also began to harness ‘the new-found potential and mass penetration of the press to reach a wider audience.’¹⁸ For decades, various revivalist groups and smaller socio-political actors controlled the Tamil press, though three national newspapers developed by professional newspaper producers eventually began to dominate the sector. These included the *Virakesari*, a journal launched by a group of Colombo-based Indian Tamil traders, the *Illakeswari*, a Jaffna-based newspaper that was particularly popular with the Tamil *literati*, and the *Tinakaran*, which was a newspaper launched by D.R. Wijewardena himself as part of a rapidly advancing newspaper empire.¹⁹ It has been suggested that ‘while *Tinakaran* became one of the leading newspapers in the country in a very short time, the paper failed to develop its own personality, remaining conservative and predominantly anti-socialist under Wijewardena’s shadow.’²⁰ In later years, the Tamil media too expanded, with papers such as the *Uthayan*, *Sudar Oli*, *Yal Thinakkural* and *Valampuri*, some of which were restricted in their circulation to the Northern peninsula and inevitably operated under heavy restrictions of the military in the post war period. Journalists working at these newspapers remained singularly susceptible to intimidation and threats as would be discussed later on in this paper.

The diversification of the media industry also extends to the nature of journalists employed in the field. Recent estimates indicate that approximately 4000 journalists work in Sri Lanka’s media sector. While around 2000 of them are employed full-time by media organisations, the rest function as correspondents or freelancers.²¹ Journalists working in the provinces in particular function mostly on a part-time basis.²²

¹⁵ Brady, op. cit., at p.5. The author refers to an interesting observation contained in the *Lak Mini Pahana* on 1 June 1978: ‘In the same manner foreign traders come to know about matters pertaining to trade through English newspapers, so should the Sinhala traders through Sinhala newspapers.’

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.* at p.6.

¹⁹ *Ibid.*

²⁰ P. Muthulingam, Evolution of the Tamil Press of Sri Lanka in G. H. Peiris (Ed.), *Studies on the Press in Sri Lanka and South Asia*, International Centre for Ethnic Studies (1997), at pp.181-192. Also see Brady, op.cit. at p.7.

²¹ CPA & IMS, op. cit., at p.15.

²² *Ibid.*

Thus the Sri Lankan media remains a complex industry with numerous stakeholders holding multiple, and often divergent interests. These interests have framed industry responses to specific issues of media reform, including revision of the constitutional, legal and regulatory framework; improvement of professional standards amongst journalists; journalists' pay and working conditions; institutional and structural shortcomings within media institutions; safety of media personnel; and problems faced by the media industry owing to external economic factors, such as high cost of newsprint and limitations in advertising budgets.

Quite apart from the sheer weight of government intimidation, the sheer diversity of these interests may perhaps explain why past media reform efforts have been either ineffective or have lost momentum. In the recent decade, editors and publishers have banded together to advance collective positions on matters that are crucial to the Sri Lankan media but the road to collective action has been complex in the face of coercive divide and rule policies pursued by powerful governments. Effective trade unions safeguarding the interests of journalists and with lobbying power both at industry and at government levels have been largely absent. In their place are journalists' associations which were never very cohesive in their approaches and in any event, lost even whatever cohesiveness they possessed as a result of sustained and effective government attacks. Understanding these interests—the driving forces behind media stakeholders—is key to effecting sustainable reform in the future.

2.3. State vs. Private Media

The state media in Sri Lanka is generally perceived as a tool of propaganda in the hands of the government. However, the manner in which private media players enforce their political/corporate agendas on their publishing houses has become a legitimate topic of discussion particularly during the recent decade. Moreover, the relationship between the state media and the private media has heavily impacted on the nature and direction of media reform. Undeniably, the existing power structure, in which the state possesses an almost indomitable advantage, is central to the process of designing and strategising future interventions for reform.

Madeleine Elmqvist and Sunil Bastian observe that regardless of the political party in power at the time, '[a] significant section of media in Sri Lanka is controlled by the state, and there is a tendency by the regime in power to use state owned media for its own political ends.'²³ Yet this feature of "interest groups influencing media content" is not restricted to state media. Both in terms of print and electronic media, it appears to be fairly obvious that both state and private media groups have certain interests as owners—be they economic, social or political interests.²⁴ These controlling interests, even in the private sector, tend to

²³ Elmqvist & Bastian, *op.cit.*, at p.11.

²⁴ 'The notion of independent media has been identified as an ideological concept rather than a realistic conception as both state and private media reflect the views and interests of the owners/publishers/investors. The close affiliation of the media houses with the government and the opposition has been reflective in the views presented by such media houses.' [Bandula Padmakumara, Chairman, Lake House (State news media group), interviewed on 08 January 2011]]

be sympathetic to different political groups or parties, thereby causing the politicisation of the private media as well.²⁵ This is a point of view that appears to find immediate resonance across the wide range of media practitioners, academics and civil society members interviewed for the purpose of this study²⁶ who lamented in general that the content of a newspaper appears to be determined by the management in an increasing number of cases and not by individual editors.²⁷

Newspapers espousing political views may be a common phenomenon, as most news organizations in the developed world as is certainly the case in the United States are fairly transparent about their political views. For example in the U.S., Fox News Channel has unambiguously represented the views of American conservatism, mainly espoused by the Republican Party, while CNN has often revealed its liberal preferences, which is more in line with the ideology of the Democratic Party.

In Sri Lanka, even though newspaper groups in the country have always had powerful links to political parties either in the government or in the opposition, a relatively recent trend has been the covert control of private newspaper groups by investors with direct links (either personal or financial) to the government.²⁸ There has been no systematic review of the relationship between media ownership and political interest groups in Sri Lanka.

The status of the electronic media in this respect requires a brief mention at this point of time. Historically, Sri Lanka opted to follow the British model of retaining government control over broadcasting rights, which led to a virtual state monopoly on radio.²⁹ This was in complete contrast to countries such as the U.S. and Australia, which enjoyed free market broadcasting. This state monopoly was eventually broken in the early 1990s when several privately owned radio stations began broadcasting. In 2005, sixteen radio stations were documented to be in operation, of which private companies owned twelve.³⁰ Furthermore, recent statistics reveal that these privately owned radio stations have succeeded in

²⁵ The comparatively small nature of the media industry in Sri Lanka has led to highly polarised and politicised debates with unfortunate consequences to the overall health and vitality of the industry.

²⁶ The relationship between profit and the necessity to prove political loyalties to the establishment may become complex in these situations. As Hiniduma Sunil Senevi, senior lecturer in media and mass communications in the Department of Languages, Sabaragamuwa University emphasized, when interviewed on 1 June 2012, 'Normally, the profit motive is the foremost aim when operating a media establishment. However, in Sri Lanka, the reality has become different and perhaps more perverted. Here, the extent of politicisation is so great that profit may sometimes be sacrificed for the fulfilment of the political agendas of a particular media house, be it print or electronic.'

²⁷ The question of editorial independence should be seen in context. As opined by two prominent publishers, Ranjit Wijewardene (Publisher, Wijeya Newspapers, interviewed on 21 February 2012 and Kumar Nadesan (Publisher, Express Newspapers interviewed on 20 February 2012), it is the editor who generally decides the content of news but the publisher may resort to intervening in a rare case. Generally, disputes are resolved through compromise as otherwise the working relationship will become intolerable. There is a wide degree of mutual trust and this process cannot be reduced to hard and fast rules.

²⁸ Dr. Devanesan Nesiiah (retired senior civil servant, member of PCCSL interviewed on 21 February 2012).

²⁹ Brady, op.cit., at p.9.

³⁰ CPA & IMS, op.cit.,

capturing a significant market share, thereby effectively breaking the government's hold over broadcasting.³¹

However, certain factors that ensure ultimate governmental control over the media still prevail today. First, Sri Lanka's private broadcasters have limited transmission capabilities, broadcasting only on the FM band, while the Sri Lanka Broadcasting Corporation (SLBC), by comparison, broadcasts island-wide on medium wave, short wave and FM bands. Second, the licensing of radio frequencies remains under state control. Despite these restrictions, it has been observed that the SLBC is rapidly losing ground in metropolitan areas where its channels compete directly with private channels.³²

Some have suggested that state-owned media has become 'completely sidelined' by the private radio channels, all of which have 'tapped into the public's increasing interest in and demand for infotainment, easily digestible news broadcasts and contemporary music programming.'³³ Furthermore, it is observed that the emergence and proliferation of private media has also provided reasonably effective platforms for certain political ideologies that were previously inaccessible or limited to niche audiences.³⁴ The advent of community radio may be a case in point, though perhaps a closer analysis of the community radio industry in Sri Lanka reveals that it lacks the type of ideological penetration usually associated with community-based media.³⁵

Unlike radio, the first venture into television broadcasting was facilitated not by state authorities, but by private entrepreneurship.³⁶ The first television station, Independent Television Network (ITN) was initially launched with the support of the then ruling United National Party Government. However, ITN's "independence" was short-lived, as within a few months, the J.R. Jayewardene government decided to appropriate the station, perhaps prompted by 'the well known potency of the impact of television'³⁷ and perhaps also prompted by personal interactions with the owners of ITN. Two years later, the Sri Lankan Government established the Sri Lankan Rupavahini Corporation, (SLRC) a second state-operated station,

³¹ See Brady, op.cit., at p.9. Commenting on the 2005 CPA-IMS Study, the author observes: 'The study also suggests the private radio stations have been successful in capturing a significant segment of the audience share, with the Sinhala language stations Sri FM owned by the Edirisinghe group and Sirasa owned by Maharaja Broadcasting recording a 22.62% and 18.67% share respectively in 2003. Meanwhile the SLBC's national service Swadeshiya Sevaya, the regional transmissions – Rajarata and Ruhuna, and the modernised replacement of the SLBC Velada Seyaya commercial service – Pavana, have recorded only a mere 16.09% which includes a 10.35% share enjoyed by Swadeshiya Sevaya. Meanwhile the SLBC's Tamil service Thendral recorded 3.77%, while the Asian Broadcasting Corporation's Soorian and the Maharaja owned Shakthi Tamil stations both rated higher with Soorian capturing 4.25% of the audience share and Shakthi reaching a staggering 11.21%.'

³² *Ibid.* at p.9.

³³ *Ibid.* at pp.9-10. The author cites Nalaka Gunawardena (2003).

³⁴ *Ibid.* at p.10.

³⁵ See Thilak Jayaratne, Kishali Pinto-Jayawardena, J. de Almeida Guneratne, P.C. & Sarath de Silva, *Sri Lanka Enabling Environment Study: A Paper based on a Study for the World Bank* (2005).

³⁶ Brady, op.cit., at p.12.

³⁷ *Ibid.*

established under the Sri Lanka Rupavahini Corporation Act.³⁸ This well-resourced television station, popularly known as “Rupavahini”, was built with the assistance of the Japanese Government. The station soon became the dominant television station ‘relegating ITN to the position of a minor station with limited reach.’³⁹ The state monopoly over television remained until 1992, when the government allowed private investors to enter the field under the control and supervision of the SLRC. By 1998, six private channels were in operation. These included Maharaja Television, later known as “MTV,” its Sinhala counterpart Sirasa, Swarnavahini and ETV, both owned by the EAP Edirisinghe Group of companies, TNL and Dynavision,⁴⁰ later rechristened “Art TV.”

A recent survey carried out by a non-governmental organisation depicts the overall penetration of state and private television stations. The findings are summarised in the following table.⁴¹

Station	Percentage of Respondents Reached
Rupavahini	97%
ITN	92.2%
Channel Eye	84.7%.
Swarnavahini	80.3%
Sirasa	77.7%
TNL	65.2%
MTV and Shakthi	51.3%.
ETV	29.6%.
Dynavision	25.3%

Table 2: Audience Reach of Sri Lanka’s State and Private Television Stations

Based on these findings, it appears that similar to the power dynamics concerning radio broadcasting, the arrival of new commercial, and better-financed television enterprises has not displaced the ultimate control of the state. State television still enjoys a privileged position, as the state remains in control of allocating television transmission frequencies and transmission licenses. Moreover, the state media holds a significant advantage over private media by retaining those frequencies with the widest coverage.⁴²

This state dominance significantly impacts on the average consumer’s exposure to the media. If the consumer—either consciously or unconsciously—demands state controlled newspapers and state-run broadcasting or television content, the public need for independent viewpoints may be undermined. The myth that the government is the most “official” and hence most “reliable” source of information seems to

³⁸ Act No. 6 of 1982.

³⁹ Brady, op.cit., at p.13.

⁴⁰ *Ibid.*

⁴¹ CPA & IMS, op.cit.,

⁴² Brady, op.cit., at p.13. The author notes: ‘Even early in Sri Lanka’s television history with only a transmitting station on Mount Pidurutalagala and two sub-transmitting stations in Kandy and Kokavil (the latter destroyed by the LTTE in July 1990), SLRC was able to provide its services to 84% of the population.’

be embedded in the average consumer's mind. The statistics depicted above may therefore be a combination of both the technical advantage and the reputational advantage of the state over the private media. Hence any attempts to reform the system must take stock of this reality.

3. Media Law Reform

3.1. Introductory Remarks

State policy relating to media law reform in Sri Lanka has often been dictated by expediency and the inevitable bargaining that goes on between the media industry bodies and a particular government in power. Hence, state policy has commonly lacked consistency and durability; manifestoes of political parties while competing for votes from the electorate, boast of grand promises of media liberalism that are seldom adhered to when in government. Significant obstacles to media professionalism in Sri Lanka, posed by archaic and outdated legal and regulatory fetters which adversely impact on the independence of the media,⁴³ have remained largely unaddressed. The need for a thorough reform process is clear regardless of whether the media institutions are state owned or privately owned.⁴⁴

This section begins by discussing the current constitutional/legal framework applicable to the media in Sri Lanka. Next, constitutional reforms and certain past reform initiatives undertaken by numerous stakeholders are analysed. The section also highlights the various challenges faced by reformers, thereby uncovering some of the key barriers to improving the present system. It is noted at the outset that perhaps the most significant achievement to the credit of the Sri Lankan media during the last decade or so has been the abolition of criminal defamation provisions in the penal law as well as in the 1973 Press Council law. In contrast, media reform initiatives towards codifying the law on contempt of court and on enacting a right to information have been attended with less success.

In terms of the 1978 Constitution (hereafter the Constitution), Article 14(1)(a) declares that every citizen is entitled to 'the freedom of speech and expression including publication.' Certain restrictions are, however, imposed under Article 15(2) of the Constitution, which states: 'The exercise and operation of the fundamental right declared and recognised by Article 14(1)(a) shall be subject to such restrictions as may be prescribed by law in the interests of racial and religious harmony or in relation to parliamentary privilege, contempt of court, defamation or incitement to an offence.' Article 14(1)(a) is also subject to the general restrictions on fundamental rights imposed by Article 15(7) of the Constitution.⁴⁵ Moreover,

⁴³ Hiniduma Sunil Senevi, (op.cit.)

⁴⁴ Elmqvist & Bastian, op.cit., at p.11.

⁴⁵ Article 15(7) declares: 'The exercise and operation of all the fundamental rights declared and recognised by Articles 12, 13(1), 13(2) and 14 shall be subject to such restrictions as may be prescribed by law in the interests of national security, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society. For the purposes of this paragraph "law" includes regulations made under the law for the time being relating to public security.'

the Sixth Amendment to the Constitution imposes a total ban on the advocacy of secession from the Sri Lankan state.⁴⁶

The legal framework pertaining to media freedom is further defined by a series of legislative provisions. Section 120 of the Penal Code⁴⁷ provides for a broad definition of “sedition” as an offence and is ‘interpreted in a very loose manner for the purpose of suppressing the expression of views [against] those with governmental or bureaucratic power.’⁴⁸ The Public Performance Ordinance⁴⁹ regulates public performances and requires approval from a Public Performances Board under the Ministry of Defence prior to any public performances or public display.⁵⁰ The Official Secrets Act⁵¹ restricts the communication of any official secret to the media and is believed to lead to self-censorship.⁵² It has been observed that such restrictions could mean that matters that should be open to debate, such as corruption, may not always reach the public domain.⁵³ Furthermore, the Prevention of Terrorism Act⁵⁴ and Emergency Regulations under the Public Security Ordinance⁵⁵ provide for far-reaching restrictions to be imposed on the freedom of speech and expression. Even at times when one or the other of these two ‘emergency’ laws have not been in force, the threat of their implementation at virtually a moment’s notice has been daunting.

In sum, the constitutional and legislative framework pertaining to media freedom in Sri Lanka operates on two levels. First, the constitutional framework provides for certain basic liberties with standard restrictions, barring perhaps the inappropriate inclusion of parliamentary privilege as a basis for limiting rights under Article 14(1)(a). A deeper analysis of the surrounding legislative framework, which complements the Constitution, reveals that considerable powers have been afforded to the state to impose limitations on the freedom of speech and expression generally, and on media freedom specifically. Thus the state has a variety of legal mechanisms at its disposal to curtail media freedom.

⁴⁶ See Lakshman Gunasekera, Freedom of Expression and Media Freedom, in Law & Society Trust, *Sri Lanka: State of Human Rights 1998* (1998), at p.105.

⁴⁷ Ordinance No.2 of 1883.

⁴⁸ Gunasekera, op.cit., at p.105.

⁴⁹ Ordinance No. 7 of 1912.

⁵⁰ Gunasekera, op.cit., at p.105.

⁵¹ Act No. 32 of 1955.

⁵² See Section 7 of the Act. According to Section 27 of the Act, “official secret” means: ‘any secret official code word, countersign or password; any particulars or information relating to a prohibited place or anything therein; any information of any description whatsoever relating to any arm of the armed forces or to any implements of war maintained for use in the service of the Republic or to any equipment, organization or establishment intended to be or capable of being used for the purposes of the defence of Sri Lanka; and any information of any description whatsoever relating directly or indirectly to the defences of Sri Lanka.’ Also see Anna Bolin, *In Whose Interest? A Study of Journalists’ Views of Their Responsibilities and Possibilities within the Mainstream Press in Sri Lanka* (2006) at p.9.

⁵³ Bolin, op.cit., at p.9.

⁵⁴ Act No. 30 of 1981.

⁵⁵ Ordinance No. 25 of 1947.

Moreover, as discussed later in this paper, this framework has been interpreted and operationalised by the Sri Lankan state in an illiberal fashion. This approach has led to a distinct practice of restricting the media, which mere legislative reform may not necessarily remedy. The business of media reform does not merely concern the amendment of legal provisions. Instead, reform measures raise fundamental questions about the media culture in Sri Lanka. Thus reform must involve an integrated and holistic process of reforming not only the legal framework, but also the institutional and educational frameworks pertaining to the media together with subversive state practices. The following sections, which discuss the success rate of past reform initiatives, clearly establish the veracity of this claim.

3.2. The R.K.W. Goonesekere Committee Report

The Report of the Committee to Advise on the Reform of Laws Affecting Media Freedom and Freedom of Expression, popularly known as “the R.K.W. Goonesekere Committee Report”, was in many ways the genesis of media reform initiatives in Sri Lanka. This comprehensive Report examined virtually every aspect of the media and presented a host of recommendations, which established the foundation for reform efforts to follow. Notably, despite the lapse of fifteen years, key recommendations presented in the Report remain unimplemented today.

The mandate of the Committee was to:

“Study all existing legislation and regulations affecting media freedom, freedom of expression and the public’s right to information, with a view to identifying the areas which need to be rescinded, amended or reformed in order to ensure media freedom, freedom of expression and the public’s right to information; and to make recommendations as to the amendments and/or repeal of existing legislation as well as new legislation required to strengthen media freedom in general and to ensure freedom of expression and the public’s right to information.”⁵⁶

One of the primary conclusions reached by the Committee was on the inadequacy of the constitutional guarantees in respect of the freedom of speech and expression. The Committee recommended that the provisions of the Sri Lankan Constitution be rephrased to reflect the wording of Articles 18 and 19 of the ICCPR, and in particular, to include the freedom of information.⁵⁷ It was also recommended that the broad restrictions on free speech and expression under the Constitution be altered to ensure that the constitutional framework is consistent with Sri Lanka’s international obligations. More specifically, the

⁵⁶ Report of the Committee to Advise on the Reform of Laws Affecting Media Freedom and Freedom of Expression (R.K.W. Goonesekere Committee Report) (1996), at p.1.

⁵⁷ *Ibid.* at pp.4-5. Also see the International Covenant on Civil and Political Rights, GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at p.52, UN Doc. A/6316 (1966); 999 UNTS 171; 6 ILM 368 (1967), Article 18 and Article 19.

Committee insisted that all restrictions imposed on free speech and expression by the Constitution be 'necessary, in a democratic society.'⁵⁸

The Committee was of the view that provisions of the Penal Code that dealt with criminal defamation should be repealed, as 'despite the several defences it allows, the possibility of such prosecution can discourage criticism of government ministers and policies or expression of political dissent.'⁵⁹ Moreover, the Committee strongly emphasised the need to exclude parliamentary privilege altogether as a ground for restricting media freedom, as 'neither Parliament nor its members require any protection from defamation over and above that enjoyed by ordinary citizens.'⁶⁰ The Committee was also one of the first to recommend a comprehensive law on contempt of court. It observed that in view of the 'perils faced by the media' when engaging in its duty to keep the public informed, there should be a Contempt of Court Act that clearly restricts the concept of contempt to 'the publication of [an] abusive or scurrilous comment about a judge as a judge, or of an imputation of impropriety or of corrupt bias, or attack on his integrity as a judge.'⁶¹

It was recommended that a Freedom of Information law be enacted, which makes a clear commitment to the general principle of open government. Moreover, the Committee stressed *inter alia* the importance of specifically listing the types of information that could be withheld; indicating the duration of secrecy; and providing for appeal to an independent authority when information is withheld.⁶² As discussed below, the framework suggested by the Committee in 1996 remained the benchmark that most future advocates of the right to information aspired to reach through their respective proposals to the government.

Apart from these fundamental recommendations, the Committee also made several pertinent suggestions, many of which continue to be relevant today. The Committee observed that the absence of protection in respect of confidentiality of sources in Sri Lanka was a 'serious impediment to investigative journalism and the exposure of public scandals and wrongdoing.'⁶³ Hence the Committee recommended that the right of journalists not to be compelled to disclose their sources of information should be guaranteed by law.⁶⁴ Moreover, the Committee proposed that certain crucial reforms be introduced to better ensure the independence of the media. Such proposals included the establishment of an independent broadcasting authority to regulate the granting of broadcasting licences, and a "Media Council" to function as an independent body to inquire into complaints from members of the public against newspapers and radio and television stations.⁶⁵

⁵⁸ R.K.W. Goonesekere Committee Report, op.cit., at p.6.

⁵⁹ *Ibid.* at p.12.

⁶⁰ *Ibid.* at p.14.

⁶¹ *Ibid.* at p.16.

⁶² *Ibid.* at pp.27-28.

⁶³ *Ibid.* at p.47.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.* at pp.49-51.

3.3. Reviewing Media Reform Since 1996

Since the R.K.W. Goonesekere Committee Report, a number of key initiatives have been placed on the reform agenda during the past fifteen years. In this section, the successes and failures of some of these initiatives are examined and assessed. These include attempts at constitutional reforms as well. Early advocates of media reform appear to have focused mainly on legal reform by seeking *inter alia* independent regulatory mechanisms, better laws on contempt of court and defamation and a specific Freedom of Information Act. As will be demonstrated, a majority of these initiatives have yet to achieve their goals. Subsequently, the reform agenda of the media industry turned inwards, seeking improvements in media standards, professionalism and ethics. Such efforts were met with far more success, as institutions such as the Press Complaints Commission were set up and a new code of conduct received widespread recognition. However, despite major advances being made on the institutional front, some operational problems such as the lack of resources continued to persist.

Finally, educational reforms were undertaken. Reformers seem to have realised—fairly late in the day—that the media faces a more fundamental challenge in terms of competences and skills, which has deeply affected the quality of the profession. Moreover, grand progress on the legal and institutional fronts may be pointless if the forerunners of the profession are incapable of making best use of the space provided to them. This educational aspect of the reform agenda is perhaps the least developed and requires a separate analysis altogether, which will be undertaken in the final chapter of this paper. Thus the following review will only address the legal and institutional reforms introduced over the past two decades.

A. Constitutional Reforms

In one of the few major (but unsuccessful) attempts to reform Article 14(1) (a) and its relevant restrictions, the Constitution Bill of August 2000, which was never enacted into law, stated as follows;

“Article 16(1)

Every person is entitled to the freedom of speech and expression including publication and this right shall include the freedom to express opinions and to seek, receive and impart information and ideas either orally, in writing, in print, in the form of art or through any other medium.”

This draft constitution formulation was far more satisfactory than Article 14(1) (a) of the present Constitution. Article 14(1) (a) is fundamentally defective in the manner in which it limits itself to “citizens” as evidenced by the contrasting rulings given by the Supreme Court on the question as to whether a company and its shareholders can avail themselves of this right to come before the Court on

free speech issues.⁶⁶ In contrast, the international formulations, including the International Covenant on Civil and Political Rights (ICCPR, Article 19) pointedly state the right as being available to “everyone”, which stipulation has been interpreted by regional tribunals to apply to legal as well as juristic persons.⁶⁷ In that sense, draft Article 16(1) of the Constitution Bill is preferable as far as Sri Lanka is concerned.

The proposed Article 16(1) has modelled itself closely on the wording of Article 19 of the ICCPR, excepting only the fact that it has preferred to omit the freedom to hold opinions, as opposed to the freedom to express opinions, in the definition of the right to free speech itself.

This omission deserves closer study both in terms of the international formulations as well as the applicable Sri Lankan jurisprudence. It is interesting in this context that framers of both Article 19 of the ICCPR and Article 10 of the ECHR had thought it fit to include the right to hold opinions within the substantive content of the right to free speech. This has been specifically interpreted to protect more than simply expression in the sense of public communication of ideas. On the contrary, it has been held applicable on the basis of the holding of individual opinion, such as when the state refuses to recruit applicants to civil servant posts because of their extremist political opinions.⁶⁸ In such instances, it has been decided that there is a violation of the right to expression and to hold opinion as well as the obvious right to non-discrimination.

The omission of the right to hold opinions in the substantive right of freedom of speech, in the presently applicable Article 14(1)(a) of Sri Lanka’s Constitution led to judicial creativity in linking the freedom to hold opinions with the right to information. Earlier pronouncements of the Supreme Court had held that a right to information existed within the right of free speech.

In *Fernando v. Sri Lanka Broadcasting Corporation*⁶⁹ the Court held that the right to hold opinions (as subsumed in the right to information, *simpliciter*), is a corollary of the freedom of thought guaranteed by Article 10 of the Sri Lankan Constitution and properly belonged there, rather than within the ambit of the right to freedom of speech in Article 14(1)(a).

⁶⁶ *Fernando v. Liyanage* (SC 1161/82 and 134/82), when the Supreme Court in ruling that a company is not a “citizen”, took away the right of media companies and their shareholders to come before the Court on free speech issues, affirmed in *Neville Fernando and Others Vs Liyanage and Others*, [1983] 2 SRI LR 214, where the Court unequivocally held that a company, not being a citizen, cannot complain of infringement of fundamental rights and that its shareholders too cannot complain of a violation since they have not suffered any distinct and separate injury such as to entitle them to allege infringement of their fundamental rights. However, see *Visuvalingam and others v. Liyanage and others*, [1983] 2 SRI LR 311. A more recent precedent is *Environmental Foundation Ltd v. Urban Development Authority of Sri Lanka and Others (the Galle Face Green Case)*, SC (F.R.) Application 47/2004, S.C. Minutes 28.11.2005, discussed more fully in the succeeding analysis.

⁶⁷ *Autronic AG v. Switzerland*, (1990), 12 EHRR, 485.

⁶⁸ *Glaserapp v. Germany*, 1986 EHRR, 25, and *Leander v Sweden*, 1987, 9 EHRR, 433

⁶⁹ [1996] 1 Sri LR 157.

This reasoning intertwining the right of information with the right of thought, conscience and religion was further developed in a Determination of the Supreme Court in 1997⁷⁰ when a bill put forward by the Government sought to set up a regulatory authority that was given the power to issue and refuse licences to private broadcasters. The Bill was determined as unconstitutional on the basis that it held real potential for the arbitrary suppression of freedom of thought and speech in that not only did it seek to establish a body that was under executive fiat to an unacceptable degree but also gave an overly wide discretion with regard to decisions on licences.

Conceptually, the bringing in of the right to hold opinions/ information under the right to freedom of thought may be innovative. However, explicitly engaging the right to freedom of information/freedom to hold and express opinions in the context of the right to freedom of speech, (as indeed, has been the practice with regard to the ICCPR and the ECHR), will yield a richer interpretation of that right. Therefore, if at an appropriate time, national debate in Sri Lanka returns to a consideration of the appropriate constitutional framework in guaranteeing freedom of expression and information, such a constitutional provision should therefore comprise two parts: the first providing for the freedom to hold opinions and the second providing for the right to speech and information, with the restrictions necessarily applying to the second only.

It is also important that a constitutionally secured right to information should encompass the duty on the part of government authorities to provide information to an applicant. Such an inclusion should not prompt fears that confidential information or secrets impacting on national security could be entered through the back door. As evidenced in the jurisprudence of the European Court relating to Article 10 in the ECHR which is of persuasive value for Sri Lanka, the right to receive information has been specifically ruled to exclude the right to compel the state to reveal secret information.

“The right to receive information basically prohibits a Government from restricting a person from receiving information that others may wish or may be willing to impart to him. Article 10 does not, in circumstances such as those of the present case, confer on the individual a right of access to a register containing information on his personal position, not does it embody an obligation on the Government to impart such information to an individual.”⁷¹

It is, however, different if disclosure was requested in a general sense and in the public interest. It is difficult to see how any objection could be sustained in that particular context.

In so far as restrictions on the substantive right are concerned, the range of restrictions provided for by Article 15(2) and (7) of the Constitution are clearly unacceptable in their width and substance. Article 16 (2) of the Constitution Bill declared that:

⁷⁰ *In Re The Broadcasting Authority Bill*, S.D. No 1/97 – 15/97, delivered on 5 May, 1997.

⁷¹ *Leander v. Sweden*, 1987, 9 EHHR, 433 at para 74. See also *Gaskin v. UK* (1989) 12 EHHR, 36.

“Any restrictions shall not be placed on the right declared and recognised by this Article other than such restrictions prescribed by law as are necessary in a democratic society in the interests of national security, public order, the protection of public health or morality, racial and religious harmony or in relation to parliamentary privilege, contempt of court, defamation or incitement of an offence or for the purpose of securing recognition and respect for the rights and freedoms of others.”

The Sri Lankan courts, by careful balancing of the right and concomitant restrictions, have subsumed the European test of proportionality in relation to declaring any restrictions legitimate.⁷² The explicit embodying of this proportionality test in Draft Article 16(2) is sensible. It contains the strict three-part test laid down by the European Court in that the restrictions must be provided for by law, in the sense that: the law is accessible and “formulated with sufficient precision to enable the citizen to regulate his conduct”; it must then pursue one of the exclusive list of legitimate aims; and most importantly, must be found necessary to secure the legitimate aim. Restrictions must therefore serve a pressing social need, the reasons given to justify them must be relevant and sufficient and they must be proportionate to the legitimate aim pursued.

Yet, this Draft Article’s retaining of the long list of grounds on which freedom of speech could be restricted, appears to be contrary to international law norms and is also cumbersome in its application. This objection relates particularly to the retention of parliamentary privilege as a ground for restricting free speech. Parliamentary privilege applies only to the privileges of parliamentarians within the precincts of the House, in relation to which they are accorded special powers. Such privileges should not be applied as a general ground of restriction with regard to freedom of speech of individuals. None of the international or regional covenants include parliamentary privilege as a ground for restricting freedom of speech. Its retention in Draft Article 16(1) and in any further revisiting of the formulation of restrictions on the constitutional right to freedom of expression is problematic.⁷³

B. Media Declarations, the Media Charter and the National Media Policy

In or around 1998, several organisations directly linked to the media industry began to focus their attention on *inter alia* the legal and regulatory framework within which the media operates; on a code of ethics; and on the social responsibility of journalists. These objectives and priorities formed the basis of the Colombo Declaration on Media Freedom and Social Responsibility. The first of such declarations was adopted at a symposium on Media Freedom and Social Responsibility jointly organised by the Sri Lanka Working Journalists Association, the Free Media Movement (FMM), the Editors Guild, the Newspaper

⁷² *Joseph Perera v. The Attorney-General* [1992] 1 SLR 199, also *Palihenage Don Saranapala v. S. A. D. B. R. Solanga Arachchi, Senior Superintendent of Police, Police Headquarters, Colombo 1 and Others*, SC Application No: 470/96, SC Minutes of 17/07/1997.

⁷³ See the Report of the RKW Goonesekere Committee on Reform of the Legislative Framework Relating to the Media in Sri Lanka which suggested that parliamentary privilege be abolished as a ground of restriction of free speech in the Constitution.

Association of Sri Lanka, the World Association of Newspapers and the Centre for Policy Alternatives (CPA).

The Declaration covered a number of important issues requiring immediate attention, including constitutional and legislative provisions for media freedom; the impact of Emergency Regulations on media freedom; necessary reforms for a public broadcasting service; and industry-specific issues, such as the high cost of newsprint. The Declaration also included a section on the “Responsibilities of Media Institutions and Personnel” and a Voluntary Code of Ethics, which stipulated guidelines for the conduct of journalists. Crucially, the Declaration brought three of the main stakeholders in the media industry, namely, FMM, the Editors Guild and the Newspaper Society together to address some of the key issues faced by the Sri Lankan media.⁷⁴ These institutions have diverse and often contradictory agendas and interests.⁷⁵ FMM, for instance, is a network of journalists committed to campaigning on issues of media freedom and rights of journalists. The Editors Guild comprises editors of some of the mainstream newspapers. The Newspaper Society is an association of newspaper owners. Thus, as Elmqvist and Bastian observe, ‘the conditions in the media and problems faced by the journalist profession have brought [these institutions] together.’⁷⁶

Despite these positive attributes and certain attempts by the United National Front (UNF) Government of 2002 to give effect to some of the principles contained in the Declaration,⁷⁷ there has been a distinct lack of initiative on the part of the state to respond to the main concerns of the industry.⁷⁸

Subsequently, key media institutions came together in Tholangamuwa in September 2005 to adopt a Media Charter (also referred to as the “Tholangamuwa Declaration”). The institutions involved were the Federation of Media Employees Trade Unions, the Sri Lanka Working Journalists Association, Sri Lanka Tamil Media Alliance, Sri Lanka Muslim Media Forum and FMM. The Charter was ultimately finalised at a conference facilitated by CPA and the International Federation of Journalists and succeeded in gaining the support of twenty-nine organisations representing regional journalists.⁷⁹ The Charter declares:

“A professional media with a responsibility to the public interest, independent of government or partisan influence and interference, is a vital part of the series of checks and balances central to democracy...There needs to develop a strong and democratic public service culture within the news media so that it reflects the richness of society, serves the whole community independent of commercial, partisan or government

⁷⁴ Elmqvist & Bastian, *op.cit.*, at p.11.

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ For example, the UNF Government established the Prime Ministerial Committee on Media Law Reforms in 2003 with a view to introducing much-needed reforms within the media sector.

⁷⁸ Elmqvist & Bastian, *op.cit.*, at p.11.

⁷⁹ Media Charter for a Democratic and Pluralist Media Culture and Social and Professional Rights for Media and Pluralism in Sri Lanka (September 2005).

interests and provides a plurality of voices from across the spectrum of society in Sri Lanka.”⁸⁰

The Charter highlights certain “Fundamental Principles”, such as respect for truth, pluralism, diversity and human rights, and thereafter lists certain key commitments that ought to be undertaken in respect of editorial freedom, media pluralism, social dialogue and the rights of journalists. Interestingly, the Charter also contains a “Practical Program for Follow-up Actions”, which lists certain key measures to be undertaken by representatives of the media during the six months to follow. These key measures included engaging in discussions with the Press Complaints Commission of Sri Lanka with the aim of strengthening the Sri Lankan code of ethics and building support and commitment among journalists for the code; launching a broad-based campaign to promote genuine public service media; and seeking a charter on ethical election reporting with editors and publishers.⁸¹ While the follow-up plan received some attention, the campaign—like many of its nature—lost momentum later.

In 2006, several media organisations including FMM, the Editors Guild and the Newspaper Society⁸² issued the Weligama Declaration on the Role of Media for National Unity. This unique policy document adopted a self-critical approach to media reform, a feature that was perhaps less visible in other declarations. The Declaration acknowledged that the media ‘plays a significant role in nurturing social and cultural attitudes and political values...and enabling public discourse.’⁸³ Hence there was a consensus that the media played a crucial role in fostering national unity. It was further agreed that ‘a self-critical approach by the media as well as constructive criticism of the media by the intellectual community will help the media profession and industry play a more positive role.’⁸⁴ One of the crucial recommendations made by the signatories to the Declaration was that there should be ‘regular, focused consultation among media practitioners on various important aspects of the national issues in order to build a common professional discourse.’⁸⁵ The responsibility to carry out such recommendations was cast not only on media professionals but also on the industry ownership.

A stark contrast may be observed between policy initiatives put forward by the media and civil society actors and the policies formulated by the government. In 2007, the Ministry of Mass Media & Information released a National Media Policy. The Policy is incredibly brief and for the most part consists of ‘instructions to, or standards for, the media rather than policy statements as such to guide government

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² Other signatories included: the Sri Lanka Working Journalists Association, the Federation of Media Employees Trade Unions, the Sri Lanka Muslim Media Forum, the Sri Lanka Tamil Media Forum, the Sri Lanka Photo Journalists' Association, the Sri Lanka Environment Journalists' Association and the South Asia Free Media Association.

⁸³ Weligama Declaration on the Role of Media for National Unity (2006).

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

action in this area.⁸⁶ This is evident in the section on “Media Freedom and Right to Access Information.”⁸⁷ While the drafting of a Freedom of Information law would be the natural course to take in order to ensure the right to access information, there was nothing in the Policy to suggest that the government intended to pass such a law.⁸⁸ Moreover, the Policy articulates a commitment to ‘[e]nsure that the media would not in any manner harm the Sri Lankan National identity and [to] prevent any person or community being subject to contempt, insult, disgrace or hate by the media.’⁸⁹ It has been observed that the focus once again is on the responsibility of the media, rather than on the government’s role in balancing media freedom with the protection of other social interests.⁹⁰ Hence the National Media Policy of 2007 appears to be merely another disingenuous governmental gesture, which ultimately does very little to address the major issues plaguing the Sri Lankan media.

However, some interesting ideas were presented in the Policy in relation to “Media Development”. The Policy promises the creation of a new theoretical and institutional framework to introduce digital technology for electronic media; the establishment of a “Media City” to present all media services from one focal point; the establishment of a “Media Authority” to streamline media performance and ensure quality standards; and the establishment of a “Media Development Council” to ‘recognise and identify the challenges, problems and new trends [in the media] and to formulate methodologies to cope with those [sic].’⁹¹ While such plans may look ‘media friendly’ at first blush, they remain largely underdeveloped, which ultimately justifies skepticism over their implementation.

In October 2008, a revised Declaration on Media Freedom and Social Responsibility was issued by the Sri Lanka Working Journalists Association, FMM, the Newspaper Society and the Editors Guild. The 2008 Declaration was adopted following an international symposium held that month to commemorate the 10th Anniversary of the previous Colombo Declaration on Media Freedom and Social Responsibility.⁹² The symposium held ten interactive sessions on key issues faced by the Sri Lankan media, including press freedom, self-regulation, contempt of court, restrictions under emergency law and the right to information.

The signatories to the revised Declaration noted that apart from certain limited positive developments, little had been done to implement the proposals previously set out in 1998.⁹³ Hence the signatories were

⁸⁶ See Article XIX & the Centre for Policy Alternatives (CPA), *Note on Sri Lanka’s Proposed National Media Policy* (2007).

⁸⁷ Ministry of Mass Media and Information, *National Media Policy* (2007).

⁸⁸ Article XIX & CPA, *op.cit.*,

⁸⁹ Ministry of Mass Media and Information, *National Media Policy* (2007).

⁹⁰ Article XIX & CPA, *op.cit.*,

⁹¹ Ministry of Mass Media and Information, *National Media Policy* (2007).

⁹² See *10th Anniversary of the Colombo Declaration on Media Freedom and Social Responsibility—International Symposium: Speeches and Interactive Sessions* (October 2008), Sri Lanka Press Council (SLPI), hereafter *10th Anniversary of the Colombo Declaration 2008*

⁹³ The signatories observed that since the 1998 Declaration, the only positive developments were the abolition of criminal defamation provisions in the law, the repeal of the 1978 amendment to the Parliamentary Powers and

compelled to reiterate the main concerns that the media industry had raised during the decade since the 1998 Declaration. Such concerns would be discussed individually and in greater detail in the following sections.

C. Independent Broadcasting Authority

Media activists have continually lobbied for an independent broadcasting authority and have specifically called for the repeal of Section 44 of the Sri Lanka Broadcasting Authority Act,⁹⁴ which empowers the Minister to issue licenses for the establishment and maintenance of private broadcasting stations. Moreover, Section 44(4), which confers extensive powers on the Minister to make regulations governing the functioning of such stations both in terms of their composition and the nature of programmes,⁹⁵ has also been severely criticised as facilitating excessive state control over the media. Hence interest groups have actively pursued the establishment of an independent broadcasting authority to regulate the granting of licences to private broadcasters, thereby ensuring that the Sri Lankan media enjoys procedural as well as substantive freedom from state control.⁹⁶

In April 1997, the Chandrika Kumaratunge government controversially tabled in Parliament a Bill to establish a new broadcasting authority, which, instead of liberalising the media sector, would have considerably extended governmental control over the broadcasting media.⁹⁷ The Bill stipulated that the proposed Authority be directly appointed by the Minister responsible for Media, and further empowered the Minister to issue guidelines in respect of the operation of stations via state-issued licenses. Thus the proposed Authority would have fallen well short of being “independent” of the government. The Bill also contained absolutely no safeguards nor procedural mechanisms to ensure that non-partisan and competent people would be appointed to the Authority. Moreover, it afforded the Minister the power to dictate policy and programme content in a manner that would have ‘rendered the electronic media completely vulnerable to the whims and fancies of politicians and any partisan interests they might represent.’⁹⁸

Privileges Act, and the establishment of the Sri Lanka Press Institute, the Press Complaints Commission and the Sri Lanka College of Journalism. See Colombo Declaration on Media Freedom and Social Responsibility (October 2008). Recommendations as proposed in the Colombo Declaration (1998) in relation to repeal/update of the existing archaic media laws must be identified as an immediate action point by the government as it has been almost 14 years since the initial recommendation. [Vide interview with I.Furkan , op.cit.]

⁹⁴ Act No. 5 of 1974.

⁹⁵ Kishali Pinto-Jayawardena, Freedom of Expression and Media Freedom in E. Nissan, (Ed.), *Sri Lanka, State of Human Rights 2003*, Law & Society Trust (2003), at p.15. The Minister is empowered to make regulations in respect of ‘the control and supervision of programmes by such stations, the prohibition, regulation or control of the ownership of private broadcasting stations by prescribed persons or classes of persons, the regulation or control of the transfer of shares in companies holding licences for private broadcasting stations and for the regulation of fees to be charges for such licences.

⁹⁶ *Ibid.*

⁹⁷ Gunasekera, op.cit., at p.108.

⁹⁸ *Ibid.* at p.110.

The Bill, described by the media advocacy body, the Free Media Movement (FMM) as 'draconian',⁹⁹ was tabled in Parliament hastily and surreptitiously,¹⁰⁰ possibly to avoid review by the Supreme Court.¹⁰¹ However, the FMM along with several other media organisations and private radio and television companies responded rapidly, filing between them, a total of fifteen petitions in the Supreme Court. The petitioners sought to challenge the constitutionality of the Bill. The several petitions objected *inter alia* to the 'excessive political interference in the proposed Authority [and] the severe controls which would be imposed on the freedom of operation of the industry...'¹⁰²

The Supreme Court's ruling against the entire Bill is a seminal judgment and a reflection of the independence of the judiciary during that period. Expounding on the proper role of the media in society and the regulatory role of the state, the Court observed:

"Having regard to the limited availability of frequencies, and taking account of the fact that only a limited number of persons can be permitted to use the frequencies, it is essential that there should be a grip on the dynamic aspects of broadcasting to prevent monopolistic domination of the field either by the government or by a few, if the competing interests of the various sections of the public are to be adequately served. If the fundamental rights of freedom of thought and expression are to be fostered, there must be an adequate coverage of public issues and an ample play for the free and fair competition of opposing views."¹⁰³

The Court further held that while a certain margin of appreciation must be afforded to the state in matters of licensing, the principle of pluralism must be safeguarded in order to 'ensure that freedom of thought and expression may not only survive but thrive and flourish vigorously.'¹⁰⁴ The Court also commented on the role of mass media in society, and accordingly observed that 'without free political discussion, no

⁹⁹ Free Media Movement Statement in the Sunday Observer 14 April 1997. Also see Gunasekera, *op.cit.*, at p.109.

¹⁰⁰ Despite assurances that any proposals for a Broadcasting Authority would be published as a White Paper to enable public discussion prior to any legislation being tabled, the Government of Sri Lanka, without warning or notice, tabled the Bill in Parliament just prior to the lengthy New Year holidays in April. This made it incredibly difficult for interested parties to critically examine the Bill or challenge its constitutionality. See Gunasekera, *op.cit.*, at p.113.

¹⁰¹ Article 121(1) of the Constitution of Sri Lanka states: 'The jurisdiction of the Supreme Court to ordinarily determine any such question as aforesaid may be invoked by the President by a written reference addressed to the Chief Justice, or by any citizen by a petition in writing addressed to the Supreme Court. Such reference shall be made, or such petition shall be filed, within one week of the Bill being placed on the Order Paper of the Parliament, and a copy thereof shall at the same time be delivered to the Speaker. In this paragraph "citizen" includes a body, whether incorporated or unincorporated, if not less than three-fourths of the members of such a body are citizens.'

¹⁰² Gunasekera, *op.cit.*, at p.109.

¹⁰³ *Athukorale and Others v. The Attorney General (Sri Lanka Broadcasting Authority Case)* [1997] 2 BHRC 610.

¹⁰⁴ *Ibid.*

education, so essential for the proper functioning of the process of popular government is possible.’¹⁰⁵ Moreover, it was held that the role of the electronic media is not limited to the formation of political opinion, but also involves ‘satisfying other public needs, including intellectual, spiritual and emotional needs, [which] ought not to be ignored or underrated.’¹⁰⁶ It has been observed that the Court’s implicit recognition of the representational role of the mass communication system is laudable, as the media had often been inadequately described as merely a provider of information to the public.¹⁰⁷ The Court may therefore be commended for appreciating the media’s role in presenting competing interests in a free and fair manner:

“In a situation in which at least two kinds of competing interests have reached the level of violent political conflict—i.e. the ethnic conflict and the class conflict reflected in the JVP insurgencies—can anyone doubt the importance of the media’s role in this regard?”¹⁰⁸

Since the 1997 ruling, successive governments have stalled on the process of establishing an independent broadcasting authority. Recently, however, the Ministry of Mass Media & Information launched a new project to establish a “National Broadcasting Authority.”¹⁰⁹ The project is still at a nascent stage; hence the actual level of independence afforded to the authority remains to be seen.

D. Contempt of Court

Owing to considerable ambiguity in the law as well as the occasional (judicial) misuse of the doctrine, several attempts have been made to reform the law on contempt of court.

Case law in relation to contempt of court has generally proceeded along conservative lines.¹¹⁰ However, contempt was rarely used to stifle freedom of expression as a matter of common usage until the period of

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

¹⁰⁷ Gunasekera, *op.cit.*, at p.112.

¹⁰⁸ *Ibid.*

¹⁰⁹ Ministry of Mass Media & Information, *Ongoing Projects*, available at <http://www.media.gov.lk/ongoing-projects.php> (last accessed on 18 January 2011).

¹¹⁰ *In the Matter of a Rule on De Souza* 18, NLR, 41; *In Re Hulugalle*, 39, NLR, 294. In *Hewamanne v. Manik de Silva and Another*. (1983, 1 SLR, 1, the impugned publication, containing an account based on the Order Paper under the heading “FDB’s Pleadings Prepared in Judge’s Chambers” and “Select Committee Probe of Mr KCE. de Alwis’s representations’, stated that a resolution was to be moved in Parliament appointing a Select Committee to probe into representations made by a former appellate court judge that a court ruling disintitling him to continue as a member of a Special Presidential Commission, was biased. Subsequently, Parliament upstaged the Supreme Court decision that the publication amounted to contempt by enacting Parliament (Powers and Privileges) Amendment Act No 25 of 1984, which stipulated that the publication of any extract of any paper published by order of Parliament, bona fide and without malice, would not amount to contempt of court. Even more troublingly, *In Re Garuminige Tillekeratne* (1991 1 SLR 134) was an instance where a provincial

the Sarath Silva Court (1999-2009). This was best evidenced in 2003, where the then Chief Justice Sarath N. Silva clashed with members of the minor judiciary, who alleged that they had been unfairly dismissed from service without a proper hearing and on political grounds.¹¹¹ Subsequently, the heads of certain media institutions that reported the dispute and published or broadcast interviews with the concerned judges were sent letters by the Registrar of the Supreme Court warning them that contempt of court charges may be instituted against them.¹¹² Strong protests were issued by FMM in response to these letters. Moreover, the media institutions concerned immediately responded to the letters of the Registrar, arguing that mere reportage of facts concerning a dispute of public importance could not constitute contempt of court.¹¹³

Though no significant developments took place in respect of this issue thereafter, the incident reflected a wider judicial tendency of intimidating¹¹⁴ the media and constraining the reporting of vital matters with regard to the independence of the judiciary.¹¹⁵ The incident 'illustrated the imprecise nature of contempt of court in Sri Lanka.'¹¹⁶ It seems the present uncertainty is further exacerbated by conservative judicial attitudes towards the issue of contempt.¹¹⁷ Such attitudes have undoubtedly enhanced the need for immediate legislative reform.¹¹⁸

correspondent of a Sinhala paper, the 'Divaina,' sent a report of a speech made by a member of Parliament in the opposition at a time when the presidential election petition was being heard, in which the latter said that "the petition had already been proved and if the petitioner did not win her case, it would be the end of justice in Sri Lanka..." Contempt of court was found *inter alia* on the basis that the publication *might or was likely* to result in prejudice to the pending hearing of the presidential election petition, inferring that the judges had already made up their minds and thus possibly deterring potential witnesses from giving evidence.

¹¹¹ Pinto-Jayawardena (2003), op.cit., at p.9. Two judges, respectively the President and the Secretary of the Judicial Services Association alleged also, in petitions filed in court, that they had been prevented from holding the Annual General Meeting of the Association. This, they contended, was due to arbitrary and coercive actions of the Chief Justice who wanted to prevent them from holding positions in the Association because they had opposed him in the past on the basis that his behaviour was not conducive to the honour and dignity of the office.

¹¹² *Ibid.* at p.9.

¹¹³ *Ibid.*

¹¹⁴ 'The tendency of intimidation has further resulted in direct and indirect self censorship by the journalists who have been forced to exercise caution and constant vigilance' [Chandra Jayaratne, Former Head, Chamber of Commerce and prominent member of civil society interviewed on 4 March 2012]

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ See discussion, *supra* at 101.

¹¹⁸ 'The misuse of power and the arbitrary exercise of discretion by judges in exercising the power to punish for contempt is primarily why there is pressure in certain countries for enactment of a codified contempt of court law rather than relying on the general practice of the balancing of different interests by the judiciary.' *10th Anniversary of the Colombo Declaration (2008) Session on Contempt of Court-The Need for a Law on Contempt of Court* at pp.59-60 (presentation by Justice Michael Francis Saldanha, Retired Chief Justice, State of Karnataka, India).

Sri Lanka has witnessed several attempts to draft a comprehensive Contempt of Court Act. In April 2000, the Editors Guild submitted proposals to the Law Commission of Sri Lanka urging the Commission to undertake legal and regulatory reform including the drafting of a Contempt of Court Act. Moreover, an All-Party Select Committee was subsequently appointed to study the need to codify the law on contempt of court.¹¹⁹ However, due to the sudden dissolution of Parliament for political exigencies by the then president Chandrika Kumaratunge in late 2003, the said Parliamentary Select Committee also lapsed thereafter. Despite considerable work done by the Committee during its sittings, its term was not renewed at the next Parliamentary sessions.

In 2006, the Bar Association of Sri Lanka (BASL) requested a special Committee¹²⁰ to draft a Contempt of Court law. After several deliberations, a draft Contempt of Court law was finalised and approved by the Bar Council on 25th February 2006. It was thereafter forwarded to the Government by the Bar Association. However, there has been no progress since then.

More recently, a draft Contempt of Court law prepared by the Law Commission of Sri Lanka received fairly wide circulation, indicating that some progress had been made in this regard. The Law Commission observed that '[t]oo harsh a law on contempt can act as a barrier to the development of a healthy and vibrant jurisprudence. Ideally a legal system should encourage both spontaneous and reflective criticism of judgments while preserving the sanctity and dignity of the courts and ensuring the smooth and effective administration of justice.'¹²¹

The BASL draft law reflected principles commonly accepted in the modern law of contempt.¹²² These principles including the standard that 'contempt should only be found if the impugned act is of such a nature that it substantially interferes or tends substantially to interfere with the due course of justice in active proceedings.'¹²³

"[A] fair and accurate report of legal proceedings held in public, published contemporaneously and in good faith should not amount to contempt of court as much as an abridged or condensed report of the same, published contemporaneously and in good

¹¹⁹ This initiative was welcomed by journalists as a timely initiative to ensure that both the judiciary and the media personnel are informed as to the scope and applicability of the law relating to Contempt of Court.' [K. Janaranjana, senior journalist, Ravaya Newspaper, interviewed on 04 January 2011]

¹²⁰ Constituted by President of the Bar Association, the late Mr Desmond Fernando, President's Counsel, the Committee was chaired by Dr J de Almeida Guneratne, President's Counsel, and comprised attorneys J.C. Weliamuna and Kishali Pinto-Jayawardena.

¹²¹ Law Commission of Sri Lanka, *Contempt of Court Law: Explanation*, available at http://www.lawcomdept.gov.lk/info_English/index.asp-?xp=723&xi=1129.htm (last accessed on 16 January 2011).

¹²² Pinto-Jayawardena (2003), *op.cit.*, at p.10.

¹²³ *Ibid.* The author comments: 'A publication made as or as part of a discussion in good faith of public affairs or other matters of general public interest should not amount to contempt of court if the risk of impediment or prejudice to particular legal proceedings is merely incidental to the discussion.'

faith, provided it gives a correct and just impression of the proceedings. The defence of innocent publication or distribution should also be made available.”¹²⁴

Accordingly, the draft law permits honest and accurate publications of reports¹²⁵ of court proceedings and stipulates that the ‘publication of court proceedings that tend to interfere with the course of justice shall not amount to contempt where the publication was made in good faith and the publisher was not aware that such proceedings were pending in a court.’¹²⁶ Moreover, the law prevents the courts from prohibiting the publication of the report of any court proceeding except where there is a substantial risk or prejudice to the administration of justice.¹²⁷ Crucially, the draft law stipulates that fair and *bona fides* commentary on a judgment of a court would not amount to contempt.¹²⁸ Thus the scope for fair and reasonable criticism of judicial decision-making was accepted as fundamental to the proposed legislative framework.¹²⁹ The judicial thinking captured in the reflection below was the basic premise of this draft.

“This is the first case, so far as I know, where this court has been called on to consider an allegation of contempt against itself. It is a jurisdiction which undoubtedly belongs to us, but which we will most sparingly exercise, more particularly as we ourselves have an interest in the matter.

Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself.”¹³⁰

Similar to the United Kingdom Contempt of Court Act of 1981, some of the other draft laws on contempt of court, such as the BASL draft specifically afforded protection against disclosure of sources. This protection was, however, omitted in the Law Commission draft. The BASL draft recognised *inter alia* that no court may require a person to disclose a confidential source, nor would such a person refusing to divulge a source be guilty of contempt of court, nor may any adverse inferences be drawn against such a

¹²⁴ *Ibid.* at p.11.

¹²⁵ As per the views expressed by some of the media personnel, mere amendments to existing laws would not be sufficient, as a proper balance in this regard would be arrived at only by bringing forth a generation of professional court reporters who are capable of producing accurate, professional and reliable reviews and reports..[Vide interview with B.Padmakumara, op.cit.]

¹²⁶ See Draft Contempt of Court Law, available at http://www.lawcomdept.gov.lk/info_English/index.aspx=723&xi=1129.htm (last accessed on 16 January 2011).

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*

¹²⁹ Explaining further, a senior journalist expressed the view that judicial power as a part of the sovereignty of the state derives from the people and therefore rests with the people. The obligation of the judiciary towards the taxpayers and the right of the citizenry to engage in fair and reasonable criticism must not be hindered by the identification of the judiciary as a prohibited zone. [Vide interview with K. Janaranjana, op.cit.]

¹³⁰ *R V Metropolitan Police Commissioner ex parte Blackburn* (No 2) 1968, QB 150

person. The only acceptable exception to this framework was when it could be established that such disclosure was necessary in a democratic society in the interests of justice, national security or for the prevention of disorder or crime.¹³¹

This clause was deemed necessary due to the fact that the legal position in Sri Lanka on compulsion of journalists to disclose sources is highly ambiguous, as various judges have sought to interpret this area of law differently. For example, two criminal defamation indictments were concurrently filed against the Editors of the *Sunday Times* and the *Lakbima* Newspapers over the publication of an incorrect news item about Former President Chandrika Kumarathunga. In the *Sunday Times* case, the High Court Judge, Upali de Z. Gunawardene chose to draw an adverse inference against the Editor for refusing to disclose his source. By contrast, in the *Lakbima* case, High Court Judge Tilakawardane took a contrary view and held that a journalist should not be compelled to disclose his source of information. For separate reasons, the *Sunday Times* Editor was convicted and the *Lakbima* Editor acquitted. However, as discussed later in this paper, with the repeal of criminal defamation laws in the country, the matter was never properly heard in appeal, leaving the issue of disclosure of sources largely unresolved.¹³²

Despite the extensive efforts of reformers to introduce a Contempt of Court Act, the initiative continues to be filibustered at the legislative level. Section 105(3) of the Constitution empowers the Supreme Court and Court of Appeal to punish for contempt of itself and also empowers the Court of Appeal to punish for contempt of the High Courts, tribunals and other institutions. Article 136 (1) of the Constitution confers power on the S.C. to make rules regulating generally the practice and procedure of the Court. Article 136 (1) (b) decrees that the S.C. has power to make rules as to the proceedings in the S.C. and the C.A. in the exercise of the several jurisdictions conferred on such Courts by the Constitution (which would therefore include the power to charge for contempt of Court as envisaged in Article 105 (3) of the Constitution. Up to now, no such rules have been prescribed by the Supreme Court and the Court's power remains unfettered in this regard. As illustrated in the preceding analysis, such power has also been used arbitrarily on occasion. Meanwhile, the statutory provision regulating the trial of offences for contempt of court is found in Chapter LXV of the Civil Procedure Code (CPC). Section 792 of the Code states that the procedure detailed in Chapter LXV is to be followed in *all* courts (emphasis added).

As pertinently observed by the Law Commission, the Supreme Court 'appears to have followed a different procedure to that prescribed on subordinate courts.'¹³³ For example, a court is required under the CPC to issue summons on the alleged contemnor. However, the practice in the Supreme Court has instead been to issue a rule *nisi* on the alleged contemnor. The Law Commission rightly observes that this practice is without any statutory basis whatsoever.¹³⁴ As questions over the independence of the Supreme Court continue to be raised today, the space for reporting and commenting on judicial proceedings could

¹³¹ *Ibid.*

¹³² For a discussion of the two cases, see *10th Anniversary of the Colombo Declaration (2008) Session on Contempt of Court—The Need for a Law on Contempt of Court*, at 58 (panel presentation by Kishali Pinto-Jayawardena).

¹³³ Law Commission of Sri Lanka, *op.cit.*

¹³⁴ *Ibid.*

significantly diminish. In this context, the need for immediate legislative reform¹³⁵ becomes even more acute.¹³⁶

A further interesting question arises as to whether a constitutional amendment is required in order to stipulate rules of procedure and of substance in regard to contempt of court as applicable to the superior courts of record in Sri Lanka on the accepted premise that an ordinary statute cannot impose limitations on constitutional provisions that are widely phrased. While views may be advanced in support or in opposition to this argument, there is considerable force in urging that, in the spirit of the constitutional philosophy which enhances the rights of individuals rather than restricts them, an ordinary law may suffice to prescribe the parameters within which the law of contempt could be exercised by all courts.¹³⁷

E. Parliamentary Privilege

Recent reform in the area of parliamentary privilege has ensured that at least some space for reporting on parliamentary debates is afforded to journalists.

An important step towards liberalising this aspect of the law took place in September 1997, when on the initiative of then Minister of Media, Posts and Telecommunication, Mangala Samaraweera, Parliament repealed the 1978 Amendment to the Parliament (Powers and Privileges) Act.¹³⁸ The 1978 Amendment had given Parliament concurrent power with the Supreme Court to punish offenders in respect of breaches of privilege specified in Part A of the Schedule of the Act. The Amendment had long served to restrain the media in reporting and commenting on the work of Parliament.¹³⁹ While not many media personnel were actually punished under these provisions, there were numerous attempts and threats made by Members of Parliament to prosecute specific journalists or media personnel on issues of parliamentary privilege.¹⁴⁰

¹³⁵ Such legislative reform would have to reflect a positive recognition of the pluralistic nature of Sri Lankan society. *10th Anniversary of the Colombo Declaration (2008) Session on Contempt of Court- The Need for a Law on Contempt of Court* at p.54 (presentation by Justice of the Supreme Court, Shiranee Thilakawardane).

¹³⁶ However, press freedoms have been questioned by some as attempting to grant special privileges to journalists, as for example, the opinions expressed by Chairman of the Sri Lanka Press Council, W. Dayaratne, PC.. (Interviewed on 05th April 2012) A more nuanced response to this complex question emphasized the importance of professionals and civil society to engage in open and transparent debate on national issues including freedoms of the press as situated within independent judicial systems and regulatory institutions (Vide interview with C. Jayaratne, op.cit.)

¹³⁷ For a comprehensive discussion on the subject, see Pinto-Jayawardena and De Almeida Guneratne, *'Contempt of Court in Sri Lanka'* National Human Rights Commission, 2004.

¹³⁸ Act No.21 of 1953.

¹³⁹ Gunasekera, op.cit., at p.105. Earlier, exclusive jurisdiction had been vested in the Supreme Court in this respect. The 1978 amendment had been strongly critiqued on the basis that Parliament should not be empowered to sit as a court and impose punishments of imprisonment or fine and its repeal was welcomed at that time.

¹⁴⁰ Gunasekera, op.cit., at p.105.

The Amendment of 1980,¹⁴¹ which some have described as 'equally undesirable'¹⁴² continues to be in operation. The said amendment penalises the wilful publishing of any report of any debate or proceeding in Parliament containing words or statements after the Speaker has ordered such words or statements to be expunged from the official report of the Hansard. Thus the amendment significantly affects the right to free speech and expression including publication of the press, and appears to permit irresponsible Members of Parliament to evade accountability for statements made on the floor.¹⁴³

In 2002, the then government promised to amend the Privileges Act in order to allow the media to cover proceedings of meetings held by the Committee on Public Enterprise (COPE). This was on the initiative of the COPE itself which requested media coverage given the public interest nature of the activities that it was engaging in, most importantly, the monitoring and interrogating of state institutions for corruption. However, this promise was not carried through.

Parliamentary privilege was subjected to scrutiny in *De Silva and Others v Jeyaraj Fernandopulle and Others*.¹⁴⁴ In this case, a majority Bench of the Supreme Court held that remarks made by an MP in Parliament could be used against him to controvert sworn statement made in an affidavit to court.

The conclusions and recommendations of the R.K.W. Goonesekere Committee in respect of parliamentary privilege continue to be applicable today. The Committee concluded that the constitutional provisions that made "parliamentary privilege" a ground for restricting free speech and media freedom was wholly inconsistent with Sri Lanka's obligations under international law.¹⁴⁵ This undesirable framework is yet to be remedied, and hence requires the immediate attention of present-day reformers.¹⁴⁶

F. The Broad-basing of Lake House

Following the initial proliferation of privately owned print media institutions, the government in 1973 passed the Associated Newspapers of Ceylon (Special Provisions) Law¹⁴⁷ changing the status of one of the leading media institutions in the country: the Lake House Group. The law effectively placed the Group directly under the control of the state. However, the takeover was subject to a specific undertaking to broad-base the newspapers and gradually divest the majority of the shares acquired by the Public

¹⁴¹ Act No.17 of 1980.

¹⁴² Pinto-Jayawardena (2003), op.cit., at p.11.

¹⁴³ *Ibid*, at pp.11-12.

¹⁴⁴ 1996 1 SLR 22

¹⁴⁵ See R.K.W. Goonesekere Committee Report, op.cit., at pp.13-14.

¹⁴⁶ 'Laws relating to parliamentary privileges pose problems to the professionalism of the media in Sri Lanka as they put journalists reporting on proceedings of the House under vague and arbitrary restrictions which impact on the public right to know.' [Sukumar Rockwood, CEO of the Press Complaints Commission of Sri Lanka interviewed on 14th February 2012]

¹⁴⁷ Law No. 28 of 1973.

Trustee to the public.¹⁴⁸ The intention of such a plan was to ultimately create a “publicly-owned” media.¹⁴⁹

Since the law was passed, no such broad-basing was carried out. Some attempts at reform were put in motion in mid-1995, when a Committee appointed by the People’s Alliance Government recommended that Lake House shares be ‘redistributed in a manner that would ensure the creation of a broad-based democratic newspaper company with the widest possible citizens’ participation.’¹⁵⁰ The report published by the Committee marked the first cogent attempt to address the problem.¹⁵¹ However, these recommendations were never given effect.¹⁵² Instead, ‘the Lake House Group became subject to a callous manipulation of its resources, its Chairmen routinely changed upon every shift of political power and its journalists coerced into following the party political line in their work.’¹⁵³ At present, the newspapers published by Lake House have displayed unbridled partiality towards the government.¹⁵⁴ Thus the notion of broad-basing the state media appears to have fallen by the wayside.¹⁵⁵

G. Criminal Defamation

Throughout the late twentieth century and early 2000s, a potent threat was posed to the non-state media in the form of criminal defamation indictments filed arbitrarily at the instance of the Attorney General due to political pressure. The constant threat of suits by political actors contributed heavily to the curtailment of media freedom during this period. The predicament was further exacerbated when certain procedural safeguards against arbitrary and politically motivated prosecutions were done away with in 1980 in what

¹⁴⁸ *Ibid.* at Section 5.

¹⁴⁹ ‘The idea of publicly owned media has been gladly received by the different stakeholders of the industry. A proper mechanism free of ulterior motives would ensure meaningful broad-basing of the state owned media. Furthermore, it may be opportune to suggest that even the privately-owned media must allow the public to own at least one-third of the shares of such media houses.’ [A.C.Visvalingam, retired senior professional and President, Citizens Movement for Good Governance (CIMOOG) interviewed on 13 April 2012 – views expressed in personal capacity]

¹⁵⁰ Pinto-Jayawardena (2003), *op.cit.*, at p.14.

¹⁵¹ *Ibid.* at pp.3, 14. The Committee considered the fact that the election manifestoes of the major political parties in the country had pledged to broadbase the Lake House Group, subject to the condition that no single person or group could own more than a quarter of the divested shares. However, the government ultimately disregarded the Committee’s report.

¹⁵² ‘The broad-basing of state media (ie: Lake House) as recommended by Colombo Declaration (2008) has not yet been implemented by the successive governments.’ [Vide interview with S. Rockwood, *op.cit.*]

¹⁵³ Pinto-Jayawardena (2003), *op.cit.*, at pp.3, 14.

¹⁵⁴ ‘It would be necessary to ensure genuine broad-basing of state media as there are many pseudo broad-based media institutions which are effectively managed and controlled by proxies and lackeys.’ [Vide interview with C. Jayaratne, *op.cit.*]

¹⁵⁵ ‘State media institutions such as Lake House need to be broad-based in order to be held accountable to public opinion, given that public funds are being used in the maintenance of this institution.’ [Vide interview with I. Furkan and S. Rockwood, *op.cit.*]

was undoubtedly a political exercise.¹⁵⁶ The resulting framework encouraged a spate of prosecutions against editors and journalists by successive governments.¹⁵⁷ In the entire history of the law of criminal defamation, only one prosecution had been instituted by a private individual.¹⁵⁸

Following the filing of several criminal defamation indictments against editors of the private media seen to be hostile to the Chandrika Kumaratunge administration, several media associations and lobby groups, began extensively lobbying for the repeal of the law on criminal defamation from the late 1990s. The campaigners emphasised that erring media professionals should be sanctioned under the civil law and not under the criminal law.¹⁵⁹ After nearly a decade of campaigning, the repeal of the provisions on criminal defamation on 18 June 2002 was no doubt 'a notable event in media history in Sri Lanka.'¹⁶⁰

As a consequence of these much-anticipated reforms, many pending criminal defamation cases were withdrawn.¹⁶¹ One particularly interesting case concerned the criminal defamation charges filed against the Editor of *The Sunday Times*.¹⁶² The Editor was convicted of criminally defaming President Chandrika Kumaratunga under both the Penal Code and the then Press Council Law, a finding later affirmed by the Court of Appeal.¹⁶³ The case itself provided critical leverage to the campaign against the law on criminal

¹⁵⁶ The earlier framework under the Criminal Procedure Code included the requirement that proceedings must first originate in the Magistrate's Court with the written sanction of the Attorney General pursuant to an investigation by the police, after obtaining the authority of the Magistrate. However, Amending Act No. 52 of 1980 did away with this framework by introducing Sections 135 (6) and 393(7) to the prevailing provisions of the Criminal Procedure Code. This effectively countered a ruling by the Court of Appeal in *R.P. Wijesiri v. The Attorney General* [1980] 2 Sri.L.R. 317, to the effect that the Attorney General had no power to send a direct indictment to the High Court in a criminal defamation prosecution without lawful investigation by the police and preliminary inquiry by the Magistrate. The case involved an indictment against a Member of Parliament for criminally defaming then President J.R. Jayawardena, which was issued directly by the Attorney General to the High Court.

¹⁵⁷ Pinto-Jayawardena (2003), op.cit., at p.5.

¹⁵⁸ *Ibid.*

¹⁵⁹ *Ibid.*

¹⁶⁰ *Ibid.* The then United National Front Government presented Penal Code Amendment Act No.12 of 2002, repealing Chapter 19 of the Penal Code and making consequential procedural amendments to Section 135 (f) of the Criminal Procedure Code. Moreover, Parliament repealed Section 118 of the Penal Code, which penalized attempts by contumacious or insulting words or signs, to bring the President into contempt. Also, the Press Council Amendment Act No.13 of 2002 repealed the provisions relating to criminal defamation contained in the Press Council Law No 5 of 1973.

¹⁶¹ The editor of Lakbima newspaper, Bandula Padmakumara was acquitted on 6th February 1998 of the charge of alleged defamation of President Chandrika Kumaratunge in an article published on 19th February 1995. The contents of the article in Lakbima were similar to the article that was published in the *Sunday Times*.

¹⁶² *The Democratic Socialist Republic of Sri Lanka v. Sinha Tissa Migara Ratnatunge*, High Court Case No. 7397/95.

¹⁶³ The indictment was filed on two counts under the Penal Code and the Press Council Law over the publication of an item in a gossip column titled "Anura; Sootin says courting days are here." In issue were words such as "Epicurean" and "in the heat of the silent night" which the defence argued were mere journalese in a trivial report while the prosecution maintained that the publication had harmed the reputation of President Chandrika Kumaratunge.

defamation. Following repeal of the criminal defamation provisions, the Editor was discharged from all proceedings and the conviction was set aside.

However, as has been observed, this was on condition that the newspaper agreed to 'publish a statement in the newspaper wherein the Editor accepted responsibility for the impugned publication as Editor, reiterated that there was no malicious intent whatsoever on the part of the writer, the newspaper or himself in wanting to defame the President and regretted the publication of the said erroneous excerpt.'¹⁶⁴

Though no doubt timely, these reforms were also a reflection of the prevailing political situation and not necessarily a success story which media and civil society actors could take sole credit for. The distinction between efforts to repeal the law on criminal defamation and other reform efforts, such as those on contempt of court, parliamentary privilege or freedom of information, is that the political circumstances at the time favored swift reforms in respect of criminal defamation.

Following the UNF victory at the parliamentary elections of 2002, a precarious political arrangement prevailed, in which the UNF cabinet, controlled by Prime Minister Ranil Wickramasinghe, was compelled to "cohabit" with President Chandrika Kumaratunga. The President's overt attempts to control and manipulate the media largely motivated the UNF Government to expedite media reform. One of the least complicated of such reform initiatives was the repeal of the criminal defamation law.

While other similar initiatives were in the pipeline during the short UNF rule, the change of government in 2004 restored the status quo, and governmental apathy if not outright hostility towards media reform once again became the norm.

H. Freedom of Information

The need for a sound legal framework that ensures public access to vital information has been greatly emphasised in recent times,¹⁶⁵ perhaps due to the culture of secrecy prevalent in most state departments and ministries.¹⁶⁶ The right to information stems from a broader notion of holding the state accountable

¹⁶⁴ Pinto-Jayawardena, (2003) op.cit., at p.7.

¹⁶⁵ The importance of the right to information was echoed by almost all the media related personnel interviewed during the research conducted in relation this paper including those heading or involved in state media institutions.

¹⁶⁶ The immediate relevance of a RTI law extends to far more than the media industry encompassing therein the ordinary citizen's right to know. 'The relevance of right to information in the light of multipurpose development projects involved with public funds is clear. One example was the Hambantota Port project. Except for the secrecy surrounding the project, which is a common concern regarding all major projects in Sri Lanka, there have been several issues which should have been discussed and debated prior to the commencement of the project. Questions regarding the presence of a rock of substantial dimension being revealed by the original geological investigations carried out at Hambantota, potential market for the services that the Hambantota Harbour was geared to provide, calculation of the cash flow for the repayment of the loan, adequacy of

for its actions and ensuring transparency. Hence freedom of information legislation is necessary to guarantee access to data held by the state and ultimately strengthen democratic institutions. In the absence of such statutory protection, the government could use a variety of excuses such as “national security” or “the prevention of terrorism” to hide information from the public. It has been often said that “the arguments that are proffered—security and terrorism—are...weak and somewhat dishonest and jingoistic.”¹⁶⁷

One analyst has compared the situation in Sri Lanka in the following manner:

“In Sri Lanka, unlike in India, we have a politicised public service...In Sri Lanka, unlike in India we do not have the possibility of judicial review of legislation. So once a law is passed even if the law is inconsistent with the Constitution it cannot be challenged in the courts...[W]e have a lot of laws in place that were passed in British colonial times in a completely different political context which are very anti right to information and which cannot be challenged because of the absence of judicial review of legislation. So again, that is another difference between Sri Lanka and India.”¹⁶⁸

The archaic nature of the present Establishments Code of Sri Lanka is particularly relevant, with a portion of the Code specifically stating that:

“No information even when confined to statement of fact should be given where its publication may embarrass the government, as a whole or any government department, or officer. In cases of doubt the Minister concerned should be consulted.”¹⁶⁹

This analysis reveals a serious need for specific legislation to be enacted to ensure freedom of information in Sri Lanka. . In response to this dire need, there have been numerous attempts to draft a Freedom of Information law, most notably under the UNF Government of 2002-2004. During this time, a draft was formulated by a committee of senior government officials with the input of civil society and the media, and subsequently approved by the Cabinet. However, its enactment was ‘stymied’ by the dissolution of

infrastructure etc were few issues which warranted such discussion.’ [Vide interview with. A.C.Visvalingam, op.cit.]

¹⁶⁷ Jagath Asoka, *To Question, or not to Question*, Sri Lanka Guardian (9 March 2010).

¹⁶⁸ *10th Anniversary of the Colombo Declaration (2008) Session on The Right to Information—A Fundamental Right of the Citizen*, at p.119 (presentation by Rohan Edrisinha, Lecturer, Faculty of Law, University of Colombo). See further, Pinto-Jayawardena (2003), op.cit., at p.8. One example of this phenomenon is when in 2000 the Cabinet announced that it would implement Section 3 of Chapter XXXI of Volume 1 and Section 6 of Chapter XLVII of Volume 2 of the Establishments Code, which prohibited public officials from disclosing any information to the media. The author recounts that this move ‘led to jittery public servants refusing to release information of any kind to the media, including even refusing to confirm or deny information already in the hands of journalists, giving initials of public servants and giving statistical information without the sanction of the Secretary of the Ministry.’

¹⁶⁹ *Ibid.*

Parliament in April 2004, and since then, 'has been delayed due to the lack of political will on the part of post-April 2004 Governments.'¹⁷⁰

The Law Commission of Sri Lanka was also previously responsible for a draft law, which sought to give statutory recognition to a judicially acknowledged principle that the freedom of speech and expression carries with it an implicit right of a person to secure relevant information.¹⁷¹ A later revised version of the Law Commission draft accorded access to official information in the possession, custody or control of a public authority to citizens of Sri Lanka.¹⁷² A "public authority" is defined to include Ministries of government, departments, public corporations, higher educational institutions, local authorities, companies in which the government has a majority share holding, any department or other authority established by a Provincial Council and anybody or office established under the Constitution other than the Parliament and the Cabinet of Ministers.¹⁷³

Moreover, the Bill provides for the establishment of a Freedom of Information Commission vested with the power of monitoring the implementation of the Bill.¹⁷⁴ The Commission also functions as an appellate body to which appeals may be made against decisions denying access to information.¹⁷⁵ The main criticism against the Law Commission draft is that the grounds for denial of information were too broad and, most notably, included parliamentary privilege.¹⁷⁶ The Law Commission draft remains one of the numerous reform initiatives that failed to see fruition.

Prior to the 2010 General Election, then Minister of Justice and Law Reform, Milinda Moragoda initiated efforts to resurrect the debate on the right to information. These efforts resulted in the circulation of yet another draft Freedom of Information Bill. The 2010 draft was a slightly improved version of the previous Law Commission draft, as it excluded parliamentary privilege as a ground for denial of information.¹⁷⁷ However, several issues of concern still remained unaddressed. For instance, Section 5(1)(c) of the Bill permits information to be denied in respect of instances where 'the information consists of memoranda or

¹⁷⁰ Kishali Pinto-Jayawardena, *Colombo Declaration on Media Freedom and Social Responsibility – 1998: Background Paper* (2008), at p.15.

¹⁷¹ Law Commission of Sri Lanka, *Report of The Law Commission on The Draft Freedom of Information Bill*, available at http://www.lawcomdept.gov.lk/info_English/index.asp-xp=723&xi=808.htm (last accessed on 15 January 2011).

¹⁷² See Section 2 of Draft Bill, available at http://www.lawcomdept.gov.lk/info_English/index.aspxp=723&xi=808.htm (last accessed on 15 January 2011).

¹⁷³ *Ibid.* Section 36.

¹⁷⁴ *Ibid.* Section 10.

¹⁷⁵ *Ibid.* Sections 13(c) and 29.

¹⁷⁶ See Law Commission of Sri Lanka, *op.cit.* As discussed earlier, the wholesale exclusion of parliamentary privilege from the framework for restricting the freedom of speech and expression has been a longstanding recommendation, which dates back to the R.K.W. Goonesekere Committee Report. See R.K.W. Goonesekere Committee Report, *op.cit.*, at pp.13-14.

¹⁷⁷ See Section 5 of Draft Freedom of Information Act (2010).

letters within a public authority or between one public authority and another', which may be too wide a ground for denial.

Moreover, unlike the Law Commission draft, the 2010 draft lacked the right of appeal to the Supreme Court as the third and final tier of appeal against arbitrary denials of information. Finally, the provisions for protecting whistleblowers appeared to be insufficient, as Section 37 of the draft only provided protection in terms of 'official information which is permitted to be released or disclosed on a request submitted under [the] Act.'¹⁷⁸ Internationally recognised standards in respect of whistleblower provisions require that persons should be protected from prosecution for disclosing not merely "official information" but "any information", so long as the whistleblower acted in good faith, and in the reasonable belief that the information was substantially true, and that such information disclosed evidence of wrongdoing or a serious threat to the health or safety of any citizen or to the environment.

As a result of more recent political developments, the agenda for introducing a Right to Information (RTI) law once again appears to have lost momentum. Ironically, the state agenda during the last decade has moved in the opposite direction, as the current Mahinda Rajapakse administration has sought to tighten secrecy laws even further and resolutely refused to support even a private member's Bill to enact an RTI for Sri Lanka, going so far as defeating the motion on a vote in order to conclusively establish its opposition to the very idea.¹⁷⁹

In this context, the struggle for the right to information in India is instructive as a comparative example. There, the fight for the right to information has been a grassroots movement strongly connected with the life and livelihood of the people. This recognition that the right to information is a matter of life and livelihood has ensured the continued fight to attain that right, despite the obstacles that RTI activists have had to encounter. The Right to Information Act of 2005 has been effectively implemented in recent years and the deaths of some RTI advocates in trying to ensure the effective working of its provisions have not deterred its proponents. Success stories which have benefited the people who fought for it abound.¹⁸⁰ The strong conviction of those who fought for an Indian RTI law has resulted not only in ensuring the enactment of a statute but also its effective enforcement powers. In the light of these comparative illustrations, it is instructive to consider whether the movement in Sri Lanka towards ensuring a good RTI law should re-envision itself as a social movement of the public for the attainment of meaningful rights of ordinary people as contrasted to a purely media driven initiative.

¹⁷⁸ *Ibid.* Section 37.

¹⁷⁹ There appears to be no discernible rationale put forward by the government as to why it refuses to enact a RTI law, leading one to the unfortunate conclusion that the predominant reason would be to keep government actions secluded from public scrutiny, particularly in the light of wide scale corruption being alleged in the post war development process.

¹⁸⁰ *10th Anniversary of the Colombo Declaration (2008) Session on Right to Information- A Fundamental Right of the Citizen*, at pp.112-117 (presentation by Nandani Sahai, Director, Media Information and Communication Centre, India).

Despite several failed attempts to enact a RTI law in Sri Lanka, there may be some value in discussing the main issues of concern raised by the several media and civil society groups involved in the campaign for such a law. There is certainly a need for the stakeholders involved to reach broad consensus on the principles that should underlie a draft Bill.¹⁸¹ The following principles have been listed as crucial in this regard:

“Standard as to maximum disclosure: The Act should establish a presumption in favour of disclosure on the part of all public bodies and should prevail over existing laws restricting information. [...]

Standard [regarding the] obligation to publish...should be imposed on ministries and public authorities to make public records and information of a particular kind coming under its purview within certain stipulated time periods. The duty to give reasons for decisions should be automatic and not upon request. [...]

[...]

Standard as to exceptions: Access to official information should be subject only to narrow and clearly drawn exceptions (particularly with regard to national security), which would be subject to a substantial harm test and a public interest override.

Standard [regarding the] processes to facilitate access: Requests for information should be processed fairly and rapidly and there should be independent review of refusals which allows appeal to a Freedom of Information Commission and finally to the appellate court. [...]

[...]

Standard [regarding] protection for whistleblowers: There should be provision [...] which gives protection to individuals from legal, administrative or employment related sanction for releasing information on wrongdoing.”¹⁸²

Moreover, it is important that the media itself plays a pro-active role in promoting the right to information. It has been previously observed that the role of the media tends to vary from case to case.¹⁸³

¹⁸¹ The difficulty faced by the minority communities due to the non-recognition of the right to information has been a major concern. Consequently, minority communities have not been able to express their views and they have been unable to raise questions for which they would prefer to obtain answers from the authorities. [Vide interview with K. Nadesan, op.cit.]

¹⁸² Pinto- Jayawardena, (2003) op.cit., at pp.8-9.

¹⁸³ See The Access Initiative (TAI), *Sri Lanka Report: Access to Environmental Information, Public Participation and Access to Justice* (2007).

For example, while the media took up controversial issues such as the *Galle Face Green Case*,¹⁸⁴ ‘there was reluctance to devote space to regular monitoring.’¹⁸⁵

Furthermore, the media has displayed a distinct lack of interest in systematically pursuing information in respect of much larger projects, such as the Southern Expressway Project.¹⁸⁶ This inconsistency may contribute to the current lack of momentum in reform efforts. If the media consistently highlights actual examples of vital information being withheld from the public, the practical value of a Freedom of Information law may become clearer. Hence the present campaign, which has thus far relied mainly on abstract principles, may benefit greatly by the infusion of a more experiential dimension.

4. *Judicial Responses to Media Issues*

While legislative and institutional reforms have been prioritised in the various reform initiatives discussed above, there may be some value in examining the manner in which the Sri Lankan judiciary has responded to some of those identical issues.

The Supreme Court, through its jurisprudence over the past two decades, has extensively dealt with the scope and content of Article 14(1)(a).¹⁸⁷ As observed previously, MDH Fernando J., in the standard-setting case of *Wimal Fernando v. SLBC*, insisted that this constitutional provision not be interpreted narrowly.¹⁸⁸ Justice Fernando observed:

“Not only does [Article 14(1)(a)] include every form of expression, but its protection may be invoked in combination with other express guarantees (such as the right to equality [...]) and it extends to and includes implied guarantees “necessary to make the express guarantees fully meaningful” [...] Thus it may include the right to obtain and record information, and that may be by means of oral interviews [...], publications [...], tape-recordings [...], photographs, and the like; and, arguably, it may even extend to a privilege not to be compelled to disclose sources of information, if that privilege is necessary to make the right to information “fully meaningful”. Likewise, other rights may

¹⁸⁴ See *Environmental Foundation Ltd v. Urban Development Authority of Sri Lanka and Others* SC (F.R.) Application 47/2004, S.C. Minutes 28.11.2005. The case involved the right to information regarding an agreement between the UDA and a private company to establish an entertainment centre at the Galle Face Green in Colombo.

¹⁸⁵ See TAI Report, *op.cit.*,

¹⁸⁶ According to one view, right to information should not be considered as a concern regarding the day to day functioning of journalists, but rather as an issue which demonstrates a lacuna in the general law of the country. [Vide interview with K. Janaranjana *op.cit.*]

¹⁸⁷ Jayaratne *et al.*, *op.cit.*, at p.18.

¹⁸⁸ *Wimal Fernando v. Sri Lanka Broadcasting Corporation*, [1996] (1) Sri. L.R. 157.

be needed to make the actual exercise of the freedom of speech effective: rights in respect of venues, amplifying devices, etc.”¹⁸⁹

The ruling in *Wimal Fernando's Case* has further significance, since the Court suggested—albeit *obiter dicta*—that if a mere listener had complained instead of a participatory listener, the rights violation would have arisen under Article 10 of the Constitution, which guarantees the freedom of thought. This view was most probably based on the reasoning that ‘information is the staple food of thought, and that the right to information, *simpliciter*, is a corollary of the freedom of thought guaranteed by Article 10’¹⁹⁰ Jayaratne *et al.* comment that the specific reason for the Court to draw such a distinction between Article 10 and 14 was that Article 14(1)(a) could be restricted by law on a number of grounds stipulated in Articles 15(2) and 15(7).¹⁹¹ By contrast, Article 10 embodies a ‘near absolute right’, which could be amended only through approval by no less than two thirds of the Members of Parliament, as well as by the people through a referendum.¹⁹² This *dictum* is crucial, as it appears to establish—or at least intimate the existence of—an inalienable right of non-participatory consumers to information. However, since the case did not deal directly with Article 10, this jurisprudential matter remains largely unresolved and thus requires further judicial scrutiny.

The Court in *Environmental Foundation Ltd v. Urban Development Authority of Sri Lanka and Others (the Galle Face Green Case)*¹⁹³ also made a contribution to the jurisprudence on the right to information. The petitioner in this case sought to compel the Urban Development Authority to issue a copy of the lease agreement it had signed with a private developer for the purpose of establishing an entertainment centre at the Galle Face Green in Colombo. The then Chief Justice Sarath N. Silva was of the view that for the right to expression to be meaningful and effective, a person has an ‘implicit right’ to secure relevant information from a public authority in respect of a matter in the public domain. Pertinently however, it may be said that this was simply a case where the particular public interest in the matter outweighed the confidentiality that attached to affairs of state and official communications. Broad reliance on this ruling as a general principle therefore cannot be manifested.¹⁹⁴

The general attitude of judges towards media issues and the freedom of speech and expression including publication has tended to fluctuate over the past three decades. The Sri Lankan courts appear to have avoided acknowledging the pre-eminent rights of any one stakeholder or institution and have preferred to adjudicate on issues on a case-by-case basis. During the late 1990s and early 2000s, the free speech jurisprudence in the country saw notable instances where the courts were quick to uphold the rights of ordinary citizens. Important examples of the court’s keenness to uphold free speech and the freedom of expression include cases in which the right of individuals to disseminate leaflets critical of the

¹⁸⁹ *Ibid.* at p.179.

¹⁹⁰ *Ibid.* Also see Jayaratne *et al.*, *op.cit.*, at p.19.

¹⁹¹ Jayaratne *et al.*, *op.cit.*, at p.19.

¹⁹² *Ibid.*

¹⁹³ SC (F.R.) Application 47/2004, S.C. Minutes 28.11.2005.

¹⁹⁴ Kishali Pinto-Jayawardena, *Collapsing Bridges and Collapsing Public Trust*, The Sunday Times, available at <http://sundaytimes.lk/090802/Columns/focus.html> (last accessed on 24 January 2011).

government to the public,¹⁹⁵ the right of teenage students to dissent,¹⁹⁶ the right of citizens to participate in noise protests,¹⁹⁷ the right to freedom of speech of a participatory listener to a radio broadcast programme¹⁹⁸ and the right to exercise one's vote¹⁹⁹ have all been upheld. Moreover, judges have tended to be sympathetic towards the claims of journalists where the government has engaged in opprobrious acts such as the banning of a press, seizure of copies of newspapers²⁰⁰ or assault of media personnel in the line of duty.²⁰¹

However, despite acknowledging the role of the media as "watchdog" or the "fourth estate", the courts have been overcautious in respect of specific claims of journalistic privilege.²⁰² The Sri Lankan Supreme Court articulated the following view in the case of *Victor Ivan v. Sarath Silva, Attorney General*:

"The freedom of the press is not a distinct fundamental right but is part of the freedom of speech and expression including publication which Article 14(1)(a) has entrenched for everyone alike. It surely does allow the pen of the journalist to be used as a mighty sword to rip open the facades that hide misconduct and corruption but it is a two edged weapon which he (she) must wield with care not to wound the innocent while exposing the guilty."²⁰³

As observed in the Law & Society Trust's Annual Review of the State of Human Rights in Sri Lanka in 2000,²⁰⁴ the courts seems to have rejected the position that a free press is 'not merely a neutral vehicle for the balanced discussion of diverse ideas...but instead, an organised expert scrutiny of government'²⁰⁵ which needs particular protection.²⁰⁶ It is observed that such protection ought to be over and above the

¹⁹⁵ *Ratnasara Thero v. Udugampola* [1983] 1 Sri L.R. 461.

¹⁹⁶ *Ekanayake v. Herath Banda* SC Application 25/91, S.C. Minutes, 30 October 1996.

¹⁹⁷ *Amaratunga v. Sirimal and Others* [1993] 1 Sri.L.R. 264.

¹⁹⁸ *Fernando v. SLBC and Others* [1996] 1 Sri. L.R. 157.

¹⁹⁹ *Karunatileka and Another v. Dayananda, Commissioner of Elections and Others* [1999] 1Sr.L.R. 157.

²⁰⁰ *Deshapriya and Another v. Municipal Council, Nuwara Eliya and Others* [1995] 1 Sri. L.R. 362;

²⁰¹ *Sumith Jayantha Dias v. Reggie Ranatunge, Deputy Minister of Transport* [1999] 2 Sri. L.R. 8.

²⁰² See *Sri Lanka Broadcasting Authority Case* [1997] 2 BHRC 610); *Fernando v. The SLBC and Others* [1996] 1 Sri. L.R. 157; *Sunila Abeysekera v. The Competent Authority and Others*, SC Application No 994/99, decided on 15 May 2000.

²⁰³ *Victor Ivan v. Sarath Silva, Attorney General*, [1998] 1 Sri LR, 340 at 347.

²⁰⁴ Kishali Pinto-Jayawardena, Freedom of Expression and Media Freedom, in E. Nissan, (Ed.), *Sri Lanka, State of Human Rights 2000*, Law & Society Trust (2000).

²⁰⁵ See William E. Francis, *First Amendment; Theory and Practice, Mass Media Law and Regulation*, (4th ed. 1986), cited in Pinto Jayawardena (2003) op.cit., at 1.

²⁰⁶ Pinto Jayawardena, (2003) op.cit., at p.1. It was further observed that in the U.S. 'even with an explicit "free press" clause and with ringing judgements in favour of unrestricted freedom of expression and an unfettered press, acrimonious debate still continues as to whether the media can claim special privileges as an institution.' However, it was conceded that regardless of such vociferous debate, 'a substantially favourable constitutional law of the press prevails in that jurisdiction and journalists have found the attitudes of the Supreme Court to be a useful barometer of the social and political status of journalism.'

general protection given to the right to free speech.²⁰⁷ This advanced form of protection, however, has not been acknowledged in any case thus far.

As mentioned earlier, in the absence of a definitive legislative framework on contempt of court, judicial attitudes in respect of contempt have remained largely conservative.²⁰⁸ For instance, in *Hewamanne v. Manik De Silva*²⁰⁹ the majority of a five-judge bench of the Supreme Court was of the view that ‘the law of contempt of court which had hitherto existed would operate untrammelled by the fundamental right of freedom of speech and expression contained in Article 14.’²¹⁰ The respondents in the case—the Editor, owner, printer and publisher of the *Daily News* Newspapers—were charged with contempt of court in respect of a news item which called into question the integrity of two judges including Justice K.C.E. de Alwis over his recommendation to impose civil disabilities on Felix Dias Bandaranaike. The majority opined that there was no unfettered right to publish judicial and particularly parliamentary proceedings,²¹¹ and accordingly confirmed the Rule issued against the respondents—though for mitigating reasons, the Court ultimately discharged them. A similar conservatism may be observed in respect of the court’s treatment of comments on pending proceedings.²¹² Judicial attitudes on the *sub judice* rule have been strongly critiqued,²¹³ particularly given that cases in Sri Lanka could drag on for interminable lengths of time. Thus it has been argued that the *sub judice* rule may in fact seriously impede discussions on matters of public interest.²¹⁴ In the area of censorship, the Supreme Court has been equally conservative as would be discussed later on in this paper.

The above survey demonstrates that reformers cannot—and indeed should not—expect the judiciary to be the vehicle of change. While litigation may be a strong strategic tool at the disposal of reformers, sole reliance on litigation could doom campaigns to certain failure. Fortunately, reform efforts in Sri Lanka have rightly focused on alternative strategies to litigation, including collective advocacy, institutional improvement and educational reform.

²⁰⁷ *Ibid.*

²⁰⁸ Pinto-Jayawardena (2003) op.cit., at p.10.

²⁰⁹ [1983] 1 Sri. L.R. 1.

²¹⁰ *Ibid.* at p.13 (per Wanasundera J.).

²¹¹ *Ibid.* at p.68 (per Wanasundera J.).

²¹² See for example, *In Re Garuminige Tillekeratne* [1991] 1 Sri.L.R 134. In this case, a provincial correspondent of a Sinhala paper, the “Divaina”, sent a report of a speech made by a Member of Parliament in the opposition at a time when a presidential election petition was being heard. The said MP was reported to have said: ‘the petition had already been proved and if the petitioner did not win her case, it would be the end of justice in Sri Lanka...’ Contempt of court was found *inter alia* on the basis that the publication *might or was likely* to result in prejudice to the pending hearing of the presidential election petition, inferring that the judges had already made up their minds and thus possibly deterring potential witnesses from giving evidence.

²¹³ See Lakshman Kadirgamar, P.C., Freedom of Expression and Sub Judice *OPA Journal*, Vol. 15, 1992-3; HL de Silva P.C., Free Press and Fair Trial, *OPA Journal*, Vol. 15, 1992-3. Citing the two *OPA Journal* articles, it is observed that the decision in the *Garumunige Case* was criticized primarily because ‘it did not take into account the need to demonstrate a “substantial likelihood of prejudice” and in fact, accorded too much importance to what was essentially, a political statement’, vide Pinto-Jayawardena (2003), op.cit., at p.10.

²¹⁴ Pinto-Jayawardena, (2003) op.cit., at p.10.

5. Contemporary Issues Regarding the Sri Lankan Media

Anna Bolin observes that viewed from a normative perspective, the role of media is to deepen and strengthen democracy.²¹⁵ This role may involve four distinct functions: first, to serve people with sufficient information; second, to comment on contemporary economic, social and political issues in society; third, to act as a watch-dog, controlling and scrutinising people with power; and finally, to encourage communication between groups within political, technical and non-profit organisations.²¹⁶ This role could only be effectively fulfilled by an independent, proactive and professional media that is sensitive to the needs of a pluralist society. This section reflects on some of the major challenges faced by the Sri Lankan media today. Such reflection may better explain why the media in Sri Lanka has struggled to effectively fulfill its role.

5.1. Independence of the Media

The extent to which the Sri Lankan media has enjoyed independence from political influence has been largely contingent on the regime in power. For example, it has been observed that the ideological changes in the media policy of the government under President D.B. Wijetunge stood in stark contrast to the governmental policy of media control under President R. Premadasa.²¹⁷ While the Premadasa Government's position on media control relaxed during the latter stages of his presidency, few real advances in media freedom could be observed during this period.²¹⁸ Following President Premadasa's assassination in 1993, President D.B. Wijetunga took significant steps towards toning media control down, one of which was to withdraw the previous president's order for the compulsory telecast of Rupavahini news bulletins on all television channels simultaneously.²¹⁹

In 1994, the election mandate of the People's Alliance included a pledge to establish a free media. However, some commentators observe that following the elections, the newly established regime 'was quick to harness and abuse the power of the media' in the lead-up to the presidential elections, scheduled to take place later that year.²²⁰ Since then, the issue of independence has haunted the Sri Lankan

²¹⁵ Bolin, *op.cit.*, at p.16.

²¹⁶ *Ibid.*

²¹⁷ S.P. Senadhira, *Under Siege: Mass media in Sri Lanka* (1996). The author observes that President Premadasa kept an iron grip on the media, a policy demonstrated in the President's use of media during an opposition bid to impeach him in August 1991.

²¹⁸ See Brady, *op.cit.*, at p.14.

²¹⁹ *Ibid.*

²²⁰ *Ibid.* 'The early years of the Chandrika Kumaratunge government were identified as a period during which the media was allowed to function with a certain amount of freedom. However, the latter part of her tenure was marked by assaults on journalists, torture, murder and disappearances engaged in by those with certain agendas, compounded by many cases of self-exile under the threat of death. Since then the media in Sri Lanka has been crushed into a state of 'self-censorship and docility.' [Vide interview with A.C.Visvalingam, *op.cit.*]

media.²²¹ In July 1995, the UN Human Rights Commission, in its Concluding Observations on Sri Lanka, recommended that the government 'should take the necessary steps to prevent control and manipulation of electronic media by the Government.'²²² This was essentially a corollary to the Commission's finding that state ownership and control over much of the electronic media could 'undermine the right of everyone to seek, receive and impart information and ideas of all kinds', which is a clear violation of Article 19 of the ICCPR.²²³ Jayaratne *et al.* comment that despite these clear recommendations, 'no changes have been introduced to bring the legal and regulatory regimes for broadcasting in Sri Lanka into line with international law.'²²⁴ Domestic committees and pressure groups have raised similar concerns. In 1996, the R.K.W. Goonesekere Committee observed:

"[R]adio and television broadcasting by the state should be undertaken by separate corporations as now but with necessary changes in the law to guarantee both the independence of their governing bodies and their editorial independence. They should be governed by boards which are independent of government; members should see themselves as independent trustees of the public interest in broadcasting and not as representatives of any special interests. They should be appointed for a fixed term according to specified criteria. The selection process should be such as to ensure it is fair and not subject to political or other pressure..."²²⁵

This view stems from a much more fundamental observation regarding the role of the state in ensuring media independence. The Committee pointed out that merely permitting private stations to proliferate could not satisfy the duty of the state to ensure that the state-funded media enjoys editorial independence. It was accordingly observed:

"It is important that private broadcasting exists; this is one way of promoting pluralism in sources of information and preventing media monopolies. It would be a mistake however to think that pluralism can be ensured simply by permitting private broadcasting. Commercial stations are often unwilling to criticise government policy for various reasons; they are influenced by business considerations and the need to earn advertisement revenue... While media diversity is important... granting licenses to private

²²¹ 'In the present context, intimidation, assaults, murder, the denial of the right to information, withdrawal of government advertisements and providing unsecured finance to sympathizers to take over control of the less friendly media companies have been identified as the most powerful weapons deployed to make the media submissive.' [Ibid]

²²² UN Doc. CCPR/C/79/Add. 56, 27 July 1995.

²²³ Article 19(2) reads: 'Everyone shall have the right to freedom of expression; this right 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.'

²²⁴ Jayaratne *et al.*, *op.cit.*, at p.14.

²²⁵ The R.K.W. Goonesekere Committee Report, *op.cit.*, at p.39.

broadcasters should not be viewed as a substitute for ensuring the pluralism and independence of public-funded broadcasting. The State will continue to be the main and significant component of broadcasting. Amendments should seek to achieve the public's right to receive information and opinion on matters of public interest."²²⁶

Moreover, due to diminished profit expectations, private media organisations have become heavily dependent on the government for loans as well as revenues from advertisements. Such economic circumstances tend to weigh heavily on the overall independence of the industry.²²⁷ Thus future reform efforts²²⁸ must take stock of two very important considerations regarding the independence of the media in Sri Lanka: first, that state regulation of licences needs to be liberalised and undertaken by an independent licensing authority; and second, that private media institutions may not necessarily be as inherently independent as usually presumed, thus requiring the institutional restructuring of state-run media institutions to ensure greater independence from the government.²²⁹

5.2. Governmental Regulation vis a vis Self Regulation of the Media

It is accepted that the effective regulation of the media is a key factor impacting on the credibility of the media institutions in any country.

In Sri Lanka, excessive governmental regulation has always been a serious problem facing the media, print and electronic. Where the electronic media is concerned, as discussed above, many stakeholders actively sought the amendment of the Sri Lanka Broadcasting Authority Act, which empowers the Minister to issue licences for the establishment and maintenance of private broadcasting stations. Other major concerns relate to the specification of qualifications and criteria for the appointment and removal of board members to the SLBC, as the current framework grants excessive powers of appointment and removal to the Minister. Additionally, the Sri Lanka Telecommunications Act²³⁰ (as amended)²³¹ established a Telecommunications Regulatory Commission (TRC) empowered to control the use of the

²²⁶ *Ibid.* at p.38.

²²⁷ Though physical attacks against the journalists have declined post 2008-2009, the climate of fear in the industry has been a major concern, as the financial stability of a media house would be at risk if the government in power is offended. [Vide interview with I.Furkan op.cit.]

²²⁸ 'The success of any reform effort would be dependent on the restoration of basic democratic rights and accountability to the public at large by those vested with power. Furthermore, it is important to establish independent institutions in the form of judicial, regulatory and professional associations comprised of and led by men and women of integrity, independence, commitment and capability. Independent civil society groups need to be established to ensure intellectual, open and transparent debate in regard to issues of predominant concern to society.' [Vide interview with C. Jayaratne op.cit.]

²²⁹ The Government of Sri Lanka was one of the signatories to the Colombo Declaration on Media, Development and Poverty Eradication (2006). The government's commitments under this Declaration included the promotion of a free, pluralistic and independent media committed to social justice and development.

²³⁰ Act No.25 of 1991.

²³¹ Act No.27 of 1996.

radio frequency spectrum; to issue and revoke licenses to use radio frequencies in Sri Lanka; and to maintain all telecommunication apparatuses. The present law also provides for an appeal to the Court of Appeal against the refusal to issue a licence or against a revocation of a licence.²³²

Like the SLBC, the TRC is also subject to extensive governmental control. By virtue of Section 3 of the Amendment Act, the membership of the TRC comprises the Secretary to the Minister of Telecommunication, the Director General of the Commission, and three other members appointed by the Minister.²³³ Moreover, the Director General of Telecommunications is appointed by the Minister without any criteria being specified for such appointment, and the officer remains in office virtually at the Minister's pleasure.²³⁴ Hence commentators including Jayaratne *et al.* insist on the expeditious introduction of reforms in respect of the TRC.²³⁵ The authors call for the amendment of the existing law in order to ensure that the TRC consults with an independent broadcasting authority, as well as other interested stakeholders, when determining the use of the radio frequency spectrum.²³⁶ Furthermore, it was recommended that the power to issue and revoke licenses in respect of radio frequencies or operation of radio transmission apparatus should be vested in an independent broadcasting authority.²³⁷

In late 2008, during the height of military operations in the North and East, the then Minister of Mass Media & Information issued certain Regulations under Section 31 of the Sri Lanka Rupavahini Corporation (SLRC) Act.²³⁸ The Regulations were intended to establish a new licensing regime pertaining to private television broadcasting stations and to monitor and regulate such broadcasting stations. Regulation 13(e) provided that a television broadcasting licence could be cancelled on the grounds that programmes aired by a licensee were detrimental to the interests of national security; incited breakdown of public order; incited ethnic, religious or cultural hatred; violated any laws of the country; were morally offensive or indecent; were detrimental to the rights and privileges of children; or violated the code of ethics, standards and practices of Television Broadcasting. Regulation 19 empowered the Minister to suspend the permission granted to a licensee to operate any channel for a specified period, in the interest of the public or in the interest of national security. Furthermore, Regulation 28 empowered the Minister to appoint a Consultative Committee with certain broad powers including the power to hold inquiries to determine whether programmes broadcast by licensees were detrimental to the interests of national security.

These Regulations appeared to establish a mechanism through which the government could regulate *programme content*—a largely unprecedented regime of control. The Regulations were met with widespread criticism, mostly on the grounds that they were *ultra vires* and that they would lead to

²³² See Section 22(4) of the Sri Lanka Telecommunications Act (as amended).

²³³ See Schedule to the Act; Section 3 of the Act.

²³⁴ See Section 22B of the Act.

²³⁵ Jayaratne *et al.* *op.cit.*, at pp.56-57.

²³⁶ *Ibid.*

²³⁷ *Ibid.*

²³⁸ Act No.6 of 1982. The said Regulations were published in the Gazette of the Democratic Socialist Republic of Sri Lanka (Extraordinary) No. 1570/35 on 10th October 2008.

excessive governmental control over private broadcasting stations. Critics argued that the Regulations went beyond the 'technical, financial and professional' grounds for regulation stipulated in Section 28 of the SLRC Act.²³⁹

An interesting point of contention in the case was whether the government was within its rights to regulate television programming on the grounds of national security. Article 15(7) of the Constitution permits the restriction of the freedom of speech and expression if such restrictions are prescribed by law *inter alia* in the interests of national security. The said Article also declares: 'For the purposes of this paragraph "law" includes regulations made under the law for the time being relating to public security.' A question thus arose as to whether regulations under the SLRC Act could form a legitimate basis for restricting fundamental rights under Article 14(1)(a) in the interests of national security. In its petition to the Supreme Court challenging the Regulations, the Centre for Policy Alternatives (CPA) argued that the impugned Regulations were in fact not "law".²⁴⁰ CPA cited the Supreme Court judgment in *Thavaneethan v. Dayananda Dissanayake, Commissioner of Elections and Others*,²⁴¹ which conclusively held:

"The word "includes" in Article 15(7) does not bring in regulations under other laws. "Law" is restrictively defined in Article 170 to mean Acts of Parliament and laws enacted by any previous legislature, and to include Orders-in-Council. That definition would have excluded all regulations and subordinate legislation. The effect of the word "includes" was therefore only to expand the definition in Article 170 by bringing in regulations under the law relating to public security."²⁴²

The Supreme Court responded positively to the series of petitions filed on behalf of private telecommunication companies, political parties and the civil society. Upon the direction of the Court, discussions were initiated to establish a vastly watered-down regulatory regime, which adopted a consultative process involving numerous stakeholders. Despite the fact that the Court never made an official pronouncement on the matter, as it was settled out of Court, the case remains one of the few recent examples of successful campaigns against excessive governmental control over the media.

The success of the campaign may be attributed to several key factors. First, the Supreme Court during the later years of the Sarath Silva Court grew fairly antagonistic towards the government and was prepared to strike down regulations it deemed unconstitutional. Second, the Court opted not to grant leave to proceed in the matter, which enabled it to provide a pragmatic remedy without becoming mired in long-drawn proceedings. This approach may present its own set of problems, as the lack of a proper precedent is not

²³⁹ *Centre for Policy Alternatives v. Minister of Mass Media & Others*, SC (F.R.) Application No. 478/2008, Petition.

²⁴⁰ *Ibid.* CPA cited the case of *Sunila Abeysekera v. Ariya Rubasinghe, Competent Authority and Others*, [2000] 1 Sri L.R. 314, which held that 'exceptions to Article 14(1)(a) must be narrowly and strictly construed for the reason that the freedom of speech constitutes one of the essential foundations of a democratic society.'

²⁴¹ [2003] 1 Sri L.R. 74.

²⁴² *Ibid.* at p.98.

always welcomed. However, the approach, at least as far as this case was concerned, seemed to have provided the petitioners with an expeditious remedy. Third, the multi-stakeholder litigation campaign that ensued drew extraordinary attention towards the case and raised its profile significantly. This no doubt expedited the negotiations that were to follow. It remains one of the only occasions on which the government was forced into a consultative process with such rapidity.

Government regulation of the print media has been a long standing feature of Sri Lanka's media history. The Press Council of Sri Lanka, set up under Law No 5 of 1973 established a seven-member council to regulate the press—six appointed by the President with the director of information as the ex-officio seventh member. Out of the six appointees, there was nominal representation afforded to the media industry. The member representing the working journalists must be selected from a panel of seven persons nominated by the journalists associations in Sri Lanka. Similarly, there must be an appointee representing the interests of the employees of newspaper businesses, such person being selected from a panel of not more than three persons nominated by each registered trade union of such employees. The Press Council was given quasi-judicial powers to inquire into complaints against the press and possessed a wide range of draconian powers, including imposing a strict prohibition on publishing matters vaguely defined as official secrets, material relating to Cabinet meetings and fiscal policy. Though the Council was not vigorous in its enforcing of these powers, their enabling by law had a sufficiently 'chilling' effect on the media in particular.

In 1999, a Parliamentary Motion 218/99 on legal anomalies affecting the press introduced by the combined opposition included a recommendation to replace the Press Council with a Media Council. From this point on, even though a Media Council was not established, the movement within the media industry bodies to put into place effective self-regulatory measures grew stronger.²⁴³ The concept of self-regulation of journalism standards has been described as a 'novel concept' for Sri Lanka.²⁴⁴ After the establishment of the Press Council in 1973²⁴⁵—an institution essentially controlled by the state—the established practice was for the Press Council to regulate the conduct of the media. This arrangement provided the government with ample opportunity to interfere with press freedom. The idea of self-regulation is therefore quite germane to the reduction of the high levels of governmental interference observed during the functioning of the Press Council.²⁴⁶

²⁴³ Formulation of regulations by bureaucrats (mostly as a response to a crisis) has been viewed as short sighted action which would result in a framework that is oppressive to those who are regulated and would inevitably be resented as constituting an unnecessary interference. Furthermore, such measures have been criticised for being disguised censorship which is burdensome and unnecessarily expensive in terms of compliance cost.' *National Conference on Self-Regulation (2011) Session on Policing the Media: Statutory or Self-Regulatory?*, at p.17 (presentation by Ariththa Wickramanayake, Attorney-at-Law and former Director-General, Securities and Exchange Commission.).

²⁴⁴ Elmquist & Bastian, op.cit., at p.20.

²⁴⁵ See Sri Lanka Press Council Law, No.5 of 1973.

²⁴⁶ It was given therefore that the argument for complete abolition of the Press Council depended significantly on the success of the self regulation initiatives.

First, journalists have to accept the idea of self-regulation and support a code of practice. Second, the public has to be made aware of it. Third, the mechanism should deliver satisfactory results that warrant the confidence of both journalists and the public.²⁴⁷ In an evaluation conducted on behalf of the Swedish International Development Cooperation Agency (SIDA), Madeleine Elmqvist and Sunil Bastian observed that there is 'almost universal acceptance of the notion of self-regulation within the journalist community.'²⁴⁸ Almost all the journalists that the authors interviewed during the evaluation appeared to accept that self-regulation was better than being subjected to the Press Council. Moreover, a slow process of disseminating the idea of effective self-regulation amongst the public has begun to take shape.²⁴⁹

In this context, the Press Complaints Commission of Sri Lanka (PCCSL) was established to introduce a mechanism for self-regulation within the print media²⁵⁰. The objective of establishing the PCCSL was to provide a body independent of the state to which citizens, aggrieved by actions of the press, could appeal without 'the arduous procedures and prohibitive costs that accompany court actions.'²⁵¹ Foremost in this initiative was, once again, the joint efforts of the three main media institutions in the country, the Editors Guild, the Newspaper Society and FMM.²⁵² The PCCSL is an eleven-member entity established under the Companies Act No. 17 of 1982, entrusted with the task of interpreting and implementing the Code of Professional Practice that was formulated by the Editors Guild.²⁵³ The primary task of the institution is to entertain complaints on editorial content from members of the public and resolve the disputes through conciliation, mediation or arbitration.²⁵⁴ Enforcement of PCCSL decisions takes place through the courts under the provisions of the Arbitration Act²⁵⁵ in the event of non-compliance by erring newspapers.²⁵⁶ The lack of willingness demonstrated by certain newspaper editors and journalists to abide by the decisions of the PCCSL has been one of the major drawbacks regarding the effectiveness of the mechanism in place for self-regulation. The lack of commitment from the very constituents on whose behalf such mechanism has been introduced may even be used to question the legitimacy and legality of

²⁴⁷ Elmqvist & Bastian, op.cit., at p.20.

²⁴⁸ *Ibid.*

²⁴⁹ *Ibid.*

²⁵⁰ The Sri Lankan media industry introduced and implemented a Press Complaints Commission with the intention of allowing the public to voice grievances and petition for redress. The PCCSL was created as an outcome of the Colombo Declaration, 1998.

²⁵¹ Pinto Jayawardena (2003), op.cit., at p.16.

²⁵² *Ibid.*

²⁵³ *Ibid.*

²⁵⁴ See <http://www.pccsl.lk> (last accessed on 3 January 2011).

²⁵⁵ Act No.11 of 1995. The arbitration Council of the PCCSL is a vital element of the self-regulation exercise. When complaints cannot be resolved through reconciliation or mediation, arbitration is carried out by three members of this special council.

²⁵⁶ Pinto-Jayawardena,(2003) op.cit., at p.16. 'Certain doubts have arisen as to the possibility of successful enforcement of an arbitration award due to the informal nature of the arbitration process. *National Conference on Self-Regulation* (2011) Opening Session, at pp.8-9 (presentation by Dr.Wickrema Weerasooriya,Insurance Ombudsman).

the concept of self regulation.²⁵⁷ At the outset, the PCCSL functioned at a reasonably satisfactory level²⁵⁸, as it received numerous complaints to which the newspapers concerned responded.²⁵⁹ The PCCSL received 181 complaints between October 2003 and December 2004.²⁶⁰ However, the number of complaints reduced to 111 the next year and has steadily declined since, indicating a ‘certain degree of ineffectiveness of the PCCSL.’²⁶¹ The following chart depicts the extent of this decline.

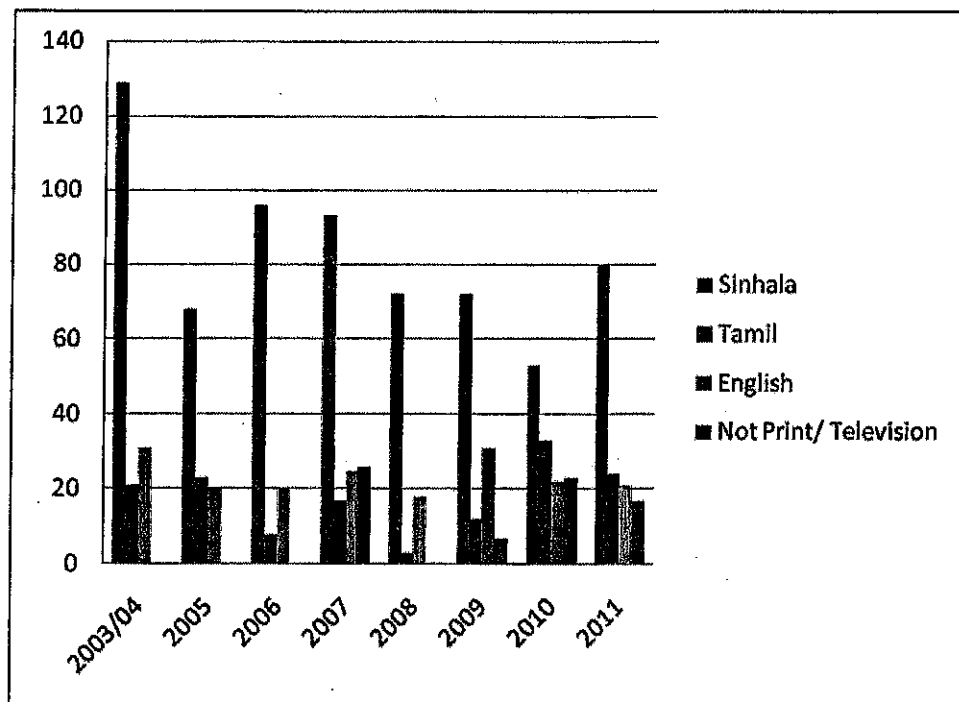


Figure 1: Complaints Chart of the PCCSL 2003-2011

One possible explanation for this worrying trend is ‘the weakening of the PCCSL activities due to staff resignations’²⁶² The PCCSL may require a comprehensive strategic plan to respond to some of these

²⁵⁷It has been said that the self regulation has been utilized as an alternative paradigm whenever the government initiates a regulation process. But the great flurry of enthusiasm, usually motivated with the intention of diverting the government imposed regulations, fades away as the time passes and stakeholders generally drift away to follow their own interests.’ *National Conference on Self-Regulation (2011)* at pp.18-19 (presentation by A. Wickramanayake, op.cit.)

²⁵⁸ ‘There has been a steady and slow growth of complaints received by the PCCSL.’ [Vide interview with S. Rockwood, op.cit.]

²⁵⁹ *Ibid.*

²⁶⁰ PCCSL Complaints Chart received from the PCCSL on 14 February 2012.

²⁶¹ Elmquist & Bastian, *op.cit.*, at p.22. This was further noted as a disappointing trend. As was succinctly observed, complaints made to the PCCSL are decreasing not because of the media has improved but because people are not sufficiently interested to follow up.(Vide interview with D. Nesiah, op.cit.)

²⁶² *Ibid.*

institutional challenges.²⁶³ Other challenges remain such as the refusal on the part of some newspapers to submit themselves to the voluntary reach of the PCCSL.²⁶⁴ However, it has been observed that the independent self-regulatory mechanism of the PCCSL is widely accepted by the vast majority of the registered newspapers printed in Sri Lanka. Similarly, editors have now largely accepted the 'Right of Reply' culture, which is a positive result and helps to reach the objectives of the PCCSL.²⁶⁵

Yet it is important to note in this regard that the overall success of any self-regulatory scheme would be possible only through the participation of the whole industry and not just a part of it. But this position must not in any manner be construed as undermining the progress made by the PCCSL during the last seven years when compared to the history of the government imposed regulatory mechanism within which the media industry operated for more than hundred and fifty years.²⁶⁶ There is little doubt that the PCCSL carries out an indispensable function within the media sector today; hence the maximum allocation of effort and resources to maintain its institutional integrity and overall efficiency is highly justified.²⁶⁷ It is certainly the better alternative to government regulation.²⁶⁸

The Press Complaints Commission of United Kingdom has been the model followed by Sri Lanka at the time of establishing the Press Complaints Commission of Sri Lanka. Based on recent developments in United Kingdom in relation to the scandal of hacking by journalists working in Rupert Murdoch's media empire and the critiqued inability of the UK's self regulatory body to play a powerful role in that regard, the effectiveness and applicability of self regulatory measures have been questioned. Undoubtedly, these

²⁶³ One such instance would be to inquire into the complaint process and investigative mechanism. The existing requirement in the Complaint Form to the PCCSL requires a complainant to identify the clause in the Media Code of Professional Practice that has been breached. Furthermore, the complainant is expected to provide the details and evidence and the burden is placed on him to provide copies of the alleged newspaper publication. Requirements of this nature mandate a standard which is neither practical nor fair to be expected from ordinary people. *National Conference on Self-Regulation (2011)*, Wickrema Weerasooriya, op.cit). Yet another cause of the Press Council not receiving sufficient complaints over past years may be due to the fact that the guidelines of the body have not been explicit. (Vide interview with D. Nesiya, op.cit.)

²⁶⁴ The PCCSL faces challenges in dealing with editors who do not want to comply with the PCCSL mandate as it does not have mandatory legal standing. (Vide interview with S. Rockwood, op.cit.)

²⁶⁵ Press Complaints Commission of Sri Lanka Annual Report 2010, p.63. But the conduct of certain editors has been subject to criticism based on their unsupportive behavior coupled with the unwillingness to adopt corrective measures. [Vide interview with S. Rockwood, op.cit.]

²⁶⁶ *National Conference on Self-Regulation (2011)*: Session on Policing the Media: Statutory or Self-Regulatory?, at p.24 (Response made by Kamal Liyanarachchi, Acting CEO, PCCSL).

²⁶⁷ For this purpose it would be necessary to ensure the independence of the entity by the appointment of independent, credible, professional and well respected members of the industry to the PCCSL. Furthermore, issues relating to funding, staffing, and infrastructure and support service will also have to be addressed.

²⁶⁸ This is an opinion almost universally supported by those interviewed for this Study with the exception of state media officials. In order to ensure the due functioning of the Press Complaints Commission it is necessary for media personnel to have faith in the institution and ensure that the functions are performed as per the mandate given to it (Vide interview with D. Nesiya, op.cit.)

events in the UK have dented public trust in the Press Complaints Commission of United Kingdom.²⁶⁹ Procrastination, contrived delay, and a lack of a pro-active role played by the Press Complaints Commission, have warranted the reference to that body as a “toothless poodle of the press”²⁷⁰

However, positive recognition of the continued importance of the Press Complaint Commission and the service rendered during the last 20 years for the betterment of the United Kingdom media industry cannot be discounted.²⁷¹

A media self-regulatory scheme in Norway had faced similar disputes in the 1990s. The Norwegian response to serious breaches of ethical codes by journalists in 1990s had been to establish a “one –stop committee” known as the “Press Industry Committee”²⁷² which deals with ethical complaints against media of all formats. The Dispute Resolution Council of PCCSL can be identified as the Sri Lankan counterpart of the “Press Industry Committee” where the membership consists of 11 members representing the academia, civil society and journalists.²⁷³

The success of the Ombudsman scheme in the Sri Lankan context in relation to financial services, insurance and tourism has given rise to speculation as to the possibility of establishing an Ombudsman for the media industry. ²⁷⁴ The similarities between an Ombudsman scheme and the PCCSL in relation to the voluntary nature of the scheme, its independence based on reliance on a Consolidated Fund, its cost effectiveness, and a less time consuming alternative dispute resolution process have been identified as facilitating such a process of conversion. This has been seen as a means of addressing the issues encountered by the PCCSL presently in relation to noncompliance with its directives by some of the editors, the non- availability of monetary relief and the doubtful position as to the status of an arbitration award by the High Court.

The difficulties encountered by journalists who also work as government servants (mostly provincial journalists who engage in part time journalism whilst working as a full time employee somewhere else) would also have to be taken into account, as it is necessary to ensure job security for those who are

²⁶⁹ *National Conference on Self-Regulation (2011) Session on The World Outside*, at p.58. (presentation by William Gore, Director, Public Affairs, PCC UK).

²⁷⁰ These observations were made by the speaker in relation to his personal experience regarding two articles published in the London Sunday Times by a well known journalist, the late Marie Colvin. *National Conference on Self-Regulation: (2011)*, Session on The World Outside, at pp.61-66. (presentation by Neville de Silva, Senior Journalist).

²⁷¹ *National Conference on Self-Regulation (2011)* William Gore, op.cit.).

²⁷² *National Conference on Self-Regulation (2011) Session on The World Outside*, at pp.67-68. (presentation by Hana Ibrahim, Editor, Ceylon Today). The Press Industry Committee consists of four industry members , that is two journalists and two editors together with three members to represent the public. This format has been recognised as in line with the concept of “Readers’ Clubs” in United Kingdom, where public participation has been emphasized as vital for the balance of different interests.

²⁷³ *National Conference on Self-Regulation (2011) Session on The World Outside*, at p.68. (Sukumar Rockwood).

²⁷⁴ *National Conference on Self-Regulation (2011)*.(Wickrema Weerasooriya, op.cit.).

willing to criticise and be involved in investigative journalism. The opportunities and leeway granted to other professions, including government doctors and lawyers, may also have to be considered for the journalists as well. Media organisations would have to take the lead to initiate discussions and negotiations in this regard with government entities. For such purpose it would be important to ensure that journalists also be given the right to form trade unions to protect their professional interests.²⁷⁵

The apparent lack of motivation for self regulation is another challenge that the PCCSL would have to be prepared to address in future as the present system does not provide for “a carrot and stick” approach to motivate compliance. While “sticks” are very limited in a self regulatory scheme (may be to the extent of expulsion or reprimand which is not strictly relevant to the media industry), there appear to be no “carrots” to induce the journalists to comply with codes of ethics.²⁷⁶

Furthermore, it would be necessary to extend the reach of PCCSL by the inclusion of regional publications, periodicals and magazines, which are still not within its purview. The initiation of a discussion between such publications to bring them within the scope of the PCCSL would be important as these publications also exercise a considerable amount of influential power over the public.²⁷⁷

Worryingly though, in recent years, the government has begun to discredit the “self-regulatory approach” under the PCCSL. The reactivation of the Press Council was announced in 2009.²⁷⁸ During the public debate that took place as a result of this announcement, then Non-Cabinet Media Minister Lakshman Yapa Abeywardena alleged that the self-regulatory mechanism was not an ideal tool to address public grievances.²⁷⁹

The present Sri Lankan government has sought to re-open the issue of self-regulation, and question the legitimacy of the PCCSL. There appears to be concerted efforts to restore the Press Council as the primary, and perhaps even the sole, arbiter of complaints against the media. The main issue with the Press Council, as currently constituted under the Press Council Law, is the nature of its composition. Section 3 of the Press Council Law empowers the President to appoint the members of the Council²⁸⁰—a provision

²⁷⁵ *National Conference on Self-Regulation (2011)*, Session on The Role of Media Organisations in Self-Regulation, at p.76 (presentation by Gnanasiri Koththigoda, Acting President, Sri Lanka Working Journalists Association).

²⁷⁶ *National Conference on Self-Regulation (2011)*, Session on Policing the Media: Statutory or Self-Regulatory?, at p.18 (A. Wickramanayake, op.cit).

²⁷⁷ *National Conference on Self-Regulation (2011)*, Session on The Role of Media Organisations in Self-Regulation, at pp.86 & 87 Imran Furkhan & Gnanasiri Koththigoda)

²⁷⁸ See ColomboPage, *Sri Lanka Press Council Born Again*, available at http://www.colombopage.com/archive_091/Jun1244821410RA.html (last accessed on 23 January 2011).

²⁷⁹ LankaTimes.com, *Dayasiri and Yapa at Loggerheads over Press Council*, available at <http://www.lankatimes.com/fullstory.php?id=18616> (last accessed on 23 January 2011).

²⁸⁰ See Sri Lanka Press Council Law (No. 5 of 1973), Section 3, which reads: ‘(1) The Council shall consist of—(a) the person for the time being holding office as the Director of Information (in this Law referred to as “the Director”); and (b) six other members appointed by the President, of whom—(i) one shall be a person to represent the working journalists, such person being selected from a panel of not more than seven persons

no doubt prone to spectacular abuse. In comparison, the Indian model contains certain safeguards that ensure some level of independence from the government.²⁸¹ The Chairman of the Council is by convention a retired judge of the Supreme Court of India.²⁸² The Council has 28 members, of whom 20 are appointed from amongst the newspaper industry, five are Members of Parliament and the remaining three are nominated by the Sahitya Academy, the Bar Council of India and the University Grants Commission.²⁸³ Moreover, the Council is reconstituted every three years and has its own source of revenue, such as levies collected from the registered newspapers and news agencies. The Press Council of India is an established autonomous quasi-judicial body, largely independent from the government. Hence, any argument for the reactivation of the Sri Lankan Press Council, which places reliance on the Indian model, is wholly capricious.²⁸⁴

There is a further issue in regard to the current composition of the Press Council. As observed previously, Section 3(1)(b) (I) of the Press Council Law states that, out of six members (other than the *ex officio* member) the member representing the working journalists must be selected from a panel of seven persons nominated by the journalists associations in Sri Lanka. Section 3(1)(b) (II) stipulates that, out of the six members, one shall be a person to represent the interests of the employees of newspaper businesses, such person being selected from a panel of not more than three persons nominated by each registered trade union of such employees.

However, in the reactivation of the Press Council by the incumbent President, these two representatives of journalists associations and newspaper businesses were not appointed as statutorily mandated.²⁸⁵ The question then arises as to whether the composition of the Council is in accordance with the enabling law²⁸⁶ and one challenge raised in this respect by the *Sunday Times* following a complaint lodged against the newspaper by the government's Director General of the Media Centre for National Security (MCNS) is pending at the time of writing this paper.

nominated by the journalists associations in Sri Lanka, and (ii) one shall be a person to represent the interests of the employees of newspaper businesses, such person being selected from panels of not more than three persons nominated by each registered trade union of such employees' (emphasis added).

²⁸¹ See Press Council Act 1978 (India).

²⁸² See Citizen's Charter of Press Council of India, available at <http://presscouncil.nic.in/Citizen%20Charter-Modified.pdf> (last accessed on 23 January 2011).

²⁸³ *Ibid.*

²⁸⁴ Sukumar Rockwood (PCCSL) and Imran Furkan (SLPI) both observed that there is little need for the restoration of the Press Council as the PCCSL has been successful in dealing with complaints brought against newspapers. It was opined that there is a lack of public faith in the Press Council as it is perceived to be working under the umbrella of government. (Vide interviews op.cit.)

²⁸⁵ The Federation of Media Employees Trade Union together with the other stakeholders of the industry has taken a collective decision to refrain from appointing the required number of members to the Press Council as it may be interpreted as an acceptance of the validity and legality of the decision to revive the Press Council. [Dharmadasa Lankapeli, media dissident (Interviewed on 05 April 2012)]

²⁸⁶ The legality of the Press Council was vehemently defended by its Chairman W Dayarathne, PC during the interview conducted in relation to this research. (Vide interview with W. Dayarathne op.cit.)

Moreover, the existing National Media Policy discussed above refers to the establishment of a “Media Development Council” to identify and address some of the pertinent issues that face the media today. On what seems to be the same line of thinking, the government recently announced plans to set up a Media Development Authority (MDA).²⁸⁷ The stated objectives of the proposed Authority are to formulate guidelines in accordance with media ethics, to promote professionalism, and to ensure clear, consistent and predictable regulatory policies and guidelines to protect core values and safeguard public interests. Ominous amongst such core values is the aim to uphold ‘the unity and integrity of the country’,²⁸⁸ which may easily be interpreted to justify curtailing political dissent.

Probably modeled after the Singapore MDA,²⁸⁹ the proposed Authority has been described as an attempt to suppress the private media through yet another regulatory mechanism.²⁹⁰ One commentator observes that the MDA was announced by Minister Keheliya Rambukwella who headed the Media Centre for National Security (MCNS) during the last phase of war against the LTTE.²⁹¹ It was further observed that since the MCNS is now defunct,²⁹² the MDA is likely to replace the MCNS and thereafter spearhead media control for moral policing and economic development.²⁹³

Though the media community may be able to counter or halt new government proposals for media regulation, the ability of stakeholders to influence the *content* of governmental proposals seems to be grossly inadequate. One reason for the success of the campaign against the 2008 SLRC Regulations was the unanimity of the stakeholder group, which included powerful entities within the private sector. Thus future campaigns to influence the content of proposals and establish true independence within the media should focus heavily on garnering the support of a wider range of stakeholders, including the more influential opinion makers.²⁹⁴

²⁸⁷ See Official Government News Portal of Sri Lanka, *Media Development Authority*, available at http://www.news.lk/index.php?option=com_content&task=view&id=15940&Itemid=44 (last accessed on 23 January 2011).

²⁸⁸ *Ibid.*

²⁸⁹ Sutirtho Patranobis, *A Media Development Authority for Lanka*, The Hindustan Times, available at <http://www.hindustantimes.com/A-media-development-authority-for-Lanka/Article1-575360.aspx> (last accessed on 23 January 2011).

²⁹⁰ See Nirmala Kannangara, *An Act Of Suppression*, The Sunday Leader, available at <http://www.thesundayleader.lk/2010/07/25/%E2%80%9CAn-act-of-suppression%E2%80%9D/> (last accessed on 23 January 2011).

²⁹¹ Sunanda Deshapriya, *Media Development Authority: Another Name for Media Control in Sri Lanka?* Groundviews, available at <http://groundviews.org/2010/07/28/media-development-authority-another-name-for-media-control-in-sri-lanka/> (last accessed on 23 January 2011).

²⁹² Despite this assertion, this body continues to be routinely used for repressive measures imposed by the government. One illustration was the fact that as notified by the MCNS, prior approval needs to be obtained for SMS news alerts related to the security establishment.

²⁹³ *Ibid.*

²⁹⁴ This was a common expectation voiced by interviewees.

5.3. Institutional Structures and Policies within the Non-state Sector

Sri Lankan media organisations face the same sort of challenges most media organisations the world over face. However, in an environment of excessive governmental control, the additional pressure placed on editors by owners seems to accentuate the already severe constraints on editorial freedom.²⁹⁵ Where good journalism is not backed by owners, the system is forced to rest on the shoulders of individual dedicated journalists. Yet with scarce resources and constant influence from the hierarchy above, even these few dedicated journalists are likely to wilt under the pressure.²⁹⁶

Despite official talk from owners about being completely independent from outside political or economic influences, journalists are often required to withdraw or substantially change articles that are critical towards advertisers or towards political allies of the owners.²⁹⁷ Moreover, journalists allege that owners often engage in the unsavoury practice of micro-managing the daily operations of the newsroom. In some private media organisations, daily news bulletins are broadcast only after the direct consent of the owners.²⁹⁸ Such vested interests are often reflected in the news carried by various news agencies.²⁹⁹

It is of interest that trade unions do not flourish within private media organizations. However, a number of institutions that focus on safeguarding the interests of media stakeholders (i.e. journalists, editors, owners, employees etc.), improving media freedom, and maintaining professional standards do exist as part of an institutional support base. Amongst these institutions, the Sri Lanka Press Institute (SLPI), the PCCSL, the Editors Guild, the Newspapers Society, FMM, the Federation of Media Employees' Trade Union, the Sri Lanka Working Journalists Association, the Sri Lanka Muslim Media Federation and the Sri Lanka Tamil Journalists' Association take precedence.

²⁹⁵ 'In practical terms, editorial independence is generally observed. Where conflicts arise, such situations are responded to on a consensual basis and with a view to achieving a compromise.' [Vide interview with K. Nadesan, op.cit.]. The fact is however that the ultimate control of news content and editorial freedom in a publishing house rests with the publisher or the owner of such media house is an inevitable reality. (Vide interview with Ranjit Wijewardene, op.cit and Harendra Jayalal, former news-head, Swarnavahini television channel, interviewed on 12th February 2012).

²⁹⁶ Malik Chaminda Dharmawardena – Dinamina Newspaper (interviewed on 24 March 2011).

²⁹⁷ This position was affirmed by a senior administrator at the Sri Lanka College of Journalism, who observed that both state and private media have political affiliations. Some of the media houses are more overt in their views. (Interviewed on 9 February 2012)

²⁹⁸ The general consensus among the public and different stakeholders in the industry acknowledges that the control of media freedom in the private media lies in the hands of the owners/investors (for example, in views expressed by C. Jayaratne and. A.C.Visvalingam, op.cit.). It is interesting to note however that the institutional structure and the unique nature of the ownership scheme of the Ravaya newspaper has been identified as placing the Ravaya newspaper in a different context to other newspapers insofar as investor control of newspapers is concerned (Vide interview with K. Janaranjana, op.cit.).

²⁹⁹ The existence of such interests has been identified as a practical reality. 'Given such political affiliations, there is a need to ensure the availability of a variety of newspapers which would ensure the balance of views between different interests' (Vide interview with D.Nesiah, op.cit.)

SLPI's role in this regard is crucial, as it is one of the only organisations that could potentially bring various stakeholders within the media industry under one umbrella. However, SLPI still faces a challenge in terms of unifying the print media with the electronic media. It is hence unlikely that the objective of finding greater consensus within the media community would be achieved unless this representational issue is appropriately addressed. The role of the SLPI to nurture an informed public and to create a more professional, independent media³⁰⁰ remains of pivotal importance in increasing media professionalism in Sri Lanka.

As observed previously, no systematic studies have been conducted in regard to private interests that control the non-state media sector. Such a study is important in examining the issues that persistently challenge the Sri Lankan media today. Threats to media independence may emanate not only from state actors, but also from private interest groups. In addition, the support base provided to the media by civil society actors has not been adequately utilised for the benefit of journalists and editors. In this context, expecting profit-oriented organisations to drastically improve in the area of social responsibility and provide editorial independence may ultimately prove futile. Hence there is an undeniable need to introduce and enforce best practices and standards within the industry to ensure greater institutional support for media professionals.

The proposed recommendation for a Charter of Editorial Independence to be adopted in media organisations would be a welcome initiative as this Charter would constitute a written agreement between the owners and the editorial staff. This would separate the proprietor from the day to day preparation and presentation of news and opinion.³⁰¹

Furthermore, the creation of a board of trustees who would be a buffer between the editor and the owners would also be important to safeguard the interests of both proprietor and the editorial staff. Though this may not be a perfect solution, as any one of the signatories to the Charter may decide not to abide by the terms and conditions, it would at least result in building confidence among the public in relation to the news or information they receive.

5.4. Media Standards, Best Practices and Professionalism

The level of professionalism in reporting is considered by many to be quite low in Sri Lanka³⁰². A recent study conducted by the International Federation of Journalists³⁰³ reveals that journalists are well aware of

³⁰⁰ Vide interview with Imran Furkhan, op. cit.

³⁰¹ *IMPACS, CPA & IFJ. Reporting for all: Developing a public service journalism culture in Sri Lanka; A Handbook for Journalists* at p.16.

³⁰² Self regulators in Sri Lanka share this view. The generally low standards of professionalism in Sri Lanka is commonly attributed to the lack of higher educational training. However it cannot be denied that vulnerability to persistent attacks and intimidation have driven out professional journalists and rendered others nervous to join the profession.

universal journalism norms—such as impartiality, accuracy, and diversity of sources—but admit that they fall well short of these standards. Elmqvist and Bastian rightly observe:

“The most evident problem in the media is the lack of the adherence to internationally recognised basic standards of accuracy, impartiality and responsibility. Overall, there remains a very high level of partisanship, little attempt to distinguish facts from opinions, [and] little analytical journalism or investigative reporting.”³⁰⁴

Some efforts, however, have been undertaken to improve media standards and produce a professional and well-trained class of journalists. For instance, the establishment of SLPI³⁰⁵ is highly germane to such efforts to promote media professionalism. According to its initial donor proposal, the objective³⁰⁶ of SLPI was to develop ‘a group of trained journalists demonstrating the highest quality, commitment and standards of professionalism.’³⁰⁷

Moreover, as discussed above, reformers have attempted to establish a culture of self-regulation through the PCCSL and the Code of Practice of the Editors Guild.³⁰⁸ In its preamble, the Code of Practice states:

“This code of practice which is binding on all Press institutions and journalists, aims to ensure that the print medium in Sri Lanka is free and responsible and sensitive to the needs and expectations of its readers, while maintaining the highest standards of journalism.”³⁰⁹

It is noted that this Code is a significant improvement on the previous Press Council Code.³¹⁰ The notion of ethics and related codes have been recognised as the best methods to regulate the professions, as there

³⁰³ International Federation of Journalists (IFJ), *On the Road to Peace—Reporting Conflict and Ethnic Diversity: A Research Report on Good Journalism Practice in Sri Lanka* (2004).

³⁰⁴ Elmqvist & Bastian, *op.cit.*, at p.23.

³⁰⁵ The SLPI was founded in 2004 and is the umbrella organization that brings together the PCCSL and the Sri Lanka College of Journalism. A major aim of the SLPI’s mandate was to establish links with fraternal international organizations around the world (Colombo Declaration on Media Freedom and Social Responsibility, International Symposium, 1998)

³⁰⁶ The overall aim of SLPI is to create and nurture an informed public committed to democratic ideas and the creation of a professional, independent and unbiased media. [Vide interview with I. Furkan, *op.cit.*]

³⁰⁷ *Ibid.* at p.10.

³⁰⁸ Vide interview conducted with K. Nadesan, *op.cit.*

³⁰⁹ Code of Professional Practice (Code of Ethics) of The Editors Guild of Sri Lanka adopted by the Press Complaints Commission of Sri Lanka, available at http://www.pccsl.lk/includes/downloads/files/file_09081732403.pdf (last accessed on 3 January 2011).

³¹⁰ See The Press Council (Code of Ethics for Journalists) Rules, 1981. The said Rules were formulated by the Sri Lanka Press Council setting out the Code of Ethics for Journalists under Section 30(i) (a) of the Sri Lanka Press Council Law, No.5 of 1973, and approved by Parliament under Section 30 (3) of the said Law.

should be a certain degree of freedom for professionals to act within their respective spheres of work.³¹¹ The Editors Guild Code consists of eight sections covering accurate reporting, corrections and apologies, opportunity to reply, confidential sources, general reporting and writing, privacy, harassment and subterfuge, and dignity. Additionally, the Rules and Complaints Procedure of the PCCSL covers the process of entertaining complaints, evidence, the award, correction or change of award, and the enforcement and interpretation of the code, and also specifies who could speak on behalf of the PCCSL.³¹² The ethical code of journalists differs from most of the other professional codes as it is a non binding document which does not impose mandatory disciplinary proceedings against a journalist. This freedom and privilege can be identified as a recognition of the unique and special nature of the journalism profession which is considered as a means of enforcing the rights of the public.³¹³

Presently, a committee has been appointed with the objective of revising the Code of Practice. This is in fact consistent with the Code itself, which states: '[t]he Editors Guild shall review the provisions of this Code from time to time, but not less than once each year.'³¹⁴ The Code of Practice, together with the self regulation scheme facilitated by the PCCSL, has ensured that the aggrieved parties have been given an opportunity to voice their concerns and to obtain a remedy in that regard. The education level of the new entrants to the media industry has shown a significant increase due to the growth of higher education and this has resulted in the creation of a generation of journalists who are well aware of the applicable ethical considerations. The success of this Code would essentially depend on the awareness and acceptance of journalists, the general public and all the other stakeholders of the industry as to this particular Code.³¹⁵ A Code of Practice, however, would not be able to eradicate the possibility of human error. Therefore it is necessary to address the grievances of those who are affected by such conduct. The personal pride of journalists and editors may sometimes prevent them from retraction or correction. But it would be important to understand that such measures not only create credibility but also a certain level of respect and trust in regard to such newspapers.³¹⁶ Certain personal qualities are also expected from professional journalists. As professionals whose task is to show the wrong-doings and mistakes of others, journalists also have to be humble enough to accept their own mistakes.³¹⁷

³¹¹ *National Conference on Self-Regulation (2011): Session on Media Ethics: Fact or Fiction*, at p.37 (presentation by Wijedasa Rajapaksha, PC, MP and former Chairman, Press Council of Sri Lanka).

³¹² Elmquist & Bastian, op.cit., at p.21.

³¹³ *National Conference on Self-Regulation (2011): (Rajapaksha, op.cit.)*.

³¹⁴ See Code of Professional Practice, section entitled "Review".

³¹⁵ *National Conference on Self-Regulation (2011): Session on Media Ethics: Fact or Fiction*, at p.31 (presentation by N.M Ameen, President, Muslim Media Forum and Editor, Navamani newspaper).

³¹⁶ *National Conference on Self-Regulation (2011): Session on Media Ethics: Fact or Fiction*, at p.34 (presentation by Seetha Ranjane, senior journalist and former Convener, Free Media Movement).

³¹⁷ In one incident a newspaper based in London published an inaccurate report about a Sri Lankan living there and after getting to know about the inaccuracy that newspaper company had been quick in taking corrective measures even before the person involved had seen the newspaper report. Consequently, a representative of the company had come to his place, apologised and had paid compensation to the aggrieved person. Sri Lankan

While these advances remain encouraging, there appears to be some disparity between journalists from Colombo and those from the provinces. Interviews conducted by the Centre for Policy Alternatives among provincial journalists revealed that they often lacked proper journalism training and seldom received training on media ethics.³¹⁸ Furthermore, the provincial journalists are isolated from mainstream media outlets and often operate without the trust and working relationship with their peers and editors as most of the Sri Lanka's media is based in Colombo.³¹⁹ It was found that most provincial journalists did not even receive copies of the Code of Practice from their respective media organisations.³²⁰ Thus journalism standards across the country may vary considerably. In response to these concerns, reformers must ensure greater circulation of the Code of Practice amongst provincial journalists and also provide them with better access to training. Some media organisations have recognized their responsibility in this regard by the implementation of initiatives towards a better compliance with ethics and professional norms.³²¹ As discussed later in this paper, such initiatives have already been undertaken by SLPI in particular, and have proved to be reasonably successful.

The need to have more frank exchanges on key issues between the journalists and the industry is another important element in ensuing greater professionalism. Grossly inadequate payments, delay in making payments, inability of journalists to form and organise trade union activities and the insecure nature of their personal and professional interests have resulted in the inability of the media industry to achieve any real solidarity.³²² The relative size of the industry when compared to the Indian print media industry and the special concerns applicable in relation to newspapers printed in Tamil are crucial matters of concern. The issue of safety of the source in the absence of shield laws to protect sources and whistle blowers has also been a significant problem.³²³

journalists must strive to attain professionalism of such high standards, *National Conference on Self-Regulation (2011)* Rajapaksha, op. cit).

³¹⁷ See Code of Professional Practice, section entitled "Review".

³¹⁸ CPA & IMS, op.cit., at 19f. Also see Bolin, op.cit., at p.10.

³¹⁹ *IMPACS, CPA & IFJ. Reporting for all: Developing a public service journalism culture in Sri Lanka; A Handbook for Journalists* at p.10.

³²⁰ *Ibid.* See also Transparency International Sri Lanka and Friedrich Ebert Stiftung, *Resource Book on Investigative Journalism (2011)* at p.15.

³²¹ Transparency International Sri Lanka and Friedrich Ebert Stiftung, *Resource Book on Investigative Journalism (2011)* at p.15 "Some media organizations have voluntarily moved to the next level. The Sinhala alternative publication, *Ravaya*, introduced its own house rules and introduced an ombudsman to the newspaper. Some media organizations have evolved their own organizational policies on gifts"

³²² *10th Anniversary of the Colombo Declaration (2008)*, Session on Press Freedom in Sri Lanka: What's Happening? , at p.34 (panel discussion).

³²³ Transparency International Sri Lanka and Friedrich Ebert Stiftung, *Resource Book on Investigative Journalism (2011)* at p.92.

"...a story published in *The Sunday Leader* in 2007 about a group of police officers who were falsely accused and indicted of crimes in retaliation for raiding well – known Colombo drug ring that had been operating with the approval of police superiors. The story quoted several of the falsely accused officers including IP Douglas Nimal. The day after the story ran, Nimal called the reporter and thanked her profusely for her work. He also

5.5. Access to Means of Transmission and Distribution

Based on the circulation figures discussed above,³²⁴ it seems clear that the general public has reasonable access to print media in Sri Lanka. These circulation figures, however, relate to Colombo-based mainstream newspapers. Accordingly, it has been observed that compared to other developing countries where regional and community media often play an important role, Sri Lanka possesses very little regional and local media.³²⁵

Moreover, in terms of the electronic media, some disparity remains between the “audience reach” of state media and private media, as access to actual means of transmission and distribution depends on a variety of factors, mostly within the control of the state. In this context, Sri Lanka does not have an extensive community radio industry. Since 1992, four successive governments have refused to grant broadcasting licences to non-profit, non-governmental or cooperative groups, including the country’s largest local development organisation—Sarvodaya.³²⁶ The explanation for this refusal seems to be political, since the government has often feared the political agendas of some of these organisations, particularly those that may take ‘an anti-government stand on social and political issues, such as human rights abuses, corruption, welfare policy and ethnic issues.’³²⁷

The projects that ultimately did get governmental approval, such as the Mahaweli Community Radio, lacked independence, as they depended heavily on the goodwill and partnership of SLBC.³²⁸ A report published by CPA in 2008 notes that the Mahaweli Community Radio, amongst other similar ventures, was never truly independent, as its contents were kept ‘artificially non-political’ through a policy which

said he was on his way to the Supreme Court to file a fundamental rights petition challenging his wrongful suspension. He promised to come over to the newspaper office with additional information exposing even more wrongdoings of his superiors. He never made it. Nimal and his wife were killed in Athurigiriya on their way to the Supreme Court in Hulfstorp.”

³²⁴ See op.cit.

³²⁵ Bolin, op.cit., at p.8.

³²⁶ *Ibid.* at p.10.

³²⁷ *Ibid.*

³²⁸ *Ibid.* The author notes: ‘Two groundbreaking projects have met with considerable success—the Mahaweli Community Radio (MCR) established in 1981, and its offshoot Kothmale Community Radio Internet Project, established in 1991. Both of these stations were developed with foreign aid and the support of UNESCO, and were designed to engage local rural communities. In MCR’s case Mahaweli Radio was to broadcast in communities involved in the government’s ambitious irrigation scheme to divert the Mahaweli River. Meanwhile the Kothmale Community Radio Project set in Sri Lanka’s hill country was designed to use radio broadcasts as a conduit between the local community and the new technology of the internet. But while these stations were considered “community radio” in terms of their content and philosophy, they relied on the goodwill and partnership of the SLBC to survive.’ Also see Nalaka Gunawardene, *The Sri Lankan Government’s Broadcast Stranglehold*, available at <http://www.asiamedia.ucla.edu/article.asp?parentid=57939> (last accessed on 3 January 2011).

prevents any criticism of the government.³²⁹ Likewise, an earlier World Bank Study conducted by Jayaratne *et al.* revealed that almost every aspect of broadcasting in Sri Lanka is tightly controlled by the Central Government.³³⁰ The occasional collaboration between the Central Government and certain Provincial Councils was not seen as evidence of decentralising control, but simply institutional collaboration. A good example of this phenomenon is the Uva Community Radio (UCR), established jointly by SLBC and the Uva Provincial Council.³³¹ Jayaratne *et al.* rightly conclude that Sri Lanka's political culture is antagonistic towards community radio initiatives. This antagonism was evident in the case of UCR, which eventually witnessed a 'marked decrease in community-driven programming, ostensibly as part of an effort to stay on the air.'³³²

In stark contrast to Sri Lanka, the experience in India has been far more positive. For decades, the broadcast media was under the complete monopoly of the Government of India.³³³ However, in *Secretary, Ministry of Information & Broadcasting v. Cricket Association of Bengal*,³³⁴ the Supreme Court emphasised that every citizen has a right to telecast and broadcast any important event through electronic media, television or radio and that the government had no monopoly over such media.³³⁵ As a result of such jurisprudential developments, the broadcasting sector in India became far more open and accessible to the citizens. Consequently in November 2006, the government released a Community Radio Policy, which allowed agricultural centres, educational institutions and civil society organisations to apply for community based FM broadcasting licenses.³³⁶ These non-transferable licenses were valid for a period of five years and were to be used for community development purposes only. As a result of this venture, some 4000 community radio stations are estimated to have emerged.³³⁷

Jayaratne *et al.* recommend that in order to overcome political impediments, future community radio initiatives in Sri Lanka should be redesigned.³³⁸ The authors claim that such initiatives should be 'relatively smaller and established in cohesive communities that have articulated common goals and are thus able to successfully surmount destabilising influences.'³³⁹ However, significant reform may not be possible without the overhaul of the present licensing regime. Thus the proliferation of community radio

³²⁹ See Centre for Policy Alternative, *Best Practices and Potential for Improved Information Flows in Media and Civil Society* (2008), at p.37.

³³⁰ Jayaratne *et al.*, *op.cit.*, at p.10.

³³¹ *Ibid.*

³³² *Ibid.* at p.43.

³³³ See Aparimita Basu, *Media Laws—An Overview*, available at <http://www.legalserviceindia.com/articles/media.htm> (last accessed on 22 January 2011).

³³⁴ (1995) 2 SCC 161.

³³⁵ *Ibid.* at p.122.

³³⁶ See UNESCO.Org, *India to Establish 4000 Community Radio Stations under New Community Radio Policy*, available at http://portal.unesco.org/ci/en/ev.php-URL_ID=24250&URL_DO=DO_TOPIC&URL_SECTION=201.html (last accessed on 23 January 2011).

³³⁷ *Ibid.*

³³⁸ Jayaratne *et al.*, *op.cit.*, at p.43.

³³⁹ *Ibid.*

in Sri Lanka may ultimately be contingent on broader reforms that culminate in the establishment of an independent broadcasting authority.

5.6. Ethnicity and Language

Issues of ethnicity and language are obviously relevant to the media in Sri Lanka, particularly in the context of a savage ethnic conflict and longstanding language-related tensions. In the private sector, the co-relation between ethnicity and media ownership is clearly revealed when one examines *who* really invests in Tamil media. Apart from a solitary non-Tamil investor i.e. Asian Broadcasting, which runs a Tamil radio station, all other Tamil language media are results of investments by Tamil entrepreneurs. It is observed that none of the leading private sector media houses such as the Wijaya Group or Upali Group in terms of print, or well-known stations such as Swarnavahini in terms of electronic media, cater to the Tamil-speaking people.³⁴⁰ In fact, some of the newspaper groups were established explicitly for the purpose of representing the views of a particular ethnic group. For example, the Upali Group represents the interest of the Sinhala population, and the Express Group represents Tamil interests. With the exception of the Maharajah Group, there seems to be little incentive for a capitalist class to invest in the media with the objective of cutting across ethnic segregations.

However, amidst this polarised environment, there have been a few attempts to break ethnic barriers. One example is the advent of multilingual newsrooms where journalists of different language groups work together. The Maharaja Group pioneered this approach and established an environment where journalists of each ethnic group are compelled to confront the opinions of colleagues from the other groups. Moreover, it is somewhat encouraging to note that certain regional services of the state-owned SLBC radio, such as the Uva Community Radio, have introduced multilingual programmes.

Diversity of ethnic representation in media houses is a key issue which needs to be addressed in order to ensure good public service journalism. Effective public service journalism should be reflective of the views expressed by all communities in society. Thus, it is "*vital that a newsroom should include all types of Sri Lankans to ensure diverse mix of gender, ethnicity, religion, language and background*"³⁴¹. In Sri Lanka, English language newspapers appear to maintain the most diverse newsrooms which includes Sinhala journalists together with Tamil, Muslim and Burgher journalists. Though there has been official recognition as to the trilingual language policy in the country, the absence of a conducive environment which encourages the implementation of such policies is a major obstacle.³⁴² A content analysis of the

³⁴⁰ Currently, the mainstream media (Sinhala and English language) versions are mostly controlled and administered by ethnic Sinhalese, both Buddhist and Christian. In the post conflict era it would be necessary for all media to consciously avoid the continued propagation of ideas that militate against an inclusive Sri Lankan mentality. [Vide interview with A.C.Visvalingam, op.cit.]

³⁴¹ *IMPACS, CPA & IFJ. Reporting for all: Developing a public service journalism culture in Sri Lanka; A Handbook for Journalists* at p.12

³⁴² *Ibid.*

print media in 2005³⁴³ revealed that Tamil, Sinhala and English newspapers focus on the same topics quite differently.³⁴⁴ A good example of this phenomenon was the reporting of killings, abductions and armed attacks during the ceasefire period, where a great dearth in credible information on such acts existed. The English-speaking press habitually attributed all killings to the LTTE, whereas the Tamil media tended to blame the government. Another study³⁴⁵ revealed a similar result concerning thematic content and sources. The Sinhala press focused on the CFA violations by the LTTE and much less on government attacks, whereas the Tamil press focused on the peace process. Furthermore, the Sinhala and English press relied heavily on military and police sources, whereas the Tamil press relied on more unconventional sources, including the LTTE.

“In a common paradox, the mass media in Sri Lanka has been one of the prime violators of freedom of expression in practising ethnic exclusivism in its reportage and commentary. This is borne out, for example, by the language medium playing a selective role in the manner in which ethnic issues are represented.”³⁴⁶

This inherent ethnic gap is also confirmed by S. Nadarajah in his study on the reporting of the vernacular press.³⁴⁷ The author observes that the Tamil press generally tended to cover more Tamil concerns such as the ethnic conflict, while the Sinhala press covered Sinhala concerns such as intra-Sinhala party politics. However, the author concedes that in specific respects, the Sinhala and Tamil papers have deviated from the norm, where Sinhala papers have criticised the government and Tamil papers have criticised the LTTE.³⁴⁸ Yet, it seems that the radicalisation of positions over the past few years has ultimately contributed to ethnicity becoming the most essential issue, particularly in Tamil media, even to the extent of causing the neglect of other factors.

Today, ethnicity and language continue to act as highly divisive levers within the media machinery.³⁴⁹ Though the representational nature of journalism will continue to influence the “angle” from which journalists report on issues, the ability to engage readers across ethnic lines remains an important part of the broader democratic role of the media. Direct measures for reforming the system have proved to be largely ineffective. However, as discussed later in this paper, there may be some scope for achieving long term reform by fostering a future generation of media personnel more sensitive to complex ethnic and language issues.

³⁴³ Radhika Hettiarachchi, *Content Analysis of Print Media on the Peace Process* (2005), (unpublished).

³⁴⁴ The negative impact of the significant influence and control exercised by extremists in Sinhalese and Tamil language media has been worsened by the limited impact of the English media (which is generally considered as moderate in its approach) on the majority Sinhala speaking public in the country.

³⁴⁵ IFJ, op.cit..

³⁴⁶ Pinto-Jayawardena (2003), op.cit., at p.17.

³⁴⁷ S. Nadarajah, *Sri Lanka's Vernacular Press and the Peace Process 2000–2005*, The Asia foundation, (2005).

³⁴⁸ *Ibid.*

³⁴⁹ Vide interview with A.C.Visvalingam, op.cit.

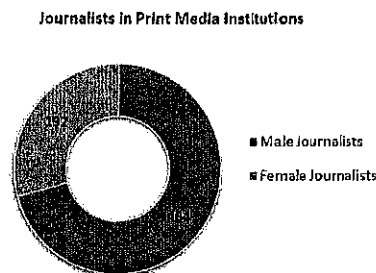
5.7. Gender

Sri Lanka's record of gender empowerment in the public sphere has often been grossly over-valued, perhaps as a result of certain "visible" achievements in the past, such as producing the world's first woman prime minister in 1960.³⁵⁰ Despite some advances since then, 'the actual impact that women [have] in the political and public sphere has continued to be minimal.'³⁵¹ Jayaratne *et al.* comment:

"Despite one or two women assuming the uppermost levels of political leadership, the overall participation of women in the formal political process has sunk to the lowest levels yet experienced in the South Asian region, as compared to India, Pakistan and Bangladesh."³⁵²

This lack of substantive progress is certainly evident in the media profession as well. For instance, the workforce is still highly male-dominated, as female journalists have limited opportunities in the newsroom.³⁵³ The following graph provides an indication as to the male –female participation in the print media.³⁵⁴

Male – Female breakdown of Journalists at Newspapers



The lack of representation in the profession is also reflected in the choice of content. A good example of this phenomenon may be observed in Sri Lanka's limited foray into community radio. Some commentators suggest that the community radio experience in Sri Lanka has failed to provide a space for the vigorous articulation of women's voices on their specific concerns.³⁵⁵ Research has instead indicated

³⁵⁰ Jayaratne *et al. op.cit.*, at p.44.

³⁵¹ *Ibid.*

³⁵² *Ibid.*

³⁵³ Bolin, *op.cit.*, at p.10.

³⁵⁴ Sri Lanka Press Institute, 2011 *An Assessment of Female Participation in Mainstream Media in Sri Lanka* [pdf] Colombo: Sri Lanka Press Institute. Available at: <http://www.sipi.lk/downloads.php> [Accessed 06 May 2012] p.21

³⁵⁵ Jayaratne *et al., op.cit.*, at p.45.

that “[p]rogramming that was systematically targeted at empowering the women of the communities was conspicuously lacking.”³⁵⁶

A recent survey conducted on behalf of Sri Lanka Press Institute (SLPI) reveals that the number of female journalists entering the media industry and the media education institutions in Sri Lanka has significantly increased over the years.³⁵⁷ Unfortunately, the study also reveals that despite these encouraging developments, female participation in media in Sri Lanka is still less than that of their male counterparts;³⁵⁸ a trend clearly visible in the Sinhala and Tamil print media and to a lesser extent in English print media. Furthermore, the increased number of female entrants to the industry has not been reflected at the managerial and decision making level where the progress of female journalists to such positions has been very slow. The following table³⁵⁹ is a clear illustration of such situation.

Newspapers	Male	Female
Chief Editor, Managing Editor, Associate Editor, Director Editorial, Senior Associate Editor, Deputy Editor, Sub Editor, Senior Editor	99	15

However, the concluding remarks in the SLPI Report indicate positive changes in future. Most participants to that survey have expressed the view that:

“There was a time when female journalists could only go up to heading a magazine or programme section of media organisations. Now there are several who have managed to break through and rise to the top and in time more females will follow suit”.³⁶⁰

The existence of intimidation and harassment, tight work schedules, multiple roles expected to be performed by women and their consequential discouragement are some of the issues which need to be addressed in order to ensure the positive participation of the female journalists in the media industry.

In terms of academia and professional training, some institutions such as the Sri Lanka College of Journalism (SLCJ) hold sessions on topics such as “Women in Media and their Role” and “Development Journalism and Women’s Issues.” The objectives of these sessions are to provide an insight to students on gender issues and expose them to sensitive areas of reporting which concern women. The importance of gender sensitising in journalism cannot be overstated. Accordingly, it has been observed that gender-

³⁵⁶ *Ibid.*

³⁵⁷ SLPI Report, op.cit., at p.34.

³⁵⁸ *Ibid.*

³⁵⁹ *Ibid.* at p.35

³⁶⁰ *Ibid.* at p.36

related training can equip journalists and editors to quickly detect glaring gaps in stories in terms of perspectives that may have been overlooked.³⁶¹

Hence it is crucial that journalists are made more aware of the different needs of men and women, which in turn should be adequately reflected in media coverage.³⁶² The reform agenda, once again, ought to be mainly focused on education, as changing the mindsets of the existing generation of media professionals is improbable. However, some attitudinal, and consequently structural, changes may be introduced through strategic curricula reform and gender training.

Moreover, a new generation of female media professionals has slowly emerged over the last decade or so. Thus the combination of greater gender sensitivity within the profession and an exponential growth in the number of female journalists entering the profession should result in tangible improvements over time.

5.8. Market Context

The lack of extensive and multi-faceted research on the Sri Lankan media has led to a dearth in information on media economics in the country. Credible and systematically generated figures on revenues from advertising or on overall profitability are scarcely available today.

The excessive duties imposed on newsprint have no doubt adversely impacted on the cost of newspapers. The signatories to the Colombo Declaration on Media Freedom and Social Responsibility raised this concern while pointing out that the import duty ultimately acts as a barrier to the distribution and dissemination of knowledge.³⁶³ It was hence concluded: 'As a direct result of escalating newsprint prices, publishers of developing economies like Sri Lanka, are compelled to increase the cover price of newspapers thus impacting on the dissemination of news and views.'³⁶⁴

A common view held amongst media professionals is that the industry is heavily dependent on advertising.³⁶⁵ Concerns are often expressed with regard to the volatility of the market and the effects an economic crisis may have on advertising budgets, and consequently on the already limited profitability of newspapers. Though some media houses belong to larger conglomerates, which could sustain their businesses through cross-financing strategies, most other organisations effectively survive on a knife's edge.

³⁶¹ Elmqvist & Bastian, *op.cit.*, at p.30.

³⁶² *Ibid.*

³⁶³ See Colombo Declaration on Media Freedom and Social Responsibility (October 2008).

³⁶⁴ *Ibid.* 'The cost of paper and print is one of the most significant obstacles to the increased professionalism of the media industry.' [Vide interview with D. Nesiiah *op.cit.*]

³⁶⁵ 'The dependency of media institutions on the revenue generated through advertisements and the inability of media institutions to oppose such investors is a practical reality which needs to be accepted by the media industry.' [Vide interview with B. Padmakumara, *op.cit.*]

The social responsibility of media stakeholders in relation to advertising content is another aspect which needs to be taken into account. The responsibility of all stakeholders, including and in particular newspapers, advertising agencies, business and consumers, is imperative in this respect. As mentioned above, the dependency of the newspapers on advertising income in practice has prevented editors and/or journalists from commenting on the advertising content. Recently, advertising campaigns run by a certain financial company offering extravagant interest rates, which ultimately turned out to be a financial scam, had raised many concerns among the general public as to the duty of respective parties to prevent incidents of this nature. The perspective of the business community in regard to maximisation of profits would seem to act as a barrier to responsible advertising. Though there is a Code of Ethics by which the advertising agencies are self-regulated, such measures have been found to be inadequate to address emerging issues. In this context the responsibility of the consumer has been emphasised as the ultimate decision maker regarding any product or service.³⁶⁶

American researcher J.H. McManus points out that most of the news around the world today is produced by profit-seeking enterprises.³⁶⁷ It is observed that in this model of “market-driven journalism”, the audience cease to be citizens, but rather become consumers. Moreover, news becomes a commodity and has to prioritise the needs of the market rather than reflect reality. Thus the entire process becomes a “transaction” in which consumers exchange their attention for money in order to get news, whereupon the media company sells their attention to the advertisers.³⁶⁸

This model appears to be prevalent in Sri Lanka as well, particularly in respect of the broadcasting media. Anna Bolin rightly surmises:

“For the time being most of the television programmes are for the upper economic groups, while there are no programmes for minorities, homeless, single parents or underprivileged groups. The quality is compromised to save costs, and the programmes to promote consumerism with the aim to maximise a wealthy audience and get more advertisers.”³⁶⁹

The extent of the commoditising of the media was amply demonstrated during the civil war. As J.B. Disanayaka observes, the Sri Lankan media often treated the war as a commodity, ‘helping to increase sales figures rather than increase understanding of the situation.’³⁷⁰ The author notes that throughout the 1980s and 1990s the media focused on presenting the conflict as a series of sensational incidents rather

³⁶⁶ 10th Anniversary of the Colombo Declaration (2008), Session on Press Freedom in Sri Lanka: Business Ethics – Is There Such a Thing? (panel discussion)

³⁶⁷ J.H. McManus, *Market-driven Journalism: Let the Citizen Beware?* (1994), at p.21.

³⁶⁸ *Ibid.* at pp.1, 37 & 61. Also see Bolin, *op.cit.*, at p.22.

³⁶⁹ Bolin, *op.cit.*, at p.23.

³⁷⁰ J.B. Disanayaka, *Ethnic Perceptions and Media Behaviour in Sri Lanka*, in A. Goonasekara, & Y. Ito (eds.), *Mass Media and Cultural Identity* (1999), at p.268.

than on covering the long-term implications of the conflict.³⁷¹

The proper response to this phenomenon must come from within the journalism profession itself. As noted above, journalists often come under severe pressure from owners with purely economic interests. Only a sound profession that uncompromisingly adheres to high professional and ethical standards could prevent market forces from dictating terms.

If high standards are maintained, the consumer's expectations would also be shaped in a positive fashion, thereby creating a demand for balanced news and credible analyses. In this context, public discourse would govern the market, rather than *vice versa*, consequently compelling media organisations to strive for a better quality of reporting in order to sell their "commodity".

5.9. Erosion of Media Freedom in Sri Lanka

A. Censorship

The issue of media censorship in Sri Lanka has evolved significantly during the past decade. While in the early 2000s the government often overtly resorted to censorship, its strategy for imposing restrictions on the media has grown more sophisticated during recent times. Today, censorship laws are scarcely imposed. Yet, even with the decline of such overt measures, the government has succeeded in creating an environment in which self-censorship is routinely practiced.³⁷²

An early example of overt censorship is the case of *Leader Publications (Pvt.) Ltd. v. Ariya Rubasinghe, Director of Information and Competent Authority and Others*³⁷³. The background to this case involves the appointment of the 1st respondent to be the "Competent Authority" under Regulation 2 read with Regulation 14(2)³⁷⁴ of the Emergency (Miscellaneous Provisions and Powers) Regulations No. 1 of 2000. On 22 May 2000, the 1st respondent, purporting to act in terms of Regulation 14(2)(b)(i), sent a letter to the petitioner prohibiting the petitioner from printing, publishing and distributing its newspaper *Sunday*

³⁷¹ *Ibid.* Also see Bolin, *op.cit.*, at p.23.

³⁷² The present context has been identified as an era where the "media has caved in" [Vide interview with D. Nesiiah *op.cit.*]. The following observation was made by Chandra Jayaratne, (*op.cit.*) in relation to the present context. "The 'fear' and 'reward' structures in force primarily along with legal regulatory and extra regulatory measures hand in hand with the lack of effective, independent and committed public institutions, lack of effective codes of conduct and ethics and disinterest and fear amongst key civil society actors and willingness to ignore amber lights around- the present calcification and labelling of all independent persons to be either 'patriots' or 'traitors' merely by their spoken, written or other actions- the net result of all this is to cripple free and fair media in operation (both state and non state media) leading even to the non state media imposing on themselves self censorship governance practices" (*Vide interview with C. Jayaratne, op.cit.*)

³⁷³ [2000] 1 Sri. L. R. 265.

³⁷⁴ Regulation 14(2) provides *inter alia* that "Competent Authority" in relation to any emergency regulation means, unless otherwise provided for in such regulation, any person appointed, by name, or by office, by the President to be a Competent Authority for the purpose of such regulation.'

Leader or any newspaper for a period of six months from the date of the order. Further by an order purporting to be under regulation 14(2)(b)(ii) he directed the Inspector General of Police to take possession of the petitioner's printing press and its premises. The petitioner filed a Fundamental Rights Application in the Supreme Court complaining that the said orders violated its rights under Articles 12(1), 14(1)(a) and 14(1)(g) of the Constitution. At the hearing, the validity of the 1st respondent's appointment as "Competent Authority" was taken up as a preliminary matter.

The Supreme Court was of the view that the '1st respondent was not entitled to make the orders he did, for he was not empowered by the regulations to do so within the meaning of Section 6 of the Public Security Ordinance.'³⁷⁵ It was further held that the means chosen for the appointment of the Competent Authority, namely by a notification published in the Official Gazette, was 'not an effective exercise of the delegated power conferred by Parliament by Section 6 of the Public Security Ordinance.'³⁷⁶ Thus it was held that the 1st respondent had no power or authority to act under regulation 14 and the document dated 22 May 2000 addressed to the petitioner was a nullity and was of no force or avail in law.³⁷⁷

Though many welcomed this somewhat unusual ruling in favour of the petitioner, the narrow technical scope of the judgment was instantly revealed. By relying on a legal technicality rather than on a substantive legal principle, 'the Supreme Court left the door open for the government to re-impose media censorship...'³⁷⁸ The government immediately promulgated a set of emergency regulations under which it became mandatory for all media—both domestic and foreign—to submit their reports to the "Competent Authority" prior to publication or broadcast.³⁷⁹ Amidst protest by both domestic and international journalists, the government lifted the requirement of pre-publication vetting. However, the Competent Authority still possessed broad sweeping powers to ban material on a wide range of grounds, including the interests of national security and the preservation of public order.³⁸⁰

³⁷⁵ [2000] 1 Sri. L. R. 265, at p.278.

³⁷⁶ *Ibid.* Section 6 of the Public Security Ordinance No. 25 of 1947 declares: 'Emergency regulations may provide for empowering such authorities or persons as may be specified in the regulations to make orders and rules for any of the purposes for which such regulations are authorized by this Ordinance to be made, and may contain such incidental and supplementary provisions as appear to the President to be necessary or expedient for the purposes of the regulations.' Accordingly, the Court held that such authorities and persons must be appointed through a substantive enactment.

³⁷⁷ *Ibid.* at p.282.

³⁷⁸ Dianne Sturgess, *Court Decision Expresses Rifts in Ruling Circles: Media Censorship in Sri Lanka Ruled Invalid then Reimposed*, available at <http://www.wsws.org/articles/2000/jul2000/sri-j18.shtml> (last accessed on 24 January 2011).

³⁷⁹ *Ibid.*

³⁸⁰ *Ibid.* The author cites the new Regulations as banning 'any material which would in the opinion of the Competent Authority be prejudicial to the interests of national security or the preservation of public order or the maintenance of supplies and services essential to the life of the community or inciting or encouraging persons to mutiny, riot or civil commotion or to commit the breach of any law for the time being in force.'

The strategy of the government for imposing media censorship slowly changed over the next few years, particularly after the resumption of hostilities in the North and East of the country. As observed in an 'insider' point of view in terms of media practice in the North and East:

"It is true that there is no official censorship or banning of newspapers now, but the effects of these two stringent measures are achieved in a subtle way through various devices by the authorities. Even steps are taken to cripple certain newspapers to force them to close down due to lack of resources. Therefore, it is evident that real press freedom does not exist here in practice."³⁸¹

Examples of government-backed elements strong-arming the media in the North and East into ceasing operations are many. A good example of this *de facto* censorship was a July 2006 incident where such unruly forces stopped the distribution of all the Tamil newspapers in the Eastern districts of Batticaloa and Amparai.³⁸²

Another critical issue in this regard is the emergence of self-censorship within the private media.³⁸³ Despite the fact that the government has not imposed censorship laws during the past few years, the Sri Lankan media is afflicted by self-censorship.³⁸⁴ The issue of editorial freedom in Sri Lanka is complex and the responsibility of editors and owners in this regard needs to be better scrutinised.³⁸⁵ The issue of self-censorship is very real, as continued interference in the newsroom by owners has severely hampered the space for free, accurate and balanced reporting.

Thus ascribing responsibility for the erosion of media freedom through censorship is a complex task. Though the government is largely responsible for creating an ambiance of fear and paranoia,³⁸⁶ the media industry itself is also responsible for becoming easily malleable and resorting to self-censorship.

B. Killings and Disappearances; Prevention of Terrorism and Emergency Law

The UN Human Rights Committee has observed that states must appreciate the importance of a pluralistic media in the nation-building process. Restricting media freedom to advance apparently noble goals such

³⁸¹ *10th Anniversary of the Colombo Declaration (2008) Session on Press Freedom in Sri Lanka: What's Happening?* at p.28 (presentation by E. Saravanapavan, Chairman, Mass Media Syndicate (Pvt) Ltd).

³⁸² *Ibid.* at p.29.

³⁸³ A predominant problem currently affecting the Sri Lankan media is self censorship which has prevented effective reporting and commentary on a range of issues, not only in regard to defence related matters but also in reference to general non-observance of the Rule of Law and the prevalence of widespread corruption.

³⁸⁴ *10th Anniversary of the Colombo Declaration (2008) Session on Press Freedom in Sri Lanka: What's Happening?* at p.32 (presentation by Sunanda Deshapriya, Head, Media Unit, Centre for Policy Alternatives).

³⁸⁵ *Ibid.*

³⁸⁶ Government interference in the media as well as threats and intimidation of the media have increased during the last few years [Vide interview with D. Nesiya, op.cit.]

as “national unity” ultimately violates the freedom of speech and expression. The Committee further observes:

“The legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multi-party democratic tenets and human rights.”³⁸⁷

Such observations remain largely unheeded in the Sri Lankan context. At the end of 2006—perhaps during a period when preparations for a full-blown military confrontation between the government and the LTTE were set in motion—Reporters sans Frontiers (RSF) referred to Sri Lanka as one of the world’s most dangerous countries for journalists.³⁸⁸ This predicament continued to prevail throughout the rest of the decade, with only small improvements observable following the end of military operations in May 2009. Although Sri Lanka’s Constitution provides for freedom of expression, the comprehensive legal framework ‘leaves wide discretion for the government to impose restrictions.’³⁸⁹

Apart from the government’s over-arching power to issue licences for radio and television stations, it possesses a variety of mechanisms to hinder the work of an independent media. The Prevention of Terrorism Act (PTA)³⁹⁰ and the Emergency Regulations under the Public Security Ordinance³⁹¹ remain the most outstanding of these mechanisms. These laws and regulations have been indiscriminately used to impose censorship of the media, seize printing presses and jail journalists. The PTA, in addition, specifically prohibits the printing, publishing and distribution of a particular publication without the prior approval in writing of a competent authority, and prohibits publication of any matter, which may perceivably lead to the incitement to violence.³⁹² Similarly, the Emergency Regulations permitted *inter alia* the detention of suspects without charge or trial, and entry search and seizure of property.³⁹³ Though the regulations were temporarily suspended during the Ceasefire Agreement of 2002, they were promptly re-introduced by the then President Chandrika Kumaratunge in August 2005 following the assassination of the then Foreign Affairs Minister Lakshman Kadirgamar.

³⁸⁷ See *Mukong v. Cameroon*, Communication No. 458/1991, at para.9.7. Also see Jayaratne *et al.*, *op.cit.*, at p.14.

³⁸⁸ The Centre for Policy Alternatives, *Background Note Prepared for International Press Freedom and Freedom of Expression Mission to Sri Lanka* (2007), at p.7.

³⁸⁹ Amnesty International, *Silencing Dissent* (2008), at p.8.

³⁹⁰ Act No. 30 of 1981.

³⁹¹ Ordinance No. 25 of 1947.

³⁹² Pinto-Jayawardena (2003), *op.cit.*, at p.4.

³⁹³ The requirements that other jurisdictions insist on prior to the exercise of power to issue emergency regulations, including but not limited to the principle of exceptional threat, principles of legality, principles of proportionality, the principle of necessity in a democratic society and the principle of non-discrimination, have not been made prerequisites under the Sri Lankan Constitution. *10th Anniversary of the Colombo Declaration (2008) Session on Freedom of Expression in Period under Emergency Regulations* at pp.72 & 73 (presentation by Asanga Welikala, Senior Researcher, Legal Unit, Centre for Policy Alternatives).

During the ceasefire period, media freedom began to slowly improve. Not surprisingly, some quarters in the media and civil society called for the repeal of the PTA altogether. Following the breakdown of the peace process in late 2006 and the resumption of the war between the government troops and the Liberation Tigers of Tamil Eelam (LTTE) media freedoms came to be increasingly under threat by both protagonists with several incidents involving violations of human rights and attacks on journalists.³⁹⁴

This new era of media restrictions witnessed incredible pressure being applied on Southern journalists by the government and also on Tamil journalists by the LTTE, which contributed heavily to the systematic silencing of moderate voices.³⁹⁵ The culture of fear engendered in the South also led to a number of Sinhala journalists being identified as unpatriotic, traitors or LTTE sympathisers and as a threat to national security. As mentioned above, this environment caused many journalists to resort to self-censorship, which no doubt adversely affected journalistic standards during the period.

Countless incidents of repression of the freedom of speech and expression, including extortion, abduction, assault and even the murder of journalists have taken place over the past decade.³⁹⁶

Some notably egregious incidents of violence against media personnel require mention:

1. Jaffna-based freelance journalist, Myilvanam Nimalarajan was killed in October 2000 inside a High Security Zone controlled by the Sri Lankan Army. Some have argued that his assassination was due to his public opposition to the activities of the Eelam Peoples Democratic Party (EPDP), a government-backed political party opposed to the LTTE. He was also noted for criticising the government for its repressive policies in Jaffna. Though some arrests of suspects belonging to the EPDP were made, 'the investigations petered out' by the end of 2002.³⁹⁷
2. Dharmaratnam Sivaram, a Tamil journalist most noted for being the Editor of controversial news website Tamilnet.com, was kidnapped in April 2005 in Colombo and extra-judicially executed soon after. Many analysts have speculated that the TMVP—a breakaway faction of the LTTE that enjoyed considerable governmental support—was responsible for the assassination, thereby insinuating government

³⁹⁴ See Amnesty International, op.cit, at pp.12-27. Also see Free Media Movement, *The Death of Media Freedom in Sri Lanka* (2007).

³⁹⁵ *10th Anniversary of the Colombo Declaration (2008)* Session on Press Freedom in Sri Lanka: What's Happening? at pp.32 & 38 (presentations made by Deshapriya and Saravanapavan).

³⁹⁶ Vide interviews with S.Rockwood, and K. Nadesan, op.cit.

³⁹⁷ Pinto-Jayawardena, op.cit., at p.19. Also see Committee to Protect Journalists, *Attacks on the Press 2000: Sri Lanka*, available at <http://cpj.org/2001/03/attacks-on-the-press-2000-sri-lanka.php> (last accessed on 5 January 2011).

complicity. Once again, no suspects were apprehended or tried in respect of the crime.³⁹⁸

3. Manusamy Parameshwari³⁹⁹, a translator of Tamil ethnicity at the Standard newspaper was arrested and the newspaper labelled as LTTE funded with frequent government raids and the arrest of its publisher.⁴⁰⁰
4. Namal Perera, Deputy Director Advocacy at the Sri Lanka Press Institute (SLPI) at that time and a friend with whom he was travelling at the time were severely assaulted sustaining serious injuries.⁴⁰¹ Attacks on media personnel including Keith Noyahr, *Rivira* Editor Upali Tennakoon, *Uthayan* editor, N Vidyatharan and media activist Poddala Jayantha confirmed this dangerous trend. Many journalists fled the country.
5. The brutal assassination of Lasantha Wickrematunge, the Editor of the strongly anti-government newspaper, *The Sunday Leader* in January 2009, was perhaps the most shocking of all recent attacks on media personnel. Wickrematunge was a prominent figure in the media and often described as a 'virulent critic of the Mahinda Rajapaksa government.'⁴⁰² The journalist also clashed with Defence Secretary, Gotabaya Rajapaksa over a defamation suit, in which Wickrematunge's business was being sued for Rs.2 billion. Following the assassination, a number of suspects, mostly linked to the armed forces, were taken into custody for their alleged involvement. However, no formal charges have reportedly been instituted against any individual.
6. On 29th July 2011, the news editor of Uthayan newspaper, Mr. G. Kuganathan, was assaulted with iron rods in Jaffna.
7. On 1st February 2012, Prasad Purnimal Jayamanne, a freelance journalist working for the BBC's Sinhala service and a member of the South Asian Free Media Association was attacked and badly beaten while filming a demonstration by fisherman in Chilaw, in protest against the death of a fisherman at the hands of the police.

³⁹⁸ Reporters Without Borders, *Tamilnet Editor's Murder Still Unpunished After One Year*, available at <http://en.rsf.org/sri-lanka-tamilnet-editor-s-murder-still-28-04-2006,17503.html> (last accessed on 17 January 2011). Also see International Press Freedom and Freedom of Expression Mission to Sri Lanka, *Press Freedom and Freedom of Expression in Sri Lanka: Struggle for Survival* (2007) at p.8.

³⁹⁹ <http://www.lankabusinessonline.com/fullstory.php?nid=899765082>.

⁴⁰⁰ <http://www.thesundayleader.lk/20090301/exposive.HTM>.

⁴⁰¹ <http://freemediasrilanka.wordpress.com/2008/07/01/assault-on-journalist-mr-namal-perera/>.

⁴⁰² B. Muralidhar Reddy, *Editor of Sri Lankan Daily Assassinated*, available at <http://www.hindu.com/2009/01/09/stories/2009010956091400.htm> (last accessed on 17 January 2011).

The above examples only serve to amplify the dismal state of journalistic freedom in Sri Lanka during the prosecution of the war as well as in the post-war period. As discussed in detail later in this paper, the post-war situation has unfortunately failed to witness much improvement. Even three years after the end of hostilities in the North and East of the country, the Prevention of Terrorism Act continues to be in force, even though the state of emergency has been allowed to lapse.

C. The Tissainayagam Case

Perhaps no other case better reflects the tension between the freedom of speech and expression and the government's obsession with controlling the dissemination of information in the media than the case of journalist J.S. Tissainayagam. The Terrorism Investigation Division (TID) of the Sri Lanka Police arrested Tissainayagam in March 2008. The journalist was charged *inter alia* with inciting the commission of acts of violence or racial or communal disharmony by publishing certain articles in the North-Eastern Monthly Magazine in 2006 and 2007.⁴⁰³ During his trial, Tissainayagam claimed that he was harassed and threatened by the TID while under detention, which had led to an involuntary confession.⁴⁰⁴

In August 2009, the High Court sentenced Tissainayagam to a total of 20 years rigorous imprisonment—the maximum sentence—for arousing “communal feelings” by writing and publishing articles that criticised the government's treatment of Sri Lankan Tamil civilians affected by the war, and for raising funds for a magazine in which the articles were published in furtherance of terrorism.⁴⁰⁵ Soon after, Tissainayagam appealed the ruling, and was granted bail on 11 January 2010 pending the outcome of his appeal.⁴⁰⁶ Eventually, in May 2010, the government announced that he would be pardoned by President Mahinda Rajapaksa to mark the 2010 World Press Freedom Day. The case of Tissainayagam was conveniently swept under the rug and discussion on the matter soon ended.

The High Court judgment has been severely criticised at several levels. One major issue related to the judge's acceptance of the confession, despite a host of evidentiary discrepancies put forward by the defence, and also her own official's contention that the prosecution had presented tampered evidence. Moreover, the judge appeared to disregard the fact that no prosecution witnesses were summoned to prove the articles could incite ethnic disharmony, but instead relied on her own judgment and on a defence witness's evidence that the articles were factually incorrect. Surprisingly, the judge dismissed the evidence of four other witnesses on the basis that they were of the same political beliefs as the accused. It

⁴⁰³ See CNN, *Jail Sentence for Dissident Sri Lankan Reporter Condemned*, available at <http://edition.cnn.com/2009/WORLD/asiapcf/09/01/sri.lanka.journalist> (last accessed on 14 January 2011).

⁴⁰⁴ See Law & Society Trust (LST), *Briefing Note on Tissainayagam Case: 17 September 2009 - Case of J.S. Tissainayagam*, available at www.lawandsocietytrust.org/web/images/PDF/briefing%20note.doc (last accessed on 15 January 2011).

⁴⁰⁵ The Sunday Leader, *Convicted*, available at <http://www.thesundayleader.lk/archive/20090906/convicted.htm> (last accessed on 15 January 2011).

⁴⁰⁶ See BBC, *Sri Lankan Editor JS Tissainayagam Gets Bail*, available at http://news.bbc.co.uk/2/hi/south_asia/8451413.stm (last accessed on 15 January 2011).

may reasonably be said that the judge failed to adhere to the fundamental principles of a fair trial including the requirement of placing the burden of proof on the prosecution.

Tissainayagam's case does not merely highlight the lack of media freedom in Sri Lanka; it also reveals a much deeper systemic problem. The three charges against Tissainayagam under the PTA were: (1) that he intended to cause the commission of acts of violence or racial or communal disharmony through the printing or distribution of the magazine "North Eastern Monthly"; (2) that he intended to cause the commission of acts of violence or racial or communal disharmony through the publishing of particular content in the said magazine; and (3) that he collected funds from *non-governmental organisations* for the publishing of the said Magazine (emphasis added). One is immediately struck by the absence of any reference to the LTTE or any terrorist group in the indictment.

One of the editorials relied on in the indictment was headlined: "Providing Security to Tamils now will define northeastern politics of the future." The excerpt specifically cited in the indictment reads: 'It is fairly obvious that the government is not going to offer them [Tamil Civilians] any protection. In fact it is the state security forces that are the main perpetrator of the killings.' By analysing the three charges and the excerpt in the indictment, it becomes fairly obvious that the conviction of Tissainayagam on the first and third charges was contingent on his conviction on the second charge, which was the only charge that was "content based". The entire case therefore rested on proving in terms of Section 2(1)(h) of the Prevention of Terrorism Act No. 30 of 1981 that the article, and more specifically the excerpt, was published with the intention of 'causing the commission of acts of violence or racial or communal disharmony.'

The sole contention of the state in the case—and this is often omitted in propaganda statements—was that an article written by a *Tamil* journalist accusing a predominantly *Sinhalese* Army is likely to incite the commission of acts of violence by Sinhalese readers against Tamils, or lead to racial or communal disharmony. This proposition is absurd and, at the very least, imposes an enormous evidentiary burden on the prosecution. Yet this aspect of the trial seldom found its way into the media, as the government successfully distorted the controversy into one revolving around Tissainayagam's links to the LTTE. Even those in the civil society who campaigned for Tissainayagam's release focused on the issue of journalistic freedom, while being divided on whether he actually had links to the LTTE. It was rarely emphasised that Tissainayagam's links to the LTTE had nothing to do with his indictment. The government achieved this feat through the relentless use of propaganda on official governmental websites during the pendency of the case—an act which would constitute contempt of court in most jurisdictions.⁴⁰⁷ In the courtroom, however, there was simply no link that could be drawn between the accused's liaisons with the LTTE—albeit during the ceasefire period where even government officials habitually liaised with the LTTE—and the actual indictment.

⁴⁰⁷ See Ministry of Defence Sri Lanka, *Background: Thissanayagam Case and Others*, available at http://www.defence.lk/new.asp?fname=20081222_01 (last accessed 15 January 2011); *Tissanayagam found guilty on terrorism: sentenced 20 years imprisonment*, available at http://www.defence.lk/new.asp?fname=20090831_07 (last accessed 15 January 2011).

Today, very few commentators identify the media ruse orchestrated by the government during the trial. Through its control of the media and effective hold over public discourse, the government successfully avoided having to defend the unconvincing position that Tissainayagam's articles were intended to incite reasonable readers into committing acts of violence or to cause racial or communal disharmony. Hence the case revealed the extent of the government's influence over public opinion and the government's ability to define the parameters of discourse on controversial issues. The end result was the conviction of an innocent individual, and the confusion of the general public.

5.10. Looking Forward: Media in the Post-Conflict Context

Post 2009, the media environment has continued to witness serious challenges. Following a long line of similar indictments,⁴⁰⁸ Reporters Sans Frontiers downgraded Sri Lanka in its World Press Freedom Index, 2011-2012 citing impunity and official censorship of websites⁴⁰⁹ as leading to pervasive self censorship.⁴¹⁰ Reports abounded that Sri Lanka's government was seeking the assistance of the Chinese government to block and filter websites.⁴¹¹ As recently as in early 2012, protest demonstrations by media organisations in Colombo were blocked and impeded by hostile pro-government groups holding clubs⁴¹² despite a report by a government appointed Lessons Learnt and Reconciliation Commission (LLRC) made public in December 2011 that media freedom should be enhanced in keeping with democratic principles and relevant fundamental rights obligations. It affirmed that harassment and attacks on media personnel should be prevented, cases should be properly investigated and prosecuted as well as deterrent punishments imposed.

Notwithstanding these disturbing developments, there is no doubt that collective media activism can be an extremely potent force in creating systemic change. In the past, the very political roles played by the media have resulted in positive contributions in a number of crucial areas. For example, as Elmquist and Bastian correctly observe, there is little doubt that the media was a major force in the anti-colonial struggle.⁴¹³ Today, the media plays an essential role in highlighting issues of poverty, state repression and corruption. One of the most urgent contemporary issues facing the media is the need to maintain its status as a vehicle for systemic change and as a facilitator of public debate. In order to retain this status, reporting standards need to dramatically improve, i.e. journalists need to be more analytical, more

⁴⁰⁸ <http://www.ifj.org/assets/docs/059/046/c93b13b-7a4a82e.pdf>; <http://en.rsf.org/press-freedom-index2010,1034.html>; <http://www.freedomhouse.org/template.cfm?page=70&release=1066>. Both Chandra Jayaratne and Sukumar Rockwood agree that the threats have increased significantly, with a certain marginal down turn since the end of the war (Vide interviews with C. Jayaratne and S. Rockwood, op.cit.)

⁴⁰⁹ PCCSL has commenced discussions with different web managers to formulate guidelines for the websites to regulate themselves. [Vide interview with S. Rockwood, op.cit].

⁴¹⁰ Reporters Without Borders, http://en.rsf.org/IMG/CLASSEMENT_2012/C_GENERAL_ANG.pdf.

⁴¹¹ <http://ict4peace.wordpress.com/2010/02/11/sri-lankan-government-to-block-internet-and-censor-independent-web-media/>; Among the websites blocked were lanka-e-news, lankadissent, srilankaguardian. Websites were requested to register with the government and many declined to do so.

⁴¹² *The Sunday Times*, 29 January 2012.

⁴¹³ Elmquist & Bastian, op.cit., at p.11.

considerate of ethnic dimensions and to represent more divergent perspectives on various issues. In effect, the media needs to adhere to universal journalistic standards and adopt best practices to ensure a fair and balance culture of reporting.

The end of a nearly 30-year military conflict brings with it certain legitimate expectations of a rapid improvement in media freedom. The present state of media freedom in the country, however, is slightly ambiguous. Notwithstanding the end of hostilities more than three years ago, a fair deal of apprehension remains as to whether state control of media is likely to improve or not. In this context, two scenarios require analysis, as priorities for interventions may greatly differ depending on whether media freedom is re-established or not.⁴¹⁴

In the context of continued media restrictions and curtailment of the freedom of speech and expression, the highest priority should be the protection of journalists by *inter alia* increasing the already existing safety funds for journalists and training journalists to produce content while minimising risks.

In the context of an improved situation where more public debate is possible, more activities for enlarging background reporting and political analysis with comprehensive views may be possible. Media reformers should look to support activities in influential spheres by maintaining existing training programs and enlarging them by adding components such as political analysis, studies on ethnicity, conflict analysis and gender studies. Reformers should also look to strengthen in-house training efforts for media organisations. Moreover, the space created by the relaxation of restrictions should be exploited to lobby for reforms in respect of media laws and regulations.

In the context of the ceasefire period in 2002, the present author concluded that the period 'witnessed a greater critique and heightened questioning in the South on the exact role of the media in times of conflict as well as in peace.'⁴¹⁵ Further: '[r]eflection by the media on its own moral responsibilities in this regard formed an essential part of this process.'⁴¹⁶

There is little doubt that the media is likely to reflect heavily over its proper role during the next few years. The government would no longer have the luxury of citing emergency or terrorism as an excuse for restricting media freedom. The media, so to speak, is still to come out of its shell. For instance, it is highly disappointing that the media remains apathetic towards the government's continued restrictions on media freedoms, despite the end of military operations. Likewise, strong efforts to discredit corrupt politicians or propel the right to information are simply not visible within the media today as a collective effort as differentiated from individual news stories. Hence, one could only hope that as peace in the country solidifies and journalistic space widens, the media would seize the opportunity for much-needed reform.

⁴¹⁴ This assertion is made in reference to an analysis carried out during a recent evaluation of the media industry in Sri Lanka which however cannot be quoted due to its confidential nature..

⁴¹⁵ Pinto-Jayawardena (2003), *op.cit.*, at p.17.

⁴¹⁶ *Ibid.*

6. Media Education and Curricula

6.1. Reviewing the Current System

As mentioned above, there is some limit to what reformers can achieve in the legal and institutional spheres. Many of the issues highlighted in the previous section have dimensions that may be addressed only through long-term educational reform. For example, the profession's apparent (general) insensitivity to gender issues or partisanship in terms of ethnicity cannot be transformed overnight. As identified by contemporary reform initiatives, such fundamental challenges may only be addressed in the classroom where the future generations of journalists and media personnel are being moulded.⁴¹⁷ An interesting development in this regard is the introduction of communications and media studies into the school curriculum at GCE A/L and GCE O/L level from 2006. However, the impact of such revisions of school curricula is yet to be examined and evaluated.

The political crisis in Sri Lanka has had tremendous contextual impact on the discourse on media education. In general, strengthening the training of journalists was seen as an answer to some of the systemic problems that plagued Sri Lankan society. Hence several initiatives were launched in the hope of establishing a training institute for journalists and other media personnel. One of the first initiatives in this respect was the appointment of a committee headed by Dr. Gamini Corea in 1993 to set up a media-training institute. This initiative was followed by another government appointed committee with the same objective in 1996 as well as by a government proposal for setting up a journalist training institute.⁴¹⁸

Up until 2003, media training in Sri Lanka had been conducted at various universities, the Sri Lankan Television Training Institute, the Sri Lanka Foundation and within the internal training departments at SLBC and Rupavahini.⁴¹⁹ A uniform perception appears to be that media education in Sri Lanka is weak due to a wide gap between what is being taught and the reality of the functioning of the media.⁴²⁰ It is rightly observed that media training must focus on ethics, principles and following a professional code.⁴²¹ There is, however, broad agreement that little of the training available at these institutions specifically caters for journalists.

One astute observation was that university courses tended to be too theoretical and focused more on abstract issues such as the relationship between media and society.⁴²² Hence a real need for quality

⁴¹⁷ Continuous discussion among university lecturers, syllabus makers and media personalities is mandatory to identify what should be the final production of universities regarding Media Education [Vide interview with. K. Janaranjana, op.cit.]

⁴¹⁸ Elmqvist & Bastian, op.cit., at p.8.

⁴¹⁹ See H. Grunnet, U. Yakoob & L. Weiss, *Assessment of the Need for a Radio and TV Journalist Training Unit in Sri Lanka* (2005); Nohrstedt et al., op.cit.,

⁴²⁰ Interview with Hiniduma Sunil Senevi, op. cit., Sabaragamuwa University

⁴²¹ Interview with Kumar Nadesan op. cit.

⁴²² Nohrstedt et al., op.cit., at p.14.

training—both theoretical and practical—had arisen during the early 2000s. Since 2003, two practical training institutions have been established, namely, the Sri Lankan College of Journalism (SLCJ) and the Media Training and Resource Centre (MTRC) in Jaffna. The functioning of these two training bodies will be adverted to later in this segment. The current trends in media education will first be examined by surveying the teaching methodologies and curricula in universities and training colleges in Sri Lanka.

6.2. Universal Standards of Media Education

Prior to reviewing the current spectrum of curricula available amongst Sri Lankan universities and training colleges, the ideal standard in respect of media curricula ought to be briefly discussed. According to a recent study by the United Nations Educational, Scientific and Cultural Organisation (UNESCO), journalism education in universities is normally organised around three curricular axes or lines of development:⁴²³

- i. An axis comprising the norms, values, tools, standards, and practices of journalism;
- ii. An axis emphasising the social, cultural, political, economic, legal and ethical aspects of journalism practice both within and outside the national borders; and
- iii. An axis comprising knowledge of the world and journalism's intellectual challenges.

The first axis represents the core of any programme designed to prepare students for careers in journalism. The UNESCO study rightly points out that on the one hand, a major weakness of journalism education 'arises out of a failure to grasp the degree to which education in university disciplines constitutes (with reporting and writing) the foundations of the practice of journalism.'⁴²⁴ On the other hand, it was observed that journalism students require training in the techniques of journalism by having competent and respected practising journalists as members of the teaching staff,⁴²⁵ and by including internships at local media organisations.⁴²⁶ Moreover, it was recommended that media organisations be encouraged to provide journalists with the time to engage in further studies, and journalism instructors with the opportunity to upgrade their professional skills.⁴²⁷

The second axis 'elucidates the institutional and societal contexts within which journalists function and connects the practice of journalism to related human activities.'⁴²⁸ The UNESCO study reveals that including such aspects in curricula strengthens professional identity, values, and goals and helps journalists understand their democratic functions and the legal and moral constraints relating to the

⁴²³ UNESCO, *Model Curricula for Journalism Education* (2007), at p.7.

⁴²⁴ *Ibid.*

⁴²⁵ *Ibid.*

⁴²⁶ *Ibid.* at p.8.

⁴²⁷ *Ibid.*

⁴²⁸ *Ibid.*

profession. Hence, this axis emphasises professional and ethical attitudes and knowledge and the importance of independent journalism to democracy.⁴²⁹

Courses falling within this axis should introduce students to the range of national and international laws that affect journalists and the media. Moreover, such courses should include the following components:⁴³⁰

- a. Democratic and constitutional principles of openness and freedom of speech and expression;
- b. Access to information laws and procedures;
- c. Legal limitations to the state-imposed restrictions on media freedom such as restrictions based on national security and public order;
- d. Legal limitations to the protection of the judicial process, including contempt of court and publication bans;
- e. Legal limitations to the protection of social values and social groups, including blasphemy, expressions of racism and obscenity;
- f. Legal limitations arising from private rights, including defamation and privacy.

In respect of professional and ethical standards of journalism, the UNESCO study recommends that the curricula includes:

“A critical examination of key ethical issues and values related principally to truth-telling, such as journalistic autonomy (including conflicts of interest); evidence, fact checking, and corroboration; sources, named and anonymous; clarity, fairness and bias; photo and digital manipulation and misrepresentation; invention; speculation, rumours and gossip; cheque-book journalism; the Internet; quotations; plagiarism; “objectivity” and stenographic journalism; sustained coverage of stories; corrections; etc.”⁴³¹

According to the study, the courses offered should also examine recurring ethical issues and challenges relating to civic duty, such as:

“[N]ews judgment; diversity (including racial and cultural identities); gender and sexual orientation; stereotyping; children; coverage of state security issues; standards of taste,

⁴²⁹ *Ibid.*

⁴³⁰ *Ibid.* at p.22.

⁴³¹ *Ibid.* at pp.22-23.

including suicides, funerals, and pictures of dead bodies; privacy issues, including public figures/private lives, celebrities, naming names, rape victims, consent, emergencies, high-jacking, kidnapping, terrorism, wars, massacres, [and] violence.”⁴³²

The third axis exposes students to more contemporary knowledge. In this respect, the UNESCO study recommends a multi-disciplinary approach through which journalism studies are combined with education in the disciplines of arts and sciences. Moreover, such an approach requires journalism educators to collaborate with their colleagues in related fields.⁴³³

6.3. University Curricula⁴³⁴

Media education first emerged as a job-oriented course in the University of Kelaniya in 1973. Prior to this, media institutions were largely responsible for training journalists. Today, at least three universities are known to offer degree programmes in mass communications and media studies, while several other institutions conduct courses with media and mass communication components. In November 2010, a National Media Summit (The Kelaniya Summit) was organised by the Department of Mass Communication, University of Kelaniya and the Ministry of Mass Media & Information to evaluate ‘the nature, quality and relevance and the future of media education in Sri Lanka.’⁴³⁵ The Kelaniya Summit saw the coming together of mass communication lecturers from around the country for the first time, as a result of which the Kelaniya Declaration was issued in late 2010. The Summit was preceded by a series of reviews of university curricula pertaining to media education. The reviews themselves appear to be reasonably comprehensive—though at times slightly generic⁴³⁶—and cover all academic courses offered by recognised universities in the country. The Kelaniya Summit itself was an extremely positive development in media education, which could lead to more structured and streamlined curricula across Sri Lankan universities. The next section of this paper summarises some of the key findings presented at the Summit by the reviewers.

The Department of Mass Communication, University of Kelaniya offers special and general degrees in Mass Communication. The curriculum was revised in 2000, following which further programmes such as a Diploma in Mass Communication were introduced. One particularly interesting course offered at

⁴³² *Ibid.*

⁴³³ *Ibid.*

⁴³⁴ Some portions of this discussion are based on the findings of Wijayananda Rupasinghe in his unpublished article: *Overview of Curricula Relating to the Teaching of Media Policy, the Law and Related Topics in Educational and Training Institutions in Sri Lanka* (October 2010).

⁴³⁵ See W. Rupasinghe & M.P. Jinadasa (eds.), *National Media Summit 2010* (2010).

⁴³⁶ The author notes that a thorough comparison between different reviews conducted by the same individuals reveals a slightly generic trend, which may diminish the reliability of some of the reviews.

Kelaniya is “Media Law and Ethics”, which provides an overview of aspects pertaining to the relations between mass media, law and ethics.⁴³⁷

A recent review of the curricula in Kelaniya concluded that the offered courses in mass communication were ‘sufficient academically and professionally’ and that the structure and content of the degree programme ensured ‘quality of education and opportunity to enhance the skills of the students.’⁴³⁸ An important feature of the special degree courses offered at Kelaniya—an aspect that appears to attract a number of high quality students—is the opportunity given to students to train in private and public media organisations.⁴³⁹ Moreover, close proximity to metropolitan areas has enhanced the employability of Kelaniya students, enabling them to find employment while in the last stages of their courses.⁴⁴⁰

As discussed below, the availability of practical training has become a key issue in media education and has often been the dividing line between high quality education that enhances career opportunities and mediocre education that leaves students detached from the industry. It has also been recommended that students be given additional opportunities to acquire proficiency in English and other foreign languages to enable them to find employment in local and international job markets with higher scales of remuneration.⁴⁴¹

The Journalism Unit of the Faculty of Arts, University of Colombo, offers a variety of courses and course units with media and mass communication dimensions. The curriculum also specifically includes media policy studies, and media law and ethics. The Unit offers both a Diploma in Journalism and a general undergraduate degree with media components. The Diploma consists of four course units, namely, “Language and Communication”, “History of Journalism”, “Mechanics of News Casting”, and “Creative Writing in Media”.⁴⁴² More specifically, the Mechanics of Journalism unit covers certain key topics, which provides a reasonably sound introduction to certain practical aspects of media work.⁴⁴³ The second

⁴³⁷ Course content includes, definitions and characteristics of mass communication law and ethics; ethics as a philosophical problem; aspects of social ethics; religious ethics; origin and development of ethics related to broadcasting, cinema, print media and other selected media; right to receiver (audience) communication rights; respect for privacy; impartiality; challenges and constraints on ethics; challenges and limitations of mass media usage with special reference to developing countries; acts and ordinances related to ethics; censorship; the Universal Declaration on Human Rights; the UNESCO Declaration on Mass Media Ethics; and Intellectual property rights. See *New Curriculum (Special) Mass Communication, Faculty of Social Sciences, Kelaniya University*; also see <http://www.kln.ac.lk/social/maco/courses.htm> (last visited on 12 January 2011).

⁴³⁸ S. M. M. Ismail, Tudor Weerasinghe & Ajantha Hapuarachchi, *Subject Review Report – Department of Mass Communication, Faculty of Social Sciences, University of Kelaniya* (2007), at p.8.

⁴³⁹ *Ibid.* at p.10.

⁴⁴⁰ *Ibid.*

⁴⁴¹ *Ibid.* at p.11.

⁴⁴² See *Diploma in Journalism – Course Syllabus, Journalism Unit, Faculty of Arts, University of Colombo*; also see *Course Units for Under Graduate Programs*, available at <http://www.cmb.ac.lk/academic/arts/journalism/units.htm#> (last visited on 12 January 2011).

⁴⁴³ The unit covers topics including news reporting and its responsibilities; quality of news accuracy; balanced reporting; clarity and simplicity; investigative reporting; development of the story; the News Editor and his role;

and third years of the general degree programme includes a number of key courses including “Introduction to Journalism”, “Development Issues in Journalism”, “The Practice of Print Media”, “Principles of Development Communication”, “Media Studies”, “Radio: Theory and Practice”, “Advertisements” and “Television: Theory and Practice”.⁴⁴⁴

A 2008 review of the curriculum at Colombo noted that it ‘carries a broad spectrum of subject areas [and] topics which are useful in producing quality graduates in the given discipline’⁴⁴⁵ Moreover, similar to the Kelaniya programme, it was observed that theoretical as well as practical components are incorporated into the curriculum in a balanced manner.⁴⁴⁶ However, some of the weaknesses in the programmes offered at Colombo include the tendency for overlap, the lack of a research component and the lack of adequate course descriptions for the benefit of students.⁴⁴⁷ Furthermore, it was noted that qualified and competent academic staff remain at the disposal of the university, and students with high “Z-Scores” are attracted to the programme. Hence the intellectual assets of the university remain in a healthy state. However, this advantage has not been adequately complemented by the provision of material assets. The reviewers observed that the amount of equipment currently available at the Journalism Unit was ‘woefully inadequate.’⁴⁴⁸

Similar to the advantage seen in Kelaniya, the metropolitan location of the Colombo Campus enables easy interaction with print and electronic media organisations situated within close proximity. This advantage provides ample opportunity for the effective conduct of the practical components of course units⁴⁴⁹ and certainly helps students build networks that benefit their career prospects.

The Department of Sinhala and Mass Communications, Sri Jayewardenepura University, offers both a diploma and a general B.A. Degree with a specialisation in Mass Communication. The degree programme appears to be comprehensive, as it covers a variety of key topics and includes units on ethics and media law as part of the course on print media studies.⁴⁵⁰ The programme also insists on the submission of a

qualities of a good Editor; organizational ability and leadership; awareness of the source of news; thinking ahead; criteria in the selection of news; newspaper design; designing the front page; headline writing; caption writing; and dummy paper.

⁴⁴⁴ *General Degree Course Syllabus, Journalism Unit, Faculty of Arts, University of Colombo*; Also see *Course Units for Under Graduate Programs*, available at <http://www.cmb.ac.lk/academic/arts/journalism/cunits.htm#> (last visited on 12 January 2011).

⁴⁴⁵ Chandrasiri Rajapaksha, Tudor Weerasinghe & Chandana Dissanayake, *Subject Review Report – Journalism Unit, Faculty of Arts, University of Colombo* (2008), at p.6.

⁴⁴⁶ *Ibid.*

⁴⁴⁷ *Ibid.*

⁴⁴⁸ *Ibid.* at p.7.

⁴⁴⁹ *Ibid.*

⁴⁵⁰ See *Course Requirements to Consider Mass Communication as a Main Field for the B.A. (General) Degree, Department of Sinhala and Mass Communication, Faculty of Arts, University of Sri Jayewardenepura*; also see <http://www.sjp.ac.lk/fa/sinh/comass.html> (last accessed on 12 January 2011). The list of courses includes: Principles of Communication; Introduction to Mass Media; Evolution of Mass Media; News Gathering and

dissertation, which, unlike the Colombo and Kelaniya programmes, compels students to engage in more detailed research. The university also offers an M.A. Programme with five units including one specifically on “Media Law and Ethics”.

One criticism of the Sri Jayewardenepura curriculum for Mass Communication is that it fails to consider some of the new developments in the field and remains slightly outdated.⁴⁵¹ Moreover, the curriculum lacks a practical component, which denies students the opportunity to ‘gain knowledge in the practical aspects of the subjects they learn in classrooms.’⁴⁵² Those involved in the professional training of journalists in Sri Lanka share the view on the basis that the university curricula is weighted towards the theoretical teaching of media rather than the practical aspects.⁴⁵³ Reviewers of the curricula have also expressed concern over the standard of teaching at Sri Jayewardenepura, as teachers appeared to be averse to using any of the modern methods or technology in respect of teaching the subject of media.⁴⁵⁴

The Open University of Sri Lanka (OUSL) is virtually the only recognised university in Sri Lanka where students are permitted to pursue further education by distance education techniques in keeping with the philosophy of “Open and Distance Learning.”⁴⁵⁵ Accordingly, the Department of Social Studies offers a unique programme through which students could engage in media studies at a self-governed pace.⁴⁵⁶ A distinctive feature of the courses offered by the Department is that they have ‘a robust multidisciplinary perspective.’⁴⁵⁷ Yet the OUSL is observed to have outdated course material; hence major curriculum revision may soon be required.⁴⁵⁸ Moreover, an unhealthy student-staff ratio at the Department has caused

Reporting; Public Relations; Advertising and Publicity Features, Columns and Interviews; Mass Media Law and Ethics; Fundamentals of Electronic Media; Effective Communication; Mass Media Effects; Inter-Cultural Communication; Television Production Techniques; Cinematography; Development Communication; Mass Media Research; Print Media Techniques; Radio Production Techniques; New Media Usage; and Political Communication.

⁴⁵¹ Udaya Meddegama, Chandrasiri Rajapaksa, Tudor Weerasinghe & Ven. Agalakada Sirisumana, *Subject Review Report – Department of Sinhala and Mass Communication, Faculty of Arts, University of Sri Jayewardenepura* (2010), at p.5.

⁴⁵² *Ibid.*

⁴⁵³ Interview with Imran Furkan & Sukumar Rockwood, (op.cit.)

⁴⁵⁴ Udaya Meddegama, Chandrasiri Rajapaksa, Tudor Weerasinghe & Ven. Agalakada Sirisumana, *Subject Review Report – Department of Sinhala and Mass Communication, Faculty of Arts, University of Sri Jayewardenepura* (2010), at p.6.

⁴⁵⁵ H.M. Bandara, Ajantha Hapuarachchi & K. Karunathilake, *Subject Review Report – Department of Social Studies, Faculty of Humanities and Social Sciences, Open University of Sri Lanka* (2009), at p.12.

⁴⁵⁶ See the Open University of Sri Lanka, Department of Social Studies, Faculty of Humanities and Social Sciences, *Bachelor of Arts Degree Programme in Social Sciences—Prospectus for Students 2010-2011*, available at <http://www.ou.ac.lk> (last accessed on 13 January 2011).

⁴⁵⁷ Bandara, Hapuarachchi & Karunathilake, op.cit., at p.4. The authors conclude: ‘the academic staff members of the Department strongly believe that the students should be well equipped with multi-disciplinary tools of analysis and applications to enable them to work effectively and efficiently in public, private or international institutions.’

⁴⁵⁸ *Ibid.* at p.17.

the overburdening of academic staff members, possibly preventing them from designing and conducting new courses according to the contemporary demands of the media industry.⁴⁵⁹

The Department of Languages, Sabaragamuwa University of Sri Lanka also offers a general degree programme with a Journalism Major and with a range of courses including “Print Media Studies”, “Mass Communication and Society” and “Print Media.”⁴⁶⁰ As a programme conducted in the provinces, the Sabaragamuwa programme could potentially provide the vital leverage needed for the improvement of journalism skills outside the capital. A recent review of the curriculum suggests that the programme ‘offer[s] good quality education and [...] provide[s] opportunities for students to enhance their skills.’⁴⁶¹ Furthermore, the Department is set to introduce a new syllabus in respect of Mass Communication in 2011, which no doubt would facilitate more specific media studies.⁴⁶² There is animated discussion currently on the precise directions that these reforms will take and much openness on collaborating with experts, both domestic and regional in this effort. However, compared to Colombo-based universities, the programme still seems to lack sophistication in terms of staff and facilities and may be a fair distance away from producing truly competitive media professionals.

The Department of Linguistics, Faculty of Arts, University of Jaffna offers a B.A. Degree with a course in “Communication and Media Studies”.⁴⁶³ The programme contains a fairly detailed syllabus giving attention to both the theoretical and practical aspects of the field of journalism. This course also has a strong component of media law and ethics including topics such as “the Right to Information”. Despite obvious resource and infrastructural constraints, the academic staff appears to be highly committed to providing the best delivery for their students. Moreover, the students themselves have been observed as highly motivated in pursuing their higher studies.⁴⁶⁴ This motivation is certainly encouraging in the post-conflict context, as journalism standards in the North would be expected to improve exponentially as the programme gathers momentum.

A number of other universities offer degrees with either mass communication specialisations or with media components. The Department of Mass Media, Sri Palee Campus, which is now affiliated to the University of Colombo, offers a four-year Special Degree in Mass Media.⁴⁶⁵ The programme appears to

⁴⁵⁹ *Ibid.* at p.10.

⁴⁶⁰ See <http://www.sab.ac.lk/Miscel/OurDegrees.htm> (last accessed on 13 January 2011).

⁴⁶¹ Sarath Amunugama, Asoka Premaratne & S.M.M. Ismail, *Subject Review Report – Department of Languages and English Language Teaching, Faculty of Social Sciences & Languages, Sabaragamuwa University of Sri Lanka* (2006), at p.6. This observation is buttressed by a field visit made to the Sabaragamuwa University by the research team in 2010.

⁴⁶² See *New Syllabus for Mass Communication, Sabaragamuwa University*.

⁴⁶³ See *Syllabus for Communication & Media Studies, Faculty of Arts, University of Jaffna*.

⁴⁶⁴ Sarath Amunugama, Ven, Ayangama Vijitha & Ajantha Hapuarachchi, *Subject Review Report – Department of Linguistics and English, Faculty of Arts, University of Jaffna* (2008), at p.11.

⁴⁶⁵ See *Syllabus—Department of Mass Media, Sri Palee Campus, University of Colombo*; also see http://www.cmb.ac.lk/academic/sripalee/index/media_syllabus.htm (last accessed on 12 January 2011).

be functioning well, notwithstanding limitations in terms of space facilities.⁴⁶⁶ Similarly, the Department of Languages and Communication Studies, Trincomalee Campus, Eastern University offers a B.A. in Communication⁴⁶⁷ and the Department of Social Sciences, South Eastern University of Sri Lanka offers a B.A. (Special) Degree with a specialisation in Sociology, which includes a course in “Mass Communication”.⁴⁶⁸ The Department of Humanities at the Rajarata University of Sri Lanka also offers a B.A. (General) Degree in Mass Communication.⁴⁶⁹ The programme, however, is not without its share of problems. A recent review of the curricula at Rajarata revealed that the programme suffered from over-dependence on visiting lecturers to conduct regular programmes⁴⁷⁰ and also had inadequacies in terms of modern teaching technologies, and IT and library resources.

6.4. Training Institutes and Colleges

Amongst the leading training institutes and colleges providing media education, the Media Research and Training Center (MRTC), affiliated to the University of Jaffna and the Sri Lanka College of Journalism (SLCJ) require mention.

MRTC conducts two courses in Journalism: (1) a part-time diploma course in journalism for working journalists, and (2) a full-time course for university students. Both courses cover a range of key topics and include theoretical as well as practical aspects of journalism.⁴⁷¹ The courses also introduce students to the basics of media law and ethics. Crucially, the underlying thinking behind MRTC seem to be based on the idea that an ‘[i]ndependent, free and pluralistic media [has] a crucial role to play in the good governance of democratic societies, by ensuring transparency and accountability, promoting participation and the rule of law, and contributing to the fight against poverty.’⁴⁷² This ideology is important to the students at MRTC, since they are most likely to form the future backbone of journalism in the Northern Province. Given the post-conflict context, the proper training of these journalists would be crucial to the future reconciliation process.

SLCJ was established with the broad objective of furthering democracy and independent thinking through

⁴⁶⁶ Chandrasiri Rajapaksha, Ajantha Hapuarachchi & S.M.M. Ismail, *Subject Review Report – Department of Mass Media, Sri Pali Campus* (2008), at p.12.

⁴⁶⁷ See <http://www.esn.ac.lk/trincocampus/Departments/LCS.html> (last accessed on 12 January 2011).

⁴⁶⁸ See *Course Syllabus of the B.A. (Special) Programme*, available at <http://www.seu.ac.lk/FAC/facpos.html#Sociology> (last accessed on 13 January 2011).

⁴⁶⁹ See Rajarata University of Sri Lanka, Faculty of Social Sciences and Humanities, *Prospectus 2008*, available at http://www.rjt.ac.lk/ssh/index.php?option=com_content&view=article&id=12&Itemid=18 (last accessed on 13 January 2011).

⁴⁷⁰ R.S. Gunatunge, D. Atapattu & Malani Endagama, *Subject Review Report – Department of Humanities, Faculty of Social Sciences & Humanities, Rajarata University of Sri Lanka* (2007), at 10.

⁴⁷¹ See University of Jaffna, Sri Lanka, Faculty of Arts, Media Resources and Training Centre, *Structure of the Diploma in Journalism Full Time and Part time Courses* (2010).

⁴⁷² *Ibid.* See Preamble.

the development of journalism and the integration of the media industry⁴⁷³. SLCJ has three core programmes: a one-year diploma course at the entry level, short professional courses for working journalists, referred to as “mid-career courses” and an extensive training program for provincial journalists. The unique feature of SLCJ is its novel approach of combining practical learning “on the job” with the standard mass communication courses at universities which encourages more abstract reflection. This approach is the result of careful planning, as the institution has adopted a participatory process that involves designing and setting up the curricula through the contribution of prominent Sri Lankan journalists and lecturers, and a curriculum advisor provided by the donor agency, Fojo.⁴⁷⁴

Elmqvist and Bastian note that the methodology adopted at SLCJ is interactive and is based on continuous assessment rather than the standard “lecture” model adopted in most universities.⁴⁷⁵ Moreover, SLCJ has an internship component, where the student spends a significant period of time at a media organisation. This component has provided an additional dimension through which students could meet mentors and develop good relations within the industry, thereby enhancing their future career opportunities.⁴⁷⁶ The authors intimate that the internships have been particularly helpful for women, since the industry can often be discriminatory in terms of providing equal job opportunities.⁴⁷⁷

One of the outstanding challenges faced by SLCJ remains the transforming of its Colombo-centric student base.⁴⁷⁸ There is an undeniable need to provide sound training to journalists and media professionals in the provinces, as ‘more and more newspapers have supplements from the provinces, and there is a commercial interest in improving the quality of provincial journalists.’⁴⁷⁹ Moreover, coverage of provincial news has occasionally been limited due to the inability of Colombo-based journalists to cover issues in the provinces comprehensively. The main reasons for this inability include the lack of resources to travel outside Colombo and poor networks with provincial journalists, who themselves are grossly underfinanced. Hence the institution may need to focus more on facilitating the training of journalists from the provinces through specially designed scholarship programmes and by calling on newspapers to

⁴⁷³ SLCJ was founded in 2004 to provide training for potential and working journalists, to enhance their knowledge through skills and technology development. A senior journalist stated that most journalists in Sri Lanka tend not to have any formal journalism education. In contrast, a large proportion of journalists in other countries in the subcontinent undergo professional or at least academic training before they commence practical work in the print or electronic media.

⁴⁷⁴ Elmqvist & Bastian, op.cit., at p.23.

⁴⁷⁵ *Ibid.* at p.24.

⁴⁷⁶ *Ibid.*

⁴⁷⁷ *Ibid.*

⁴⁷⁸ Approximately 60-70 students have been taken into the Sri Lanka College of Journalism each year since the start of the college in 2004. The College notches up a pass rate of 80-90 percent entering the industry within the year of completing the diploma. Approximately 5-10 students of the year enter university in pursuit of a BA degree. (data obtained through an interview with senior administrator, Sri Lanka College of Journalism, 9 February 2012)

⁴⁷⁹ Elmqvist & Bastian, op.cit., at 24.

sponsor students from outside Colombo.⁴⁸⁰

The Sri Lanka Press Institute has already carried out a “training needs assessment” for provincial correspondents in more than twenty districts and has identified critical areas that need to be addressed. As a result of this survey, SLCJ has begun to conduct at least one course for provincial correspondents every month. The subjects range from “One-man Operation for Video Journalists”, to “Basic News Writing and Radio Production”. SLCJ trainers acting as designers and co-trainers also carry out regional training programmes for the BBC World Service Trust⁴⁸¹. As of now, the SLCJ has trained close to 1,200 provincial correspondents from all parts of the country including the North and East.⁴⁸²

6.5. Institutional and Attitudinal Challenges: A Comparative Analysis

The media industry in Sri Lanka appears to be attracting a strong and vibrant younger generation, as journalism still remains a reasonably viable career option. However, there are certain challenges faced by the industry that may significantly dissuade future job seekers from entering the profession.

One significant challenge that has already been discussed at length is the risk factor. Journalists and media personnel continue to be harassed, intimidated, assaulted and even assassinated for doing their job. The notion that working in the media is “dangerous”, has ultimately stigmatised the profession, and has possibly prevented a number of aspiring graduates from pursuing a career in the media. Apart from this quite obvious challenge, there remains the nagging issue of resources. Media personnel, in general, form a grossly underpaid class of professionals, which no doubt discourages new entrants⁴⁸³.

Apart from these entry-level challenges, media education in Sri Lanka faces certain distinct institutional and attitudinal challenges. One of the most significant challenges in this respect is the widening chasm between theory and practice. On the one hand, there is a dire need for sound practical training, as most journalists in Sri Lanka have received no formal training, either at the entry level or as working journalists.⁴⁸⁴ Correspondingly, there appears to be a persistent problem in respect of university courses

⁴⁸⁰ *Ibid.*

⁴⁸¹ Interview with a senior administrator, Sri Lanka College of Journalism Sri Lanka Collage of Journalism , 9 February 2012).

In 2011, The SLCJ provided for six professional courses that were specifically asked for by the media organizations. Two courses were in relation of writing post conflict articles and the other courses related to camera operations and training.

⁴⁸² Sri Lanka College of Journalism, *Courses Offered: Provincial Correspondents*, available at http://www.slcj.lk/course_details.php?course_id=9 (last accessed on 17 January 2012).

⁴⁸³ As a senior administrator at the SLCJ observed, the conditions of work at media institutions need to be improved in order to promote professional and satisfactory standards in the media industry in Sri Lanka. (Anonymous - interviewed on 9 February 2012).

⁴⁸⁴ *Ibid.* at p.23.

being too abstract or theoretical and lacking a practical dimension.⁴⁸⁵ A common challenge faced by most universities—particularly those located outside Colombo—seems to be the lack of appropriate practical components.⁴⁸⁶ According to the reviewers of the Mass Communication courses in the Kelaniya University, ‘practical experience and multi-skills should be facilitated to the students so that they may be strong enough to compete with specialist[s] coming out from other institutions [sic].’⁴⁸⁷ In similar vein, the reviewers of the Journalism Unit of the University of Colombo have observed that opportunity for further development of students’ talents is hindered by the dearth of, and indeed the systematic organisation of, exposure to practical aspects of the profession.⁴⁸⁸

This issue appears to have been adequately tackled in India. The rapid expansion of the Indian media during the last two decades has not only changed the perception of the people towards journalism as a career but has also increased the demand for competent media persons, well versed in the latest communication technologies. This in turn has given rise to several training institutions for aspiring journalists across the country. These new-age Journalism Schools, popularly known as “J Schools”, promise to teach the craft of journalism within a span of ten months to two years. A good example of such cutting edge-institutions is the Asian College of Journalism, Chennai (ACJ).⁴⁸⁹

As discussed above, the lack of practical training in Sri Lanka may have been addressed to an extent by the arrival of contemporary professional training institutions such as SLCJ, which has the potential to fulfil the role of a cutting-edge practical training institution. However, this institution is yet to penetrate the industry to the extent of creating systemic change.⁴⁹⁰ Hence a fairly serious problem remains:

⁴⁸⁵ The industry requirement of full time journalist with academic qualifications and practical skills must be the main concentration point for the media education policy makers. [Vide interview with I.Furkan, op.cit.]

⁴⁸⁶ See for example the observations of Rajapaksha, Hapuarachchi & Ismail, op.cit., at 12; Gunatunge, Atapattu & Endagama, op.cit. at p.12.

⁴⁸⁷ Ismail, Weerasinghe & Hapuarachchi, op.cit., at p.12.

⁴⁸⁸ Rajapaksha, Weerasinghe & Dissanayake, op.cit., at p.8.

⁴⁸⁹ As borne out by conversations that the research team had with Ammu Joseph and Nupur Basu in Bangalore, August 2010. ACJ is considered to be a top ranking journalism school that offers post-graduate courses in journalism. ACJ offers a one year Post Graduate Diploma with specializations in Television, Print, New Media and Radio. In the first trimester, all students, irrespective of their chosen medium, are taught the basics of Broadcast, Web and Print. From the second trimester onwards, students of each stream are guided by a trained faculty to learn the nuances of reporting in their respective choice of medium. The highlight of the stream specializations is the in-house publications that students work on throughout the term. Furthermore, ACJ seems to be maintaining a cosmopolitan campus environment by granting scholarships to students from Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka.

⁴⁹⁰ In order to create such a systematical change it has been suggested that a National Diploma should be introduced for journalists. This course would take 18 months to complete and would be recognized as the pre qualification to enter the profession. [Vide interview with S.Rockwood, op.cit.]

university graduates lack practical training, while industry-trained journalists lack a sound theoretical grounding.⁴⁹¹

Practical and theoretical exposure in the international sphere would enable the journalists to maintain international standards and ensure the professionalism expected of them in the media industry. Therefore, it would be necessary for the media education providers to understand their responsibility in this regard.⁴⁹²

Some key studies on media training have revealed certain limitations in "individual" media training. The focus on individual training may certainly improve the skills of individual journalists, yet such an approach may have very little impact on the institutions in which they function.⁴⁹³ At the institutional level, it has been observed that 'the structures of hierarchy makes it very difficult for trained staff to share their new competence with colleagues, unless in an informal way.'⁴⁹⁴ As Elmquist and Bastian rightly point out, 'institutional barriers make it difficult for individuals to practise what they learn.'⁴⁹⁵ The authors further observe that 'many editors and gate keepers constitute the principal blockage to better journalistic practice.'⁴⁹⁶ This hierarchical barrier certainly requires immediate attention.

The changing socio-economic context would require journalists to be prepared to face the changing nature of the post-war environment. Particularly, the end of ethnic the conflict in Sri Lanka means that journalists would be compelled to develop their expertise and professional skills in order to address a wide range of issues other than those matters that are conflict related. Therefore, it is imperative that the review and enhancement of curricula in universities and institutions should be carried out in order to address these emerging circumstances.⁴⁹⁷

Media education in Sri Lanka also suffers from a sense of denial, as it appears to ignore the absence of media freedom in the country. There are two possible explanations for this inadequacy: first, the self-

⁴⁹¹There exists a wide gap between the university education of students in mass media and mass communications and the practical trainings offered by media institutions such as the Sri Lanka College of Journalism. [Vide interview with D. Nesiiah, op.cit.]

⁴⁹² Ibid. The importance of maintaining good relationships with foreign media (not just in the western hemisphere) in countries like India, the Middle East, China and Russia was emphasized on the basis that there is a strong need to maintain a regional and international contextualised focus even in the reporting of national issues.

⁴⁹³ Elmquist & Bastian, op.cit., at p.12.

⁴⁹⁴ Ibid. at p.25. The authors observed that unless journalists occupied a higher position at the working place, they had few opportunities to '[apply] their new skills within a wider circle, or to provide in-house training to colleagues.'

⁴⁹⁵ Ibid. at p.12.

⁴⁹⁶ Ibid. at p.25.

⁴⁹⁷ The ability of journalists to change according to changing circumstances was identified as an important skill in the profession of journalism. For example, in the present context, journalists are required to specialize in greater business or financially related issues after decades of conflict and this has necessitated training in new skills. (a senior administrator, Sri Lanka College of Journalism, (interviewed on 9th February 2012).

preservation agenda of certain educational institutions; and second, the influence of certain politically motivated elements within the university system.

A good example of the first explanation comes from the Jaffna-based training institute, MRTC. During interviews conducted in Jaffna in December 2010, the MRTC educators admitted that they studiously avoided any reference to contentious issues such as the independence of the media from government, and attacks on journalists, in order to avoid the ire of the government. We also observed a similar pattern in November 2010 at the Department of Languages and Communication Studies, Trincomalee Campus, Eastern University. Educators at this institution cited inadequate facilities and university bureaucracy as major obstacles to upgrading the campus.⁴⁹⁸ Ironically, nearly 80% of the student population at this campus is of Sinhalese ethnicity, despite the fact that Trincomalee itself is celebrated for being multi-ethnic. The absence of a sufficiently strong Tamil or Muslim student population remained unexplained.

While this dysfunction is aggravated in the North and the East, it is also prevalent in Colombo and other places in the South. Self-preservation may partly explain this phenomenon in the South. Yet there also seems to be an element of politicisation within the system. A number of leading lecturers in Sri Lanka's departments of mass communications have been known to have political affiliations.⁴⁹⁹ Such affiliations have an unhealthy impact on the development of curricula, as those charged with formulating curricula have vested interests in avoiding contentious issues. Since media education is vital to long-term reform, the absence of course content on media freedom and other contemporary issues facing the Sri Lankan media is of considerable concern.

The absence of an enlightened educational framework in Sri Lanka certainly weakens the potential of future journalists and media personnel to engage the state on key issues that affect their profession. This absence will ultimately impact on the quality of reform work in the future. It is thus strongly recommended that educational institutions actively seek to include in their curricula a critical examination of current legal and institutional structures. Such frank discussion on these contentious issues will no doubt equip media workers to pursue reform far more effectively.

Furthermore, the situation in terms of education in media law and policy appears to be deplorable. Interviews that the research team conducted during the past year in Sabaragamuwa, Jaffna and Trincomalee Universities as well as conversations with media and mass communications lecturers in the

⁴⁹⁸ Interviews of the research team with the Rector and the staff of the Mass Communications Department, Trincomalee Campus, 2010.

⁴⁹⁹ For example, Professors Ariyaratne Atugala and Sunanda Mahendra, both long serving lecturers in mass media, continue to have political affiliations. Prof. Atugala is the former Head of the Department of Mass Media at Kelaniya University, who later became chairman of the SLRC and Director-General of the Government Information Department. See http://www.news.lk/index.php?option=com_content&task=view&id=15111&Itemid=44 (last accessed on 22 January 2011). Prof. Mahendra currently serves on the highly politicized Press Council. See ColomboPage, *Sri Lanka Press Council Born Again*, available at http://www.colombopage.com/archive_091/Jun1244821410RA.html (last accessed on 23 January 2011).

Colombo Universities revealed that media law is taught by lecturers who are not lawyers and have no knowledge of how the law works in practice, and is generally dealt with in a superficial manner.

It appeared that one solution was to hire guest lecturers who were supposed to have knowledge in the area of media law; however, in actual fact, it was revealed that even those guest lecturers possessed very little knowledge about the subject matter of media law and policy. The dearth of qualified lecturers was indeed a problem. In addition, where the universities were concerned, bureaucratic red tape made it difficult for them to obtain the services of guest lecturers; as the Rector of the Trincomalee campus succinctly observed: 'we cannot pay guest lecturers very much due to the prevailing rules and regulations. Who will come all the way from Colombo to Trincomalee to teach media law and policy in this sort of situation?'

⁵⁰⁰ At a different level, there appeared to be tensions between the academic and the practical spheres of education in mass communications and the media.⁵⁰¹ In private conversations with senior editors in Colombo, the courses offered by universities tended to be dismissed on the basis that they are academic and impractical in the actual world of journalism..

On the other hand, there also appeared to be an undercurrent of resentment on the part of media educators in universities that the key media industry offices in Colombo give preference in awarding internships to students of the training colleges run by the industry rather than university students. Overcoming these tensions will be key to bringing educators and mass communications teachers together in the common objective of improving the system in which media and mass communications is taught in Sri Lanka.⁵⁰²

Educators have been enjoined to find a balance between the theory and the practice of media law. Further, it is of obvious importance that media training must have the widest possible contact with foreign media in order for journalists to have exposure to best practices.⁵⁰³

⁵⁰⁰ Interviews of the research team with the Rector and the staff of the Mass Communications Department, Trincomalee Campus, 2010.

⁵⁰¹ Mass communications degree holders with good knowledge of theory need to be empowered by including more practical aspects in the mass communications degree. Overall the journalist needs to have the essential theoretical knowledge as well as the practical skills in order to become a successful professional. [–a senior administrator, Sri Lanka College of Journalism Sri Lanka Collage of Journalism, interviewed on 9 February 2012)] and Prof. Ajantha Hapuarachchi – Head of the Journalism Unit- University of Colombo Interviewed on 30th April 2012)

⁵⁰² 'The development of a critical mass of strategic and capability embedded professionals requires a much more focused and professional approach, delivered with excellence and commitment by all stakeholders. Effective Human Resource Development and Human Resource Management, with capable mentors, guides and gurus leading the way, are essential features that are lacking in Sri Lanka. The two areas where no emphasis is placed in capability and development are in connection with the development of correct attitudes and values/norms.' [Vide interview with C. Jayaratne, op.cit.] Furthermore, it has been suggested that it would be more appropriate to combine all institutions providing media education to become one central education centre which would ensure common standards. [Vide interview with D. Lankapeli, op.cit.]

⁵⁰³ Interview with Devanesan Nesiah, op.cit.

7. Conclusion

As a vital component of civil society, the media has a dual role to play in applying rights-based approaches.⁵⁰⁴ It is both a beneficiary of human rights guarantees, most notably the freedom of speech and expression, and a catalyst for human rights guarantees more generally. This paper has sought to review this dual role by broadly examining the nature of state regulation of the media and the media's own responsibilities and freedoms. Moreover, this paper has assessed the state of media education, and in doing so, has sought to examine how media teaching and training have impacted on this dual role.

The media in Sri Lanka appears to have made some progress in the legal and institutional arenas. By examining past reform efforts and assessing the current state of issues faced by the media, this paper reveals that certain positive developments have in fact taken place. Key amongst such developments is the abolition of criminal defamation laws, the narrowing of restrictions with regard to parliamentary privileges and the comprehensive identification and prioritisation of future reform needs.

Moreover, successful campaigns against harsh regulatory mechanisms, such as the Broadcasting Authority Bill of 1997 and the SLRC Regulations of 2008, reveal the capacity of the media community to mobilise when necessary. However, this paper has also identified certain negative developments, such as the deterioration of editorial freedom and the emergence of self-censorship, which require new strategic thinking to be tackled effectively. The recent re-activation of bodies such as a government controlled Press Council and a proposed Media Development Authority and continued attacks on media offices perceived to be critical of the government, with no perpetrators being caught, have sent out negative signals to those hoping for a flowering of a freer media environment in the country. Finally, this paper has discussed the positive and negative attributes of media education in Sri Lanka. While it is encouraging to see lecturers reaching broad consensus on curriculum reform at conferences such as the Kelaniya Summit, the absence of specific components on contentious issues facing the Sri Lankan media appears to have devalued the present curricula. The absence of a focus on media law and regulatory reforms and education/training in that regard has also detracted from the value of such enterprises.

In conclusion, it may be reiterated that media reform in Sri Lanka requires an integrated approach, which addresses legal, industry and educational dimensions of the media through a comprehensive and all encompassing strategy. It is mainly through such an approach that the Sri Lankan media could regain its independence and integrity and reclaim its rightful position as the fourth estate of democracy.

⁵⁰⁴ Elmqvist & Bastian, *op.cit.*, at p.31. The authors further elaborate on the rights-based approach: 'A rights-based approach to development is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. Essentially, a rights-based approach integrates the norms, standards and principles of the international human rights system into the plans, policies and processes of development. The principles include equality and equity, accountability, empowerment and participation. A rights based approach tries to develop strategies to build the capacities of both duty-holders (government, authorities etc) to fulfil their obligations, and claim-holders (the public, vulnerable groups etc) to claim their rights.'

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