

10/5A, Nilammahara Road
Katuwawala, Boralesgamuwa.
e-mail: w.jayaweera@gmail.com
Tel: 0773625701
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Hon. Mangala Samaraweera
Minister of Finance and Mass Media

Dear Mr. Samaraweera,

The major flaws of the draft law on regulating the issuance of broadcasting licences finalised by Dr. Rohan Samarajeeva

The purpose of this dissenting report is to draw your attention to the two major flaws of the draft broadcasting regulatory law finalised by Dr. Rohan Samarajeeva, who chaired the Committee appointed by you to recommend suitable solutions to the issuance of broadcasting licences. I was a member of this Committee and have made a substantial contribution to Dr. Samarajeeva's draft but declined to give my consent to his final version as it did not contain the two of the most important provisions I proposed to include. I wish to justify them briefly below.

One of the proposals I made ensures the requirement of licensees (broadcast media owners) impartiality when broadcasting matters relating to controversial issues or public policies and matters influencing the outcomes of elections and referendums. My other proposal makes it a requirement for the broadcasting organisations to give right of reply or right to correction to those who justifiably consider that they have suffered damage to their legitimate interests and their reputation as a consequence of the distortion of facts in a broadcast programme. These two provisions I proposed provide necessary safeguards to protect larger public interests over media owners' private interests, but both provisions were rejected in my absence abroad, I was told.

It is a common regulatory practice to prevent broadcasting media organisations from taking sides on controversial issues. Broadcast frequencies are a public property. Thus, licensee media owner cannot utilise them to shape the public opinion according to their private interests. The law should obligate the impartiality of owners of broadcast media and prevent them from censoring viewpoints they dislike.

Most of the mature democracies have provisions to ensure fairness and impartiality when treating controversial issues in broadcasting programmes. Accordingly, the licensee owners are prevented not only from censoring important viewpoints they dislike but also

from giving undue prominence to a particular view or opinions of a particular person or a body the owner might determine to promote.

It is much easier for the media owners to interfere into the editorial independence of the broadcasting professionals when there is no such provision in the law to protect and promote the professional impartiality expected from the broadcasting journalists.

In fact, the provision I proposed to include in this regard was extracted from the Section 320 of the Communication Act (OfCom) of the United Kingdom, which prohibits licensee media owners to broadcast their own views and opinions on any of the matters mentioned under that clause. Those are the:

- (a) matters of political or industrial controversy;
- (b) matters relating to current public policy; and
- (c) matters influencing the outcome of elections and referendums held in Sri Lanka or any other country.

This provision legally compels broadcasting organisations to give a fair coverage in reporting controversial issues without being biased to a particular viewpoint or to an interest group media owner may wish to support.

Similar provisions exist in other broadcasting regulatory laws. For example, the Irish Broadcasting Act of 2009 has the following provision to ensure impartiality of the broadcasting organisation.

(2) Broadcasting codes shall provide—

(a) that all news broadcast by a broadcaster is reported and presented in an objective and impartial manner and without

any expression of the broadcaster's own

(b) that the broadcast treatment of current affairs, including matters which are either of public controversy or the subject of current public debate, is fair to all interests concerned and that the broadcast matter is presented in an objective and impartial manner and without any

expression of the broadcaster's own vi

It is obvious that without such provisions in the law, the public will not be able hold broadcasting organisations accountable if they deliberately violate impartiality and fairness in reporting on controversial issues. Nor does the proposed Commission can intervene or hold an inquiry into such violations unless fairness and impartiality as well as right of correction become a legal obligation of broadcasters and prescribed as such in the regulatory law.

The absence of an impartiality and fairness provision in the law would enable the private broadcasters to collectively promote or oppose a particular view point or a particular person of their choice. It would be detrimental to a democracy to give such

powers to a group of media owners, a minority who are privileged to utilise broadcasting frequencies disseminate to information.

Illustrating this point Cardiff university professor Dr. Justin Lewis recently pointed out that if there was no broadcast impartiality rule, the British Labour Party would not achieve the biggest poll shift since 1945 during the last British elections, as all the major newspapers were supporting the Conservative party without giving fair coverage to labour party and its policies¹. Media mogul Rupert Murdoch directed all his newspapers to support the Conservative Party, but he was prevented from using his broadcasting network to do so due to the legal obligation for broadcasters to preserve their impartiality in reporting controversial public policy debates including during elections.

Moreover, the impartiality provision empowered the broadcast journalists to maintain their independence and fairness in reporting without being unduly influenced by their media owners. We will not be able to foster professionalism among broadcasting journalists if their editorial independence is not protected from the media owners or from any other influence groups due to lack of a well-defined impartiality provision in the law.

But contrary to my reasoning the Chairman of the Committee was of the view that each private broadcasting organisation should be free to take its own position on any of the controversial issues they wish to cover. He was of the view if people want to know other viewpoints, they are free to listen to different broadcasting services which might report on other aspects of the issue. Irrespective of such speculative expectations what if all the major broadcasters decided to censor dissenting viewpoints in order to promote a particular view point of their choice? For example, what if all major broadcasters decided to oppose a particular policy decision and to censor viewpoints favourable to such policies reaching their listeners or viewers. His position would lead big spenders and even external forces who want to shape the Sri Lankan public opinion to buy the allegiance of private broadcasters to support their intentions.

The argument that broadcasting organisations should be allowed to take their own positions in presenting controversial issues contravene the basic norms of journalism which requires media organisations to provide a fair coverage of all relevant facts and dimensions in their reporting. As Dr. Richard Sambrook has pointed out “without significant reach committed to reflecting an impartial diversity of views (as opposed to partial limited views) there is likely to be polarising effect as the public limit their information sources to those with which they are pre-disposed to agree.”²

Equally important is that law provides right of reply to those who are aggrieved due to factually incorrect information concerning them in a broadcast programme. This is not a merely a matter of addressing grievances but also meeting the broadcast requirement to s

¹ <http://theconversation.com/broadcast-impartiality-rule-has-helped-labour-to-achieve-biggest-poll-shift-since-1945-78949>

² Richard Sambrook, (2010, Dec) Bringing Trust Impartiality and Objectivity in the digital Age, published by the Reuters Institute Study of Journalism

rectify the mistakes of getting their audiences exposed to incorrect information. At the end what is paramount is the right of the viewing and listening public to know all important aspects, and not the right of the broadcasters to withhold the aspects they dislike. Broadcast media is a conduit by which people are supposed to receive accurate information and a range of informed and opposing opinions on the subject matter of the programme. So, ensuring that basic function of broadcast media, by including the right to correct to rectify any inaccuracies in broadcast material cannot be considered as obstructing free speech of broadcasters.

The annexed two written submissions I have made to the Committee in Sinhala explains the importance of addressing those two issues. I made these submissions in writing due to my inability to attend the last committee meeting.

Finally, I wish to request you to consult an internationally reputed expert or an international organisation experienced in evaluating and reviewing broadcasting regulatory laws to examine Dr. Samarjeeva's draft in the light of the issues I have raised here, before rushing into a public discussion on the draft.

Thank you for your attention

Wijayananda Jayaweera

Member of the Committee to recommend mechanisms for issuing broadcasting licences

Cc: Secretary, Ministry of Finance and Mass Media
Chairman and members of the Committee

Annexes;

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| 1. | | | | B | | B | | B | | B | B |
| 2. | B | B | B | | | B | | | | B | |

Annex 1

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Homophily –the eco chamber effect where people tend towards the familiar or views they agree with –is an increased risk in the digital age. With an abundance of views and information it is easier than ever to seek refuge only within the familiar. As a result, the significant reach committed to reflecting an impartial diversity of views (as opposed to partial limited views) there is likely to be polarising effect as the public limit their information sources to those with which they are pre-disposed to agree.⁶

⁶ Richard Sambrook, (2010), *Defining Trust Impartiality and Objectivity in the digital Age*, published by the Reuters Institute Study of Journalism

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