

Unit 5: Providing the Legal Framework

Learning Objectives Laws protecting the media

After studying this unit you should be able to:

- Explain why there is a growing trend away from strict regulation of the media;
- Outline the legislative framework recommended in the *Cape Town Principles*;
- Understand the reasons behind the broad application of parliamentary privilege in instances where media reports are accurate.

Introduction and Overview

How is the law related to the media? Why is the law important in media? The purpose of this unit is to examine the legal framework that is best suited to develop a free and independent media that is capable of helping citizens to enjoy their 'right to know' through building an informed society. Certain legislative mechanisms not only help promote a free media, but also assist in the free flow of information. The free flow of information provides for a greater exchange between the public and parliament, thereby helping parliament to be more responsive to the needs of the community. As such, an appropriate legislative framework not only helps the media operate, but also assists the media in stimulating discussion so that parliamentary decision-making can contribute to poverty alleviation and development.

Commentary

Increasingly, confident democratic governments and communities that believe in the strength of their institutions do not see the need for the media to be restrained by excessive regulation. It may seem strange, but it is part of the media's role to question government and criticize the way parliament conducts its business in order to provide accountability and assist parliament in adapting to the needs to the community. The strength of a democracy is reflected in the tolerance shown by those in power to criticism or alternate views. For parliament to seek to undermine the media or complain about criticism leveled against it is not a sign of a strong institution; instead parliament should heed the criticism leveled at it from an independent media to see whether the substance of the criticism can be applied when making future decisions. As such parliament should provide the legal framework and contribute to the development of an enabling environment that will ensure that a free media flourishes.

This trend away from strict regulation toward greater freedom has resulted in many countries reassessing the legislative environment in which the media operates, dispensing with outdated and archaic laws that were traditionally used to suppress an independent media and the free flow of information. Coupled with this has been a move to greater self-regulation of the media and the creation of media councils or similar institutions in lieu of legislative restrictions and regulation.

A Freer Legislative Environment

The *Cape Town Principles* suggest that in order for parliament, parliamentarians and the media to reach their potential for disseminating information to the people, as well as providing feedback from the people to the government, there should be a secure and supportive environment for the free flow of information. Such an environment would consist of the following legislative framework:

- Passing freedom of information legislation

- Resisting privacy legislation that could be used to suppress freedom of speech and freedom of the media;
- Applying full parliamentary privilege to all fair and accurate reports of parliamentary proceedings, including committees;
- Rejecting or repealing legislation to license media, journalists and the press;
- Repealing criminal defamation laws so that the media is no longer subjected to punitive controls that curb freedom of expression;
- Exercising caution in the passage of anti-terrorism legislation which may limit society's freedoms or make the state less accountable; and
- Rejecting or repealing laws that empower the state to censure or punish political opponents and the media for partisan reasons.

Laws provide the foundation for a free and independent media, but laws alone cannot guarantee a free media. A freer legislative environment must be coupled with an enabling environment and culture that respects the essence of what the laws are trying to achieve.

Offending Parliament and Parliamentary Privilege

Parliament should also respect the role of the media to criticize the performance of parliament. Therefore parliament should react to such criticism through its conduct, not by arguing with the media or resorting to contempt of parliament charges. In line with the CPA study group's *Recommendations for an Informed Democracy*, parliaments should repeal legislation, rescind standing orders and/or publicly abandon their traditional authority to punish the media and others for contempt of parliament or

offending the dignity of parliament simply by criticizing the institution or parliamentarians.

Contempt is an offence that occurs when an action obstructs or impedes parliament or one of its members from performing their duties. It is an offence that is broadly defined and should not be used to circumscribe the freedom of the press.

Parliamentary privilege protects parliamentarians and people who are invited to speak during committee deliberations from being sued for the remarks they made either on the floor of parliament or in committee. However, it is customary for that same protection to extend to the media when they report on what was said. The extension of privilege to the media means that the press is free to report what was said without fear of punishment. Parliament should exercise their discretion to extend parliamentary privilege to situations where the media accurately reports what was discussed, even when the information comes from a leak that provides details of what was discussed in closed committee sessions. Parliament should deal with the parliamentarian responsible for the leak rather than targeting the journalists who are the recipients of such information. Ultimately reducing the number of closed sessions would do away with the need to extend privilege in these circumstances. Irrespective, extending parliamentary privilege in all circumstances where the media engages in fair and accurate reporting of what is discussed in parliament reinforces parliament's respect for the community's 'right to know' and shows a willingness to facilitate the free flow of information in order to build an informed society.

Unit 5 Questions

Please answer each of the following questions. If you are taking this course in a group you may then meet to discuss your answers.

1. Why should there not be strict regulation of the media?
2. List the types of legislation parliament should pass and the types of legislation it should reject or repeal in order to encourage a free and independent media?
3. Aside from providing a freer legislative framework, what can parliament do in order to make the reporting of parliament and the parliamentary process freer for the media?

Select Bibliography

Krug, P. and Price, M. "Chapter 10: The Legal Environment for News Media" in Islam, R (ed.) *The Right to Tell: The Role of Mass Media in Economic Development*. World Bank Institute Development Studies; Washington DC, 2002: pp.187-206

Walden, R. "Chapter 11: Insult Laws" in Islam, R (ed.) *The Right to Tell: The Role of Mass Media in Economic Development*. World Bank Institute Development Studies; Washington DC, 2002: pp.207-24

The Enabling Environment for a Free and Independent Media: Contribution to Transparent and Accountable Governance, USAID, Office of Democracy & Governance, Bureau for Democracy, Conflict, and Humanitarian Assistance, Occasional Papers Series January 2002.

Recommendations for an Informed Democracy (Conclusions of a CPA Study Group on Parliament and the Media, held in partnership with the World Bank Institute and the Parliament of Western Australia, Perth, Western Australia, 17-21 February 2003).

