

Statutory Regulation: The Indian Experience

Justice G.N. Ray

"If anyone could point out an intermediate and yet a tenable position between the complete independence and the entire subjection of the expression of public opinion, I should perhaps be inclined to adopt it; but the difficulty is to discover this position."

DE TOCQUEVILLE

The power that the media wields in a free democratic society is apparent from the status it has earned as the Fourth Estate of the society. Although it is the youngest of the four estates, it is the most powerful of all of them and has been constantly growing in power on account of its increasing command over information, its expanding and deepening reach, and its ever strengthening capacity to influence and shape the views and opinions of the people and the policy-makers. The advent of the electronic media and particularly the satellite television and the internet, the growing literacy, the global expansion of the print media propelled by the computer technology, the fast life and increasingly dependence of the common man, intelligentsia and leaders of public opinion on the media for knowledge, views and opinions, have among other things, contributed to the intensity of the grip of the media on society.

Free media is one of the basic requirements of a free democratic society. By disseminating all requisite information, it creates an informed society.

The law reflects the political system of a country. Different press laws have therefore developed along the lines of political philosophies of different countries. The authoritarian press laws, in the early stages of the press following the invention of the printing press in the 15th century, giving control to the rulers over the press, later gave way to the libertarian laws on the advent of the age of enlightenment.

The expansion of the press and the growth in its power in the beginning of this century spawned yet another theory of the press laws – that of social responsibility.

Dealing with the role of free press in a democracy, the First Royal Commission on Press pointed out: “The democratic form of society demands of its members an active and intelligent participation in the affairs of their community, whether local or national”. The right to free speech, it is said, “is absolutely indispensable for the preservation of a free society in which government is based upon the consent of an informed citizenry and is dedicated to the protection of the rights of all, even the most despised minorities”.

Freedom of expression, therefore, is among the foremost of human rights. Such unlimited and unaccountable power are liable to be misused. Hence there is need for its regulation whether by an imposed law or by voluntarily put enforceable guidelines.

India experienced its first statutory regulation of the press in colonial rule. Adam's Press Ordinance was the first ordinance brought in by the then Governor General, John Adam. The regulations promulgated by Adam were directed against newspapers published in the Indian languages and edited by the Indians. It is now known that the Adam regulations were the forerunner of the Vernacular Press Act of 1878 and other statutory measures to control the Indian press whose power posed a major factor in the country's struggle for freedom from colonial yoke.

After India gained independence in 1947, the framers of the constitution have placed "very narrow and stringent limits.....to permissible legislative abridgement of the right to free speech and expression" even though such freedom had potential risk of abuse. As pointed out by Supreme Court the 'framers of the constitution may well have reflected, with Madison who was the leading spirit in the preparation of the First Amendment of the Federal Constitution' that "it is better to leave a few of the noxious branches to their luxuriant growth than, by

pruning them away, to injure the vigour of those yielding the proper fruits". Thus, amongst the Fundamental Rights of the citizen defined therein, Article 19 (1) (a) of the Indian Constitution provides for all citizens to have the right, inter alia, to freedom of speech and expression. The Constitution which guarantees this freedom as a fundamental right by Article 19 (1) (a), also permits the state under Article 19 (2), to impose reasonable restrictions on its exercise by making a law in the interests of the sovereignty and integrity of the country, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

In a number of cases the Supreme Court has held over and over again that any restriction, whether direct or indirect, imposed by Parliament upon the right of freedom of speech and expression other than those mentioned in clause (2) of Article 19 would be outside the scope of this Article. Pre-censorship, prohibition on import of printed and published material, placing a ban on printing and publishing material of a specified nature, demanding security from the press or placing any restriction which would amount to an indirect curb on free circulation of a newspaper or a class of newspapers have all been held to be bad in law.

Background

The concept of Press Council or Media Council, as many such bodies are now called, first emerged in Sweden in the year 1916 as a Court of Honour. There was thus greater appreciation of having an institution which would be in a position to oversee whether press freedom is exercised with greater loyalty to high standards of journalism. As of now there are over 50 such active bodies constituted voluntarily or through statute. The voluntary bodies reject the governmental control yet can satisfy the demand from public for a more disciplined press that balances the rights of citizens with freedom of Press. Such voluntary bodies enjoy jurisdiction on such media as agree to submit to its jurisdiction and be amenable to its directions. Juxtaposed are the statutorily formed Councils. The statutory backing gives them compulsive and complete jurisdiction over the given country's print or electronic media or both, as the case may be.

One finds that of these statutory Councils, some function as arm of the government as in the case of several countries like Indonesia, Sri Lanka and Nepal, while there are others which though enjoy statutory backing, but function independent of any government control as in India and Denmark.

Establishment of Press Council

The Indian Press Commission while examining the concept of freedom of press held in 1956 that freedom of the press meant freedom to hold opinions, to receive and to impart information through the print word, without any interference from any public authority.

The Commission discussed the need for monitoring editorial independence, objectivity of news, fairness of comment and regulation of conduct of the press in the matter of such objectionable writing as is not legally punishable and recommended the establishment of the Press Council to look after these aspects . It also recommended that such Council should also be entrusted with the responsibility of fostering the development of the press and protecting it from pressures. The opinion of the Commission was for statutory protection of the Council to make it effective in actions. Coupled with this statutory protection, was the recommendation that Council should comprise of persons nominated by the press itself and men who command the general confidence and respect of the profession. There was to be no role of the government in constituting the Council. The Commission thus envisioned a Press Council which would be comprised of the peers of the profession who were aware of the intricacies of the

field and who functioned under the Chairmanship of a person chosen from the judiciary to ensure that the Council discharged its freedom within the four corners of laws.

Indian Press Council

As indicated earlier, the Press Council in India was born out of the recommendations of the First Press Commission taking into account the functioning of print media from colonial rule to post independence era and for suggesting steps for improving its place, status and functioning in the new democratic set up. The Parliament of India debated for long on the mode and modalities of the constitution of the regulatory body of the print media and by enactment of 1965, formally brought the Press Council of India into existence. The founding fathers had clearly legislated that the body despite being a creation of the statute will function totally free of government interference and thereby even though a large part of the funds of the Council would be sanctioned by the Parliament through the nodal Ministry of Information & Broadcasting of the Indian Government, in the past 40 years, there has been no effort to interfere in its adjudicatory functioning. After the proclamation of emergency in 1975 by the then Government of India, freedom of citizen and press in particular was severely interfered with and country wide protests were raised against imposition of emergency

and interference with press freedom. The emergency had to be withdrawn. The Press Council Act 1965 was replaced by the Press Council Act 1978. The Press Council of India now functions under this Act. The Indian National Parliament has ensured that Press Council of India would act as statutory autonomous body functioning freely without any interference by the government or any other authority.

The Press Council of India is required under the statute not only to promote the standards of the press but also to protect it from any onslaught or threats to its freedom. Such threats are normally envisioned to be from the authorities of the governments. The Press Council of India enjoys adjudicatory jurisdiction over any action/decision of the government that may be, or may even be perceived to be, an attempt to control the freedom of the journalists. In its adjudicatory function it also considers the complaints made by public or governmental authorities against press for violating the ethics in journalism.

It will be appropriate at this stage to refer to the composition of Press Council of India. The Council is constituted with twenty members being peers of the press elected by big, medium and small newspapers both English and vernacular in terms of the statutory provisions of the Press Council Act, 1978,

representing, owners' category, editors' category and category of working journalists. In order to achieve a balance approach of the Council, the Act provides for nomination of eight members being high representatives from public. Two Houses of Indian Parliament nominate five members, Lok Sabha nominating three members and Upper House i.e. Rajya Sabha nominating two members. There are three other members in the Council each being nominated by University Grants Commission, Bar Council of India and Sahitya Academy. The tenure of the Council is three years and after expiry of such tenure, new Council is formed. Besides the said 28 members, the Council has a Chairman which by convention has always been a retired Judge of the Supreme Court of India. The Act has ensured that even in the matter of selection of Chairman, the Government has no control. The Selection Committee for the Chairman also enjoying a term of three years consists of Vice President of India as Chairman of Rajya Sabha, the Speaker of Lok Sabha and one elected representative of the Press.

The key to the working of the Council is contained in Section 13 (1) of the Indian Press Council Act of 1978. It outlines the objects of the Council. These are to preserve the freedom of the press and to maintain and improve standards of newspapers, etc. Sub-section (2) proceeds to particularise the functions. The Council

is enjoined to encourage the growth of a sense of responsibility and public service among all journalists; to keep under review such developments as are likely to restrict the supply and dissemination of important news of public interest; to keep under review cases of assistance received by any newspaper, etc from any foreign source; to promote a proper functional relationship among all classes of persons engaged in the production of newspapers and to concern itself with developments such as concentration of ownership that may affect the independence of the press.

It is noteworthy that the ambit or range is very wide and it can well be said that there is hardly any topic, with the exception of disputes which are of an industrial nature, which are not covered by Section 13. Section 14 gives the power to the Council to administer a warning or admonition or censuring a newspaper, a news agency, the editor or a journalist when it has been established that standards of journalistic ethics or public taste have been breached. The Council can further require any newspaper to publish particulars relating to any inquiry which would include the final adjudication given by the Council. The adjudications/decisions of the Council are final and cannot be challenged in any court of law except under the constitutional provisions of Article 32 or Article 226 before the High Courts or Supreme Court of India.

Special Powers of Press Council

There are two provisions which deserve special mention as they are of an unusual kind and which invest the Press Council with certain powers in the matter of making inquiry which other Press Councils do not generally possess. Under Section 15, the Council has been vested with the powers of a Civil Court for purposes of summoning and enforcing the attendance and examining of witnesses. The Council can require discovery of documents, requisition of any public record, etc. It may not, however, compel any newspaper or a journalist to disclose the source of information. The other power contained in Section 15 (4) read with the Section 13 empowers the Council to make enquiries against all authorities including the government and to make such observations in its adjudications against such authorities and the government as the Council may think fit.

The main considerations that have prevailed with the Council in dealing with the complaints that come before it, have been to find solutions which are more conducive to healthier understanding between the Press, the executive authorities and the people. Every attempt is made in the first instance to bring about a settlement which fulfills the role of a Press Ombudsman.

The Inquiry Committee

One of the special committee of the Council which is called the Inquiry Committee hears such complaints as survive after dismissal of those which are either withdrawn or are not prosecuted or are settled or are summarily dismissed by the Chairman in the exercise of express power conferred by the statutory provisions. The Inquiry Committee hears all complaints in a quasi judicial manner and full opportunity is afforded to all concerned to produce their evidence and address arguments personally or through their representatives or counsel. Thereafter, recommendations are made to the Council which finally gives the adjudication. It is necessary to mention here that the Council not only acts on complaints filed before it but even takes suo motu cognizance of any matter that may have a bearing on standards or freedom of the press. The decision of the inquiry committee is placed before the full Council and being ratified by the Council with modification, if any, the adjudication made by inquiry committee, becomes final.

Apart from the adjudicatory functions, the Indian Press Council also discharges advisory functions, qua matters related to the press. These may relate to proposed legislative measures, legal

provisions in force or policy decisions likely to affect the press functioning.

To continue with the Indian experience of statutory regulation of the press, it will be interesting to cite by way of illustration, a case that came up for Council's action. The complaint was against attempted curtailment of the press freedom. The action of a newspaper management, which had removed the editor of the paper pressurised by extraneous business considerations was challenged by the Press Council. The jurisdiction of the Council to take cognizance of such matter being matters governed by terms of contract between the employer and employee and prohibition against taking cognizance in matters governed by Industrial Disputes Act was challenged before the High Court by the management raising the question of locus of Press Council of India to initiate an action. Law courts of India being fearlessly independent, clearly established the right of the Press Council to enquire into such matters and it will be appropriate to quote the, the observation made by an Indian High Court: **"whenever there is infringement or impingement on the freedom of the press and independence of the newspaper, irrespective of the source of the threat, the jurisdiction of the Press Council is attracted. If there is a violation of right to the**

liberty of the Press by the State. State functionary, public authority, companies, individuals or any person real or fictional, it will give jurisdiction to the Press Council to pronounce on the impropriety of the action complained of. The Press Council has the responsibility of fostering the independence of the Press protecting it from external pressure, irrespective of the source or origin of the pressure”.

Shortcomings

It will not be proper to assert that the Press Council Act in India is absolutely perfect and does not require a relook. It requires to be highlighted that it is an accepted position globally that media need to be regulated without under estimating the need for introspection from within. How it is to be regulated however must depend on the felt need of a country with reference to socio economic and political set up prevailing in that country. What is important to ensure is that the regulatory body be it voluntary or statutory, must function independently for maintaining the freedom of media and must ensure free functioning of the media and guiding the media not to deviate from the goal of functioning as a watchdog of the nation by observing the well accepted norms and ethics in journalism and helping the functionaries of the State to build up a true welfare

society constantly striding for better building of nation. The impact of globalisation and growing trend of corporatisation of media and media being driven more and more by profit earning motive and various other factors prevailing in media scenario in India and other countries, prompt to adjust media regulatory bodies to address the changing scenario and paradigm shift in media functioning as of now. The Press Council of India Act under which Press Council of India now functions was enacted in 1978. A long time has elapsed from the enactment in 1978. There has been sea change in functioning by media. Therefore, it has been felt not only by Press Council itself but social activists and others that the Act requires suitable amendments for incorporating provisions to achieve more effective regulation of the press in India without interfering with the desired freedom of the press. Left to myself, I am inclined to think that Press Council should not function as a penal body. The real function of a regulatory body is to take the press in a desired manner by maintaining the high standard of journalistic norms and ethics by indicating guidelines to be followed by media. It is only when a media violate such norm deliberately on repeated occasions, despite being cautioned and reprimanded, the erring newspaper need to be penalised in the spirit of a paterfamilia putting the errant child to a right path. Just to indicate one or two

cases where suitable provisions in the statute may be necessary for effective functioning of Press Council of India, it may be pointed out that enforcement of its adjudicatory direction by the Council is to be ensured. The Council has the power to direct a newspaper to publish the particulars of its inquiry/or adjudication, but the statute is silent on the mechanism to enforce such direction. If the publication fails to abide by the directions given by the Council in its adjudication in disposing of a complaint case, there should be explicit provision for publishing the adjudication in the news failing which suitable penal measures like stopping of giving advertisements by government or public sector undertakings for a specified period, withholding of accreditation or deregistering the paper for a specified period may be imposed on the erring newspaper.

Presumably, the legislators when enacted the Act in 1978 thought that adjudication by PCI principally formed by the peers of the press would be respected and followed in letters and spirit. But unfortunately such ideal situation does not conform to reality. The insensitivity of some newspapers and defiant mood in complying with the direction given by PCI have prompted PCI and law makers to seriously think for bringing suitable amendment to address such problems. Since the Council has not yet finalised its views on

proposed amendment, it is not possible or even desirable to catalogue the cases requiring proposed amendment at this stage. One or two areas where amendment may be introduced in the Act have been highlighted only to make note of some remedial measures necessary for regulating the press properly and effectively.

It will also be appropriate to indicate that unlike a voluntary body, a statutory body enjoys lesser flexibility. However a lot of flexibility in the functioning of a statutory regulatory body may be achieved through the mechanism of rule and regulation making power. The Press Councils being bound by the parameters of the respective enactment governing such Council can not have the extent of flexibility enjoyed by a court of honour or court of ethics being a voluntary body. While it is correct that the procedure for exercise of powers given to the body by the statute has necessarily to be followed but as already indicated, that the provisions empowering a statutory body to frame rules and regulations to supplement some of the provisions in the statute, make it possible to bring flexibility in the procedure overcoming the need for modification of the statutory procedure which otherwise is likely to be cumbersome as well as time consuming. This has been the case with the Indian Press Council which has the authority to draw up

the methodology of its inquiry and adjudicating into complaint cases by framing rules and regulation within the ambit of the Act and Press Council of India has framed such rules and regulation.

The experience of the Press Council of India clearly demonstrates that even by a statute, a free and independent body can be set up to function as a self-regulatory watch dog over the fourth estate which by virtue of the legal sanction behind its action/adjudication, can ensure that the press properly discharges its duties and responsibilities towards the public and the society at large. Therefore, functioning of Press Council of India under a statute deserves meritorious consideration while evaluating the pros and cons and efficacy of different types of regulatory bodies for the media.

Conclusion

I solemnly state before this august body that the Press Council of India is suitably insulated from pressure coming either from print media or corporate sector because of its non-dependence on them for funds for running the Press Council of India. The government is also unable to influence its functioning because it has been made statutorily independent autonomous body even though the government through appropriate nodal ministry provides funds as required by the Council to supplement

its other source of revenue namely by levying the fees at a fixed rate consistent with the volume of circulation of the concerned newspaper.

To highlight the freedom enjoyed by the Press Council of India, I may indicate that the Union Government of India had sometime back undertaken an expenditure performance review of all offices/institutes funded by the union budget. Insofar as the Press Council of India was concerned, the government stated before the Parliament in its report for budgetary sanction that “keeping in mind the nature of Press Council of India which is a self regulatory body of the Press, such a view would neither be appropriate, nor is another ‘peer body’ available to review it.” This solemn statement only reveals the extent of independence being enjoyed by the Press Council of India in its functioning.

I may, conclude by stating that the Indian experiment in statutory regulation of the press has combined the benefits of self regulation by peers of the press and high and responsible representatives of people commanding respect in the society by insulating the Council against any interference either by the Government or by the Press. No regulatory body is expected to be foolproof. It will therefore, be judicious to interact with regulatory bodies of media operating at different parts of the world addressing

different ground realities in the respective area of operation and to adopt the model best suited to the country in question.

I am extremely thankful to the organisers of this Regional Conference on a very relevant issue, "Regional Conference: Eastern Africa Media at Cross Roads" to give me an opportunity to place Indian experiment in regulating the print media in India so that in the matter of forming regulatory bodies in Africa, such experiment is also kept in mind. All right thinking persons in different parts of the globe in their anxiety to evolve mechanism for best performance of media, consistent with dignity and independence in their functioning, should do well in interacting as frequently as possible and deriving benefit from the collective wisdom. The World Association of Press Councils of which Press Council of India is a participating member is also aiming to bring togetherness of media councils operating at different parts of the world for cohesive and effective functioning of such councils. The media and regulatory bodies are at cross roads almost every where because of globalisation and ever changing scenario in media functioning dictated by corporatisation and various other inter related issues much more complicated than those prevailing in yesteryears. Therefore, the Media Council of Kenya rightly deserves thanks and deep appreciation from all of us in organising this regional

conference of several African countries on the eve of Executive Committee meeting of WAPC where members of WAPC from various countries and some of the invitees will have the opportunity to interact in this meet.

Thanking you all for a patient hearing.

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