

# PREFACE

## I

I have pleasure in commending to you this painstakingly detailed monograph prepared by Associate Research Professor Usha Loghani. She has dealt with all the complaints adjudicated by the First Press Council of India 1966-1974 and the Second Press Council 1979-1984 (June). Ms Loghani has focussed on four arenas of stress: pressurisation and harassment of newspaper persons, accreditation and freedom, advertisement as a mechanism of control and influence over the press, and residual areas of press freedom not conveniently classifiable under neat categories. At the end of annotated description, the author has tried to distil major principles enunciated by the Press Council.

Even a casual browsing of this short monograph would convince you how fragile and brittle is the freedom of the press in India. The Press Council proceedings reflect more thoroughly than those before the Supreme and the High Courts the hazards to the free press.

Of course, India is not unique, among the Third World nations particularly, in deploying power and even force in stilling the claims to accountability of public power. Nor is India unique in her inability, towards the end of the fourth decade of her independence, in ensuring the full accountability of the power of the free press. The Press Council of India is, unenviably, confronted by the need thus to protect the freedom of the press against all insidious erosion and to ensure that Indian journalism retains the best characteristics of a learned and self-regulating profession. While everything that is done by a human agency could almost always be done better, and here the sky is the limit, a reading of this anthology should persuade you that the Press Council has played this crucial role quite admirably so far. Nothing in what follows, by way of constructive critique, is intended to detract from this overall appreciation.

## II

There are many striking features of the Press Council adjudication which we must note, briefly, here. *First*, well over ninety per cent of cases, highlighted in this study, relate to regional or local press as distinct from the national press; correspondingly, we have prominently, as petitioners, or respondents small and medium newspapers, and these are mostly from the regional language press.

*Second*, out of 133 cases presented here only in about seventeen journalists' associations have been active participants, the rest of journalists appearing in their individual capacities. This clearly suggests a larger

(x)

role, even by way of intervention, by journalists' associations before the Press Council.

*Third*, it is striking that out of these about nineteen associational interventions, eleven are in the first arena of stress—namely, harassment and 'pressurisation' of journalists. If one looks at the regional profile of these interventions, one finds that Uttar Pradesh has been the most active with five out of nineteen interventions, followed by four from Andhra Pradesh and only one each from Assam, Manipur, Tripura, West Bengal, Punjab, Haryana Madhya Pradesh, and Chandigarh. The Indian Federation of Working Journalists has made two appearances. While it appears that West Bengal has a special forum—West Bengal Newspapers' Rights Preservation Committee—it is clear that other states where the press is very vulnerable—Bihar, and now even Gujarat—do not feature by way of associational interventions. (And Orissa features in a most insignificant manner). It is equally striking that, apart from Andhra, no other southern state appears by way of associational intervention.

*Fourth*, it appears that the Press Council itself has acted *suo motu* only in six out of 133 cases presented here. And all such actions have been "settled." Surely, the quotient of *suo motu* action by the Press Council can be made more significant, especially in the area of physical violence, including murderous assaults, against journalists. Deprecating these, as is regularly done by chairpersons of the Press Council, is simply not enough. Nor is it any justification to say that the Council may not act *suo motu* because police investigations have begun. Given the rather frightening dimensions of physical assault on and intimidation of journalists, the Press Council can only realise its role, functions and power by a more vigorous, proactive development of its *suo motu* jurisdiction.

*Fifth*, and this is disturbing indeed, there appears a significant asymmetry in competence between the journalists as complainants and governments as respondents. You will find in the present collection, time and again, dismissal of complaints on the ground that the "complaint was not made out" or that it was "vague" or otherwise "insufficient." Of course, not all complaints should succeed; but a pattern of finding to the effect that complaints are not "made out" does suggest the lack of adequate technical assistance to journalists. It is also indicative of the rather peculiar absence of media attorneys in the Indian Bar; and, of the fact, that legal resources are unequally distributed. This unequal distribution, you will find, is not problematic for large newspapers or for the news services; it is acutely so for small and medium newspapers where such services seem to be most desperately needed.

*Sixth*, as the quantitative breakdown of the decisions shows, a very large number of complaints are dismissed. 52% of complaints in the arena of harassment and pressurisation, 53.2% in advertisement, and 66.7% in the residual press freedom cases have been dismissed. Only in the

arena of accreditation the dismissal rate is lower: 15.4%. Such a high rate of dismissal coupled with a miniscule *suo motu* rate of initiation, must raise many a disturbing question. Is it due to the nature of complaints? Or the way they are presented, argued and handled by the Press Council? Or because of the fleeting ghost of *sub judice*? Or because of asymmetry in forensic resources? Or a mix of all these factors? Are more baseless complaints filed? If so, where do the genuine complaints go? How are they processed, managed and resolved? Does the high rate of dismissal have any impact on the credibility and competence of the Press Council? Or, is the Press Council regarded by journalists as a forum to be eclectically invoked to settle scores with the politicians and bureaucrats? Alternatively, is this rate of dismissal due to the high judicial presence of a retired justice of the Supreme Court of India as a chairperson of the Council? Clearly, a separate empirical study on this aspect is called for. But, for the time being, one may venture to say that this high rate of dismissal may not be apt for the fulfilment of the major objective of the Press Council, under section 13 of the Press Council Act, 1978, "to help the newspapers and news agencies to maintain their independence" or "to keep under review any development likely to restrict the supply and dissemination of news of public interest and importance."

*Seventh*, similar questions arise in regard to *suo motu* initiation by the Council. Take the case, by way of example, of *suo motu* action by the Press Council against the Government of Maharashtra. Four specific newsmen were identified as being subject to intimidation by a Rajya Sabha Member; in regard to one the government admitted an assault by "unknown persons" against a journalist which it said was under investigation. The Press Council decided that "since the aggrieved persons did not wish to complain against the state government" no further proceedings were necessary (p.3)! If the aggrieved persons had complained, *suo motu* action would not have been necessary in the first place! Clearly, the Press Council has the power, under section 15 of the Act, of a civil court in "summoning and enforcing attendance of persons and examining them on oath." In a *suo motu* action, once initiated, the "desire" of persons affected to proceed with the matter should have, strictly, no decisive role; much less they should be expected to agree to file complaints! Moreover, when the government indicates that investigations concerning the assaults on a journalist are under way, nothing prevents the Press Council to monitor these investigations under its wide powers under section 15. Instead, the Press Council dismisses the action initiated by it!

Similarly, in a *suo motu* action against the Government of Karnataka when a blockade of four leading newspaper offices prevented the emergence of the dailies on the morning of 23 September 1980, the Council felt that "it was for the state government to make an enquiry into certain features which appeared somewhat unusual", since it was not within its "charter

to go into the regularity and validity of the investigation" (p.19). This is an astonishing example of self-restraint by an authority with such a wide mandate under section 13 of the Act. Section 15, as noted, confers wide powers for "performing its functions or holding any enquiry" under the Act; surely, whatever the state government may or may not do to enquire into such matters, once the Press Council initiates an action *suo motu* it cannot be inhibited by the power of the respondent state to investigate. Indeed, the further holdings on the standard of proof (p.18) drastically curtail whatever power the Press Council itself has in the exercise of its *suo motu* jurisdiction. What is worse, the standards thus enunciated also spill over, in all their rigour, to the arena of private complaints. Strong condemnation (issued in this case) is, after all, no effective substitute for the exercise of statutory duties and powers by the Press Council.

### III

The pathology of public power is writ large in growing violence in India. In the domain of the press, this pathology reveals itself in physical assaults on journalists and newspaper offices. The State of Orissa leads the nation in this respect. But the virus of violence has begun to affect many other states. The burning down of the office of the *Gujarat Samachar* in Ahmedabad during the so-called anti-reservation riots in 1985, with the police standing by, is a recent outrageous example of this trend. Apart from physical violence, intimidation is practiced on a large scale, which include even threats of rape of journalist's wife and daughter. Added to these, and by now, usual situation, are the terrorists' 'hit-lists' for journalists who expose or condemn them; the 'terrorist' threat is, of course, a culmination of unchecked earlier phase of terrorism, though not so-called, against the free press in India.

The foregoing is an alarming, but by no means an *alarmist*, description which can be substantiated sociologically—an exercise which we do not undertake here. But should you read between the lines the cases presented in the first section of this monograph, your reservations on this score will be substantially modified, especially when you read with some sociological imagination those cases which involve police-press relations and use and abuse of powers of prosecution and detention.

Clearly, the legal system translates actual happenings of violence and intimidation as *allegations* of violence. It then subjects these 'allegations' to strict test of proof. In the absence of impartial investigation and prosecution, 'proof' becomes elusive. Since most people who have to testify have also to live within the web of violence (including threats of it) their ability, not being martyrs, to testify is also subjected to some rational calculus of survival and to the extent possible, well-being. Thus, the law after having converted a real happening into an allegation ends up in *cancelling* the possibility of a real event ever having taken place! It is only in rare cases that the law confirms the real event.

This is the message of the first part of the monograph. Even the Press Council's wide powers can be silenced by the mere filing of the F.I.R. or, in some cases, by a charge-sheet. The criminal process moves too slowly, given the insubstantial resource investment in the administration of justice in India, to ameliorate the situation.

This being the situation, the values of the freedom of press, indirectly enshrined in the Constitution as fundamental right in article 19, mean little in the everyday reality of a working journalist. This must also explain, partly, the belated and tardy growth of investigative journalism, at local and regional levels, in India.

Of course, these violent threats do not emanate merely from the agents of state power. They also arise from dominant groups in civil society, be they units of industry, trade unions, or an assortment of mafia groups operating now virtually in every part of India. But since the state is under a duty not just to observe the fundamental rights but also create a social order in which rights can be meaningfully exercised, one identifies, in the last analysis, all threats to the free press to the nature of state formation in India.

The Press Council should, in this zodiac, become a powerful arena of the assertion of the constitutional values. Looking at the materials assembled in this monograph, one feels that the Press Council needs to redefine its role beyond adjudication towards creation of conditions which make the right to freedom of expression meaningful through the free press. Clearly, no matter how it refashions its role, the Press Council, given the present legal institutional competences, cannot intervene in the criminal justice process; and by definition assault, arson, murder and intimidation all fall within the province and function of the administration of criminal justice.

The question is: does the present juncture of Indian development, with the pernicious provenance of violence against the press, justify *status quo*? Is not a separate cadre of courts needed for this growingly dangerous domain of violence against the press? Is there no scope for review of procedural and substantive law to meet this menace? Is there scope for institutional collaboration between the Press Council and the Tenth Law Commission of India, charged with an agenda of judicial reforms, to work out more specific institutional and normative renovation necessary to protect the press from this rising violence?

This introduction cannot bear the burden of providing an actual blueprint for action. In any case, there is enough cumulated wisdom, arising from performance of its statutory tasks, in the Press Council of India to propose an agenda of action. The Indian Law Institute which has prepared a series of monographs in collaboration with the Press Council (of which this is the sixth) will, it goes without saying, assist the Council, should it so wish.

## IV

Economic coercion, operates mainly through withdrawal of advertisements; through it, the state may effectively control a 'free' press. The Press Council has done admirably well in combating this form of coercion, despite the high percentage of dismissal of cases. It has freely passed strictures against unjustified withdrawal of advertisements. So well-established the Press Council's view of this matter has been that it appears that by the time the complaint is ripe for determination, advertisements are restored.

But governments might apply economic coercion in ways short of stopping advertisements. For example, the rates of advertisement may be fixed at low levels, giving the newspaper the Hobson's choice of refusal (p. 64); or which produces the same result, "display advertisements" on matters like communal harmony containing appeals to the public may be even at a lower rate than the national norms followed by the D.A.V.P.—the Directorate of Advertising and Visual Publicity (pp. 64-65). Similarly, differential award of government advertisements may be justified on the basis of verification of circulation by the District Magistrate; but the latter, unjustifiably, may follow no recognised procedures in arriving at this determination (p. 65). Further, in the application of the D.A.V.P.'s "telescopic" formula for advertisement rates, it is permissible to differentiate between dailies and weeklies (p. 66). There might be discrimination as to the number of insertions released (see the complaint on p. 70 that *Muzoffarnagar Bulletin* received only 14 advertisements as against 56 by another paper in the same period). And, finally (without being exhaustive) advertisement budgets may be reduced in a particular period (e.g., p. 71) justifying less or no advertisements.

All these raise tricky issues and the approach of the Press Council is to leave such matters to "amicable" resolution by the parties. It seems to prefer direct and authoritative intervention only in case of stoppage of advertisement which smacks of discrimination or vendetta. This approach does, in turn, leave plenty of vital issues to play of power relations among the press and the politicians.

Not many complaints concerning unfair advertisement practices seem to be levelled against statutory corporations. This may mean that these are fair and even-handed in their approach or that local and regional papers perceive the role of government advertisement as bigger or more adequate than that of statutory entities. But statutory corporations are state under article 13 and they are disabled from discriminatory or arbitrary use of their powers. The new incarnation of article 14, post-*Maneka*, should be of considerable assistance to local and regional newspapers in their battle against economic duress.

So would be the promising jurisprudence of the Supreme Court of India concerning the applicability of fundamental rights to the "centres of

economic power” presaged in interlocutory proceedings in *M.C. Mehta v. Srilam Fertilizers (Delhi Oleum Leakage case : 1986 (I) SCALE 199)*. When this notion is fully developed, it should be possible for newspapers to claim fairness in advertising practices at any rate from the big private corporations.

Advertisement may also be a means of patronage. I was told that in a small city like Sagar in Madhya Pradesh there are as many as 75 to 78 newspapers which survive only on government advertisement; and the city of Bhopal has newspapers, similarly placed, with extraordinary musical titles as *Damdām Diga Diga!* If this information is correct, and there is no reason why one should be misinformed, there arises the constitutional question of arbitrary distribution of state largess now prohibited by the Supreme Court in a long line of decisions since *Kasturi Lal v. State of J. & K.* (A.I.R. 1980 S.C. 1992). Obviously, the new jurisprudence must assist the Press Council in combating such largess. Patronage is as inimical to the freedom of the press as hostile discrimination or economic coercion.

## V

The Press Council has performed its role rather distinctively in relation to its mandate to “build up a code of ethics for newspapers, news agencies and journalists” under section 13(2)(b) of the Act. A case-by-case approach is eminently suited to the eventual formulation of the code; the contribution made by the Council is adequately reflected in a previous study *Violation of Journalistic Ethics and Public Taste* published by the Institute in 1984. In this volume, too, we find the Press Council enunciating and elaborating a code of ethics for journalists (e.g. see pp. 111-114).

At the same time, frailties of the processes of determination often vitiate the implementation of the code evolving norms even by the Press Council itself. The Press Council has, for example, reached the right normative result when it ruled deliberate suppression of news by news agencies is not permissible. But, when an important news item concerning the large-scale molestation of women at Rabindra Sarobar Stadium at Calcutta on June 27, 1969, was not put out as news by the U.N.I. and the P.T.I., the Council proclaimed that suppression of a news item of “great public and national importance” should be “deliberate”. “If they erred in making the omission, it would not establish suppression of news” held the Council (p. 122). This was so because the Council treated the matter under section 13(2)(e) under which it has the power, coupled with duty, “to keep under review any development likely to restrict the supply and dissemination of news of public interest and importance.” And the Council could not determine in this case whether the suppression of news was deliberate because it did not have the “actual wordage of news put on the wires by the Calcutta office” to determine for itself “whether satura-

(xvi)

tion point had been reached and news of minor importance was included at the cost of the alleged news item”!

Surely, the Press Council should not find itself so helpless. By the time any complaint is investigated, such evidence may not remain available; the result would be that “deliberate suppression” can only rarely be demonstrated. But in that case neither can the *bona fide* exercise of discretion! If not under section 13(2)(e), at least under clause (i) of section 13(2) a reproach was in order on two counts: first, non-publication of an item of public interest and importance and an inability to offer a convincing explanation for this with supportive evidence. If the code of conduct has to have worthwhile operative significance in this area, surely the onus of why such news wasn’t printed must lie on the journalist and editor and not on the complainant! It is also not without significance that the news item concerned molestation of women. The Press Council has an important role to play in correcting the patriarchal biases in newspapers as an integral part of code of ethics. It is also under a duty, in order to perform this role, to itself avoid the shadow of patriarchal ideology.

This monograph should remind us that the freedom of the press, like all other freedoms, is not given once and for all but that it has to be won and retained by acts of struggle. The series of monographs published by the Institute over the past three years in collaboration with the Press Council of India\* indicate the terrain, logistics and strategies of this struggle. The Press Council is itself among the principal combatants on the side of the free press : at the same time, it offers a powerful arena for securing accountability of a profession which insists on the accountability of the state.

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\**Law of Defamation : Some Aspects* (1986); *Violation of Journalistic Ethics and Public Taste* (1984); *Parliamentary Privileges and the Press* (1984); *Contempt of Court and the Press* (1982); *Official Secrecy and the Press* (1982).