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<td>Rajan, R. V.</td>
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Media Watchdogs In India

By

R V Rajan
MEDIA WATCHDOGS IN INDIA

by R.V. RAJAN

Introduction:

India, as it were, stands at the cross-roads of Asia, "looking across the sea to Arabia and Africa on the West and to Burma, Malaysia and the Indonesian Archipelago on the East. Geographically, the Himalayan ranges keep India apart from the rest of Asia".

Logistically, India measures 3,214 km from North to South and 2,933 km from East to West, with a total land area of 3,287,263 sq.km. It has a land frontier of 15,200 km and a coastline of 7,516.5 km. Andaman and Nicobar islands in the Bay of Bengal and Lakshadweep islands in the Arabian Sea are parts of the territory of India.

India shares its political borders with Pakistan on the West and Bangladesh and Burma on the East. To the north lies China, Tibet, Nepal and Bhutan. Across the Palk Straits to the South lies Sri Lanka.

Though India is the 7th largest in terms of area, it ranks 2nd in population, in the world. According to the 1991 census, India has a population of 844 million. This burgeoning population has eaten into the available resource base, consequently, retarding development in crucial sectors, particularly education. Even though the literacy rate according to the 1991 census, has reached 52.11% of the total population, much needs to be done especially in education among the women and the poorer sections.

India is termed as a vibrant example of unity in diversity. Being the birth place of two major religious (Hinduism and Buddhism) and
the home to followers of Islam, Christianity, Sikhism, Jainism and Zoroastrianism, makes India a melting-pot of people with diverse religious affinities. India has 18 officially recognized languages, and more than 1,500 different dialects.

When India became free after a 200 year history of colonialism, it was felt, she needed a Constitution which was in consonance with the spirit and "genious of her people". But again, it was also realized, that in this age and time, no Constitution can be absolutely original. Therefore, the Indian Constitution makers in their sagacity, thought it apt and prudent, to borrow freely from the other great constitutions of the world. At the same time, amalgamating the provisions to the Indian milieu.

The Constitution makers chose to adopt a Parliamentary system of government (of the United Kingdom), while they framed the chapter on Fundamental Rights upon the model of the United States Constitution, and adopted the idea of Directive Principles of State Policy, from the Constitution of the Eire. They also added elaborate provisions relating to Emergency in the light of the Constitution of the German Reich.

Thus, the framers sought to incorporate the accumulated experience gathered from all the known constitutions, and to avoid all defects and loopholes that might be anticipated in the light of these constitutions.

The Indian Constitution does not contain any specific provision guaranteeing the freedom of the Press. Because freedom of the Press is included in the "wider freedom of expression", which is guaranteed by Article 19, Clause (1) Sub-Clause (a) Art.
19(1)(a), proclaims, that "all citizens shall have the right to freedom of speech and expression". This right, not only guarantees expression of one's own views, but also the views of others, and by any means, including, printing. But, this right is "not absolute" and reasonably restrictions may be imposed on the freedom of the Press, in the interests of the "security of the state, the sovereignty and integrity of India, friendly relations with foreign states, public order, decency and morality, or for the prevention of contempt of court, defamation or incitement to an offence".

But at the same time, the freedom of speech and expression makes it illegitimate for the state, to make laws to abridge the freedom of the Press, or to curtail the circulation or put fetters on the dissemination of information, through excessive and prohibitive taxation and other penalties. But again, "the Press is not immune to ordinary forms of taxation, the application of the general laws relating to industrial relations, and the regulation of the conditions of service of the employees".

So also, censorship of the Press is not specifically prohibited by any provision of the Constitution. The constitutionality of any such measure, has to be judged by the test of "reasonableness", both from the "substantive" and "procedural" stand points.

Be that as it may, the litmus test of a free press is, if it functions without fetters, from day to day. And it can be said, without an iota of doubt that the Press in India is a free, vibrant institution. But, there have been abrevations. For instance, during the proclamation of Emergency from 1975 - 77, a Censorship Order was issued, and the Press was gagged. But
widespread public agitation, and disillusionment resulted in the lifting of the Emergency, and also the Censorship Order. All the restrictions on the Press were removed in 1977, and the Indian Press once again breathed freedom, never again to lose it.

WATCH DOGS OF THE MEDIA

As the Electronic Media consisting of Radio, T.V. has been hitherto the monopoly of the Government and Press being the only Mass Media in the Private Sector, historically the special watch dog mechanism covers only the Press Media.

It is worth noting, in this context, that, despite being under exclusive government control, both radio and television are covered by the same general laws as are applicable to other media. These include the constitutional prescriptions, laws governing national security, public order, public moral, etc. the laws of defamation, the law of copyright, employment laws, and so on. In addition, AIR and Doordarshan are also governed by the Broadcasting Code formulated by the Government of India which sets certain basic standards for them to follow as public service utilities.

As regards the limited area of private participation allowed in these media, viz. commercial sponsorship of programmes and advertising, it is a purely contractual activity to which no special statutory laws apply. However, with the wide interpretation given by the courts to the word "state" in Article 12 of the Constitution of India, those dealing with AIR and Doordarshan can have recourse to the extraordinary writ jurisdiction of the High
Courts and the Supreme Court and can thus hope to get quicker and more efficacious relief than against a private respondent.

With the opening of the skies, this situation is changing and the government is actively involved in preparing a new policy which is likely to introduce Watch Dog Mechanisms covering other Media.

PRESS COUNCIL OF INDIA

There is only one major Watch Dog Mechanism of the Press in India, and it is the Press Council of India. The Press Council was established by any Act of Parliament as early as 1965, but this act was repeated in 1976 during the Proclamation of Emergency. But the Council was re-established in 1978, under the Press Council Act of 1978.

The first Press Council was formed on the basis of a report submitted by a Press Commission in 1954. The report recommended the establishment of a Press Council, whose objects should be 1) "Journalism in India" by R.Parthasarathy, to safeguard the freedom of the press and help the press to maintain its independance, 2) to censure objectionable types of journalistic conduct and by all means to build up a code in accordance with the highest professional standards, 3) to keep under review any development likely to restrict the supply and dissemination of news of public interest and importance, 4) to encourage the growth of a sense of responsibility and of public service among those engaged in the profession of journalism, 5) to study the development in the press which may tend towards concentration or monopoly and, if necessary, to suggest remedies therefore, 6) to publish reports at least once a year, recording its work, and
reviewing the performance of the press, its development and the factors affecting them, and lastly, to improve methods of recruitment, education and training for the profession by the creation of suitable agencies for the purpose such as a Press Institute”.

As a result, the Press Council was established in 1965, and its first president was Justice N. Rajagopala Iyengar. This council was unique in having statutory authority. Its power to summon and enforce attendance of persons and examine them on oath; to require the discovery and production of documents; to receive evidence on affidavits, and to issue commission for the examination of witnesses or documents were valuable aids in the conduct of investigations. The council had 28 members, out of whom, 20 were nominated by the various newspaper organisations. Every enquiry held by the council was deemed to be a judicial proceeding and no suit or other legal proceedings lay against the council of its members in respect of anything done in good faith.

As mentioned earlier, the Press Council Act was repeated in 1976, during the Emergency, and the council was re-established under the Press Council Act of 1978.

This act which is valid today, is an “Act to establish a Press Council for the purpose of preserving the freedom of the Press and of maintaining and improving the standards of newspapers and news agencies in India”.

Composition of the Council:

The Act says that the Council “shall be a body corporate having a perpetual succession and a common seal and shall by the said name sue and be sued”. The Act lays down that the Council shall
consist of a Chairman and 28 other members. It elaborates that, "the Chairman of States (Rajya Sabha), the Speaker of the House of the People (Lok Sabha) and a person elected by the members of the Council". Of the other members, the Act says that "thirteen shall be nominated in accordance with such procedure as may be prescribed from among the working journalists, of whom six shall be editors of newspapers and the remaining seven shall be working journalists other than editors". The Act further says, that "six shall be nominated in accordance with such procedure as may be prescribed from among persons who own or carry on the business of management of newspapers "... "one shall be nominated in accordance with such procedure as may be prescribed from among persons who manage news agencies", "three shall be persons having special knowledge or practical experience in respect of education and science, law, and literature and culture ----", "five shall be members of Parliament of whom three shall be nominated by the Speaker".

The Act provides that the Chairman and other members shall hold office for a period of three years.

**Powers and Functions**

Regarding the powers and functions of the Council, the Act States, "The Objects of the Council shall be to preserve the freedom of the Press and to maintain and improve the standards of newspapers and news agencies in India".

The specific functions of the Council as laid down by the Act are, a) to help newspapers and news agencies to maintain their independence;
b) to build a code of conduct for newspapers, news agencies and journalists in accordance with high professional standards;

c) to ensure on the part of newspapers, news agencies and journalists, the maintenance of high standards of public taste and foster a due sense of both of rights and responsibilities of citizenship;

d) to encourage the growth of a sense of responsibility and public service among all those engaged in the profession of journalism;

e) to keep under review any development likely to restrict the supply and dissemination of news of public interest and importance;

f) to keep under review cases of assistance received by any newspaper or news agency in India from any foreign source including such cases as are referred to it by the Central Government or are brought to its notice by any individual, association of persons or any other organisations;

g) to undertake studies of foreign newspapers, including those brought out by any embassy or other representative in India of a foreign State, their circulation and impact."

The Council has the power to censure, where "on receipt of a complaint made to it or otherwise, the Council has reason to believe that a newspaper or news agency has offended against the standards of journalistic ethics or public taste or that an editor or a working journalist has committed any professional misconduct, the Council may, after giving the newspaper, or news
agency, the editor or journalist concerned an opportunity of being heard, hold an enquiry in such manner as may be provided by regulations made under this Act and, if it is satisfied that it is necessary so to do it, it may, for reasons to be recorded in writing, warn admonish or censure the newspaper, the news agency, the editor, or the journalist or disapprove the conduct of the editor or the journalist, as the case may be;

Provided that the Council may not take cognizance of a complaint if in the opinion of the Chairman, there is no sufficient ground for holding an enquiry;

The General Powers of the Council are, "summoning and enforcing the attendance of persons and examining them on oath, requiring the discovery and inspection of documents, receiving evidence on affidavits, requisitioning any public record or copies thereof from any court or office, issuing commissions for the examination of witnesses or documents, and any other matter, which may be prescribed".

The Council is empowered, for the purpose of performing its functions under this Act, levy such fees, at such rates and in such manner, as may be prescribed, from registered newspapers and news agencies and different rates may be prescribed for different newspapers having regard to their circulation and other matters.

The Act of 1978 further says that, "the Central Government may, after due appropriation made by Parliament by law in this behalf, pay to the Council, by way of grants such sums of money as the Central Government may consider necessary for the performance of the functions of the council under this Act".
The Council is also expected to prepare once every year, an annual report, giving a summary of its activities during the previous year, and giving an account of the standards of newspapers and news agencies and factors affecting them.

In short, it can be said that the only body, which watches the conduct of the press and entertains complaints against it is the Press Council, which however, has no punitive powers. The utmost it can do is to "censure a newspaper if warnings and admonitions fail to produce results".

The Press Council, supported by the Press Commission, has urged the government to amend the Press Council Act to give it more teeth. The council is against framing a code of ethics. It said it would make up such a code in course of time through precedents established in the process of dealing with specific complaints. The council has held that mere enunciation of certain basic principles in general terms had not proved helpful when it came to applying them to individual cases. In its views, if these principles were to be reduced to a kind of code of conduct or journalistic property by the council, they would have a tendency to attain a degree of what might give rise to difficulties.

**HOW TO MAKE A COMPLAINT**

It is open to any person to lodge a complaint with the Press Council against a newspaper for a breach of the recognised ethical canons of journalistic propriety and taste. The complainant need not necessarily be the person aggrieved or directly involved. The alleged breach may be in the publication or non-publication of a news item or statement, or other material, like cartoons, pictures, photographs, strips or advertisements which are published in a newspaper. Cases can also be initiated by any
member of the public against a professional misconduct of
journalists whether they be on the staff of a newspaper or
engaged in freelance work. There can also be a complaint against
any matter transmitted by a news agency by any means whatsoever.
By virtue of the Press Council (Procedure for Inquiry) Regula-
tions, 1979, limitation of time is provided under clause 3 (1)(f)
for filing complaints with the Council, namely within two months
in the case of a complaint relating to the publication or non-
publication of any matter in respect of dailies and weeklies or
in regard to any matter transmitted by the news agency, and
within four months in all other cases, provided that a relevant
publication of an earlier date may be referred to in the
complaint. In the case of a complaint against any professional mis-
conduct by an editor or a working journalist, the same shall be
lodged within four months of the misconduct complained of.

Writing to the editor first

It is a requirement of the Inquiry Regulations that the
complainant should initially write to the editor of the newspaper
drawing his attention to what the complainant considers to be a
breach of journalistic ethics or an offence against public taste.
Such prior reference to the editor affords him an opportunity to
deal with the matter in the first instance and thus allows the
respondent to take such remedial action as he might consider
appropriate before the complaint is lodged with the council. This
rule is necessary because it acquaints the editor with the
identity of its accuser and the details of the complaint. It is
conceivable that in some instance the complainant has been wrongly
informed or has misinterpreted the facts. In others, it may be a
case of inadvertent error which the editor is only too ready to
admit and correct. If the would-be-complainant is satisfied, that would be the end of the matter.

Where, after reference to the newspaper, the person desires to proceed with the complaint, he should enclose with his complaint copies of correspondence with the editor, if no reply has been received from the editor, the fact should be mentioned in the complaint.

The complainant has, in his complaint, to give the name and address of the newspaper, editor or journalist against whom the complaint is directed. A clipping of the matter or news-item complained of, in original, should accompany the complaint. The complaint has to state in what manner the passage or news-item or the material complained of is objectionable. He should also supply other relevant particulars, if any.

In the case of a complaint against non-publication of material the complainant will, of course, say how that constitutes a breach of journalistic ethics.

The Council cannot deal with any matter, which is sub-judice in the law court. The complainant has to declare that "to the best of his knowledge and belief he has placed all the relevant facts before the Council and that no proceedings are pending in any court of law in respect of any matter alleged in the complaint". A declaration that "he shall notify the Council forthwith if during the pendency of the inquiry before the Council any matter alleged in the complaint becomes the subject matter of any proceedings in a court of law" is also necessary.
Complaints before the Council

The jurisdiction of the Press Council extends to the whole of India. It does not have any branches and functions from its headquarters in Delhi. In its efforts to provide speedy and inexpensive justice, the Council often holds its sittings outside Delhi where inquiries into complaints pertaining to the particular region are conducted. This has created greater awareness about the Institution and people have often sought redressal through the Press Council instead of knocking at the doors of the law courts. One of the reason for this could be that the Press Council does not simply seek to pass judgement on the actions of the respondents — whether they be from the Press or the authorities. Its efforts are directed towards effecting a settlement to actually remove the hardship, aggrieved by which, a complaint may have been filed. In cases against the press, it could mean prevailing upon the paper to afford a right to reply to the complainants or publication of regrets by the paper. In the complaints against the authorities, it seeks assurance of remedial action from the respondents. It functions as a friendly watchdog to ensure preservation of freedom of the Press and maintenance and improvement of high standards of journalism.

During the period 1988-91 the Council registered 574 cases. Of these, 233 were complaints against authorities, and 341 complaints were against the Press. In 125 matters, adjudications were rendered, laying down important guiding principles, while 350 cases were summarily disposed of by the Hon’ble Chairman at the preliminary stage, withdrawal, or the matter having become
subjudice. Detailed statement of cases can be seen below.

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Complaints against Press

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Code of Conduct

Section 13 (2) (b) of the Press Council Act, 1978, requires the Council "to build up a code of conduct for newspapers, news agencies and journalists, in accordance with professional standards".

Some quarters have urged the Press Council to prepare a detailed code for journalists to guide them in their profession. But the Council has consistently adhered to the view that it is neither desirable nor necessary to formulate an exhaustive code in abstract, and that the Council is in consonance with the letter and spirit of Section 13 (2) (b) of the Act, building up a set of principles and guidelines through its adjudications on a case-to-case basis.
For the last three years, the Council has started the practice of preparing and publishing annually an index of adjudications and principles enunciated therein.

It is hoped that the journalists, the authorities and the public would benefit alike from the adjudications of the Council and abide by the guidelines laid down by it.

OMBUDSMAN

The Press is itself imposing a kind of self regulation, in keeping with the motto of "Freedom with responsibility". Recently the Times of India has appointed an Ombudsman Mr. P N Bhagwati, (former Chief Justice of India).

The Ombudsman Act as Watchdogs on the doings of the newspaper, and as intermediaries between the newspaper and the public. (Appointing Ombudsman is a normal practice with newspapers in U.S.A. Japan, Sweden, Canada, etc.)

ADVERTISING STANDARDS COUNCIL OF INDIA

The advertising industry in India which has witnessed tremendous growth in the last decade and which is expected to triple its billings before the end of the decade, decided to form a self regulating body called Advertising Standards Council of India (ASCI) monitor and promote standard of advertising practices in India with a view to:

1. Ensuring the truthfulness and honesty of representations and claims made through advertising and safeguarding against misleading advertising. ii) ensuring that Advertising is not offensive to generally accepted norms.
standards of public decency. iii) safeguarding against the indiscriminate use of advertising for the promotion of products or services which are generally regarded as hazardous to society or to individuals or which are unacceptable to society as a whole. iv) ensuring that advertisements observe fairness in competition and the canons of generally accepted competitive behaviour.

2. To codify adopt and from time to time modify the code of advertising practices in India and implement, administer and promote and publicize such a code.

3. To promote, maintain and uphold fair, sound, ethical and healthy principles and practices of advertising.

4. To promote better understanding of the benefits of fair, sound and ethical advertising amongst the Practitioners of advertising and in society at large.

5. To represent, protect, inform and guide the members of the company on matters relating to advertising.

6. To foster and promote co-operation amongst persons or companies engaged and involved in advertising.

The ASCI was registered as a company in 1985 under the Indian Companies Act 1956.

The membership of ASCI is divided into the following categories.

a) Advertisers of goods and/or services in any newspapers, periodicals or other media;

b) proprietors or publishers of newspapers or other periodicals who carry the advertisements of goods and/or services;

c) advertising agencies
d) hoarding contractors, film producers/distributors, block makers, printers and such other types of allied and ancillary trade and profession who assist in creation of or placement of advertising or are in any manner concerned with advertising.

The general Management and Control of ASCI is vested in the Board of Governors, who number 16 and who represent all the four categories of membership.

ASCI has a Consumer Complaints Council consisting of 14 members, 8 of whom are from professions and activities not related to advertising and the remaining six, being members of ASCI to examine and investigate the complaints received from the Consumer and the general public including the members regarding any breach of the code of conduct and advertising ethics and for recommending action to be taken in that regard.

The powers of the CCC as laid down in the Memorandum of Association are as follows:

d) Each Council shall be entitled to receive complaints from the Board of Governors, the Consumers, the general public and members of the company.

e) Each Council shall enquire, investigate and decide upon the complaints received by it within the frame work of the Code of Conduct adopted by the company.

f) All the decisions of each Council shall be by simple majority, in writing and may specify the action to be taken in respect of the offending advertisement.

g) Each Council may seek assistance of the Board of Governors on any matter that is placed before it or connected with the
purposes for which it has been created. Each Council will not be bound by any advice or assistance but its decisions and recommendations will be binding on the Board of Governors.

h) Each Council will forward all its decisions for implementation to the Board of Governors as expeditiously as possible.

i) Each Council shall submit a report of its working every year to the Board. The Board shall consider and forward a copy of the report with or without its comments, to the members along with the notice of the Annual General Meeting.

As of 3rd March'94, ASCI had 178 members. During the year 1992-93 CCC considered a total 250 complaints, of which 120 were UPHELD, 104 were not UPHELD, 24 were considered Non-issues.

ASCI has also adopted a code for self regulation in Advertising, whose declared fundamental principles are as follows:

"This Code for Self-Regulation has been drawn up by people in professions and industries in or connected with advertising, in consultation with representatives of people affected by advertising, and has been accepted by individuals, corporate bodies and associations engaged in or otherwise concerned with the practice of advertising with the following as basic guidelines with a view to achieve the acceptance of fair advertising practices in the best interests of the ultimate consumer:

I. To ensure the truthfulness and honesty of representations and claims made by advertisements and to safeguard against misleading advertisements.

II To ensure that advertisements are not offensive to generally accepted standards of public decency."
III To safeguard against the indiscriminate use of advertising for the promotion of products which are regarded as hazardous to society or to individuals to a degree or of a type which is unacceptable to society at large.

IV To ensure that advertisements observe fairness in competition to that the consumer's need to be informed on choices in the market place and the canons of generally accepted competitive behaviour in business are both served.

The Code's rules form the basis for judgement whenever there may be conflicting views about the acceptability of an advertisement, whether it is challenged from within or from outside the advertising business. Both the general public and an advertiser's competitors have an equal right to expect the content of advertisements to be presented fairly, intelligibly and responsibly. The Code binds the advertisers, the advertising agency and the media owner.

It is heartening to learn that in most of the cases brought to the notice of ASCI, Judgement given by it are accepted by the affected parties, resulting in the increased credibility of ASCI as a Watch Dog Mechanism on Advertising in the country.

CONSUMER ACTION GROUPS

Until a decade ago India was a sellers market but with growing liberalisation and increase in competition, it has become a buyers market, stressing the importance of the Consumer as the King. Though there have been organisations acting as Consumer activists working independently it was only in 1986 that the Government of India, through an Act of Parliament introduced the "Consumer Protection Act '86".
The Act is a milestone in the realm of consumerism. The Act is not only ameliorative but punitive as well. The unwary consumer can no longer be taken for a ride by unscrupulous vendors and service agencies. The Act provides for a cheap, simple and speedy remedy, in refreshing contrast to the teasing and dilatory forensic process of the regular courts. Any consumer can directly approach the District Forum, the state or the National Commission with a complaint in any form and have his real grievances redressed. Consumer organisations can also play their part in upholding the rights of the consumers.

Today nothing escapes the attention of the Consumer Forum including errors of omission and comparison committed by the Media.

A glimpse of the provisions of the Act is presented herein below:

1. The Act provides for the notification of Central and State Consumer Protection Councils by the respective governments with a view to protect the rights of consumers such as,
   i) the right to be protected (against hazardous goods)
   ii) the right to be informed (about quality, quantity, against unfair trade practices, etc.)
   iii) the right to be assured (of access to a variety of goods at competitive prices),
   iv) the right to be heard (of complaints)
   v) the right to seek redressal (through appropriate agencies) and,
   vi) the right to consumer education.

2. The Act aims to promote and protect the rights of the consumers with regard to defective goods, deficient services,
over charging or any unfair trade practices (as defined under MRTP ACT 1969). It includes false statement on quality or grade of goods/services false claims to sponsorship, making false and misleading promises on the articles, false projection of the needs for or usefulness of goods/service, giving warranty on products not based on adequate or proper test, and the like, whether made orally or in writing or by visible representation.

3. The Act provides that the complaints can be preferred by a consumer, a consumer organisation or the government to

i) District Forums

ii) State Commission

iii) National Commission,

The Act outlines the composition of the Consumer Forum as follows:

i) District Forum will consist of a President (District Judge) and two members (including a lady Social Worker).

ii) State Commission will consist of a President (High Court Judge) and four members (including atleast one woman).

iii) National Commission will consist of a President (Supreme Court Judge) and four members (including atleast one woman).

The jurisdiction of different forms are defined as follows:

i) District Forum shall have jurisdiction to entertain complaints related to claims less than Rs.1 lakh. It will
have the same power as are vested in a civil court. As a result of finding, it can order removal or the replacement of the defective goods, return of the price/charges, or order payment of due compensation.

ii) The jurisdiction of State Commission is for claims exceeding Rs.1 lakhs but less than Rs.10 lakhs, and on appeal against the orders of District Forum within the State.

iii) National Commission looks into claims exceeding Rs.10 lakhs and on appeals against State Commissions.

Though the Act was enacted to provide cheap and speedy redressal to the Consumer, in the recent past it has been noticed that because of the growing number of both legitimate and illegitimate complaints to these forums they are unable to cope up with the pressures and the decisions are getting delayed.

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6. Annual Report of Press Council of India'92
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