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MEDIA ETHICS IN INDIA: WHERE STATUTORY AND VOLUNTARY REGULATION CO-EXIST

S. Venkat Narayan
Syndicated Journalist
C-2-2073 Vasant Kunj
New Delhi-110070, India

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MEDIA ETHICS IN INDIA: WHERE VOLUNTARY AND STATUTORY REGULATIONS CO-EXIST

By S. Venkat Narayan

India, the world's largest democracy, is also home to one of the biggest media industries in the world. Nearly 44,000 publications are printed in a hundred languages. Their total circulation: about 127 million copies. Of them, nearly 4,500 are daily newspapers.

The size of television audience is no less staggering: there are now nearly a hundred TV channels. Only the government-controlled Doordarshan (DD) TV network is terrestrial. The rest are satellite channels. Together, they broadcast in over a dozen languages. Most of them are privately owned, and broadcast round the clock.

Television today reaches 362 million people, of whom 138 million live in metros. TV reaches 80 per cent of the population, and 60 per cent of the country's geographic area. There are more than 500 TV transmission centres. TV has been a government monopoly for decades. But its explosion began barely half a dozen years ago. Today TV is the primary source of news for 45 per cent of the population, whereas newspapers enjoy that privilege with barely a third of the population, and radio even less: 20 per cent.

The film industry in India is equally huge. The dream factories of Mumbai, Chennai, Calcutta, Hyderabad, Bangalore, Thiruvananthapuram together churn out two feature films a day on an average. Since 1913, when the first film was made in India, more than 30,000 films have been produced in 30 languages. Every day, some 15 million people flock to over 13,000 cinema halls across India to see their favourite heroes and heroines singing, dancing and romancing at some of the most beautiful locales in the world.

But the Bollywood saga doesn't end there. About a hundred million people see at least one film daily on one of the TV channels across India alone. Another 50 million see them yearly worldwide. The patronage Indian films enjoy is not confined to the 26-million-strong Indian diaspora alone. Indian films are watched by millions of people in neighbouring Pakistan, Bangladesh, Sri Lanka and Nepal, the Middle East, Europe, Africa, and the Americas. It has been estimated that a billion people spread over 90 countries across the globe see at least one Indian film in a year. Film producers like Subhash Ghai and Yash Chopra say that they no longer make their films for Indian audiences. They recover what they spend on making their films from the overseas market itself. What their films earn in India is profit.

I am talking about newspapers, radio, television and films in India primarily to give you some idea about the sheer size of the Indian mass communication industry.

The first newspaper in India was published in Calcutta by James Augustus Hicky, an employee of the East India Company. During the colonial era, legislation pertaining to the press was passed primarily to suppress the freedom of newspapers to write against the rulers of the day. A number of laws came into existence. They include laws like the Licensing Act of 1857, the Vernacular Press Act of 1878, the Newspapers (Incitement to Violence) Act of 1908, the Indian Press Act of 1910, and the Press (Emergency Powers) Act of 1931. The colonial rulers also used the chilling Official Secrets Act of 1923 as well as several provisions in the Indian Penal Code of 1860 to stifle dissent and criticism of their acts of commission and omission.

Things began to change once India became free in August 1947. The following year, Prime Minister Jawaharlal Nehru's government set up a Press Laws Inquiry Committee to review all laws relating to the press in the light of the fundamental rights voted by the Constituent Assembly. In 1950, the Constitution of free India guaranteed to all citizens the right to freedom of speech and expression through Article 19(1)(a). In 1951, the Press (Emergency Powers) Act of 1931 was replaced by the Press (Objectionable Matter) Act. This was allowed to lapse in 1956.
In 1952, the first Press Commission was constituted, with heavy-weights such as Sardar KM Pannikar, Acharya Narendra Deva and M Chalapathi Rau as its members. It made some very useful recommendations to improve the quality of journalism in the country. In 1955, the government passed the Working Journalists (Conditions of Service and Miscellaneous Provisions) Act, designed to ensure security of jobs, better working conditions, fixation of respectable minimum levels of wages, and a certain status to working journalists of all categories.

Ten years later, the Press Council Act was passed, providing for a self-regulatory mechanism for the press with the dual object of protecting the freedom of the press and maintenance of high standards of the profession. This Act enabled anybody to go to the Press Council—a quasi-judicial body comprising journalists and laymen—with a complaint against violation of the norms of journalism by the press.

In 1975, then Prime Minister Indira Gandhi had imposed an Internal Emergency to save herself from being ousted from office after a court found her guilty of breaking the electoral law. She suspended Article 19 of the Constitution, and imposed censorship by an executive order under Rule 48(1) of the Defence of India Act of 1971. She then promulgated through an ordinance a new Act, patterned on the Press (Objectionable Matter) Act of 1951: The Prevention of Publication of Objectionable Matter Ordinance, 1975. Under this, security could be demanded from printers, publishers and editors of newspapers. On second offence, this security could be forfeited, or fresh security demanded. Mrs Gandhi followed this up by repealing the Press Council Act of 1965 and abolishing the Press Council. She also scrapped the Parliamentary Proceedings (Protection of Publication) Act of 1956, which gave the press immunity from legal action for publication of parliamentary proceedings.

Of course, the so-called Iron Lady of India had paid the price for playing havoc with press freedom, and people’s fundamental rights. She was booted out of office in a historic general election in 1977. The first non-Congress Government that came to power in that election, with Morarji Desai as Prime Minister, promptly dismantled all the laws that Indira Gandhi had enacted to suppress the media. The new government repealed the Prevention of Publication of Objectionable Matter Act in March 1977, and passed a new Press Council Act in 1978.

The new Act added three new features: 1. The manner of nomination of the members of the Council was made totally free from any governmental influence; 2. The Council was given powers to levy a charge on newspapers in order to make it financially more independent than its predecessor; and 3. The Press and Registration Appellate Board (which used to comprise two government officers earlier) was now made part of the Press Council Act. It is now constituted with its chairman and another member of the Council. This eliminated the possibility of the Board being used by the government as an instrument to indirectly suppress the press (as was done during the much-detested Internal Emergency).

In 1978, the Desai Government had also set up the Second Press Commission, which recommended the amending of provisions in a number of laws that affected the free functioning of the press. Such laws included the Official Secrets Act, the Contempt of Courts Act, the Telegraph Act, the Indian Post Office Act, and the Law of Defamation, among others. It also recommended that India enact a Freedom of Information Act and dump the Official Secrets Act.

The Freedom of Information Bill, 2000 is now ready and is waiting to be enacted by Parliament. Its avowed aim is "to provide for freedom to every citizen to secure access to information under the control of public authorities to promote openness, transparency and accountability." If and when passed, the Act will have an overriding effect on The Official Secrets Act of 1923, and every other Act in force shall cease to be operative to the extent to which they are inconsistent with its provisions.

However, organisations such as the Press Council, the Press Institute of India, the National Campaign for People’s Right to Information, and The Forum for Right to Information have demanded amendments in the draft bill finalised by the cabinet. They want that the Right to Information should also extend in respect of private companies, non-governmental agencies (NGOs) and international agencies, whose activities are of a public nature, and have a direct bearing on public interest. They say the law must contain strong penal provisions against wilful and wanton withholding or delay in supplying information or deliberately
supplying misleading or inaccurate information. They also demand that the law should contain an appeal mechanism of an independent nature to provide reliable redress to any citizen dissatisfied with any decision of a public authority. In the present draft bill, all appeals are to other government authorities.

Some details about the Press Council will be useful here. A body corporate having perpetual succession, it consists of a chairman and 28 other members. By convention, the chairman is a retired judge of the Supreme Court of India. Of the 28 members, 20 represent the press, five are Members of Parliament (MPs), and three are persons having special knowledge or experience in respect of education and science, law and literature and culture. The chairman and other members hold office for a period of three years. A retiring member is eligible for re-nomination for not more than one term. An MP nominated to the Council ceases to be a member the moment he ceases to be an MP. The 20 members representing the press are nominated by press organisations and news agencies notified by the Press Council as representative bodies of the press on an all-India basis. The Council has its own source of revenue by way of fee levied on registered newspapers/periodicals and news agencies. The deficit is made good by grants-in-aid from the central government.

Some of the important functions which the Press Council is required to perform are: to help newspapers and news agencies to maintain their independence; to build up a code of conduct for them in accordance with high professional standards; to ensure on their part the maintenance of high standards of public taste and foster a due sense of both the rights and responsibilities of citizenship; to encourage the growth of a sense of responsibility and public service among all those engaged in the profession of journalism; to keep under review any development likely to restrict the supply and dissemination of news of public interest and importance; and to promote a proper functional relationship among all classes of persons engaged in the production and publication of newspapers or in news agencies.

Over the years, the Press Council has evolved a set of broad principles through its adjudications and guidelines, and published them in 1983-84. They were updated in 1992 as well as in 1995 by then Chairman RS Sarkaria and published as a book, entitled "A Guide to Journalistic Ethics." The 1995 edition contains three parts. Part I contains the updated norms of journalistic ethics in a concise form. Part II contains ethico-legal essays on topics with which journalists are most concerned: defamation, privacy, right of reply, journalistic ethics, and protection of confidential sources of information. And Part III contains 10 appendices. Some of them are guidelines issued by the Press Council from time to time, while others provide the text of legal provisions and extracts of important judgments.

Just like codes of journalistic ethics drafted and published in various countries, the basic principles set out in the Indian Press Council's Guide are not cast-iron statutory rules but broad general principles. If applied with due discernment and adaptation, to the varying circumstances of each case, they will help journalists to self-regulate their conduct along the path of professional ethics.

For instance, the guide says that the fundamental objective of journalism is "to serve the people with news, views, comments and information on matters of public interest in a fair, accurate, unbiased, sober and decent manner. Publication of inaccurate, baseless, graceless, misleading or distorted material should be avoided."

"Journalists should judge no one unheard," the guide points out. It asks newspapers not to publish anything which is manifestly defamatory or libellous against any individual or organisation unless, after due care and checking, they have reason to believe that it is true and its publication will be for public good." Intrusion or invasion on the privacy of individuals is not permissible unless outweighed by genuine overriding public interest. While reporting crime involving rape, abduction or kidnap of women or sexual assault on children, or raising doubts and questions touching the chastity, personal character or privacy of women, the names, photographs of the victims or other particulars leading to their identity should not be published.

As a matter of self-regulation, newspapers should exercise due restraint and caution in presenting any news, comment or information which is likely to jeopardise, endanger or harm the paramount interests of the state and society. Using or passing off the writings or ideas of another as one's own, without crediting the source, is an offence against the ethics of journalism. Journalists should not tape-record anyone's
conversation without that person’s knowledge or consent, except where the recording is necessary to protect the journalist in a legal action, or for other compelling good reason. Newspapers/journalists should not publish anything which is obscene, vulgar or offensive to public good taste. They should avoid presenting acts of violence, armed robberies and terrorist activities in a manner that glorifies their acts, declarations or death in the eyes of the public.

The Press Council says that, if a journalist receives information from a confidential source, he should respect the confidence, and that it cannot compel the journalist to disclose such source. But it shall not be regarded as a breach of journalistic ethics if the journalist voluntarily discloses the source in proceedings before the Press Council if he considers it necessary to repel effectively a charge against him/her.

The Press Council discharges its responsibilities primarily through the medium of adjudication on complaints received by it either against the press for violation of journalistic norms, or by the press against undue interference by an “authority” with its freedom. If the Council is satisfied after due inquiry that a newspaper or news agency has offended against the standards of journalistic ethics or public taste, or that an editor or working journalist has committed any professional misconduct, it may warn, admonish or censure the newspaper, the news agency, the editor or the journalist, or disapprove their conduct.

In complaints against the government and its authorities, the Council may make such observations as it may think fit in any of its decisions. The Press Council’s decisions are final, and they cannot be questioned in any court of law. Even though the Indian Press Council’s decisions do not carry punitive sanctions for their enforcement, it wields a lot of moral authority. Its decisions are announced from time to time, and given wide publicity in the newspapers. However, if a newspaper censured refuses to print the Council’s decisions in its columns, there is nothing it can do.

Because it lacks penal powers, the Indian Press Council has often been dismissed as a toothless wonder. But its former Chairman Sarkaria was against the Council getting punitive powers because he felt that persuasive and moral powers are enough. But his successor and current Chairman Parshuram Baburam Sawant explains: "If we (the Press Council) get penal powers, and inflict a penal measure, the matter is bound to go to court. Even if there is a provision that the decision of the Press Council shall be final, the constitutional powers of the High Court and the Supreme Court, under Sections 226 and 32, cannot be taken away by statutory provision."

So an aggrieved party penalised by the Press Council can go to the courts and challenge its verdict. Once the matters go to court, two consequences follow. As Chairman Sawant puts it, "The first is all the parties concerned, including the Press Council, get bogged down in a long-drawn litigation. Apart from the expenses, when the matter is finally decided, it is too late and what is sought to be an efficacious remedy will become almost infructuous. And, secondly, since the Press Council has powers not only to take action against the press or the authorities for illegal actions but also for unethical actions, it is the court which will sit in appeal over not only for what the Press Council thinks is illegal, but what is unethical or ethical. In other words, it is the courts which come to substitute themselves for the Press Council. This is not what was intended in enacting the Press Council Act."

Sawant says that, on an average, the Press Council receives about eight to nine hundred complaints per year. They are mostly against the press, but a sizeable number are also against the authorities. After notices are issued to both the press and the authorities, they attend the hearings at the Press Council, or are represented by their lawyers or representatives. "We have been adjudicating on matters, and there have been reconciliations also which we have brought about. Many of the newspapers publish whatever we want them to and also the replies of the aggrieved parties."

But not all newspapers tend to oblige the Press Council, though. The Times of India is one such. In 1989, it appointed retired Supreme Court Chief Justice PN Bhagwati as its ombudsman to deal with public complaints against what is published in its columns. Explaining the reasons for appointing an ombudsman, the daily’s then Editor Dileep Padgaonkar said the newspaper was trying to "give readers a chance to appeal to another authority just in case the editor does not give them a fair hearing."
An ombudsman was appointed for the first time in the world in 1967 by an American newspaper called the Courier Journal of Kentucky and its sister publication, the Louisville Times. The Washington Post followed suit in 1970. Today, there are about 35 press ombudsmen in the United States and Canada. A national press council called the National News Council was indeed established in the US on a voluntary basis, but it could survive only for a decade. Sweden created a national Ombudsman in 1969 after the Swedish Press Council—established in 1916, the first of its kind in the world—came under attack in Parliament and outside. The Swedish Ombudsman has no statutory basis, but decides most of the complaints against the press. And the Swedish Press Council adjudicates issues in which a matter of fundamental interest is involved.

In Britain, most national newspapers appointed their own ombudsmen in 1989-90, at a time when there was severe criticism of the voluntary Press Council. They include The Times, The Guardian, and The Independent. The British press was dissatisfied with the Council’s proposed reforms. The Council was subsequently replaced by a voluntary Press Complaints Commission.

However, The Times of India was the first newspaper in India to appoint an ombudsman. The immediate reason that led to the appointment appears to be the Press Council’s somewhat cumbersome complaints procedure. Because it is a statutory body, it is obligatory for the Press Council to give parties to a complaint a reasonable opportunity to be heard, to produce evidence, to cross-examine witnesses and to appear before its Inquiry Committee with a lawyer. The Inquiry Committee comprises members of the Press Council. It meets in different cities and decides the cases after elaborate hearings. Its decisions are then sent to the full Council, which generally approves them. After the approval, the Council pronounces a formal adjudication.

Busy editors do not have the time to deal with the Council’s formal complaints mechanism, particularly when they are faced with many complaints at the same time! Incidentally, during the three years preceding the appointment of Justice Bhagwati as an ombudsman, as many as 21 complaints against The Times of India reached the level of the Press Council’s inquiry committee. Interestingly, the complaints to the Council against The Times of India fell drastically after the daily appointed its own ombudsman. For example, only two complaints against it reached the level of the inquiry committee during 1990-91 but were thrown out, and just one during 1991-92, which was upheld.

Justice Bhagwati was not associated with The Times of India before his appointment. He has no experience of journalism. He does not work full-time, and has not been provided with any full-time staff. He receives staff assistance only when necessary, to research the background of each complaint and to prepare his conclusions. He takes up complaints mostly as an adjudicator, not as a conciliator. He does not take up any complaint on his own, or accept third party complaints. He receives complaints mostly by mail, and entertains no complaints by telephone or in person. In 1990, he received 75 complaints. They slumped to 66 the following year. He does not make any internal inquiries against editorial staff on his initiative. Nor does he subject any stories to systematic checks by sending them to sources and asking them to identify errors.

He does not write personal memos or in-house memoranda for the editorial staff. However, copies of his opinions go to the editor and chairman of The Times Group. Bhagwati thinks his appointment has increased the awareness of ethical issues among the editorial staff. He writes a report for publication in the paper twice or thrice a year. Occasionally, he writes a column, too, and thinks the exposure he is getting in the paper is “sufficient.”

In the US and Britain, most of the dailies regularly publicise their ombudsman’s existence and exhort their readers to send their complaints to him. This is important for the success of the institution of the ombudsman. But The Times of India does not care to remind its readers about the existence of its ombudsman. Nor is its ombudsman too bothered about it. The last time I read Bhagwati’s reports or column in The Times of India was so long ago that I am not even sure if he continues to be its ombudsman! Clearly, this is not a happy state of affairs.

So, neither the statutory Press Council nor the self-regulatory mechanism of an ombudsman is functioning with the kind of vigour that is necessary. But the press in India continues to be vibrant, particularly some
sections of it. It is fair to say that a lot of journalists tend to exercise self-restraint and are not adventurous enough to probe the limits of press freedom. Once in a while, there is a flutter when an enterprising reporter comes up with an interesting story in the name of investigative journalism. Early this year, former cricketer Manoj Prabhakar and a sportswriter of tehelka.com met a large number of cricketers and cricket administrators and secretly videotaped conversations with them, in which they openly admitted to the prevalence of rampant match-fixing in the country. Names of wellknown cricketers, such as Kapil Dev, Mohammed Azharuddin, Ajay Jadeja, and Nikhil Chopra were freely bandied about. This was clearly the most sensational story of the decade. A national enquiry is now on, and Messrs Azharuddin, Jadeja and Chopra are out of the national team, and Kapil Dev is most likely to be dumped as its coach.

But old-fashioned journalists attacked Prabhakar for resorting to questionable means to prove that bribery and match-fixing are commonplace in Indian cricket. But tehelka.com’s Editor-in-Chief Tarun J Tejpal defended the sting operation thus: “Tehelka.com did not sting (Bollywood actress) Karishma Kapoor talking about (fellow actress) Raveena Tandon; nor did it sting Azhar talking about his wife. What we did concerned only the public domain, and public figures who were cheating on public sentiment and money. Surely, the heart of journalism should be about asking uncomfortable questions, about revealing what someone is trying to conceal, about pushing the envelop of inquiry.”

Mercifully, Indian newspapers are still very shy of preying into the private lives of politicians and other newsmakers. Most of them play the game by the rules, and tend to be very conservative and conventional. But for the daring enterprise of a handful of reporters, editors and newspapers, some of the most sensational cases of corruption and bribery that rocked India in the past decade may not have seen the light of the day. Neither the Press Council nor the Ombudsman has come in the way of such efforts to get at the truth by using unconventional methods in the name of public interest. They co-exist and are performing their duties to promote ethics in Indian journalism. And that’s a jolly good thing.