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NOTE ON PRESS COUNCIL OF INDIA

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Note on Press Council of India

I. Introduction

1. In a democracy, the media wields significant power. Even though, it is not directly part of the political system, the media has the ability to influence public opinion, frame the issues of the day and challenge the policies of the government.¹
2. Indian Courts have described the freedom of press as an ‘Ark of the Covenant’ in every democracy². The freedom of the press/mass media is derived from the fundamental right to free speech and expression guaranteed under Article 19(1)(a) of the Constitution of India.
3. A statutory body – the Press Council of India – was established in 1966 for the twin purposes of preserving the freedom of the press and of maintaining and improving the standards of newspapers and news agencies in India. The present Council functions under the Press Council Act, 1978.
4. The main purpose of this note is to examine the provisions of freedom of expression contained in the Constitution of India and to study the Press Council Act, 1978 to discover whether the Press Council of India has been able to meet its stated objectives of preserving the freedom of the press and of maintaining and improving the standards of newspapers and news agencies in India.

II. Freedom of Press

¹ Referring to the indirect but significant role of the media (or press) in influencing the political system, Thomas Carlyle wrote in 1840, “Burke said there were Three Estates in Parliament; but, in the Reporters’ Gallery yonder, there sat a Fourth Estate more important far than they all”

² In Bennett Coleman v. Union of India (1972) 2 SCC 788 : AIR 1973 SC 106 : (1973) 2 SCR 757, A.N. Ray, C.J said thus:

“The liberty of the press remains an ‘Ark of the Covenant’ in every democracy.... The newspapers give ideas. The newspapers give the people the freedom to find out what ideas are correct.”

5. It is by now well established in a catena of judgements of the Supreme Court of India that the fundamental right to freedom of speech and expression, embodied in Article 19(1)(a) of the Constitution, includes freedom of the press^{3,4}. The Constitution does not directly provide for the freedom of press. Articles 19(1)(a) and (2), which are to be read together, read as follows:

“19. (1) All citizens shall have the right

(a) to freedom of speech and expression;

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law insofar as it relates to, or prevent the State from making any law relating to, libel, slander, defamation, contempt of court or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State.”

6. It is evident from the language of Article 19(1)(a) and (2), that the Constitution has not guaranteed an absolute freedom of speech and expression. It has only guaranteed some measure of freedom within limits. Moreover, the Constitution does not specifically guarantee the freedom of the press. This is amply evident from various decisions of the Supreme Court⁵ where it has been held that if any restrictions on the exercise of the Fundamental Rights Under Article 19(1)(a) do not fall within the limits of Article 19(2), it cannot be upheld.

7. In India, it has been widely debated whether or not it is desirable to recognise explicitly freedom of the press — as an institutional freedom. The Constitution

³ Supreme Court in *Union of India v. Assn. for Democratic Reforms* (2002) 5 SCC 294

⁴ *Printers (Mysore) Ltd. v. CTO* (1994) 2 SCC 434

⁵ *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*, (1985) 1 SCC 641; *Bennett Coleman v. Union of India* (1972)

of India does not directly provide for the freedom of press, unlike the Constitution of the United States which has adopted libertarian principles⁶ in explicitly recognising the freedom of the press in the First Amendment to the US Constitution which provides that,

"Congress shall make no law... abridging the freedom of speech, or of the press".

It is relevant to note that in India, the Second Press Commission (1978) had opined, that "no useful purpose" will be served by inserting a separate provision on those lines "as that concept is already embodied in Article 19(1)(a)"⁷ Much before the independence of India, the Privy Council had observed that common law freedom could be claimed by the press. In *Channing Arnold v. King Emperor (1914)*⁸ Privy Council said thus:

"The freedom of the journalist is an ordinary part of the freedom of the subject, and to whatever length the subject in general may go, so also may the journalist, but apart from statute law, his privilege is no other and no higher... No privilege attaches to his position."

8. The fundamental principle behind the freedom of press is from the perspective of readers, i.e. "people's right to know". In the *Bennett Coleman v. Union of India (1972)*⁹, Mathew, J. observed,

"The constitutional guarantee of freedom of speech is not so much for the benefit of the press as it is for the benefit of the public. The freedom of speech includes within its compass the right of all citizens to read and be informed."

⁶ Libertarian Theory of Press is one of the four theories of the relation of the press to society or to government. The Libertarian Theory of Press propounds that press informs, entertains, sells and helps in discovering the truth. It is a free marketplace of ideas where anyone can publish his/ her views and expressions but cannot defame or be obscene. There shall be minimum checks and balances by the government.

⁷ Freedom of Press as an Institution A G Noorani, WS-100 Economic & Political Weekly, Oct 26, 1991.

⁸ AIR 1914 PC 116, 117

⁹ (1972) 2 SCC 788 : AIR 1973 SC 106 : (1973) 2 SCR 757; at p. 818: (SCC p. 846, paras 168, 169)

In the same case (supra)¹⁰, A.N. Ray, C.J. explained freedom of the press thus:

“45. It is indisputable that by freedom of the press is meant the right of all citizens to speak, publish and express their views. The freedom of the press embodies the right of the people to read. The freedom of the press is not antithetical to the right of the people to speak and express.”

9. The Second Press Commission (1978) explained the concept of freedom of press in the context of citizens’ access to diverse information and views on matters of public significance when it referred to the impact of media ownership and collusion with big business on the freedom of the press. In its Report (Vol. I pp. 34-35) the Commission described the concept of freedom of press thus:

“15. The expression ‘freedom of the press’ carries different meanings to different people. Individuals, whether professional journalists or not, assert their right to address the public through the medium of the press. Some people stress the freedom of the editor to decide what shall be published in his paper. Some others emphasize the right of the owners to market their publication. To Justice Holmes, the main purpose of the freedom was to prevent all prior restraint on publication.

16. The theory is that in a democracy freedom of expression is indispensable as all men are entitled to participate in the process of formulation of common decisions. Indeed, freedom of expression is the first condition of liberty. It occupies a preferred position in the hierarchy of liberties giving succour and protection to other liberties. It has been truly said that it is the mother of all other liberties. The Press as a medium of communication is a modern phenomenon. It has immense

¹⁰ (1972) 2 SCC 788 : AIR 1973 SC 106 : (1973) 2 SCR 757; at p. 796 (SCC p. 823, para 80)

power to advance or thwart the progress of civilization. Its freedom can be used to create a brave new world or to bring about universal catastrophe.

17. Freedom of speech presupposes that right conclusions are more likely to be gathered out of a multitude of tongues than through any kind of authoritative selection. It rests on the assumption that the widest possible dissemination of information from as many diverse and antagonistic sources as possible is essential to the welfare of the public. It is the function of the Press to disseminate news from as many different sources and with as many different facts and colours as possible. A citizen is entirely dependent on the Press for the quality, proportion and extent of his news supply. In such a situation, the exclusive and continuous advocacy of one point of view through the medium of a newspaper which holds a monopolistic position is not conducive to the formation of healthy public opinion. If the newspaper industry is concentrated in a few hands, the chance of an idea antagonistic to the idea of the owners getting access to the market becomes very remote. But our constitutional law has been indifferent to the reality and implication of non-governmental restraint on exercise of freedom of speech by citizens. The indifference becomes critical when comparatively a few persons are in a position to determine not only the content of information but also its very availability. The assumption in a democratic set-up is that the freedom of the press will produce a sufficiently diverse Press not only to satisfy the public interest by throwing up a broad spectrum of views but also to fulfil the individual interest by enabling virtually everyone with a distinctive opinion to find some place to express it.” (emphasis supplied)

10. In the *Brij Bhushan case (1950)*¹¹ the Supreme Court upheld the liberty of the press with respect to pre-censorship of a journal. In *Romesh Thappar v. State of Madras (1950)*¹², the petitioner had challenged an order issued by the Government of Madras under Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949 imposing a ban on the circulation of the petitioner's journal. The Court struck down the order as violative of the right to freedom of speech and expression under Article 19(1)(a) and upheld the liberty of circulation of ideas in the form of journals, papers, periodicals etc.
11. In *Express Newspaper (P) Ltd. v. Union of India, 1959*¹³, Bhagwati J. quoted the following passages on the general meaning of freedom and resulting conception of the freedom of Press, from “Freedom of the Press — A framework of Principles” (Report of the Commission on Freedom of Press in the United States of America).

“119. The General Meaning of Freedom

To be free is to have the use of one's powers of action (i) without restraint or control from outside (ii) with whatever means or equipment the action requires.

“The primary suggestion of the term ‘freedom’ is the negative one, the absence of external interference whether to suppress or to constrain. To be free is essentially to be free from something — some arbitrary impediment to action; some dominating power or authority. And so long as it can be taken for granted that the unhindered person has all the needs to act

¹¹ *Brij Bhushan v. State of Delhi*, AIR 1950 SC 129, 133.

¹² *Romesh Thappar v. State of Madras*, AIR 1950 SC 124.

¹³ *Express Newspaper (P) Ltd. v. Union of India*, 1959 SCR 12, (12)

with — which is usually the case the negative meaning remains the chief elements of the conception.

“But since freedom is for action, and action is for an end, the positive kernel of freedom lies in the ability to achieve the end; to be free means to be free for some accomplishment. And this implies command of the means to achieve the end. Unless the equipment necessary for effective action is at hand, unrestraint may be a mockery of freedom ... Unrestraint without equipment is not liberty for any end which demands equipment.”

.....

Resulting conception of Freedom of the Press:

“The emerging conception of freedom of the press may be summarised as follows:

As with all freedoms, Press freedom means freedom from freedom for. A free Press is free from compulsions from whatever source, governmental or social, external or internal. From compulsions, not from pressures; for no press can be free from pressures except in a moribund society empty of contending forces and beliefs. These pressures, however, if they are persistent and distorting — as financial, clerical, popular, institutional pressures may become — approach compulsion; and something is then lost from effective freedom which the Press and its public must unite to restore.

“A free press is free for the expression of opinion in all its phases. It is free for the achievement of those goals of press service on which its own ideals and the requirements of the community combine and which existing techniques make possible. For these ends it must have full command of technical resources, financial strength, reasonable access to sources of information at home and abroad, and the necessary facilities for bringing information to the national market. The press must grow to the measure of this market.”

III. Mandate and Powers of Press Council of India

12. The Press Council of India (hereinafter, “the Council”) was set up by the Parliament on the recommendations of the First Press Commission (1952). The present Council functions under the Press Council Act, 1978 (hereinafter, “the Act”).

13. The Council is a statutory, quasi-judicial¹⁴ institution headed by the Chairman who is nominated by a Committee consisting of the Chairman of the Rajya Sabha, the Speaker of the Lok Sabha and a person elected by the members of the Council. In addition to the Chairman, the Council comprises of 28 other members, of whom 20 represent the press and are nominated by the press organisations and news agencies recognised and notified by the Council, 5 members are nominated from the two Houses of Parliament and 3 represent the fields of education and science, law, and literature and culture and are nominated by the Sahitya Academy, University Grants Commission and the Bar Council of India. The Chairman and members serve on the Council for a term

¹⁴ 1975 SCC OnLine Del 157 : ILR (1976) 1 Del 753

of three years. A retiring member shall be eligible for re-nomination for not more than one term.

14. Section 13 of the Act states the mandate of the Council as thus,

“13. Objects and functions of the Council.—(1) 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.

(2) The Council may, in furtherance of its objects, perform the following functions, namely:—

(a) to help newspapers and news agencies to maintain their independence;

(b) to build up 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 the 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 organisation: Provided that nothing in this clause shall preclude the Central Government from dealing with any case of assistance received by a newspaper or news agency in India from any foreign source in any other manner it thinks fit;

(g) to undertake studies of foreign newspapers, including those brought out by any embassy or other representatives in India of a foreign State, their circulation and impact. Explanation.—For the purposes of this clause, the expression “foreign State” has the meaning assigned to it in section 87A of the Code of Civil Procedure, 1908 (5 of 1908);

(h) to promote a proper functional relationship among all classes of persons engaged in the production or publication of newspapers or in news agencies: Provided that nothing in this clause shall be deemed to confer on the Council any functions in regard to disputes to which the Industrial Disputes Act, 1947 (14 of 1947), applies;

(i) to concern itself developments such as concentration of or other aspects of ownership of newspapers and news agencies which may affect the independence of the Press;

(j) to undertake such studies as may be entrusted to the Council and to express its opinion in regard to any matter referred to it by the Central Government;

(k) to do such other acts as may be incidental or conducive to the discharge of the above functions.”

15. Thus, it is evident from Section 13 of the Act that amongst other things, the Council may in furtherance of its objects: (i) help newspapers maintain their independence; (ii) build a code of conduct for journalists, news agencies and newspapers; (iii) ensure on the part of newspapers, news agencies and journalists “high standards of public taste” and foster responsibility among citizens; (iv) review any development likely to restrict the supply and dissemination of news; and (v) concern itself with developments such as concentration of or other aspects of ownership of newspapers and news agencies.

The above functions of the Council emphasize the dual objects of the Council as per the Act, namely, (i) preservation of the freedom of the Press and (ii) maintenance and improvement of the standards of newspapers.

16. Section 14 provides that on receipt of a complaint made to it or otherwise, the Council may, after giving the newspaper, or news agency, the editor or journalist concerned an opportunity of being heard, hold an inquiry if it believes that a newspaper or news agency has offended against the standards or journalistic ethics or public taste or any professional misconduct by an editor or a working journalist. 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. These are the powers of censure given to the Council under Section 14 of the Act.

For the purposes of performing its functions or holding an inquiry, the Council shall have the same powers as are vested in a Civil Court while trying a suit under the Code of Civil Procedure, 1908. Furthermore, every inquiry held by the Council shall be deemed to be a judicial proceeding under Sections 193 and 228 of the Indian Penal Code 1860. Decisions of the Council are final and cannot be appealed before a court of law.

17. In *Shri K.K. Birla v. The Press Council of India & Others (1975)*,¹⁵ the Delhi High Court while referring to the Section 12 (Objects and functions of the Council) of the Press Council Act, 1965 (earlier Act) had held the functions performed by the Press Council to be quasi-judicial in character.

“12. That the nature of the duties cast upon the Press Council, the power to require any newspaper to publish the particulars of the inquiry, and the elaborate procedure set down in the regulations for hearing of the complaints, all lead to the conclusion that the Press Council has to act quasi-judicially. The Press Council has to determine in every case by a majority of the votes of the members of the Press Council and then to communicate in writing the decision to the parties to the case. Any decision of impropriety in a complaint under section 12 of the Press Council Act, is likely to affect a man's reputation. Thus, an objective assessment has to be made in such cases. A duty to act judicially has to be inferred from the nature of the rights affected. There has to be a quasi-judicial approach in the matter of determination of complaints before the Press Council. Various provisions of the Code of Civil Procedure have been made applicable to the Press Council in holding enquiries before it. Every enquiry held by the Press Council is deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Penal Code, 1860. It is also obligatory for the Press Council to give the parties a reasonable opportunity to be heard in the enquiry, to produce evidence, to cross examine witnesses, and to appear before the Press Council by a legal practitioner. All these import a duty on the Press Council to act

¹⁵ 1975 SCC OnLine Del 157 : ILR (1976) 1 Del 753

judicially, and consequently the functions performed by it have to be held to be quasi-judicial in character.” (emphasis supplied)

18. The language employed in Section 13 (1) of the Act wherein it states, “The objects of the Council shall be to preserve the freedom of the Press” is understood in the widest amplitude and not restricted to only as against State action. It has been held in the *Shri K.K. Birla case (1975) (Supra)* that there is nothing in the Act or any intention of the legislature spelled out from the provisions of the Act to confine the jurisdiction of the Press Council against the State or State functionary. In the above case, the Delhi High Court while referring to the preamble and Section 12 (Objects and functions of the Council) of the Press Council Act, 1965 (earlier Act) held thus,

“30. Limitation cannot be read in a provision of the statute, if none is provided by the legislative. The Courts cannot arbitrarily cut down the amplitude of an expression used by the legislative. Where the language of the section is plain, it is not open to read in limitations which are not there. To limit the meaning of freedom of Press in section 12 of the Act, by adding words or importing the concept of freedom of Press as understood in Article 19(1)(a) of the Constitution, alleged to be available only against the State action, would be defeating that legislative intend and laying down a different policy. The legislative purpose is clear from the preamble and section 12 of the Act that the Press Council is enjoined to preserve the freedom of Press, in whomsoever it vests and against whosoever infringes, be that state or public authority, legal or fictional person, individual or joint stock company.

.....

The Press Council is to safeguard the Freedom of the Press against threats of its violation originating from any source whatsoever. It is the Press Council which must preserve the liberty of Press against insidious attempts constantly made to restrict, impinge upon or infringe it. But there is nothing in the Act or any intention of the legislature spelled out from the provisions of the Act to confine the jurisdiction of the Press Council against the State or State functionary. One of the functions entrusted to the Press Council is to help newspapers to maintain their independence. The independence of the newspaper can be jeopardised by any external pressure emanating from any source, be the political parties, trade unions, advertisers, other newspapers or any other conceivable agency. Against under section 12(2)(e) the Press Council is to keep under review any development likely to restrict the supply and dissemination of news of public interest and importance. “Any development” suggests that the legislature intended it to be of widest amplitude and not to restrict it to only as against State action. There is further built in guidance when we refer to the provisions of section 12(2)(f), under which the Press Council is called upon to keep under review cases of assistance received by any newspaper or news agency in India from any foreign source. Here the State or State functionary is not involved at all, yet the Press Council in furtherance of its objects is enjoined to perform the function to keep under review such cases.” (emphasis supplied)

Whenever there is infringement of the freedom of the press and independence of the newspaper¹⁶, irrespective of the source of the threat, the jurisdiction of the Press Council is attracted. In the KK Birla case (1975) (supra), Delhi High Court observed thus,

“35. The concept of freedom of Press mentioned in section 12 of the Act in addition to is being a fundamental right is made, a statutory right with statutory machinery to preserve it. Whenever there is infringement or impingement of 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 be that by the State, State functionary, Public Authority, companies, individual 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 development of the Press protecting it from external pressure, irrespective of the source or origin of the pressure.”

19. Considering the above discussion, it emerges that the Press Council of India is vested with the authority of declaratory adjudication with limited powers to give directions under the Act. (i) While the Council has the power to issue the guidelines to the press, it does not have the power under the Act to enforce such guidelines. As per Section 14 of the Act, the Council has the power to admonish or censure the press or disapprove the conduct of the editor or the journalist, if after holding an inquiry, it is satisfied that it is necessary so to do. (ii) It may

¹⁶ The freedom of speech and expression under Article 19(1)(a) includes freedom of press. If any act of the State or State functionary infringes the freedom of press, the remedial measure is also constitutional having been provided in Article 32 of the Constitution. For redress of grievance against others, the ordinary common law remedy is available.

be concluded from a conjoined reading of Sections 13, 14, and 15 of the Act and from various decisions rendered by Courts that the Council is empowered to make observations in respect of conduct of any authority including the Government, if considered necessary for performance of its functions under the Act.¹⁷ However, the Act suffers from the same deficiency of lack of enforceability.

In *Ajay Goswami v. Union of India (2007)*¹⁸, where the Press Council of India submitted to the Court that limited powers have been given to it by virtue of Section 14 of the Press Council of India Act, 1978 namely, only to warn, admonish or censure newspapers or news agencies and only the authority of declaratory adjudication with its power limited to giving directions to the answering respondents arraigned before it to publish particulars relating to its enquiry and adjudication as well as no jurisdiction over the electronic media, the Court observed as thus,

“73..... In our opinion, the present scenario provides for a regulatory framework under which punishment is prescribed for flouting the standards set by the Press Council of India by newspapers/print media...”

20. It may be noted here that the jurisdiction of the Council is limited to print media. It does not have the power to review the functioning of other media like the electronic media, television, radio and the digital media including social media channels such as WhatsApp / Twitter / Facebook.

IV. CONCLUSION

¹⁷ <https://mib.gov.in/acts/press-council-act-1978>; As per Section 13 of the Act, 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

¹⁸ 1 SCC 143 : (2007) 1 SCC (Cri) 298 at page 171

21. Since the Council is not vested with punitive powers, the Council cannot exercise control over the erring publications or the government. It does not have powers beyond the power of censure of the media for violations. Similarly, the government is not bound to comply with its recommendations. The aforesaid limitations could be remedied by equipping the Council with the power to ensure compliance and imposing of penalty for non-compliance of its guidelines. It was reported that in 2014, the Central Government was considering an amendment to Section 14 of the Act to empower it to suspend accreditation of a journalist, editor and registration of a publication, besides advertisement, if they abuse their independence.¹⁹ ²⁰ This has not been taken forward to date. Lastly, since the jurisdiction of the Council is limited to print media, currently there is no independent body constituted by law to regulate the broadcast media news organisations.

¹⁹ <https://www.firstpost.com/india/press-council-act-to-get-more-teeth-govt-663260.html>

²⁰ PRESS COUNCIL OF INDIA, Annual Report, (April 1, 2012- March 31,2013)

<http://www.presscouncil.nic.in/WriteReadData/Pdf/PCIANNUALREPORTEnglish.pdf>