CHAPTER 14

ADVERTISERS AND ADVERTISEMENTS

Advertising in the press

False claim about circulation is a gross breach of journalistic propriety (Hardwar Darshan, 1969).


Denial of advertisement

Advertisements used to influence editorial policy (Sahavadar Kunj, 1984(2) P.C.I. Rev. 49).


Right to advertisement

Advertisements from any party including the government cannot be claimed as a matter of right (Sankata Utsav, 1980 Ann. Rep. 53).

Failure to conform to the advertisement policy is good ground for non-release of advertisements (Sahabik Mulahid, 1983(3) P.C.I. Rev. 44.)
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Failure to conform to the advertisement policy is good ground for non-release of advertisements (Saptahik Mujahid, 1983(3) F.C.I. Rev. 44).
Because of the large part advertising revenue plays in the economy of a newspaper, there is a widely held belief that advertisers can and do exert an influence on editorial policy. Anyone familiar with the working of a newspaper will admit that individual advertisers occasionally seek to influence the policy of a newspaper or to obtain the omission or insertion of particular news items. Any attempt by an advertiser to do so is to be condemned, and if the attempt is on the part of the government, it is reprehensible. It has been observed that withdrawal or grant of advertisements has at times been used as a lever to bring the writings in conformity with the ideas of the authority vested with the discretion to grant this facility to them. From the very beginning the Press Council was diligent enough to point out that such threat or inducement would amount to an infringement of the freedom of the press. During 1992-93, the Council adjudicated upon 25 complaints alleging withdrawal or denial of due facilities. Of these nine were dismissed while in 15 cases, the Council dropped the proceedings primarily upon amends made or on assurances given by the authorities. Action was dropped in one on account of the matter being withdrawn.

1. Ushodaya Publications (P) Ltd v. Government of
The Council has categorically stated that there is no automatic right vested in any newspaper to claim government advertisements. At the same time it is the duty of the government and public sector undertakings to ensure that there is a just and equitable distribution of advertisements based on a rational and notified policy. In this context reference may be made to a decision of the Andhra Pradesh High Court⁴ where the right of the government to release its advertisements to newspapers was in question. According to a government order, all government advertisements were to be released by the Director of Information subject to certain guidelines laid down therein. The High Court ruled that the order did not affect the freedom of the press. Newspapers do not have a right to demand and obtain advertisements from the government.

The government has a right to choose the newspaper in which it would advertise. The court, however, did rule that while giving advertisements to various newspapers, the government must do so without exercising any discrimination in favour of or against any particular newspaper.⁵ The guidelines issued by the government

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for selecting newspapers were held valid with some exceptions. For example, a guideline saying that no advertisement could not be denied to publications merely on the ground that in the view of the Postmaster General a "rabid or abusive" tone or "distorting news for a mischievous purpose" was struck down.

The judgment in the newsprint case also clarifies the constitutional position regarding advertisements. The petitioners argued that the imposition of customs duty had compelled them to reduce the space intended for advertisements which had adversely affected their revenue. The Government pleaded that the right to publish a commercial advertisement was not part of the freedom of speech and expression; and newspapers often contained 'piffle'.

Rejecting this argument, the Supreme Court pointed out in contrast to allegations that newspapers are subject to pressure from advertisers, allegations that newspapers sometimes refused unreasonably to accept nature of writings might not necessarily be a true assessment. Moreover, even if newspapers contained 'piffle'—which means 'foolish nonsense'—that could not be a ground for imposing a duty which would hinder circulation. For this conclusion, the court drew support from an American case wherein the U.S. Supreme Court had held that second class mailing privilege could not be denied to publications merely on the ground that in the view of the Postmaster General a "rabid or abusive" tone or "distorting news for a mischievous purpose" was struck down.

The type and quantum of advertising a newspaper gets will depend on the character of its readership and circulation. This may tend a newspaper, which solely depends on advertising for its viability, to submit false claims about circulation. This, according to the Council, is a gross breach of propriety and ethics. At the same time, verification of circulation by means other than through the Registrar of Newspapers was deprecated; and newspapers often contained 'piffle'.

support from an American case wherein the U.S. Supreme Court had held that second class mailing privilege could not be denied to publications merely on the ground that in the view of the Postmaster General the matter was not in good taste.

The Press Council also adjudicated upon newspaper’s own advertisements and publicity and censured those considered misleading or in bad taste. The cases dealt with follow.

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A newspaper daily carried an imprint on its mast-head that it was the largest circulated Hindi daily of northern India. It was found out from the information furnished by the Registrar of Newspapers that it was a weekly printing only 1,025 copies with a paid circulation of 75 copies per week.

In contrast to allegations that newspapers are subject to pressure from advertisers, allegations that newspapers sometimes refused unreasonably to accept advertisements from would-be advertisers were also investigated by the Council. A newspaper should have a right to refuse advertisements of any kind which are obviously intended to mislead the advertisers.

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contrary to its standards or may be objectionable to its readers. The right, however, ought not to be exercised arbitrarily.

Unethical to publish dummy advertisements

The Press Council has also adjudicated upon newspaper’s own advertisements and publicity and censured those considered misleading or in bad taste. Like publishing dummy advertisements and plagiarism etc.

The cases dealt with follow.

ADVERTISING IN THE PRESS

False claim about circulation

A Hardwar daily carried an imprint on its mast-head that it was the largest circulated Hindi daily of northern India. It was found out from the information furnished by the Registrar of Newspapers that it was a weekly printing only 1,025 copies with a paid circulation of 73 copies per week.

The Council said the claim was deliberately false and obviously intended to mislead the advertisers. It held this to be a gross breach of journalistic ethics. A

propriety and had no hesitation in censuring the
Joseph John, alleged that it commercially exploited the
editor.
Mahatma's name and was consequently unethical.

Unethical to publish dummy advertisements

The complaint against Hitvada, an English daily of
Bhopal, was that it resorted to unethical practices
like publishing dummy advertisements and plagiarism
etc.

The Council upheld the complaint since the
advertisements had neither been paid for nor authorised
by the advertisers. Hence the newspaper had
transgressed the norms of journalistic ethics. A
warning was issued to the editor to refrain from such
practices.

The text of an advertisement in Times of India read:
"The Singer sewing machine is one of the useful things
ever invented - Mahatma Gandhi." The complainant,

\[ \text{\textsuperscript{a}} \text{.} 1980 \text{ Ann. Rep. 115-124.} \]

\[ \text{\textsuperscript{b}} \text{.} 1969 \text{ Ann. Rep. 37.} \]

\[ \text{\textsuperscript{c}} \text{.} 1984(2) \text{ P.C.I. Rev. 49} \]
Joseph John, alleged that it commercially exploited the Mahatma's name and was consequently unethical. The complainant had not challenged the authenticity of the Mahatma's statement. Since admittedly Mahatma Gandhi had made such a commendation, the Council held, it was not improper either for the advertiser to derive advantage from it or for the publisher to exercise his discretion to publish it.

**DENIAL OF ADVERTISEMENT**

As instrument of punishment™

The Press Council took suo motu action against the government of Madhya Pradesh on the basis of a report in *Indian Express* that a small daily *Samvad Kunj* of Seoni was penalised for having exposed the involvement of some influential persons including officers and politicians in a sex scandal. The reprisal was by way of stoppage and withdrawal of government advertisements and withholding payment of bills.
The allegations in the *Indian Express* report were confirmed by Ashok Koshal, editor of *Samyad Kunj*. He also alleged harassment at the instance of G S Misra, Union Minister of State for Energy, and Vimla Verma, the State PWD Minister.

Though the State Government had contended that the concerned newspaper was not on the approved list for issue of advertisements, the Council found that it was getting government advertisements earlier like other newspapers. As such, it was unable to see the reason for the paper being discriminated against as regards release of advertisements. The Council asked the government to place the newspaper on the approved list for release of government advertisements.

**Just and equitable distribution**

The editor of *Akash Marq*, a small newspaper with a circulation of 12,000, complained that the government of Bihar was not giving their due share of advertisements unless any mala fide was established such as stoppage by way of reprimand for criticizing government or officials.

The council noted that advertisement cannot be claimed as a matter of right. It would not, as a matter of course, entertain complaints pertaining to denial of advertisements unless any mala fide was established such as stoppage by way of reprimand for criticizing government or officials.
keeping in mind the requirements of the advertisement policy. The complainant, however, alleged that the hostile action of the government was due to the critical articles against the then Chief Minister of Bihar, Shri Bhagwat Jha Azad, in 1988.

Reminding governmental authorities that their expenditure on advertisement was expenditure of public money, the Council stressed the need for ensuring its just and equitable distribution. The Council also found it highly improper the association of police officers with checking and certifying the circulation figures of newspapers. It felt that circulation figures certified by the Registrar of Newspapers should be accepted by the authorities.

The Council noted that advertisement cannot be claimed as a matter of right. It would not, as a matter of course, entertain complaints pertaining to denial of advertisements unless any mala fide was established such as stoppage by way of reprisal for criticising the government or officials.
R Madhavan Nair, editor of Tribune, in his complaint alleged, inter alia, that the Haryana government had stopped its advertisements because two editorials appeared in the newspaper had reportedly infuriated Bansi Lal, the then Chief Minister. While admitting that advertisements had been stopped, the government denied that it was due to the fact that the Chief Minister was infuriated.

Having stated the principles on which the government should distribute advertisements, the Council observed that from this it would follow that where advertisements were withheld from a newspaper for the reason mentioned in the complaint, viz., its editorials being critical of the government, it would certainly be a case of threat to press freedom and a device adopted to influence editorial policy.

In summing up, the Council emphasised three points: (i) in the matter of distributing advertisements, a government’s discretion is not absolute. It is conditional on the advertisements not...
being placed or withheld for the object of influencing the a particular paper's editorial policy or as a means of the punishment for persisting in an editorial policy not meeting its approval; (ii) these withdrawal of advertisements, since they attempted to influence editorial policy, constituted an invasion on press freedom; and (iii) one of the main purposes for the establishment of the Press Council is safeguarding the liberty of the press and preventing a government from influencing the editorial policy.

In the Council's opinion, delisting of the Tribune as calculated to threaten its freedom, the Council considered it as an attempt to influence its editorial policy. Disapproval of this "invasion of the liberty of the press and freedom of the editor in conducting his newspaper" was recorded by the Council and the action of the government was condemned.

Delisting of newspapers not justified

Searchlight, an English daily of Patna, and Pradeep, its sister Hindi daily, were delisted without issuing

any show-cause notice which, according to S.K. Rau, the editor, had injuriously affected the freedom of the papers. Mr. Rau pointed out two reasons for the Chief Minister's antipathy towards his newspaper: (i) his complaint to the Council questioning the propriety of the Chief Minister appointing a member of his staff as a member of the Food Committee with the status of a cabinet minister; and (ii) comments by the paper pointing out lapses of the administration which, according to him, was part of his public duty.

In the Council's opinion, delisting of the newspapers by the government was vitiated by taking into consideration matters "wholly alien to and irrelevant for determining the character of the matter published in the paper". Apart from this, the Council concluded that delisting of the twin newspapers was not justified and withdrawal of advertisements was meant as a punishment for pursuing an independent policy. To criticise the administration for its acts of omission and commission was part of the duty of the press and the government should not be so thin-skinned as to consider that any criticism of it which displeased it was ground for vindictive action. The Council expressed
the hope that the government would reverse its
decision, relist the papers and would continue to
have been a somewhat different matter if the
release advertisements as before.
complainant newspaper had originally been included in
the approved list, and the released without proper
justification as a consequence of writings unpalatable
to the authorities, or if unlawful discrimination could
be established at the executive level.

No automatic right to claim advertisement

Sankata Uvaach, a Hindi weekly, alleged that the State
Government of Uttar Pradesh had not accorded
recognition to the paper for release of advertisements
due to critical writings published in the paper. It was
further pointed out that certain other local weeklies
were being patronised for advertisements though they
had no better claim.
The government maintained that certain guidelines,
laid down for approving newspapers for government
advertisements, had not been met by the newspaper.
The Council laid down the principle that no one
has a right to claim that any paper which has been
indulging in baseless and motivated publication of
untrue and sensational statements of government
positions.
the conditions laid down by the government itself for releasing advertisements must be fulfilled. It would have been a somewhat different matter if the complainant newspaper had originally been included in the approved list and then deleted without proper justification as a consequence of writings unpalatable to the authorities or if unlawful discrimination could be established at the executive level.

Obligation to conform to advertisement policy

The editor and publisher of Saptahik Mujahid of Assam alleged that denial of approval by the Chief Minister for releasing advertisements to their newspaper had been without any reason. They submitted that the newspaper had fulfilled the initial requirements for approval and the Deputy Secretary (Publicity), Home Affairs, who was the legitimate authority, had recommended approval.

The State Government asserted that the newspaper was not maintaining proper journalistic ethics and was indulging in baseless and motivated publication of writings and reports tending to fan communal passion.

13. 1983(3) F.C.I. Rev. 44.
It was further asserted that due to its limited circulation the government was not bothered to issue contradictions and withholding of approval for releasing advertisements was in conformity with the government's advertising policy.

The Council inclined to the view that there was no substance in the complaint. It felt that good grounds existed for non-release of advertisements so long as the newspaper failed to conform to the government's advertisement policy. The fact was emphasised that the getting of advertisement from any party including the government cannot be claimed by a newspaper as a matter of right. The complaint was dismissed in the absence of any proof regarding arbitrary or mala fide action by the government.
THE PRESS AND THE POLICE


Police inaction in breaking blockade (Case of the Bangalore newspapers, 1982(1) P.C.I. Rev. 36).

Editor abducted by police (Prachand, 1983(1) P.C.I. Rev. 33).

Illegal arrest of correspondent (Blitz, 1983(2) P.C.I. Rev. 31).

Police insulting and threatening editor (Jai Ai Asom, 1982(2) P.C.I. Rev. 53).

Journalists assaulted (Indian Express, 1982(2) P.C.I. Rev. 61).

Crime is the business of the police. But crime is news, of public interest, and the public is entitled to be informed about it. As such crime is the business of the press also. In the normal gathering of the news and in the course of legitimate inquiries, reporters frequently obtain information which enables fraud, corruption and vice to be exposed in the newspapers and the police to bring those involved to justice. But in a country where the nexus between the police and criminals is a fact beyond mere surmise, police officers are also getting exposed at times through the
newspapers. A conflict thus becomes inevitable.

The Royal Commission on the Police had no doubt of the value of good relations between the press and the police. Its Report of 1962 stated that the press was an important intermediary between the police and the public and that it had a useful part to play in helping the police; the police for their part, could render a reciprocal service by taking the press into their confidence and making available information the public should be given.14

Everything will go on well as long as the press is willing to toe the police line, swallow the police story, applaud the police and report prominently their not infrequent instances of their bravery. However, free and critical writings inevitably tend to heckle those against whom such writings have been directed and the authorities are more often than not observed to have used their powers to cow down such writers. This usually manifests in the form of harassment, threat or raid. At times even physical violence is resorted to.

The Council adopted a resolution at its meeting in Bangalore in December 1967 which laid down its opinion on the complaints regarding attacks on newspapers and newsmen. Cases of this nature brought before the Council later were adjudicated on the basis of this principle, and the inquiry or found no action to be warranted upon — the matters having become sub judice or being inharassing newsmen.

The resolution inter alia said: "It (the Council) views with concern tendencies to coerce newspapers to desist from publishing facts or toe a particular line. The Council is particularly concerned with the reported failure of certain State Governments to provide adequate protection to newspapers as well as their representatives engaged in the performance of their duty, arrested him, and paraded in the streets in handcuffs. According to him, the police was acting in vengeance. The Council urges the people in general and political parties and the governments in particular to ensure that newspapers get a full opportunity to gather unfacts and express their views fully and also ensure that newspapermen function without threat of coercion,


intimidation or physical violence". The Council adjudicated upon a total of 33 such matters in 1992-93. Of these, charges were found to be substantiated in nine matters while 12 stood disposed of upon amends having been made or on assurances having been given by the authorities. In five other cases the Council dropped the inquiry for found no action to be warranted upon the matters having become sub-judice or being withdrawn. Seven complaints were rejected.

Handcuffing and parading of a journalist

Avantilal Jaiswal, an Indore-based correspondent of Saptahik Sputnik, complained that on 19 February 1991 the Superintendent of Police forcibly entered his house, arrested him, and paraded him in the streets with handcuffs. According to him, the police was wreaking vengeance upon him for his critical writings but the Government explained that the action under the Excise Act was consequent to the detection of his shady deals under the veil of journalism. The complainant

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reiterated that the authorities were provoked by the publication of a report: "Price of a tribal girl only for Rs 500".

The Inquiry Committee of the Council was of the opinion that the handcuffing of the journalist was actuated by malice because of his reports criticising the police. It was also established that the complainant was not only handcuffed but was paraded on the road and six criminal cases were registered against him though none of them was sent to court. Pointing out the repeated direction of the Supreme Court that the police should not handcuff a person accused of an offence unless they have reasonable grounds to believe that he will abscond or avoid his arrest, the Committee said this dictum was honoured in breach. Upholding the complaint, the Council reminded the authorities that in case they found anything objectionable or violative of the ethics of journalism in the writings of a journalist, the proper course for them is to approach the Council.

On earlier occasions also[17] the Council had condemned the practice of handcuffing journalists as...
glaring instances of humiliation, insult and harassment with the object of teaching the journalists a lesson for exposing the misdeeds of the authorities. It tantamounts to jeopardising the freedom of the press. Noting with deep concern the past conduct of the State Government (of Orissa) in the matter of dealing with journalists, the Council directed the Government to issue strict guidelines to the police on the use of handcuffs in the light of the Supreme Court judgment. It is a sorry commentary on the state of affairs that after six years the Council had to repeat the same resentment.

Attack on newspaper offices

In 1985 the Press Council initiated suo motu inquiry on the basis of a news in Indian Express: "Ahmedabad handed over to army as police revolt - Cops attack newspaper offices, reporters". According to the report, policemen directed their wrath at the press for highlighting police atrocities in the city during the previous days. Following the killing of an head-constable by the mob, the office of Gujarat Samachar was set on fire by irate policemen. The office and

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press of Western Times was gutted. Both the newspapers were unable to publish their editions for an indefinite period while Times of India and Indian Express suspended their editions for a day in protest against the police attacking their staff.

The Inquiry Committee felt that the attack on Gujarat Samachar, whether done by the police or others, constituted grave danger to the freedom of the press and a serious interference with its independence. Condemning the State Government for its failure to maintain freedom of the press, the Committee said that such a situation could and did arise would shock the conscience of everybody who cherishes freedom of the press. At the same time the Committee had a word of caution to the press also. The press was advised that in respect of any writing or publication in relation to sensitive matters, proper restraint should be exercised.

Police inaction in breaking blockade 10

The Council took suo motu action on reports that four Bangalore dailies - Deccan Herald, Prajavani, Indian Express and Kannada Prabha - failed to appear in the
morning of 23 September 1980 as a result of a night-long blockade by members of the ruling party, the Congress-I. The Council asked the Chief Secretary, Government of Karnataka, to furnish details of the siege laid on the two newspaper establishments which publish the four dailies by the storm-troopers of the party. Although the State Government had questioned the Council's jurisdiction at the outset, that resistance was abandoned when Justice Grover, the Council Chairman, wrote to Mr Gundu Rao, the Chief Minister. Asserting that it was a "single and stray incident which was purely a law and order situation," the Chief Minister maintained that initiation of suo motu action might not be warranted. The newspapers maintained that the blockade had been pre-planned at the instance of the Chief Minister, and the Police Commissioner had prior knowledge of it.

The final argument before the Inquiry Committee revolved around two main issues: (i) whether the so-called blockade by members of the Congress-I had been at the instance of the Chief Minister; and (ii) whether there had been such inaction by the police as might give rise to comments and observations.
After carefully considering the main points involved in the adjudication, the Council concluded that it had been established that the blockade did take place and was of the view that such blockade interfered with the freedom of the press. Such acts were condemned. It was also concluded that there was no direct evidence to prove that the blockade or seizure of newspaper offices had been effected at the instance or with the prior knowledge of the Chief Minister. The circumstantial evidence failed to conclusively establish that the Chief Minister had a hand in the incident. In this connection the well-settled rule of law was emphasised that "circumstances from which an inference of guilt is sought to be drawn must be incompatible with the innocence of the person against whom that evidence is used and must be incapable of explanation upon any other reasonable hypothesis than that of his guilt". Even if the Chief Minister, feeling aggrieved by the newspapers concerned, had shown his displeasure in his speeches, it did not follow that he was responsible for bringing about the blockade.

However, there could be no doubt about the police inaction to disperse the demonstrators; while this could be attributed to an anxiety to avoid any
unpleasant development, it was emphasised that "the police could have without any serious apprehension of breach of peace, put the so-called young persons and students into vans" and taken them away, thereby bringing an end to the blockade. In regard to the manner in which the investigation was conducted, the Council felt that there were vital contradictions and lapses. The evidence also suggested that Mr H D Sangliana, the Deputy Commissioner of Police, could not function effectively. The Council felt that it was for the State Government to make an inquiry into certain features that appeared to be somewhat unusual, since it was not within its charter to go into the regularity and validity of the investigation.

The complainant, Asha Bhandari, alleged that her husband, V M Bhandari, editor and publisher of Prachand, a Hindi weekly from Bombay, had been abducted by the Haryana police. This, according to her, was consequent to certain writings in the weekly whereby the corrupt deeds of the then Haryana Chief Minister, Bhajan Lal, and his colleagues had been exposed. It was
stated that the editor, implicated in a fabricated case under the Official Secrets Act, had been handcuffed, shackled, beaten up and kept in an isolated place.

The State Government, while admitting the arrest, denied the charge of handcuffing and abduction. The Press Council noted the fact that no effort was made by the State Government to rebut Bhandari's allegations of maltreatment by the police resulting in his hospitalisation. The Council upheld the complaint of harassment and maltreatment on account of the critical writings by Bhandari.

Illegal arrest of correspondent\textsuperscript{21}

In his complaint against Patna police, a former correspondent of Blitz alleged his illegal arrest in a false case. This, according to the complainant, was due to his refusal to divulge his source of information regarding the whereabouts of a college girl who, having run away from her parents, had married a Patna University student. He submitted that on account of his critical writings he was harassed by the police. In April 1981 he wrote a story against the marathonsex

\textsuperscript{21} 1983(2) P.C.I. Rev. 31.
scandal in Patna Medical College and also about the Bihar Shariff riots. On 10 June 1981 he was arrested for abduction of a girl. On account of the arrest, his services were terminated by the newspaper.

Having heard the complainant and examined the material on record, including the letter of the Inspector General addressed to the editor exonerating the complainant from involvement in the episode, the Council took the view that the State Government should have conducted a proper inquiry into the matter against the officers responsible. It concluded with the observation that the Government could still consider the expediency of doing so.

K C Sharma, editor of Jai Jai Asom, a fortnightly from Tezpur, alleged in his complaint dated 11 March 1980 that B N Phookan, Superintendent of Police, Darrang, had insulted him and threatened to arrest him on flimsy charges like publishing false news in his paper. This, he stated, was provoked by a news item appearing in Dainik Janmabhumi (of which he was the Tezpur

22. 1982(2) F.C.I. Rev. 53.
correspondent) relating to contempt of court proceedings against Phookan. In subsequent communications he submitted that the Government of Assam had started harassing him by illegal requisitioning of Jai Jai Asom office premises to accommodate the police force.

Denying the allegations, the Government clarified that the Superintendent of Police was only verifying the registration of the newspaper under the Press and Registration of Books Act. The officer also felt it necessary to verify whether Sharma had made disparaging remarks against Sanjay Gandhi on the basis of an intimation from a respectable quarter.

The Council observed that it was one of those rare cases where a high official holding the office of Superintendent of Police had himself made an enquiry for breach of section 3 of the Press and Registration of Books Act. It was contended that he did so under any direction from an appropriate authority under the Act. The Council was of the view that even assuming that he conscientiously felt that he was under a statutory obligation to enforce the provision of the Act, the further incident relating to an alleged statement made...
by the complainant was not in any way connected with the enquiry he was making under the Act. It observed that there were many ways of humiliating a person and the complainant, having incurred the displeasure of the Superintendent of Police, was summoned to appear under the Press and Registration of Books Act and then confronted with the alleged derogatory remarks. The Council, therefore, upheld the complaint to the extent that there was some sort of maltreatment or humiliation to which the editor had been subjected.

Journalists assaulted

A group of newsmen met a Press Council team and protested against the treatment given to journalists at a function in Hussainiwala to commemorate the martyrdom of Bhagat Singh. A formal complaint filed by them alleged that Swadesh Talwar, news photographer of Indian Express, Chandigarh, had been mercilessly beaten up by the police. This was supported by documentary evidence and clippings from various newspapers which reported the incident. Further, it was stated that Jagtar Singh who was accompanied by Sunil Baghina was

23. 1982(2) P.C.I. Rev. 61.
also beaten up when they went to rescue Talwar. His camera was also snatched by the police.

It was explained that when unruly elements tried to disturb the function in which the Chief Minister, Darbara Singh, was addressing a huge gathering, the police had to resort to a mild cane-charge. Only subsequently the police came to know that some pressmen/cameramen got mixed up with the miscreants. Since they had no press badges, the police were unable to distinguish them from the general public. The allegation of snatching away of the camera was denied.

The Council was of the considered view that while Talwar and Jagtar Singh, photographer and reporter respectively of Indian Express, were injured, the evidence was conflicting as to whether they were beaten up after disclosure of identity. The Council noted that none of the injured pressmen had gone to the local first aid post which corroborated the medical reports of injuries being of a minor nature. Also had they been picked out of the crowd as special victims of the wrath of the Deputy Superintendent of Police, the injuries would have been more severe. As regards the charge of snatching away the camera, the Council felt that it
would be reasonable and legitimate to hold that the police had indeed snatched it at the time of the incident though it might be difficult to name the person who did so. However, it emphasised that a "considerable view must be taken of the snatching away of the camera and the removal of the film etc." before being delivered back to the photographer. The Council decided to uphold the complaint to the extent mentioned above.

A very exciting case of far-reaching importance arose in 1974 on the basis of two complaints filed by journalists in defence of B G Varghese, editor of Hindustan Times, who was sought to be removed from that post by the proprietors. Though the case remained inconclusive when the Press Council was abolished in 1976, a number of issues involved in and arising out of the case were settled by the Delhi High Court.

The complainants, D R Mankar and C P Ramachandran, had submitted before the Press Council that freedom of the press was synonymous with the freedom of the editor to pursue an editorial policy.
INTERFERENCE FROM WITHIN


Editor's resignation under pressure (Indian Post, 1989-90 Ann. Rep. 81).

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The complainants, D R Manekar and C P Ramachandran, had submitted before the Press Council that freedom of the press was synonymous with the freedom of the editor to pursue an editorial policy

free from external pressure; that B G Verghese was following an independent editorial policy exposing the defects and misdeeds of the establishment; that K K Birla, chairman of the Hindustan Times Limited, was under pressure from the Government to replace the editor; and that there was a threat to terminate services of Verghese. It was also pointed out in the complaint that Birla had sent a notice to Verghese in August 1974 asking the latter to cease to be the editor with effect from 28 February 1975 without disclosing any reason.

Birla took a preliminary objection regarding the jurisdiction and maintainability of the two complaints under the Press Council Act. He raised a very interesting and important question with wide implications: the Press Council was intended to help newspapers if only there was an encroachment on them from the government or public authorities, hurting the press. Since no such thing had happened, the controversy stated in the complaints fell under the Industrial Disputes Act and thus the Press Council had no power to adjudicate under proviso 2, clause 12(a)(i)

Section 12 was amended in 1970 adding the proviso "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, 1942, applies."
of the Press Council Act 1965. Another objection was to the effect that the Council as a body was an interested party in the controversy and, therefore, editors and journalists who were members of the Council were not entitled either to vote or participate in the discussion. Both objections were overruled and the Council began its inquiry with the examination of Verghese.

The validity of the proceedings were challenged by Birla in the Delhi High Court where it was contended that protection to the freedom of the press was available against the State and not against an individual or a joint stock company. It was also contended that the editor had no fundamental right under Article 19(1)(a) of the Constitution as against the proprietor of a newspaper.

At the same time the High Court held that normally under the Press Council Act it was for the Council to decide whether this jurisdiction had been brought before the Council. The Council does not issue any enforceable...
order or direction. It merely expresses its opinion on matters brought to its notice and it has no legal sanction. The counsel argued that such an opinion was not amenable to the writ jurisdiction of the High Court. However, the court declared that looking at the composition of the Council and the nature and functions entrusted to it, the decision given by the Press Council about the propriety of Birla's action terminating the service of his editor would have considerable influence on the readers. It will have serious repercussions on the circulation of his newspapers, affecting his proprietary rights. A person who will be prejudicially affected by the opinion of the Council has sufficient legal interest to invoke jurisdiction of the court under Article 226 of the Constitution.

At the same time the High Court held that normally under the Press Council Act it was for the Council to decide whether this jurisdiction was there or not. "Where a statute creates a certain body and entrusts jurisdiction on the basis of a certain jurisdictional fact to such a body, the existence or non-existence of that fact is to be determined by that body. The Press Council has assumed jurisdiction by rejecting the
preliminary objections... Questions of inherent jurisdiction are always to be decided before the merits are considered and that is what is done by the Press Council."

On the main question relating to the independence of the editor, the High Court referred to a volume of material including the opinion of the Press Commission (1954). The High Court quoted approvingly from the report which stated, inter alia, that the need for maintaining editorial independence, objectivity of news presentation and fairness of comment were the aspects which should be looked after by the Press Council which would also have responsibility of fostering the development of the press and protecting it from external pressure.

Enquiring into the reasons for the enactment of the Council, the High Court found that the reason was to safeguard the liberty of the press and then went on to define it. The court observed "freedom is always from things and certain circumstances. It is the state of being at liberty rather than constraint or under

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restraint. Freedom is an exemption from external control, interference or regulation. Freedom of the press then is the right to publication through the medium of printed material without any restriction or compulsion from any source whatsoever and subject only to the valid laws made under Article 19(2) of the Constitution. It is the right to publish and circulate the ideas, opinions, views and comments with complete freedom. A free press is free from compulsion from whatsoever source, governmental or social, external or internal. The liberty of the press is indeed essential to the nature of a free democratic state. It consists in laying no previous restraint upon publication by any agency."

Describing the editor as the living articulate voice of the press who speaks through the paper, the court held that "any interference with the presentation of the news, views or comments or any attempt to suppress or constrain it would be impairment of that freedom. The selection of the news is the sole responsibility of the editor... the proprietors or owners of a newspaper are entitled, if they so wish, to lay down any partisan policy for the newspaper and make it existance and had arisen from the common law before they were declared and guaranteed by the Constitution."

"The value of the newspaper is in its contents, the
The selection of which is the sole and undivided responsibility of the editor.

At the same time the court accepted the proprietor’s right to lay down the editorial policy or the guidelines which the editor has to follow or to have his own viewpoint expressed through the newspaper.

The Press Commission had also said that

We do not deny to the owner and proprietor his basic right to have his point of view expressed through the paper... When a proprietor changes the editor he should also delegate to him a measure of individual authority which would enable him to carry out his policy and to resist any attempt to divert the policy in anti-social directions.

The court held that "any interference with the presentation of the news, views or comments or any attempt to suppress or constrain it would be impairment of that freedom. The selection of the news is the sole responsibility of the editor... the proprietors or owners of a newspaper are entitled, if they so wish, to lay down any partisan policy for the newspaper and make the newspaper an instrument of propagation of their

27. Ibid, p.1413.
policy... but once having laid down the policy the editor has to be left to work independently within the framework of that policy."

The High Court made another important observation in regard to the industrial dispute between the editor and the proprietor. The court ruled that independence of the editor is included in the independence of the newspaper. The owner or proprietor is at liberty to exercise his undoubted right to hire and fire or to terminate the employment or severe his relationship by any cause which seems to him proper but not as a punishment or for discouragement of the editor's responsibilities and functions which relate to freedom of press or independence of the newspaper. When this is done the jurisdiction of the Council is attracted under section 12 of the Act to preserve the editor's freedom and to maintain his independence. It will be for the Council to determine as to what is the foundation of the termination. The Council has jurisdiction to find out the motive behind the termination of an editor's services and ascertain whether any improper or undue influence was being brought to bear on the editor in the discharge of his duties as an editor. The Council has jurisdiction to decide on the facts of the given case whether there has been pressure on the editor.

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subversive of the freedom of the press or violative of the independence of the newspaper.

On a complaint by P. Rajan, Assistant Editor, against Mathrubhumi, the High Court made another important observation in regard to the industrial dispute between the editor and the proprietor. It said the Press Council had no jurisdiction to settle the terms and conditions of service of the editors or to order the reinstatement or to pass any enforceable orders for the grant of salary, wages, gratuity or other benefits accruing on the termination of services. The Council is not competent to force an editor on the proprietor. At the same time where the action of termination or dismissal may be legally correct and yet constitute a threat to the freedom of the press, the Council may pronounce its opinion on the propriety of the termination or dismissal.

Resignation under pressure

The Press Council deplored the episode of Vinod Mehta having had to resign from the editorship of Indian Post under pressure from the proprietor.

Interference in editorial affairs

On a complaint by P. Rajan, Assistant Editor, against Mathrubhumi, alleging intimidation and interference in the editorial affairs by the management, the Council issued certain guidelines touching on the relationship between the management and the editor. It was held that in all matters relating to the administration of the editorial department, including appointment, promotion, transfer and deputation of working journalists, it would be obligatory for the management to act on the recommendations of or in consultation with the editor. The responsibility for maintenance of discipline in the editorial department, including the power of granting leave to working journalists, shall be delegated to the editor and only cases of termination of service or removal or dismissal from service of the employees in the editorial department not below the rank of Assistant Editor should be dealt with by the management and there too action shall be taken in accordance with the recommendation of the editor.


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Interference on the part of workers

Interference can be from within as well. In 1979, a chief subeditor and some other journalists of a mass circulated Calcutta daily, Jugantar, complained that a group of employees belonging to a trade union had interfered with the working of the journalistic wing of the paper. Their case was that a group of print workers had misbehaved with the night editor and changed the front page layout by substituting some stale news in the space meant for a picture that was not yet ready on account of power cut. Further, it was submitted that the workers believed that the proposed insertion of words "the block was not received because of the power cut" in the space earmarked for the said block was an attempt to malign the Left Front Government. The news editor had reportedly lodged a complaint with the editor about the incident but no action was taken. The complainants contended that such action by a group of employees to please the ruling party was a direct interference with the functions of journalists.

In the course of the inquiry the president of the concerned union contended that the subject matter of

the complaint was not within the Press Council's jurisdiction but was a matter strictly between employer and employees having no bearing on the freedom of the press. The Council rejected this view holding that the matter did fall within the charter of the Council. In its adjudication the Council concluded that the management should have intervened effectively and brought about a settlement between the concerned workers and the journalists. The Council reprimanded it for interfering with freedom of the press from within and upheld the complaint.

In considering the complaint, the Council approvingly referred to the British Press Council rulings on the subject. It noted that a strict view was taken with regard to non-publication or interruption or any changes made at the instance of newspaper workers. In the case of Evening Standard it had emphasised the importance to the public of freedom of the press and the newspaper's right to say that by virtue of section 1(1) of the Press and Registration of Books Act 1939 and in accordance with

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34. Ibid, at 67.

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publish what it lawfully may. In the case of Evening Post it said: "To stop publication or threaten to do so in order to suppress news or comments, however unpalatable to some the item concerned may be, is censorship." To resist such attempts, it was pointed out, was one of the functions of the Press Council. It was stated that it is entirely unacceptable in a free society that protests should be allowed to take the form of a direct attack upon the freedom of the press and denial of the right of a newspaper to publish what it lawfully may. The destruction of press freedom would be disastrous to the public as a whole and to both sides of the industry.

Curb on editorial freedom by management

In the Aljamiat case, the Press Council held it highly unethical and illegal to publish news items condemning the editor and announcing his suspension from the editorship while his name continued to be printed as editor in the printline. It goes without saying that by virtue of section 1(1) of the Press and Registration of Books Act 1867 and in accordance with the independent directors of the company, Guilty Publishing, the owner, Rowland Tiny Rowland, was guilty.

Id, at 68.

related conventions, it is the editor who controls the selection of material for publication in a newspaper. In the instant case, the impugned items were inserted in the newspaper at the instance of the management and without the knowledge of the editor.

Naaz Ansari, editor of the Urdu daily Aljamiat, was condemned and subsequently suspended for publishing a UNI despatch from Baghdad about the deliberations of the Islamic Popular Conference. The Indian delegation to the conference was led by Maulana Asad Madani who was the president of the Jamiat Ulema-i-Hind of which Aljamiat was the official organ. The UNI report was carried on the front page of the paper with broad headlines giving prominence to the views attributed to Maulana Madani. But, the management took exception to the publication of this story, alleging that it was absolutely incorrect and intended to defame the jamiat Ulema-i-Hind.

The Press Council took note in this connection a controversy between the owner and editor of the Observer (London). The independent directors of the company had held the owner, Rowland Tiny Rowland, guilty of "improper proprietorial interference" in the
editorial freedom of the editor. They censured Rowland for publishing criticism of his editor over an article

alleging atrocities in the Metabaleland province of Zimbabwe, which according to them constituted "inhibition, if not restraint, on the editor's freedom". (Government of Madhya Pradesh, 1983(3) P.C.I. Rev. 43).

The Council observed that the attitude of the management of Aljamiat was worse considering the fact that its editor was condemned in his own newspaper while he legally remained in control of and responsible for selection of all material in the newspaper. The Council held the management guilty of unethical acts and of causing serious injuries to the editorial freedom. N K Trikha, Special Correspondent of Nav Bharat Times and member of the Press Council, sent a complaint to the Council against the Delhi Administration and the Government of Bihar alleging (i) that the Delhi Administration had constituted the Accreditation Committee in a manner detrimental to the interests of many newspaper associations/agencies; and (ii) that as regards grant of accreditation facilities to newspapermen, the Government of Bihar had been exercising its authority injudiciously. The complainant desired the rules relating to accreditation be looked into so as to examine the existence of any element likely to affect freedom of the press.