CHAPTER 4

THE COUNCIL IN ACTION

4.1 The Press Council with its wide range of responsibilities works through standing committees, the most important of which is the Inquiry Committee. There are six committees: Inquiry Committee (I & II), Selection Committee, Finance Committee, Library Committee and All Purposes Committee.¹ In the matter of functioning through committees, the Press Council of India follows the British Press Council which works through two standing committees: the General Purposes Committee and the Complaints Committee. The General Purposes Committee deals with what has been described as the positive side of the Council’s work; this includes keeping under review the law on such matters as censorship, contempt of court and libel, press monopoly and prepare statistical information on these developments. It also handles complaints about the conduct of other people against the press while the Complaints Committee handles the negative

¹. Section 8(1) of the Press Council Act 1978 empowers the Council to constitute from amongst its members any committee for performing its functions.
side of the Council’s work, complaints about the conduct of the press.

WHO MAY MAKE A COMPLAINT?

4.2 Dispensing with the rigidity of locus standi, any member of the public is entitled to lodge a complaint against a newspaper, news agency, editor, or other working journalist, alleging a breach of the recognised ethical canons of journalistic propriety and taste in the publication or non-publication of a matter. Cases can also be initiated by any member of the public against a professional misconduct of journalists whether they be on the staff of a newspaper or engaged in freelance work. On the contrary, the British Press Council deals with complaints against newspapers, not against individual journalists; the

2. The Press Council Act, 1978, S 14(1). However, as held by the Council in Dr Satyanarayan Dave v. Indian Express, (1989-90) Ann. Rep. 111, when the impugned criticism is against any individual, right to reply is restricted to the affected person and no third person has locus standi. The rule of locus standi ensures that the process of the Council shall not normally be invoked at the instance of a person who has no special stake or interest in the matter. See Lalit Mohan Gautam v. Indian Express, (1990-91) Ann. Rep. 122.

3. "Matter" means an article, news item, news report, or any other matter which is published by a newspaper or transmitted by a news agency by any means whatsoever and includes a cartoon, picture, photograph, strip or advertisement. Vide Regulation 2(a) of the Press Council (Procedure for Inquiry) Regulations, 1979.
editor accepts responsibility not only for what appears
in his newspaper, but also for the behaviour of his
staff.

4.3 Limitation of time is provided under regulation
3(1)(f) for filing complaints: within two months in the
case of a complaint relating to the publication or non-
publication of any matter in respect of dailies, weeklies
and news agencies; and within four months in all other
cases. In the case of a complaint against an editor or a
working journalist, alleging any professional misconduct
other than by way of publication or non-publication of
any matter, the same shall be lodged within four months
of the misconduct complained of. The Council in its
discretion may condone the delay. The complaints can be
against the press as well as by the press. A newspaper, a,
journalist or any institution or individual can complain
against the Central or a State Government or any
organisation or person for interference with the free
functioning of the press or encroachment on the freedom
of the press.

4.4 Reminiscent of the statutory requirement of
issuing notice to the opposite party prior to the
launching of the litigation under many enactments, it is
a firm rule of the Press Council that before it will
accept a complaint the aggrieved person must seek redress
from the editor of the newspaper drawing his attention to
what the complainant considers to be a breach of
journalistic ethics or an offence against public taste.
Such prior reference to the editor affords him an
opportunity either to take remedial action or to clarify
the position, sometimes to the satisfaction of the
prospective complainant.

4.5 Should an aggrieved person fail to obtain
satisfaction from the editor, he can then make his
complaint to the Press Council. He should enclose with
his complaint copies of correspondence with the editor;
if no reply has been received from the editor, the fact
should be mentioned in the complaint.

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

4. The complaint may be sent to: The Secretary,
Press Council of India, Faridkot House (Ground Floor),
Copernicus Marg, New Delhi 110 001.
4.7 In the case of a complaint against non-publication of material, the complainant will, of course, say how that constitutes a breach of journalistic ethics.

4.8 In order to nip vexatious or frivolous complaints in the bud itself, the Council is given the power not to take cognizance of a complaint if in the opinion of the chairman there is no sufficient ground for holding an inquiry.

4.9 The Press Council will not deal with any matter which is sub judice. The complainant has to declare that "to the best of his knowledge and belief he has placed all the relevant facts before the Council and that no proceedings are pending in any court of law in respect

5. The European Court of Human Rights in Strasbourg is also following a similar practice. Every petition or complaint will be considered first by the European Commission for Human Rights, the investigative arm of the Court. In order to prevent governments having to deal with a vast number of vexatious or unfounded petitions, the Commission has a sub-committee to weed out such cases and to conduct preliminary inquiries. When cases are accepted as bona fide they are first referred to governments, and efforts are made to settle them by friendly negotiations. If these fail, the Commission has the ultimate remedy of referring the case to the Court. See Paul Martin, "Europe's Court of Last Resort," Reader's Digest (Bombay: July 1986), pp. 66-70.

6. Dr S V Charupure v. Midday, (1989-90) Ann. Rep. 181. Proceedings against the newspaper were dropped by the Council when it was brought to its attention that a suit relating to the impugned report was pending in Bombay High Court. See sec 4(3) of the Act.
of any matter alleged in the complaint". A declaration that "he shall notify the Council forthwith if during the pendency of the inquiry before the Council any matter alleged in the complaint becomes the subject matter of any proceedings in a court of law" is also necessary.

4.10 In Britain, if legal proceedings in respect of the subject matter of a complaint have been instituted or are threatened, the Press Council will defer the complaint until after the proceedings have been concluded or abandoned. If such proceedings are threatened, or if the Council considers they are likely, it will require the complainant either to abandon the proceedings or to wait until they have been disposed of by the court. Where the complainant decides to abandon legal proceedings and proceed with his complaint before the Council, the newspaper is protected from subsequent legal action. The press councils are at best quasi judicial bodies and their proceedings must give way to court proceedings.

4.11 Clement Jones, a former British editor and a member of the British Press Council for eight years, says:

There is also an obligation on the part of the Press Councils not to usurp the courts of law and they should refuse to deal with cases where there is an obvious and serious remedy at law.
unless the complainant gives a clear undertaking not to go to law subsequently, using the Council’s adjudication to buttress his legal action.7

HOW A COMPLAINT IS DEALT WITH

4.12 On taking cognizance of a complaint, the editor or journalist concerned is asked to show cause why action should not be taken against him. After receiving the written statement and other relevant materials from the opposite party, the secretariat of the Council prepares a dossier and places it before the Inquiry Committee. The Committee screens and examines the complaint in necessary details and, if need be, calls for further particulars or documents. The persons concerned are given opportunity to give oral evidence by appearing before the Committee personally or through their authorised representatives. The British Press Council has so far refused to permit legal representation to prevent its proceedings becoming too formal and legalistic. There the proceedings are informal. However, legal practitioners can also be authorised to appear before the Committee and the Council in India.

4.15 For the purposes of performing the functions of the Council or holding any inquiry under the Act, it has been provided in Section 15(1) that the Council has the power to use persons throughout India as are vested in a civil court of civil jurisdiction.
4.13 After the Inquiry Committee reaches its decision, the findings and recommendations will be forwarded to the Council, which may or may not accept them. The Committee gives reasons for arriving at the conclusions and submits the entire record of the case to the Council. The Council passes orders giving its decisions on every finding contained in the Committee's report or remits the case to it for further inquiry. Many recommended adjudications are accepted by the Council in view of the fact that the Committee before making any recommendation hardly leaves any room for doubt.

4.14 After a decision in Council is reached a summary of the facts and of the recommendation is released for publication. If the Council thinks it necessary or expedient in public interest so to do it can direct any newspaper to publish in the manner the Council deems fit any particulars relating to an inquiry.

Powers of Civil Court

4.15 For the purposes of performing the functions of the Council or holding any inquiry under the Act, it has been provided in Section 15(1) that the Council has the same power throughout India as are vested in a civil
court while trying a suit under the Code of Civil Procedure in respect of:

(a) summoning and enforcing the attendance of persons and examining them on oath;
(b) requiring the discovery and inspection of documents;
(c) receiving evidence on affidavits;
(d) requisitioning any public record or copies thereof from any court or office;
(e) issuing commissions for the examination of witnesses or documents; and
(f) any other matter which may be prescribed.

Section 15(3) further provides that "every inquiry held by the Council shall be deemed to be a judicial proceeding within the meaning of Ss 193 and 228 of the Indian Penal Code". Section 193 deals with fabrication of any evidence in the course of judicial proceedings and section 228 deals with intentional insult or interruption to public servant sitting in judicial proceedings. The legislative intent that the functioning of the Council dealing with any complaint is to be in the nature of a judicial function is made manifestly clear by the various provisions in the Act. However, the lawyers are often told that the Council is not a court of law and the procedure adopted by it is less rigid than the one followed in the courts.

4.16 In a Chandigarh case as well as in the Verghese case, the Council had to threaten the exercise of judicial power to tame recalcitrant respondents. In the case of the Chandigarh journalists, the Government of
Haryana, which had earlier refused to recognise the authority of the Council in the Tribune case, sent its Director of Public Relations to answer the inquiry only upon the threat to use the power to issue summons. In the Verghese case, the Council succeeded to compel the management to produce the complete correspondence exchanged between Mr B G Verghese and Mr K K Birla.

PROCEEDINGS ARE OPEN

4.17 Justice should not only be done but should manifestly and undoubtedly be seen to be done. The proper administration of law in accordance with the rules of natural justice requires that proceedings before a judicial or quasi-judicial body should be held openly and in public. Although the principle may not be universally observed, it is undoubtedly recognised throughout the world as being a basic standard by which the quality of legal systems may be judged.

4.18 In Britain the adjudication of complaints is held in private. According to the procedure adopted in 1954, the Press Council would not sit in public or permit reporters to attend its meeting. Commenting on this, the

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Observer in a leading article of 28 March 1954 said: "Newspapers which claim the right of free reporting in the public interest should be ready to apply the same principle to their own affairs". However, the procedure was not changed when the Council was reconstituted in 1963.

4.19 In India, though every inquiry held by the Press Council shall be deemed to be a judicial proceeding, its proceedings were held in camera (till the open court rule was accepted in 1986) and requisite information was released after the matter stood adjudicated. Needless to say this was a negation of the fundamental freedom of information; and the Council itself received a poser on this when S Sahay, editor of the Statesman, requested admittance to the meeting of the Inquiry Committee hearing the complaint of Mr Balram Jhakar, then Speaker of the Lok Sabha, against the Illustrated Weekly of India. Sahay claimed that the public had a right to know not only the final conclusions of the Council but also the submissions of the parties so
as to be able to judge the soundness or otherwise of the Council's decision since it was on the basis of this case-law that a code of conduct was being built up. According to him:

The Council is entrusted with the task of building up a code of conduct, presumably on a case-law basis. And case-laws can carry conviction only if people are aware of the material and arguments that have shaped the Council's decision. Hence the Council, in my view, owes it to the people and the profession that its proceedings, right from the inquiry stage, are made available to the people through the press.

4.20 In his detailed note, the Chairman, Justice A N Sen, recommended to the Council that it may not, for any valid reason, refuse to permit the press to attend and watch the proceedings before the Inquiry Committee or the Council. The Press Council which has been established for the purpose of preserving the freedom of the press may not itself be considered guilty of denial of legitimate freedom to the press, he said.

4.21 Accepting the recommendations of the Chairman, the Council at its meeting in August 1986 decided as follows:

i. Members of the public, including the press, should be allowed to attend and watch the
proceedings before the Inquiry Committee and also before the Council:

ii. In an appropriate case, the members of the Inquiry Committee may decide to exclude all outsiders, including the members of the press, at the hearing of a particular complaint. The decision of the Inquiry Committee should be either unanimous or by consensus failing which the decision by a majority of the members present at the Inquiry Committee meeting should prevail.  

iii. After the hearing of a complaint has been concluded before the Inquiry Committee and when members choose to deliberate amongst themselves about the decision to be recommended to the Council, no outsider, including any member of the press, and even the parties to the proceedings will be permitted to remain present.

iv. At the time of consideration of the recommendations of the Inquiry Committee by the Council, the Council may also exclude the members of the public, including the press, at the time of mutual discussion and deliberation, if the Council considers it to be fit and proper. Any such decision by the Council, if not unanimous or by consensus, must be by a majority of the members present at the meeting.  

4.22 There was no difficulty for the Council to make its proceedings open because neither the Act nor the Regulations states anywhere that the proceedings will be held in private. The fact that the Indian Press Council, unlike its British counterpart, is a statutory organisation, is also relevant.

10. In the constitution of the Alberta Press Council there is a provision in Art 4(c) which reads - "Meetings of the Council shall be open to the public unless a majority of the members present agree otherwise".

unlike its British counterpart which is an exclusive professional organisation of the journalists, is statutory in nature was also overlooked when earlier Justice N Rajagopala Ayyangar, in his capacity as Chairman of the Council, refused to oblige to a strong plea for permitting the press to report the proceedings in the Verghese case. In 1984, the then Chairman, Justice A N Grover, took strong exception to the publication of proceedings before the Inquiry Committee when the case had not yet been disposed of.

DECISIONS BY CONSENSUS

4.23 The decision of the Press Council is taken by majority of votes of members present and voting in any meeting. In the event of the votes being equal, the Chairman shall have a casting vote and shall exercise it. However, the Council generally takes decisions by consensus. Moral authority and universal acceptability being the main sanction of the Press Council, it is advisable that it should always strive to reach decisions by consensus. Recourse to voting will ultimately lead to external lobbying and internal grouping which will greatly diminish the stature and prestige of a very important body. Public trust is important because its decisions are final. They cannot be questioned in a court.
of law except by invoking the writ jurisdiction of the High Courts or the Supreme Court.

4.24 The opinion expressed by the Council subserves two useful purposes: (1) That any abuse of press freedom does not pass without anybody noticing it or raising a finger of protest, and (2) that the press should not, in its own interest, indulge in scurrilous or other objectionable writings - writings such as have been considered below the level of recognised standards of journalistic ethics by a fair-minded jury like the Council constituted mainly of the press itself. That much restraint is necessary to preserve a much prized freedom.

5.2 The British Press Council's main sanction was the obligatory publication of the adjudication in full, though there was no requirement to allocate it any particular position or prominence. This is the case...