Part Four

GUIDE, ADVISER AND ALLY
Chapter 15

SUMMING UP

15.1 The history of the Press Council falls into two phases. The first began with its institution in 1966 and ended ten years later when it was abolished during the emergency; the second is the present era which began in 1978 when the Council was restored by the Janata Government. Both these phases need to be considered separately, for chronological and historical reasons, though the two phases are inseparable by a common thread of similar perspectives and objectives.

The First Phase

15.2 Though the First Press Commission, in its report submitted to the Government in 1954, had recommended the setting up of an all-India Press Council, it did not come into being until more than 12 years thereafter. The legislative exercise for constituting the Council by statute was over only in 1965. Even thereafter it took another eight months to
establish it; and the Council did come into being on 4 July 1966. The list of members of the first Council was gazetted on 16 November 1966 - ten years and four months after the bill for its creation was first introduced in Parliament.

15.3 Once the Press Council had been established its members accepted the challenge to make it work. Mr Justice J R Mudholkar, a sitting judge of the Supreme Court, was appointed as the Council's first Chairman. His personality and prestige proved of great value in getting a tentative and uncertain project launched. Unfortunately his term was a short one, and to the genuine regret of all his colleagues he was obliged to resign after only one year of office following a controversy over the composition, powers and functions of the Council in which he was accused of being unhelpful. During that time he made the Council's purpose clear and gave direction to its work. The aim, as he saw it, was the development of a body as the guardian of the press.¹ The press had to be free, but it had also to be trustworthy. The Council's appeal would be conscience and fair play.

15.4 Mr Justice N Rajagopala Ayyangar, a retired judge of the Supreme Court, succeeded Mr Justice Mudholkar as Chairman. Both these gentlemen were highly respected in their profession; and they used their best endeavours to realise the principles for which the Council stood. The Council had need of such men during the years of its infancy.

15.5 A 20-member Advisory Committee with the Minister of Information and Broadcasting as chairman was constituted in early 1968 to "study the existing Act under which the Press Council of India has been set up and to suggest such amendments as may be considered necessary to enlist for the Council full and effective cooperation from all sections of the press and the public and to enable it to play its due role in preserving the freedom of the press and improving the standards of journalism in the country which are in conformity with the basic objectives of the Council." In response to a request from the committee, the Council submitted a memorandum on its functions and powers in the light of the experience gained during a year and a half of its existence till then but decided not to say anything in regard to its composition which was a matter for Parliament to decide. The committee
submitted its report on 31 October 1968. Both the term of the Council and of the Chairman was extended by an ordinance up to 31 March 1970. An amending bill based on the recommendations of the Advisory Committee was passed by Parliament in 1970 and the new Council was nominated under a revised procedure laid down in the amended Act.

15.6 The original quagmire over the nomination of members persisted even under the amended Act as a result of which the term of the Council had to be extended by an ordinance for a period of six months in 1973. Later it was extended twice i.e., up to the end of 1975. Meanwhile, internal emergency was clamped on the country and press freedom was curbed. The Press Council was abolished by an ordinance and it ceased to exist from 1 January 1976.

15.7 For the great amount of work the Press Council was supposed to do, the budget was pitifully low. In order to make the Council financially viable and autonomous, the 1978 Act gave it the power to levy fees on newspapers and news agencies having regard to their circulation and other matters. Under the earlier Act, the Council was wholly dependent for funds on the
payments made by the Central Government. The income/expenditure of the Council for the years 1968-73 will show that the working of the Council was under severe budgetary constraint.

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<thead>
<tr>
<th>Year</th>
<th>Income</th>
<th>Pay of Estt</th>
<th>Allow-</th>
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<td></td>
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<td>officers</td>
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<tr>
<td>1968</td>
<td>Rs 3,01,316</td>
<td>53,215</td>
<td>38,177</td>
<td>76,685 22,562 47,720</td>
</tr>
<tr>
<td>1969</td>
<td>Rs 2,67,390</td>
<td>65,437</td>
<td>40,361</td>
<td>85,529 36,001 1,83,804</td>
</tr>
<tr>
<td>1970</td>
<td>Rs 4,39,967</td>
<td>69,374</td>
<td>33,124</td>
<td>1,06,125 19,301 1,17,959</td>
</tr>
<tr>
<td>1971</td>
<td>Rs 3,61,787</td>
<td>78,731</td>
<td>38,135</td>
<td>90,041 20,646 1,39,354</td>
</tr>
<tr>
<td>1972</td>
<td>Rs 3,79,158</td>
<td>75,481</td>
<td>39,502</td>
<td>1,02,219 15,274 1,32,901</td>
</tr>
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15.8 Though the budget was increased slightly in 1970, it was brought down the next year. After paying the salaries and meeting the establishment charges, precious little was left for actual investigation and research. Given its budget, it could not really do much more than perform its adjudicatory functions. Now the position is changed. Rule 1C of the Press Council Act 1978 empowers the Council to levy fees at the rates ranging from Rs 100 to Rs 7,500 per annum depending on the circulation of the newspapers/periodicals or the class of news agency. No fee is levied on papers with

circulation of less than 5,000 copies. Any fee payable to the Council is recoverable as arrear of land revenue. The Central Government also continues to make grants to the Council. During 1992-93 the Council received grants aggregating to Rs 34.13 lakhs and an amount of Rs 16.67 lakhs was realised as fees from newspapers/news agencies. Besides this the Council also had an unspent balance of Rs 1.38 lakhs as on 1 April 1992.

15.9 The complaints jurisdiction of the Council constitutes its most important function. A comparatively accurate scenario of the exercise of this jurisdiction can be gleaned from the Annual Reports. The following table sets out some statistical information relating to the First Phase.

Complaints before the Council

<table>
<thead>
<tr>
<th>Year</th>
<th>Total No. of complaints</th>
<th>By the State</th>
<th>Against the State</th>
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<tbody>
<tr>
<td>1967</td>
<td>29</td>
<td>(not known)</td>
<td>5</td>
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<tr>
<td>1968</td>
<td>32</td>
<td>14</td>
<td>3</td>
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<td>1969</td>
<td>77</td>
<td>44</td>
<td>5</td>
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<td>1970</td>
<td>58</td>
<td>26</td>
<td>11</td>
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<tr>
<td>1971</td>
<td>60</td>
<td></td>
<td>17</td>
</tr>
<tr>
<td>1972</td>
<td>125</td>
<td></td>
<td>22</td>
</tr>
<tr>
<td>1973</td>
<td>96</td>
<td></td>
<td>32</td>
</tr>
<tr>
<td>1974</td>
<td>95</td>
<td></td>
<td>39</td>
</tr>
</tbody>
</table>
15.10 During 1992-93 the Council registered 758 cases out of which 242 were against authorities and 516 were against the press. This trend was evident from the very beginning. The government was the principal complainant against the press and the Press Council was being used whenever it was dissatisfied with a report in a newspaper. Though this was contrary to what was envisaged, the 1967 Annual Report of the Council identified the Home Ministries of the Central and State Governments as the principal ministries invoking the complaint jurisdiction of the Council against the press. In the *Andhra Prabha* case the editor had to tender an apology to the Chief Minister of Orissa; and in the *Mother India* case the editor gave an undertaking - which was accepted by the Ministry of Home Affairs - that he would not repeat the offence. In 1968 the Council considered 32 complaints, 29 of them pertaining to violation of journalistic ethics or publication of matter offending against public taste. Fourteen of these complaints were filed by the State Governments, the rest being those referred to it by the public. The number of complaints steadily grew to 108 against newspapers and 32 against the state governments.

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⁴. Ibid.
and others in 1972. There was a general feeling that the machinery of the Press Council was increasingly and deliberately being used by the government to increase rather than decrease its control over the press. However, timely steps were taken by the Council itself to reverse this trend.

15.11 As stated earlier, the Press Council Act, both original and current, lay great stress on the need to help newspapers to maintain their independence and to ensure high professional standards. These functions have naturally constituted most of the work of the Council. This extension of the Council's jurisdiction was opposed; the Advocate-General of Haryana was of the opinion that such inquiries were outside its scope. Mr Justice Ayyangar, the then Chairman of the Council, wrote a spirited and judicious defence of this jurisdiction, echoing the assertion made by the Council in its second Annual Report:


—. (1970) A.R. (v)-(vi). The question arose in respect of a complaint made by the Tribune against the Chief Minister of Haryana stopping government advertisements to the paper.
Press Councils, wherever they exist, have come to be regarded mainly as a watch-dog on the conduct of newspapers and persons who produce them. With consideration of ethical questions relating to the press as its primary concern, a Press Council functions as a defender of the press freedom and exposes the basis of that freedom. Other duties listed in this charter are either considered incidental or performed in the projection of their proper role.  

By 1971, the Council felt sufficiently secure in this jurisdiction to express its displeasure at this jurisdiction being questioned. This led to the criticism in some quarters that the Council was laying more or almost exclusive emphasis on these functions to the neglect of other functions. But, if the Council's fundamental role is to safeguard the freedom of the press and to ensure that this freedom is not to be regarded as a licence by any section of the press, then it is legitimate for the Council to pay maximum attention to the adjudications of cases of assaults on the freedom of the press from the government and other elements on the one hand and to the cases relating to

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infraction by newspapers and journalists of the code of conduct and the writings offending against public taste.

15.12 The most significant aspect of the Council's complaint jurisdiction is the pathology of its use. It has been used by a large variety of people for diverse purposes. When the Council was first established in 1966, it evolved an ambitious programme involving the evolution of a code of conduct,9 a scheme for the training of journalists,10 reviewing the concentration of ownership patterns in the press11 and looking at the problem of parliamentary privilege and the press.12 The Council's adjudications have helped build up a good case law serving as a code of conduct; apart from it, it abandoned the attempt to create a code of ethics, hoping to create such a code through its case work.13 As far other areas were concerned, the Council with its scarce resources was not in a position to cope up with its multiple tasks.

10. Ibid, 4-5.
11. Ibid, 5.
12. Ibid, 6-7.
Slowly it became a lobbying organisation. It suggested improvements in a number of laws concerning the press including the law relating to contempt of court.

15.13 A renovated Press Council was set up in 1970. It was a time when the thunders of an imminent confrontation between the press and the government were audible in the distant horizon.\(^{14}\) The mounting tension between the Government and the corporate press, aggravated by the defeat of the Government in the famous newsprint supply case,\(^{15}\) has had its resounding effect on the Press Council. In her pitched battle with the press and the opposition, Mrs Indira Gandhi scored a strategic point when an internal emergency was proclaimed under Art 352 of the Constitution; and the very first act under the emergency was to impose pre-censorship on the press. The Press Council had become infructuous and its continuance as a guide, adviser and ally of the press had become an anachronism. The Government wanted an alibi to abolish it; and it was done on the plea that "it was not able to carry on its functions effectively


\(^{15}\) *Ibid.*
to achieve the objects for which it was established”.

The Second Phase

15.14 The Press Council was resurrected after the emergency with the enactment of the Press Council Act 1978. Justice A N Grover, who resigned from the Supreme Court following his supersession during Mrs Gandhi’s regime, was appointed as Chairman.

15.15 The Council’s power to finance itself through a levy on the press has resulted in the augmentation of its budget. Apart from offsetting the inflationary losses, it would lessen the Council’s dependence on the Government. However, the ambivalence of the media is tangible in the non-payment of the statutory levy: the Council could collect Rs 16.67 lakhs as fee for the year 1992-93 whereas arrears for the period would come to Rs 8.20 lakhs.

15.16 Compared with its previous workload (1966-75), there is no doubt that the workload of the Council has increased. During 1992-93, no less than 758 complaints were received by the Council. Of these, 242 were complaints against the authorities for
jeopardising the freedom of the press or the exercise of the complainant's legitimate journalistic functions, and the remaining 516 were against the press for violation of the norms of journalistic ethics and good taste. With the addition of 421 matters pending from the previous year, the Council was required to consider a total of 1,179 cases. The total number of cases disposed of during this period was 828, including 266 cases in which adjudications were rendered after full inquiry, while the remaining 562 were summarily disposed of on preliminary grounds such as lack of sufficient grounds for inquiry, or non-prosecution, abandonment or withdrawal by the complainant, or its settlement between the parties at the initial stage, or the matter having become sub-judice in a court of law. The year 1991-92 opened with 331 pending cases and the number of cases filed during the year was 574. Out of this 125 cases were adjudicated and 358 were dismissed at the preliminary stage.

15.17 A careful analysis of the adjudications reported in the Annual Reports would reveal that it is the government which is the largest and most effective complainant to use the jurisdiction of the Council against the press. This may seem a paradox because the
basic justification for the establishment of the Council was as a bulwark against encroachments against freedom of the press. A positive aspect, however, is the inclination of the government and other authorities to approach the Council instead of approaching the courts with all sorts of complaints against the press.

Has the Council failed?

15.18 There is a vociferous criticism against the Press Council that it has failed in its duties and functions. This class of critics seriously doubt, if not outrightly reject, its utility. Rajeev Dhavan concludes his essay on Press Council with a caustic remark that the case of the press has to be considered without the window dressing of the Press Council.16

15.19 The Council may not have fully lived up to the expectations bestowed on it; but it will be unfair and far from the truth to say that it has become a futile institution. Any exercise in this regard has to be made on the basis of the twin objective of the Council: (1) Preservation of the freedom of the press

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and (2) Maintaining and improving the standards of newspapers. The first object required the Council to remain and act as a vigilant sentinel against any invasion on press freedom. The Council was also charged with a duty to help newspapers and news agencies maintain their independence. It was further asked to keep under review any development likely to restrict the supply and dissemination of news of public interest and importance.

15.20 As would be seen from the case book, the Council has entertained a good number of complaints against public authorities alleging attempts to invade the independence and freedom of the press. These complaints ranged from the cases of various types of excesses actually committed or sought to be committed on individual journalists to the stoppage of advertisements to newspapers in order to pressurise them into toeing the line of the government. Apart from this, over the years, the Council has acquired broad hybrid functions as a mediator between the government and the press. It has done a bit of lobbying on parliamentary privileges, defamation and contempt of court.

17. Supra Ch. 14, p. 229.
15.21 The second objective of maintaining and improving the standards of newspapers entailed a number of functions which the Press Council was required to perform. These included building up of a code of conduct for newspapers and news agencies and journalists in accordance with high professional standards; to ensure on the part of the press the maintenance of high standards of public taste and foster a due sense of both the rights and responsibilities of citizenship; to encourage the growth of a sense of responsibility and public service among all those engaged in the profession of journalism; to provide facilities for the proper education and training of persons in the profession; to study developments tending towards monopoly or concentration of ownership including a study of the ownership or financial structure of newspapers and news agencies and, if necessary, to suggest remedies; to promote technical or other research; to keep under review cases of assistance received by any newspaper from any foreign source; and to undertake studies of foreign newspapers including those brought out by any embassy or other representative of a foreign state, their circulation and impact. 

15.22 One of the main points of criticism against the Press Council has been that it has not laid down a code of conduct for the press as enjoined by S. 13(2)(b) of the Act and as suggested by the First Press Commission in 1954. But, as has been explained in Chapter 6 of this thesis¹⁹, the Council thought it wise to 'build up' and not to 'formulate' such a code. This view has not only been endorsed by the Second Press Commission but it has held that formulation of the code with one stroke would be undesirable. Indeed, as pointed out by Dr Trikha,²⁰ the Indian press has become highly suspicious and apprehensive of the framing of the code after its unsavoury experience during the 1975-77 emergency when a government-inspired code was sought to be thrust on it. Even those people who at one time wanted a clear-cut code of ethics to be formulated are now in favour of its gradual evolution over the years from the ever-growing case book of adjudications. Therefore, it cannot be considered a failure on the part of the Council if it has not produced a tangible code.

¹⁹. Supra p. 81.

15.23 As part of this endeavour, the Council released in 1992 'A Guide to Journalistic Ethics' which is a succinct compilation of the principles sorted out from the adjudications of the Council and the guidelines issued by it in their wake. Many of the basic principles set out in this Guide are in substance universally recognised. These are not cast-iron statutory rules but broad general principles which if applied with due discernment and adaptation to the varying circumstances of each case will help the journalist to self-regulate his or her conduct along the path of professional ethics. This Guide was presented to the Third International Conference of Press Councils and Similar Bodies held in New Delhi in October 1992 when the conference was in the process of considering a proposal to lay down a code. Adopting the Guide, the Conference urged other press councils to emulate the Indian pattern and build up similar guides out of their decisions.

15.24 Our study does not warrant the conclusion that the Press Council has failed in its objectives. We can legitimately be proud of our Council that in certain aspects it outshines the British Press Council which is the model for many other press councils in the
world. However, it will be better if we take earnest steps to further tone it up so that it will continue as a sentinel against draconian restrictions which the governments might seek to impose on the press.

S.U.G.G.E.S.T.I.O.N.S

A. Status and structure

15.25 Being a statutory creature is the greatest advantage of the Indian Press Council. It should not only be retained but strengthened by making a provision for compulsory placement of adjudications of the Council in Parliament or the State legislatures. Though the domination of the political executive is discernible, the in-built safeguards in respect of nomination of members enable the Council to remain free from the interference and influence of the government. Being a statutory body, the Council is conferred with power to summon and enforce the attendance of persons and examining them on oath as also to require the discovery and inspection of documents. It has also power to receive evidence on affidavit, to requisition any public record or copies thereof from any court or office and to issue commissions for the examination of
witnesses or documents. At the same time newspapers and
newspapermen are exempted from compulsory disclosure of
their source of information which is a wholesome
provision not available in other countries. The
creation of a free and autonomous body by statute is a
unique experiment and we have succeeded in it.

15.26 There is a suggestion to establish regional
press councils, leaving the central council as an
appellate body. Though seem to be tenable in the
context of the regional language press, such regional
councils with an appellate forum will further aggravate
the problem of delay. Even now the prolonged and
protracted proceedings are causing great annoyance and
sometimes a feeling of disgust. An adjudication long
after the damage caused by an irresponsible publication
will be futile. The Inquiry Committee sitting in
various regions can be taken as a substitute for the
establishment of regional councils. More Inquiry
Committees can be set up and hearings can be held on
complaints emanating from a particular region at a
place located in that region.

15.27 There is a suggestion to make the Council a
permanent body (like the Upper House of Parliament)
with provision for triennial retirement of half of the membership in various categories. Though nothing critical can be said of the present method of nomination of members, care should be taken to give representation to all regions. A situation emerged in 1982 when all the seven working journalists other than editors happened to belong to Delhi and all of them were special correspondents. In the present Council, five out of the seven working journalists are from Delhi and one each from Lucknow and Calcutta. The regional imbalance is distressingly evident with only two members (Dr M V Pylee and Shri K M Mathew) to represent the entire South. In keeping with the spirit of the federal set-up in India, representation from different regions can be statutorily provided for.

B. Powers and functions

15.28 For the effective functioning of the Press Council, it should be given some teeth based on the principle of the golden mean between moral and punitive sanctions. While mere moral sanctions may not be sufficient in hard cases, conferment of punitive powers is more dangerous. The Council has undergone three phases of thinking on the subject. Under the
chairmanship of Justice A N Grover penal powers were considered desirable and necessary; under the chairmanship of Justice A N Sen such powers were not at all needed and, if given, could be misused by the government; under Justice Sarkaria's chairmanship these became necessary once again. However, under Justice Sawant, the present chairman, the Council is not seeking any such power. If the Council began penalising the parties, Justice Sawant says, they would immediately approach the courts leading to prolonged litigation defeating its objective of providing speedy relief. It is our considered opinion that the Council should assume power to recommend payment of cost and compensation at the time of deciding a case. In case of default, the Council should have the power to recommend to journalists' associations to cancel the membership of the defaulters. The Council should also have the power to recommend cancellation of government advertisements and other privileges if a newspaper was found guilty twice within a span of three years.

15.29 In order to make the Press Council an effective body all those engaged in the profession of

21. The Hindu, 14 October 1995, p.6. For a detailed discussion on this aspect, see ch. 5, p. 64.
journalism shall be brought under its disciplinary authority. Though we have made out a case in chapter 5 against making journalism a closed profession, a beginning can be made by bringing all those journalists who come within the statutory definition of a "working Journalist" under the disciplinary control of the Council as in the case of other similar statutory bodies entrusted with the responsibility of maintaining professional standards like the Indian Medical Council and the Bar Council of India. The Press Council shall be given power, beyond the power of warning or censuring delinquent journalists, to remove a member from the profession for professional misconduct and violation of professional ethics in line with similar power enjoyed by the Bar Council and the Medical Council.

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22. Section 2(f) of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act 1955 defines a working journalist thus: "working Journalist" means a person whose principal avocation is that of a journalist and who is employed as such in, or in relation to, any newspaper establishment, and includes an editor, a leader writer, news editor, subeditor, feature writer, copy tester, reporter, correspondent, cartoonist, news photographer and proof reader...


15.30 All laws affecting the press should first be referred for the opinion of the Council. Modifications shall be effected in existing laws relating to parliamentary privileges, contempt of court, defamation, official secrets etc as suggested by the Press Council and narrated in earlier chapters.

15.31 The Council should have the power to order immediate correction of glaring misstatements published in a newspaper. This is important as otherwise irreparable damage would be done to the reputation and prestige of an individual or an institution by the time an adjudication is pronounced by the Council.

C. Procedure and performance

15.32 Efforts should be made to cut short the delay in the pronouncement of adjudications. The process can be expedited by reducing the number of adjournments and pronouncing ex parte decisions with an opportunity for the affected party to appeal. The number and frequency of regional sittings can be increased to enable the parties to pursue the cases.

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effectively.

15.33 Since the Council has rejected a suggestion to constitute regional councils,27 care should be taken to ensure regional representation in the Council. This will be in tune with the spirit of federalism to which our nation is committed.

15.34 The Council shall be bold enough to pass severe indictments against the authorities which would enhance its dignity and moral authority. Only such steps would remove the general feeling that the Council is an ineffective body as against mighty authorities.

15.35 The Council should ensure publication of its adverse adjudications in a proper manner and follow-up actions shall be kept under constant review. The secretariat may address the concerned authorities and professional organisations about non-implementation or improper or inadequate implementation of its decisions. The result of this surveillance may be published in the Annual Report.

15.36 The Council should indulge more often in the

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initiation of suo motu action. To avoid the allegation of motivated action, this can be done only by consensus instead of by a majority decision. Since the suo motu inquiry is conducted on behalf of the whole Council, it should have the sanction and willing support of all the members.

15.37 Though an autonomous body, 70 per cent of the Council's funds are received in the form of grants while the remaining 30 per cent is collected as a levy from the newspapers. The Council is empowered to levy fees at the rates ranging from Rs 100 to Rs 7,500 per annum depending on the circulation of newspapers/periodicals; newspapers having a circulation up to 5,000 copies exempted. Even this small amount is not being paid regularly by several newspapers; the arrears pending against them have gone up to Rs 52 lakhs. In order to make payments prompt the newspapers should be asked to produce a "no dues certificate" from the Council before receiving payment for government advertisements.

29. The Council received grant-in-aid amounting to Rs 34.13 lakhs during the financial year 1992-93 from the Central Government, collected Rs 16.67 lakhs as fees from newspapers/periodicals and news agencies and had Rs 3.12 lakhs as other miscellaneous receipts like interest on bank account etc. See (1992-93) Ann. Rep. 661.
Complaints against TV and radio

15.38 The broadcasting industry has no equivalent of the Press Council though the television channels, including the government-owned Doordarshan and All India Radio, have never been above criticism. With more and more channels, both foreign and national, crowding our airwaves, the formation of a controlling agency has become imperative. If a Complaints Commission is established to deal exclusively with complaints relating to the electronic media, it, along with the Advertisement Standards Council of India, would be a fitting corollary or an ideal collaborator with the Press Council of India in ushering and ensuring a free market of ideas with a better deal for the buyers and sellers.

20. In 1977 the Annan Committee on the Future of Broadcasting in Britain recommended the establishment of a statutory body which would sit in public in order to investigate and decide upon complaints from the public. The result in 1981 was the establishment of the Broadcasting Complaints Commission (BCC). See, Tom G Crone, Law and the Media (Oxford: Heinemann, 1989), pp 184-185.