

MEDIA COUNCIL BILL

..... POLICY BRIEF



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:::: Policy Brief ::::

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Contents

Introduction	1
1. Compliance of Code of Conduct.....	2
2. Constitution of the Council	4
3. Dismissal of chairperson and members of the Council.....	6
4. Imposition of hefty fines.....	7
5. Fund to the Council.....	9
6. The government may give directive to the council.....	10
7. References.....	11

Introduction

Press Council is a self-regulatory body formed by and for the media. While the press is considered the watch-dog of government and society at large, press councils act as the watchdog of the press itself. Thus, its primary function is to administer Code of Practice agreed upon by the members of press, and register and investigate into public complaints related to the editorial content in media. Press Council plays a critical role in safeguarding press freedom and freedom of expression.

Press councils have been formed in different parts of the world for mainly for either of three purposes; as an intermediary between the media investors and editorial leadership, between media and public, i.e., media consumers and, lastly, for self-regulation of media (Tara Nath Dahal, personal communication, December 20, 2019). According to the official website of Press Council Nepal, the historical development of press council in Nepal can be traced to 1967, when the Press Advisory Committee was formed. Press Council Nepal was later established as prescribed by the Press and Publication Act, 1962. The existing Press Council Nepal was formed as per Press Council Act, 1992.

The government of Nepal has proposed a new Bill Related to the Amendment and Integration of Laws Related to Nepal Media

Council, which will replace the existing Press Council Act 1992. The Bill envisions a new Media Council with an objective to develop and promote healthy, independent, respectable and responsible journalism while maintaining professional ethics of journalism. The new Bill with its stringent provisions has raised alarms among media professionals and other stakeholders. There are several sections in the Bill that establishes the Council as an entity powerful enough to impose hefty fines on media, while some sections puts the independence of the Council at risk. The Bill, if implemented in its current form, will have severe consequences on press freedom in Nepal. The following lists attempts shed light on sections that need to be reviewed, along as recommendations:

1. Compliance of Code of Conduct

Section	Sub-section	Clause	
6	4		The Council shall monitor whether every media outlet, electronic broadcasting media and online news sites, newspapers and literary papers, and its publisher, editor, journalists and reporter abide by the Code of Conduct or not and the Council may issue necessary directives to comply with the Code of Conduct during such monitoring.
	5		The concerned media outlet, electronic broadcasting media and online news sites, newspapers and literary papers, and its publisher, editor, journalists and reporter is obligated to follow directives pursuant to Sub-section (4).

All media outlets and journalists are obligated to follow the directive to comply with the Code of Conduct as issued by the Council. The mandatory enforcement of code of conduct, with the Council as an enforcement agency only creates fear among journalists. When journalists are required to abide by the code of conduct, it becomes a piece of legislation, rather than an ethical guideline. The Council, as an independent body, should create an environment where members of the media themselves hold each other answerable.

Recommendation

The Council should only draw attention of the media to cases of violation of the code of conduct. The decision whether to pay heed or not to such reprimand from the Council should be left to the discretion of concerned media outlet and journalist. Voluntary compliance of code of conduct ensures that all members of the media respect the code of conduct and commit to implementing it.

2. Constitution of the Council

Section	Sub-section	Clause	
7	1		<p>The council shall consist of the following persons:</p> <p>(a) One person appointed by the government of Nepal from amongst persons who hold a bachelor degree on any subject and have at least 10 years of experience in the field of journalism and have rendered distinguished service in the same field – Chairperson</p> <p>(b) First class gazetted officer nominated/ appointed by the ministry – Member</p> <p>(c) Chairperson, Federation of Nepali Journalists – Member</p> <p>(d) Six persons, including at least two women, nominated by the ministry, who have at least 15 years of experience in different fields of mass media, management, law, information technology or social sector – Member</p>
	3		<p>A recommendation committee, consisting of the following members, shall be constituted to recommend a suitable person for the appointment in the position of Chairperson:</p> <p>(a) Secretary of the ministry – Coordinator</p> <p>(b) One person appointed by the ministry from amongst persons who are renowned in law, information technology or social sector – Member</p> <p>(c) One person appointed by the ministry amongst senior journalists – Member</p>

Media Council is a self-regulatory and autonomous body formed to keep watch on the media. The composition of the Council plays determining role in whether it can function in an independent manner. The aforementioned clauses allow the government to nominate and appoint eight members of the council, including the chairperson, amongst the total of nine members. With the majority of members appointed by the government on recommendation from the Ministry of Communication and Information Technology, the council may become subject to interference from the government, which can jeopardize the self-regulatory nature of the council.

Additionally, the Council should also represent the diversity within the media as well as media consumers. In cases of wrongdoing by media outlets, public turns to the Council. Thus, it must be representative of diverse fields within the media, including investors, academia, civil society, and media consumers.

Similarly, the recommendation committee tasked with recommending a person for the position of chairperson consists of government appointees only, which gives space for prejudice to come into play.

Recommendation

The number of government appointments in the Media Council should be reduced. Doing so helps in ensuring that the council remains free of government interference. The representation of members of civil society, academia, and consumers of the media should be increased, instead of direct government appointments. If the majority of the Council members are representatives of media, it may not be trusted to be vigilant of the media itself. Thus, it is important to limit participation of

the media to less than half of the total number of the Council members.

With regards to Sub-section (3), the clauses should be reviewed to include Supreme court justices, members of the academia, and civil society, instead of government appointees. The potential members of such recommendation committee can be Chief Justice, the speaker of the House of Representatives or the National Assembly, the dean of journalism department at Tribhuvan University, or a senior journalist.

3. Dismissal of chairperson and members of the Council

Section	Sub-section	Clause	
10	2		Whatever may be written in Sub-section (1), the government of Nepal can dismiss the chairperson or members from his position before the end of tenure, in the following conditions: (a) lack of work capability (b) for unsatisfactory performance (c) bad behavior (d) not following his/her official duty with due honesty (e) is insane

Although the chairperson and council members are appointed for the tenure of four years, the aforementioned clause allows the government to dismiss them if the given conditions for disqualification are found in them. The five stipulated conditions for dismissal are not defined well, and leave much room for discretionary interpretation. As a result, the

government can misuse its authority to control the council and its work by firing council members at its whim. These vague clauses expose council members to a constant fear of being fired, and consequently, endanger the autonomy of the council.

Recommendation

The Sub-section (2) should be removed altogether. This reduces the chances of misuse of authority by the government, and allows chairperson and council members to work without any fear of prejudiced action by the government.

4. Imposition of hefty fines

Section	Sub-Section	Clause	
18	1		<p>To cause to pay compensation with imposition of fine: The Council may impose fine of NRs 25,000 up to NRs 1,000,000 on the media outlet, publisher, editor, journalist or reporter if any person, under Section (16), files complaint of harm to his/her reputation due to any content published or broadcast in contravention of the Code of Conduct published by the Council and upon inquiry, under Section (17), if the media outlet, publisher, editor, journalist or reporter is found guilty of harm to reputation.</p>

	2		The council may cause to pay compensation to person or organization if the reputation of the concerned person or organization is damaged due to any content published or broadcast in contravention of the Code of Conduct published by the Council.
	3		Basis for the determination of compensation under Sub-section (2) shall be as prescribed.

The abovementioned clauses stipulate that media outlet, editor, journalist or reporter will be fined NRs 25,000 up to NRs 1,000,000 if found guilty of causing harm to the reputation of complainant due to media content published against the code of conduct. By handing over the power to impose legal penalties such as these, these clauses elevate the council to a quasi-judicial body. However, there is little certainty that the council will have required judicial expertise to issue verdicts on cases of harm to reputation.

More importantly, the imposition of such hefty fines may lead journalists towards self-censorship. As discussed before, the code of conduct serves as an ethical guide for journalists and whether to follow the code of conduct or not is up to each individual. However, by penalizing actions deemed to be against the code of conduct, the journalists are pushed to self-censorship. The violation of the code of conduct should not be considered a criminal offence.

Recommendation

The imposition of fines should be removed from the Bill. Given that the offence of harm to reputation already addressed in Section 306 and 307 of the National Criminal Code 2074, in

section dedicated to libel and defamation, the inclusion of such a provision in the Bill seems unnecessary. In case the Council receives complaints of harm to reputation, the Council should recommend complainants take other judicial routes to file the case against the related media house, or journalist. The role of the Council should be limited to directing the complainants to other government or judiciary bodies that may be of help to them.

5. Fund to the Council

Section	Sub-Section	Clause	
21	3		The Council shall not receive any form of assistance from foreign government, person or institution.

The above mentioned clause restricts the Council from receiving any form of grants or assistance from foreign government, institutions and persons. The clause might be intended at safeguarding the autonomy of the Council. However, Press Council Nepal has received funds from foreign governments in the past, and such grants have helped the Council support media enterprises in Nepal. Thus, restricting the Council of foreign assistance may not be a wise move.

Recommendation

The Section related to the fund to the Council can be the same as in the existing Press Council Act, 1992. The 1992 Act states that the Council can receive from funds from foreign government, or institution with prior approval from the Government of Nepal. The 1992 Act also has an additional provision that allows the Council from any other source.

6. The government may give directive to the council

Section	Sub-Section	Clause	
29	1		The government of Nepal may issue directives to the Council for the development and promotion of healthy, independent, respectable and responsible journalism aligned with Mass Media Policy of the country.
	2		It is the duty of the Council to follow the directive pursuant to Sub-section (1).
	3		The Council may issue directives to media outlets for public welfare during natural calamities and to maintain professional dignity.
	4		It is the duty of all media outlets to follow the directive pursuant to Sub-section (3).

It is reasonable for the government to issue directive to the Council during natural calamities as media plays a very crucial role in the immediate aftermath of any disaster. However, Sub-section (3) above does not clarify whether the Council is responsible to follow directives issued during natural disaster, or on other occasions as well. The lack of clarity in Sub-section (3) can be interpreted as the government being authorized to issue directives to uphold professional dignity of journalism without any occurrence of natural disasters.

Recommendation

Sub-section (3) should be written in a way that the government may issue directives to the Council and the Council to media outlets only during the occurrence of a natural calamity. In normal times, when no natural calamity has occurred, the code of conduct published by the Council serves as the directive for media outlets.

7. References

Introduction. (2017). Retrieved from <http://www.presscouncilnepal.org/np/2017/08/1206>



SAMRIDDHI
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Samriddhi, The Prosperity Foundation is an independent policy institute based in Kathmandu, Nepal. It works with a vision of creating a free and prosperous Nepal.

Initiated in 2007, it formally started its operations in 2008. The specific areas on which the organization works are:

- i. Entrepreneurship development
- ii. Improving business environment
- iii. Economic policy reform
- iv. Promoting discourse on democratic values

Centered on these four core areas, Samriddhi works with a three- pronged approach—Research and Publication, Educational and Training, Advocacy and Public Outreach.

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(more information at www.samriddhi.org)



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