

## CONTENTS

Lesson No	Lesson Name	Page No.
<b>UNIT - 1</b>		
1	Constitution of India	1.1 - 1.9
2	Freedom of Speech and Expression	2.1 - 2.8
3	Directive Principles	3.1 - 3.7
4	Emergency Provisions - Effects on Media	4.1 - 4.7
5	Parliamentary, Legislative Privileges and Media	5.1 - 5.8
<b>UNIT - 2</b>		
6	Law of Defamation	6.1 - 6.9
7	Contempt of Courts Act 1971	7.1 - 7.4
8	Official Secrets Act 1923 VIS A VIS Right to Information Act	8.1 - 8.9
9	Press and Registration of Books Act	9.1 - 9.10
10	Working Journalists and Other News Paper Employees (Conditions of Service and Miscellaneous Provisions) Act 1955	10.1 - 10.8
11	Copy Right Act	11.1 - 11.10
<b>UNIT - 3</b>		
12	Prasar Bharati (Broadcasting Corporation of India) Act	12.1 - 12.11
13	The Cable Television Networks (Regulation) Act 1995	13.1 - 13.8
14	Satellite Regulations in India	14.1 - 14.7
15	Cinematography Act	15.1 - 15.12
<b>UNIT - 4</b>		
16	Press Council of India	16.1 - 16.9
17	Codes Suggested for The Press Council of India and Press Commissions	17.1 - 17.8
18	Codes for Radio and Television	18.1 - 18.10
19	Information Technology Act - 2008	19.1 - 19.14
<b>UNIT - 5</b>		
20	Medias Ethical Issues	20.1 - 20.9
21	Ethical Issues Ownership of Media	21.1 - 21.11

## **Unit - I**

### **Lesson - 1**

# **CONSTITUTION OF INDIA**

## **1.0 Objective:**

On completion of this lesson you should be able to understand:

- Historical background of the constitution of India
- Key Features
- Amendment of The Constitution
- Fundamental Rights

## **Structure:**

- 1.1 Introduction**
- 1.2 Historical background**
  - 1.2.1 The Cabinet Mission Plan**
  - 1.2.2 Indian Independence Act 1947**
  - 1.2.3 Constituent Assembly**
  - 1.2.4 Drafting**
  - 1.2.5 Factors**
- 1.3 Key Features**
  - 1.3.1 Schedules**
  - 1.3.2 Federal Structure**
  - 1.3.3 Parliamentary Democracy**
  - 1.3.4 Judicial Review of Laws**
- 1.4 Amendment of the Constitution**
- 1.5 Fundamental Rights**
  - 1.5.1 Peculiar Features of Fundamental Rights**
- 1.6 Summary**
- 1.7 Self Assessment Questions**
- 1.8 Suggested Readings**

## 1.1 Introduction:

The Constitution of India is the supreme law of India. It lays down the framework defining fundamental political principles, establishes the structure, procedures, powers, duties of government institutions, and sets out fundamental rights, directive principles, and the duties of citizens. It is the longest written constitution of any sovereign country in the world. It contains 448 articles in 24 parts, 12 schedules and 97 amendments. Besides the English version, there is an official Hindi translation. B.R.Ambedkar was the Chief Architect of Indian Constitution.

## 1.2 Historical Background:

The Constitution was enacted by the Constituent Assembly on 26 November 1949, and came into effect on 26 January 1950. The date 26 January was chosen to commemorate the Purna Swaraj, declaration of independence of 1930. With its adoption, the Union of India officially became the modern and contemporary Republic of India and it replaced the Government of India Act 1935 as the country's fundamental governing document. The Constitution declares India to be a sovereign, socialist, secular, democratic republic, assuring its citizens of justice, equality and liberty, and endeavors to promote fraternity among them. The words "socialist" and "secular" were added to the definition in 1976 by constitutional amendment. India celebrates the adoption of the constitution on 26 January every year as Republic Day.

The Government of India Act 1935's contribution to the constitution of India was tremendous. Important features such as the federal structure of government, provincial autonomy, a bicameral central legislature consisting of a federal assembly and a council of states, the separation of legislative powers between the centre and provinces are some of the provisions of the constitution, which were directly taken from the Government of India Act 1935 Act.

**1.2.1 The Cabinet Mission Plan:** The cabinet mission plan which was formulated in 1946, discussed the framework of the constitution and laid down in some detail the procedure to be followed by the constitution drafting body. After elections for the 296 seats assigned to the British Indian provinces were completed the constituent assembly of India first met and began work on 9 December 1946.

**1.2.2 Indian Independence Act 1947:** The Indian Independence Act, passed by the British Parliament on 18 July 1947, divided British India into two new independent states, India and Pakistan, which were to be dominions under the Commonwealth of Nations until they had each finished drafting and enacted a new constitution. The Constituent Assembly was divided into two for the separate states, with each new Assembly having sovereign powers transferred to it for the respective dominion. However, in most cases the states were so dependent on central institutions that they were widely expected to accede to a dominion. When the Constitution of India came into force on 26 January 1950, the Indian Independence Act was repealed. India ceased to be a dominion of the British Crown and became a sovereign democratic republic.

**1.2.3 Constituent Assembly:** The Constitution was drafted by the Constituent Assembly, which was elected by the elected members of the provincial assemblies. Dr. B.R. Ambedkar, Jawahar Lal Nehru, C.Rajagopalachari, Rajendra Prasad, Sardar Vallabhi Patel, Maulana abul Kalam Azad, Shyama Prasad Mukherjee were some important figures in the Assembly. There were more than 30 members of the Scheduled classes. Representatives

from Anglo-Indian community, the Parsies, Minorities Committee and Gorkha Community were also instrumental in designing the constitution. Prominent jurists like K.M.Munishi, Alladi Krishna swamy iyer, B.R. Ambedkar, Ganesh Mavalankar were also members of the Assembly. Sarojini Naidu, Durga Bai Deshmukh, Vijaya Lakshmi Pandit, Rajkumari Amrit kaur were important women members. The first temporary 2-day president of the Constituent Assembly was Dr Sachidanand Sinha. Later, Rajendra Prasad was elected president of the Constituent Assembly. The members of the Constituent Assembly met for the first time on 9 December 1946.

**1.2.4 Drafting:** A day before declaration of independence i.e. on the 14 August 1947 meeting of the Assembly, a proposal for forming various committees was presented. Committee on Fundamental Rights, the Union Powers Committee, and Union Constitution Committee were formed. On 29 August 1947, the Drafting Committee was appointed, with Dr.B.R.Ambedkar, as the Chairman along with six other members assisted by a constitutional advisor. A Draft Constitution was prepared by the committee and submitted to the Assembly on 4 November 1947. Draft constitution was debated and over 2000 amendments were moved over a period of two years. Finally on 26 Nov. 1949, the process was completed and Constituent assembly adopted the constitution. 284 members signed the document and the process of constitution making was complete. The architects of India's constitution, though drawing on many external sources, were most heavily influenced by the British model of parliamentary democracy. A number of principles were adopted from the constitution of Unites States of America including the separation of powers among the major branches of government, the establishment of a supreme court, and the adoption, albeit in modified form of a federal structure (a constitutional division of power between the Union (central) government and state governments)

The Assembly met in sessions open to the public, for 166 days, spread over a period of 2 years, 11 months and 18 days before adopting the Constitution. After many deliberations and some modifications over 111 plenary sessions in 114 days, the 308 members of the Assembly signed two copies of the document (one each in Hindi and English) on 24 January 1950. The Constitution has undergone many amendments since its enactment.

**1.2.5 Factors:** Various factors have influenced the Indian constitution during its framing and after coming into force also. The social factors that had their impact on the framing of the Indian constitution included

Communalism

Racial diversity

Linguism

Castesim

Discrimination based on sex

Special needs of the tribal and backward areas

The Political factors that influenced the constitution are Integration of Indian states, provision of federation, and aspiration of the people and finally influence of Mahatma Gandhi. Many economic factors have influenced it. Poverty, under development, unemployment, poor living standards etc have forced the constitution to put provisions relating to economic democracy under the directive principles of state policy. They are as a sort of reminder to the legislatures to always bear in mind that their law should reflect the ideals enshrined in them. But unlike the fundamental rights they are not justifiable because the constituent assembly was well aware of the fact that the government has no resources to put them immediately into practice.

### 1.3 Key Features:

The key features of the constitution are federalism, parliamentary form of government, separation of powers, fundamental rights; secularism etc. Federalism refers to the existence of more than one level of government in the country where we have governments at the state as well as central level. According to the parliamentary form of government the different tiers of government consist of representatives who are elected by the people. Through universal adult franchise people above the age of 18 years can exercise and cast their vote to select people's representatives. The constitution provides for three organs of the state i.e legislature for which the members are elected by people themselves, executive which consist of a small group of people who are responsible for implementing laws and running the government. The third wing refers to the judiciary which refers to the system of courts in country. The section of fundamental rights has often been referred to as the conscience of the Indian constitution. They protect the citizens against the arbitrary and absolute exercise of power by the state. The constitution thus guarantees the right of the individuals against the state as well as against other individuals. The last salient feature of the Indian constitution is secularism according to which the state does not officially promote any one religion as the state religion. Although it is federal in nature it also has a strong unitary bias.

**1.3.1 Schedules:** Schedules are lists in the Constitution that categorize and tabulate bureaucratic activity and policy of the Government.

- First Schedule (Articles 1 to 4): This lists the states and territories of India, lists any changes to their borders and the laws used to make that change.
- Second Schedule (Articles 59, 65, 75, 97, 125, 148, 158, 164, 186 and 221): This lists the salaries of officials holding public office, judges, and Comptroller and Auditor General of India.
- Third Schedule (Articles 75, 99, 124, 148, 164, 188 and 219): Forms of Oaths - This lists the oaths of offices for elected officials and judges.
- Fourth Schedule (Articles 4 and 80): This details the allocation of seats in the Rajya Sabha (the upper house of Parliament) per State or Union Territory.
- Fifth Schedule (Article 244): This provides for the administration and control of Scheduled Areas and scheduled Tribes (areas and tribes need special protection due to disadvantageous conditions).

- Sixth Schedule (Articles 244 and 275): Provisions for the administration of tribal areas in Assam, Meghalaya, Tripura, and Mizoram.
- Seventh Schedule (Article 246): The union (central government), state, and concurrent lists of responsibilities.
- Eighth Schedule (Articles 344 and 351): The official languages.
- Ninth Schedule (Article 31-B): Originally Articles mentioned here were immune from judicial review on the ground that they violated fundamental rights. but in a landmark judgment in 2007, the Supreme Court of India held in *I.R. Coelho v. State of Tamil Nadu* and others that laws included in the 9th schedule can be subject to judicial review if they violated the fundamental rights guaranteed under Article 14, 15, 19, 21 or the basic structure of the Constitution.
- Tenth Schedule (Articles 102 and 191): "Anti-defection" provisions for Members of Parliament and Members of the State Legislatures.
- Eleventh Schedule (Article 243-G): Panchayat Raj (rural local government).
- Twelfth Schedule (Article 243-W): Municipalities (urban local government).

**1.3.2 Federal Structure:** Three subject lists, the Union list, the State list, and the Concurrent list define the legislative powers of each level of government. The Union government reserves the right to make laws in areas specified on the Union list, the state governments are allowed to make laws in areas specified in the State list, and laws in areas listed on the concurrent list may be made at either a state or federal level. The areas of public order, dealings with local governments, and certain types of taxes are examples of topics which are on the state lists, where Parliament is forbidden to intervene barring exceptional circumstances. Issues such as education, transportation, and criminal law are on the concurrent list, where both state legislatures and Parliament are able to make laws. All residuary powers are vested with the Union.

**1.3.3 Parliamentary Democracy:** The President of India is elected by the Parliament and State Legislative Assemblies, but directly by the people. The President is the head of the state, and all the business of the Executive and Laws of the Parliament are made in his/her name. However, these powers are only nominal, and the President must act only according to the advice of the Prime minister and the Council of Ministers. The Prime Minister and the Council of Ministers exercise their offices only as long as they enjoy a majority support in the Lok Sabha, the lower house of the Parliament, which consists of members directly elected by the people. The ministers are answerable to both the houses of the Parliament. Also, the Ministers must themselves be elected members of either the Lok Sabha or the Rajya Sabha, the upper house of the Parliament. Thus, the Parliament exercises control over the Executive. A similar structure is present in States, where the directly elected legislative Assembly enjoys control over the Chief Minister and the State Council of Ministers.

**1.3.4 Judicial review of laws:** Judicial Review refers to that the Constitution is the supreme power of the nation and all laws are under its supremacy. Judicial review is adopted in the Constitution of India from the Constitution of the United states of America. In the Indian constitution, judicial review is dealt with under Article 13. Article 13 states that:

1. All pre-constitutional laws, if in part or completely in conflict with the Constitution, shall have all conflicting provisions deemed ineffective until an amendment to the Constitution ends the conflict. In such situation the provision of that law will again come into force, if it is compatible with the constitution as amended. This is called the Doctrine of Eclipse.
2. In a similar manner, laws made after adoption of the Constitution by the Constituent Assembly must be compatible with the constitution, otherwise the laws and amendments will be deemed to be void ab initio.
3. In such situations, the Supreme Court or High Court interprets the laws to decide if they are in conformity with the Constitution. If such an interpretation is not possible because of inconsistency, and where a separation is possible, the provision that is inconsistent with constitution is considered to be void. In addition to article 13, articles 32, 124, 131, 219, 228 and 246 provide a constitutional basis to judicial review in India.

## 1.4 Amendment of the constitution:

A constitution is the basic document which determines the fundamental relationship between the different organs of the government, the nature of the executive, legislature and the judiciary and the relationship between the government and judiciary and also between the government and the governed. It may be wholly enacted or partly enacted and aptly in the form of conventions. To suit the changing needs of the society and serve the people for a long time enough room was provided to the constitution for its growth and future needs in the form of amendment procedures. To facilitate this framers of the constitution have tried to avoid extreme rigidity and extreme flexibility and have steered a middle course.

There are three different methods for the amendment of the Indian constitution. Each method is applied in connection with certain specific provisions. Article 368 of the constitution provides for the amendment of the constitution of India. According to the first provision the federal provisions of the constitution can be amended when the bill for the amendment is passed in both the houses voting separately with a majority of the total membership of the house and two thirds of the members present and voting therein. The bill is then sent to the states and it should be approved by at least half of the state legislatures before it is approved by at least half of the state legislatures before it is presented to the president for his assent.

Amendments to the Constitution are made by the Parliament, the procedure for which is laid out in Article 368. An amendment bill must be passed by both the Houses of the Parliament by a two-thirds majority and voting. In addition to this, certain amendments which pertain to the federal nature of the Constitution must be ratified by a majority of state legislatures. As of January 2012 there have been 115 amendment bills presented in the Parliament, out of which 97 have been passed to become Amendment Acts. Most of these amendments address issues dealt with by statute in other democracies. However, the Constitution is so specific in spelling out government



powers that many of these issues must be addressed by constitutional amendment. As a result, the document is amended roughly twice a year. The Supreme Court has ruled in *Kesavananda Bharati vs State of Kerala* case that not every constitutional amendment is permissible; the amendment must respect the basic structure of the constitution, which is immutable. In 2000 the National Commission to Review the Working of the Constitution (NCRWC) was set up to look into updating the constitution.

## 1.5 Fundamental Rights:

Fundamental Rights is a chapter of Rights contained in the Constitution of India. It guarantees civil liberties such that all Indians can lead their lives in peace and harmony as citizens of India. Every Indian can enjoy these rights during normal times and are denied during emergencies. The rights can be divided into two categories i.e. those which impose certain restrictions of negative character on the state without conferring special privileges on the citizens. Then there are positive rights which confer privileges on the people eg. Article 17 similarly abolishes untouchability. Article 18 says that the state shall not confer any special title on the citizens. These can be easily covered in the former category. Right to liberty, equality of freedom to express or worship come under the second category. Another feature is that these make a distinction between the citizens and aliens. Rights to freedom to worship and equality before law are available even to aliens, rights to freedom of speech and assembly is available to only citizens. Similarly there are certain rights which are denied to a particular section(s) of society e.g. armed forces personnel do not enjoy political rights. Then another feature of our rights is that these are available only against the state and not against any private party. If state violates any right the aggrieved party can seek justice through courts of law but if some violation is by an individual, he or she will have to take recourse to ordinary law of the land. One of the most important and significant feature of our rights is that these can be suspended. It is peculiar in the sense that no constitution of the world has made any such provision.

These include individual rights common to most liberal democracies, such as equality before law, freedom of speech and expression, freedom of association and peaceful assembly, freedom to practice religion, and the right to constitutional remedies for the protection of civil rights by means of writs such as habeas corpus. Among the Fundamental Rights, Right to freedom is included in the articles 19, 20, 21 and 22. Right to freedom includes freedom of speech and expression, freedom to assemble peacefully without arms, freedom to form associations or unions and freedom to move freely throughout the territory of India. Furthermore, Right to freedom also states that citizens have the freedom to reside and settle in any part of the territory of India and also have the freedom to practice any profession or to carry on, any occupation, trade or business. However, subject to reasonable restrictions by the state in the interest of the general public. Certain safeguards are envisaged to protect the citizens from exploitation and coercion.

The seven fundamental rights recognized by the constitution are

1. The right to equality
2. The right to freedom
3. The right to freedom from exploitations
4. The right to freedom of religion



5. Cultural and educational rights
6. The right to constitutional remedies
7. The right to property (Saving of certain Laws-44th Amendment made it a legal right and not a fundamental right)

These rights guaranteed under the Constitution of India are fundamental as they have been incorporated into the "fundamental Law of the land" and are enforceable in a court of law. However, this does not mean that they are absolute or that they are immune from Constitutional amendment. Fundamental rights for Indians have also been aimed at overturning the inequalities of pre independence social practices. Specifically, they have also been used to abolish untouchability and hence prohibit discrimination on the grounds of religion, race, caste, sex, or place of birth. They also forbid trafficking of human beings and forced labour. They also protect cultural and educational rights of ethnic and religious minorities by allowing them to preserve their languages and also establish and administer their own education institutions.

**1.5.1 Peculiar Features of Fundamental Rights:** Not like other countries in India fundamental rights have some peculiar features. The rights guaranteed here are not absolute. Each right is conditioned by certain duties. There is no right which has no corresponding obligations. Another feature is that they are justifiable. It implies that the rights are above everything in the land. All the executive actions or laws passed by our legislatures must be in conformity with fundamental rights. The fundamental rights have been very much elaborated. It is said that these have been so much elaborated that no other constitution has discussed them in such a greater length. These are justifiable and courts of law are competent to declare any law which is violative of these rights as unconstitutional or ultra vires of the constitution, if need be. Such an action can be taken only if an appeal is made by a citizen to revise a law or an executive order, which in his opinion is ultra vires of the constitution. Violations of these rights result in punishments as prescribed in the Indian Penal Code (IPC), subject to discretion of the judiciary. The Fundamental Rights are defined as basic human freedoms which every Indian citizen has the right to enjoy for a proper and harmonious development of personality. These rights universally apply to all citizens, irrespective of race, place of birth, religion, caste, creed, color or sex. They are enforceable by the courts, subject to certain restrictions. The Rights have their origins in many sources, including England's Bill of Rights, the United States Bill of Rights and France's Declaration of the Rights of Man.

## 1.6 Summary:

The Constitution of India lays down the framework defining fundamental political principles, establishes the structure, procedures, powers, and duties of government institutions sets out fundamental rights, directive principles, and the duties of citizens. It is the longest written constitution of any sovereign country in the world. It contains 448 articles in 24 parts, 12 schedules and 97 amendments. Besides the English version, there is an official Hindi translation. B.R.Ambedkar is the Chief Architect of Indian Constitution. The key features of the constitution are federalism, parliamentary form of government, separation of powers, fundamental rights and secularism etc. Federalism refers to the existence of more than one level of government in the country where we have governments at the state as well as at the centre. According to the parliamentary form of

government the different tiers of government consist of representatives who are elected by the people. Through universal adult franchise people above the age of 18 years can exercise and cast their vote to select people's representatives. The constitution provides for three organs of the state i.e legislature for which the members are elected by people themselves, executive which consist of a small group of people who are responsible for implementing laws and running the government. The third wing refers to the judiciary which refers to the system of courts in country. The section of fundamental rights has often been referred to as the conscience of the Indian constitution. They protect the citizens against the arbitrary and absolute exercise of power by the state. The constitution thus guarantees the right of the individuals against the state as well as against other individuals. The last salient feature of the Indian constitution is secularism according to which the state does not officially promote any one religion as the state religion.

In the parliamentary democracy the president of India is elected by the Parliament and State Legislative Assemblies, and not directly by the people. The President is the head of the state, and all the business of the Executive and Laws of the Parliament are in his/her name. However, these powers are only nominal, and the President must act only according to the advice of the Prime minister and the Council of Ministers. Amendments to the Constitution are made by the Parliament, the procedure for which is laid out in Article 368. An amendment bill must be passed by both the Houses of the Parliament by a two-thirds majority and voting. In addition to this, certain amendments which pertain to the federal nature of the Constitution must be ratified by a majority of state legislatures. Judicial review is adopted in the Constitution of India from the Constitution of the United States of America. In the Indian constitution, judicial review is dealt under Article 13.

### **1.7 Self Assessment Questions:**

1. Explain the key features of Indian constitution.
2. Explain the amendment procedure of the constitution.
3. List out the Fundamental Rights and explain them.
4. Write about the peculiar features of fundamental rights.

### **1.8 Suggested Readings:**

1. Durga Das Basu: Introduction to the Constitution of India
2. Durga Das Basu: Law of the Press
3. Dr. Jan R. Hakemulder, Dr. Fay AC De Jonge and P.P. Singh : Media Laws and Ethics
4. B. N. Pandey: Indian Constitution
5. Kiran Prasad: The Philosophies of Communication and Media Ethics

## Lesson 2

# FREEDOM OF SPEECH AND EXPRESSION

### Objective:

On completion of this lesson you should be able to understand:

- Historical background of the constitution of India
- Freedom of speech
- Freedom of expression
- Limitations of freedom of speech and restrictions
- Restrictions
- Reasonable restrictions

### Structure:

- 2.1 Introduction
- 2.2 History
- 2.3 Freedom of Speech
- 2.4 Freedom of Expression
- 2.5 Limitations of Freedom of Speech and Restrictions
  - 2.5.1 Security of the State
  - 2.5.2 Friendly relations with foreign States
  - 2.5.3 Public Order
  - 2.5.4 Decency and Morality
  - 2.5.5 Contempt of Court
  - 2.5.6 Defamation
  - 2.5.7 Incitement to An Offence
  - 2.5.8 Sovereignty and Integrity of India
- 2.6 Restrictions
- 2.7 Reasonable Restrictions
- 2.8 Summary
- 2.9 Self Assessment Questions
- 2.10 Suggested Readings

## 2.1 Introduction:

The right to freedom of speech and expression is closely related to other rights, and may be limited when conflicting with other rights. The right to freedom of expression is also related to the right to a fair trial and court proceeding which may limit access to the search for information or determine the opportunity and means in which freedom of expression is manifested within court proceedings. As a general principle freedom of expression may not limit the right to 'privacy, as well as the honor and reputation of others. However greater latitude is given when criticism of public figures is involved. The right to freedom of expression is particularly important for media, which plays a special role as the bearer of the general right to freedom of expression for all. However, freedom of the press is not necessarily enabling freedom of speech. Judith Lichtenberg has outlined conditions in which freedom of the press may constrain freedom of speech, for example where the media suppresses information or stifles the diversity of voices inherent in freedom of speech. Lichtenberg argues that freedom of the press is simply a form of property right summed up by the principle "no money, no voice".

## 2.2 History:

Concepts of freedom of speech can be found in early human rights documents and today's concept emerged gradually during the European Enlightenment, England's Bill of Rights 1689 granted 'freedom of speech in Parliament' and the Declaration of the Rights of Man and the Citizen, adopted during the French Revolution in 1789. Article 19 of the Universal Declaration of Human Rights, adopted in 1948, states that: "Everyone has the right to freedom of opinion and expression. This right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." The present right to freedom of speech, or the freedom of expression, is recognized in international and regional human rights law. Based on John Stuart Mill's arguments, freedom of speech is understood as a multi-faceted right that includes not only the right to express or disseminate information and ideas but to seek, receive and impart information and ideas.

## 2.3 Freedom of Speech:

The usual liberties of the individual are embodied in the Constitution of India, according to which all citizens shall have the right;

- To freedom of speech and expression
- To assemble peacefully and without arms
- To form association or unions
- To move freely throughout the territory of India
- To reside and settle in any part of India.
- To acquire hold and dispose of property
- To practice any profession or to carry on any occupation, trade or business

This deals with articles from 19 to 22 of Constitution of India.

The colonial experience of the Indians made them realise the crucial significance of the Freedom of Press. Such freedom was therefore incorporated in the Constitution; to empower the Press to disseminate knowledge to the masses and the Constituent Assembly thus, decided to safeguard this freedom of press as a fundamental right. Although, the Indian Constitution does not expressly mention the liberty of the press, it is evident that the liberty of the press is included in the freedom of speech and expression under Article 19(1)(a). But such freedom is not absolute and it is qualified by certain clearly defined limitations under Article 19(2) in the interests of the public.

It is necessary to mention here that, this freedom under Article 19(1)(a) is not only cribbed, cabined and confined to newspapers and periodicals but also includes pamphlets, leaflets, handbills, circulars and every sort of publication which affords a vehicle of information and opinion. Thus, although the freedom of the press is guaranteed as a fundamental right, it is necessary for us to deal with the various laws governing the different areas of media so as to appreciate the vast expanse of media laws.

## 2.4 Freedom of Expression:

The Constitution of India contains the right to freedom, given in articles 19, 20, 21 and 22, with the view of guaranteeing individual rights that were considered vital by the framers of the constitution. The right to freedom in Article 19 guarantees the freedom of speech and expression, as one of following six freedoms. In a landmark judgment of the case *Maneka Gandhi v. Union of India*, the Supreme Court held that the freedom of speech and expression has no geographical limitation and it carries with it the right of a citizen to gather information and to exchange thought with others not only in India but abroad also.

The constitution of India does not specifically mention the freedom of press. Freedom of press is implied from the Article 19(1) (a) of the Constitution. Thus the press is subject to the restrictions that are providing under the Article 19(2) of the Constitution. Before Independence, there was no constitutional or statutory provision to protect the freedom of press. Freedom of press has been included as part of freedom of speech and expression under the Article 19 of the UDHR. The heart of the Article 19 says: "Everyone has the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

In *Romesh Thapar v. State of Madras*, Patanjali Shastri, CJ observed: "Freedom of speech and of the press laid at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible."

The Supreme Court observed in *Union of India vs. Assn. for Democratic Reforms*: "One-sided information, disinformation, misinformation and non information, all equally create an uninformed citizenry which makes democracy a farce. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions".

In *Indian Express vs. Union of India*, it has been held that the press plays a very significant role in the democratic machinery. The courts have duty to uphold the freedom of press and invalidate all laws and administrative actions that abridge that freedom. Freedom of press has three essential elements. They are: freedom of access to all sources of information, freedom of publication, and freedom of circulation.

In India, the press has not been able to exercise its freedom to express the popular views. In *Sakal Papers Ltd. vs. Union of India*, the Daily Newspapers (Price and Page) Order, 1960, which fixed the number of pages and size which a newspaper could publish at a price was held to be violative of freedom of press and not a reasonable restriction under the Article 19(2). Similarly, in *Bennett Coleman and Co. vs. Union of India*, the validity of the Newsprint Control Order, which fixed the maximum number of pages, was struck down by the Court holding it to be violative of provision of Article 19(1)(a) and not to be reasonable restriction under Article 19(2). The Court struck down the plea of the Government that it would help small newspapers to grow.

In *Romesh Thapar vs. State of Madras* (1950 SCR 594, 607; AIR 1950 SC 124), entry and circulation of the English journal "Cross Road", printed and published in Bombay, was banned by the Government of Madras. The same was held to be violative of the freedom of speech and expression, as "without liberty of circulation, publication would be of little value". In *Prabha Dutt vs. Union of India* ((1982) the Supreme Court directed the Superintendent of Tihar Jail to allow representatives of a few newspapers to interview Ranga and Billa, the death sentence convicts, as they wanted to be interviewed.

There are instances when the freedom of press has been suppressed by the legislature. The authority of the government, in such circumstances, has been under the scanner of judiciary. In the case of *Brij Bhushan vs. State of Delhi* (AIR 1950 SC 129), the validity of censorship previous to the publication of an English Weekly of Delhi, the Organiser was questioned. The court struck down the Section 7 of the East Punjab Safety Act, 1949, which directed the editor and publisher of a newspaper "to submit for scrutiny, in duplicate, before the publication, till the further orders, all communal matters all the matters and news and views about Pakistan, including photographs, and cartoons", on the ground that it was a restriction on the liberty of the press. Similarly, prohibiting newspaper from publishing its own views or views of correspondents about a topic has been held to be a serious encroachment on the freedom of speech and expression.

## 2.5 Limitations of Freedom of Speech and Restrictions:

The freedom of speech and expression does not confer an absolute right to express without any responsibility. Lord Denning, in his famous book "Road to Justice", observed that press is the watchdog to see that every trial is conducted fairly, openly and above board, but the watchdog may sometimes break loose and has to be punished 'for misbehaviour. With the same token Clause (2) of Article.19 of the Indian constitution enables the legislature to impose reasonable restrictions on free speech under following heads:

1. Security of the State,
2. Friendly relations with foreign States,
3. Public order,
4. Decency and morality,
5. Contempt of court,
6. Defamation,
7. Incitement to an offence, and
8. Sovereignty and integrity of India.



Reasonable restrictions on these grounds can be imposed only by a duly enacted law and not by executive action.

- 2.5.1 Security of the State:** Reasonable restrictions can be imposed on the freedom of speech and expression, in the interest of the security of the State. All the utterances intended to endanger the security of the State by crimes of violence intended to overthrow the government, waging of war and rebellion against the government, external aggression or war, etc., may be restrained in the interest of the security of the State. It does not refer to the ordinary breaches of public order which do not involve any danger to the State.
- 2.5.2 Friendly relations with foreign States:** This ground was added by the Constitution (First Amendment) Act of 1951. The State can impose reasonable restrictions on the freedom of speech and expression, if it tends to jeopardise the friendly relations of India with other State.
- 2.5.3 Public Order:** This ground was added by the Constitution (First Amendment) Act, 1951 in order to meet the situation arising from the Supreme Court's decision in *Romesh Thapar, s case* (AIR 1950 SC 124). The expression 'public order' connotes the sense of public peace, safety and tranquillity. In *Kishori Mohan vs. State of West Bengal*, the Supreme Court explained the differences between three concepts: law and order, public order, security of State. Anything that disturbs public peace or public tranquillity disturbs public order. But mere criticism of the government does not necessarily disturb public order. A law punishing the utterances deliberately tending to hurt the religious feelings of any class has been held to be valid as it is a reasonable restriction aimed to maintaining the public order. It is also necessary that there must be a reasonable nexus between the restriction imposed and the achievement of public order. In *Superintendent, Central Prison vs. Ram Manohar Lohiya* case the Court held the Section 3 of U.P. Special Powers Act, 1932, which punished a person if he incited a single person not to pay or defer the payment of Government dues, as there was no reasonable nexus between the speech and public order. Similarly, the court upheld the validity of the provision empowering a Magistrate to issue directions to protect the public order or tranquillity.
- 2.5.4. Decency and Morality:** The word 'obscenity' is identical with the word 'indecenty' of the Indian Constitution. In an English case of *R. v. Hicklin*, the test was laid down according to which it is seen 'whether the tendency of the matter charged as obscene tend to deprave and corrupt the minds which are open to such immoral influences'. This test was upheld by the Supreme Court in *Ranjit D. Udeshi vs. State of Maharashtra*. In this case the Court upheld the conviction of a book seller who was prosecuted under Section 292 I.P.C., for selling and keeping the book "*The Lady Chatterley's Lover*". The standard of morality varies from time to time and from place to place.
- 2.5.5 Contempt of Court:** The constitutional right to freedom of speech would not allow a person to contempt the courts. The expression Contempt of Court has been defined Section 2 of the Contempt of Courts Act, 1971. The term contempt of court refers to civil contempt or criminal contempt under the Act. But judges do not have any general immunity from criticism of their judicial conduct, provided that it is made in good faith and is genuine criticism, and not any attempt to impair the administration of justice. In *Arundhati Roy*, case the Supreme Court of India followed the view taken in the American Supreme Court



(Frankfurter, J.) in *Pennekamp vs. Florida* in which the United States Supreme Court observed: "If men, including judges and journalists, were angels, there would be no problem of contempt of court. Angelic judges would be undisturbed by extraneous influences and angelic journalists would not seek to influence them. The power to punish for contempt, as a means of safeguarding judges in deciding on behalf of the community as impartially as is given to the lot of men to decide, is not a privilege accorded to judges. The power to punish for contempt of court is a safeguard not for judges as persons but for the function which they exercise". In *E.M.S. Namboodripad vs. T.N. Nambiar* case, the Supreme Court confirmed the decision of the High Court, holding Mr. Namboodripad guilty of contempt of court. In *M.R. Parashar vs. Farooq Abdullah*, contempt proceedings were initiated against the Chief Minister of Jammu and Kashmir. But the Court dismissed the petition for want of proof.

- 2.5.6 Defamation:** The clause (2) of Article 19 prevents any person from making any statement that injures the reputation of another. With the same view, defamation has been criminalized in India by inserting it into Section 499 of the I.P.C.
- 2.5.7 Incitement to An Offence:** This ground was also added by the Constitution (First Amendment) Act, 1951. The Constitution also prohibits a person from making any statement that incites people to commit offence.
- 2.5.8 Sovereignty and Integrity of India:** This ground was also added subsequently by the Constitution (Sixteenth Amendment) Act, 1963. This is aimed to prohibit anyone from making the statements that challenge the integrity and sovereignty of India.

#### **Practical Constraints and Curtailments:**

Right to freedom of speech and expression, which enable an individual to participate in public activities. The phrase has not been used in Article 19, but freedom of expression includes freedom of press.

The Indian constitution while not mentioning the word "press", provides for "the right to freedom of speech and expression" (Article 19(1) a). However this right is subject to restrictions under subclause (2), whereby this freedom can be restricted for reasons of "sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, preserving decency, preserving morality, in relation to contempt of court, defamation or incitement to an offence". Laws such as the official secrets act and prevention of terrorism act (POTA) have been used to limit press freedom. Under POTA, person could be detained for up to six months before the police were required to bring charges on allegations for terrorism-related offenses. POTA was repealed in 2004, but was replaced by amendments to UAPA. The Official Secrets Act 1923 remains in effect. For the first half-century of independence, media control by the state was the major constraint on press freedom.

#### **Sedition:**

According to the English Law, Sedition embraces all the practices whether by word or writing which are calculated to disturb the tranquillity of the State and lead an ignorant person to subvert the Government. Mere criticism of the government does not amount to sedition, if it was not calculated to undermine the respect for the government in such a way so as to make people cease to obey it and so that only anarchy follows. Section 124A of the Indian Penal Code defines

the offence of sedition as follows: "Sedition. whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine". But Explanation 3 says "Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section" In *Kedar Nath vs. State of Bihar*, the court upheld the constitutional validity of the Section 124A of I.P.C and also upheld the view taken in *Niharendu's case*.

## 2.6 Summary:

The first amendment act of 1951 has empowered the state to impose certain restrictions on the freedom of speech and expression in the interest of public order and maintenance of friendly relations with foreign countries. It also empowers the state to carry on trade, business or industry whether to the total or the partial exclusion of citizens. Freedom of association and assembly is subjected to the right of the state to impose reasonable restrictions. These restrictions are considered essential for checking the abuse of freedom.

The original provision of the constitution regarding the freedom of speech was exceptionally wide. This may be attributed to the American influence on the framers of the constitution. The circumstances in which freedom of speech could be curtailed have been explained by Justice Brandeis. According to him, to justify suppression of freedom of speech there must be reasonable ground to for the serious evil will result if freedom of speech is practiced. There must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground that the evil to be prevented is a serious one. An equally broad interpretation of the right of the free speech under the original provision has been given by the Indian Supreme Court in case of *Romesh Thapar vs the State of Madras*. It was observed that the constitution has placed these offences in a distinct category against public order which aim at undermining the security of the state or overthrowing it and made the prevention of the sole justification of the legislators abridgment of the freedom of speech and expression, that is to say, nothing less than endangering the foundations of the state or threatening its over throw to justify the curtailment of the freedom of speech and expression".

The first amendment act of 1951 has considerably reduced the scope of the right to freedom of speech. It provides that "reasonable restrictors may be imposed by the state on the right to freedom of speech in the interest of the security of the state, the maintenance of friendly relations with foreign states, public order, decency, morality, or contempt of court, defamation or incitement to an offence. Thus the scope of the state interference in the right to freedom of speech has been widened. If the courts are satisfied about the reasonableness, the legislature and the executive are free to impose any number of restrictions on the individual's rights to freedom of speech. In several cases Supreme Court has interpreted the phrase reasonable restrictions. It has been held that "the phrase 'reasonable restrictions' connotes that the limitation imposed on a person should not be arbitrary or of an excessive nature, beyond what is required in the interest of the public. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonable ness. It was observed that, "the determination by legislature on what constitutes a reasonable restriction is not final or conclusive; it is subject to super vision by the court'. In the matter of fundamental rights the Supreme Court watches and guards the

rights guaranteed by the constitution and in exercising its functions, it has the power to set aside an act of the legislature if violation of the freedoms guaranteed by the constitution. The Indian constitution gives the due emphasis to personal liberty and the principle rule of Law.

The freedom of speech and of the press does not confer an absolute right to express without any responsibility. Lord Denning, in his famous book Road to Justice, observed that press is the watchdog to see that every trial is conducted fairly, openly and above board, but the watchdog may sometimes break loose and has to be punished for misbehaviour. With the same token Clause (2) of Article 19 of the Indian constitution enables the legislature to impose reasonable restrictions on freedom of speech to protect the security of the State, friendly relations with foreign States, public order, decency and morality, contempt of court, defamation, incitement to an offence, and sovereignty and integrity of India. Reasonable restrictions on these grounds can be imposed only by a duly enacted law and not by executive action.

### **2.7 Self Assessment Questions:**

1. Explain the history of freedom of speech and expression.
2. Discuss the freedom of speech in the context of media war.
3. List out the reasonable restrictions that can be imposed basing on freedom of speech.

### **2.8 Suggested Reading:**

1. Durga Das Basu: Introduction to the Constitution of India
2. Durga Das Basu: Law of the Press
3. Dr. Jan R. Hakemulder, Dr. Fay AC De Jonge and P.P. Singh :Media Laws and Ethics
4. B. N. Pandey: Indian Constitution
5. Kiran Prasad: The Philosophies of Communication and Media Ethics

## Lesson - 3

# DIRECTIVE PRINCIPLES

### Objective:

On completion of this lesson you should be able to understand:

- Directive Principles
- Classification of Directive Principles
- Criticism of Directive Principles:

### Structure

- 3.1 Introduction
- 3.2 Directive Principles
- 3.3 Classification of Directive Principles
  - 3.3.1 Socialistic Principles
  - 3.3.2 Gandhian Principles
  - 3.3.3 Liberal Principles
- 3.4 Criticism of Directive Principles
- 3.5 Summary
- 3.6 Self Assessment Questions
- 3.7 Suggested Books

### 3.1 Introduction:

An important feature of the constitution is the Directive Principles of State Policy. Although the Directive Principles are asserted to be "fundamental in the governance of the country," they are not legally enforceable. Instead, they are guidelines for creating an order characterized by social, economic, political justice, liberty, equality, and fraternity as enunciated in the constitution's preamble. The Forty-second Amendment, which came into force in January 1977, attempted to raise the status of the Directive Principles by stating that no law implementing any of the Directive Principles could be declared unconstitutional on the grounds that it violated any of the Fundamental Rights. The amendment simultaneously stated that laws prohibiting "antinational activities" or the formation of "antinational associations" could not be invalidated because they infringed on any of the Fundamental Rights. However, the amendment reflected a new emphasis in governing circles on order and discipline to counteract what some leaders had come to perceive as the excessively freewheeling style of Indian democracy. These amendments revoked the Forty-second Amendment's provision that Directive Principles take precedence over Fundamental Rights and also curbed Parliament's power to legislate against "antinational activities."

## 3.2 Directive Principles:

The Directive principles of state are not justifiable as per Article 37 but enforceable in people's court. The object of these principles incorporated based on Irish Constitution is to embody the concept of a welfare State. They are positive in nature, as they are positive instructions to state to strive hard to implement some programs for the welfare of people. On the other hand Fundamental Rights are negative in nature and they direct the state to refrain from doing certain acts violating the basic codified rights of people. Directive principles were held to be supplement to fundamental rights in achieving a Welfare State. Parliament can amend fundamental rights for implementing the directives so long as the amendment does not touch the basic features. They are supplement to each other. In fact directive principles and fundamental rights are to be harmoniously construed. K.T. Shah defined it as a cheque payable at the convenience of banker."

The Directive Principles of State Policy are contained in Part IV, Articles 36 to 50 of the Indian Constitution. Article 43 provides that the state shall endeavor to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities, and in particular the State shall endeavor to promote cottage industries on an individual or cooperative basis in rural areas. Article 37 of the Constitution declares that the Directive Principles of State Policy "shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws."

It was said by several members in the Constituent Assembly that the directive principles are superfluous or mere guidelines or pious principles or instructions. They have no binding force on the State. In his speech Dr. Ambedkar said that "The directive principles are like instruments of instructions which were issued to the Governor in General and Governors of colonies and to those of India by the British Government under the 1935 Act under the Draft Constitution. It is proposed to issue such instructions to the President and Governors. The text of these instruments of the instructions shall be found in scheduled IV of the Constitution of-India. What are called directive principles is that they are instructions to the Legislature and the Executive. It was never intended by Dr. Ambedkar that the Directive Principles had no legal force but had moral effect while educating members of the Government and the legislature, nor can it be said that the answer referred to necessarily imply with the Directive Principles had no legal force.

## 3.3 Classification of Directive Principles:

The directive principles are embodied in as many as 16 articles. It is difficult to classify these principles because they are not arranged in accordance with any logical plan. They cover a wide range of state activities. They are concerned with the social, economic, legal, educational and international principles. For the purpose of a systematic study the principles have been classified into three categories namely the socialist, Gandhian and liberal those which were not included in these categories were placed in the fourth general category.

**3.3.1 Socialistic Principles:** Many of these directive principles aim to attain a socialist society. These socialistic principles were considered essential for the purpose of establishing a welfare state.

Article 38 provides for State to secure a social order for the promotion of welfare of the people and (44th amendment) minimize the inequalities in income.

Article 39 contains certain policies to be followed by the state such as:

1. To provide adequate means of livelihood (through poverty alleviation programs)
2. The ownership and control of the material resources of the community are so distributed as to sub serve the common good
3. The operation of economic system does not result in concentration of wealth to the common detriment
4. Equal pay for equal work for both men and women, the concept, accepted by Supreme Court.
5. The health and strength of workers men and women and the tender age children are not abused
6. That the childhood and youth are protected against exploitation and moral and material abandonment.

Article 39 A, added by 42 amendment provides for Equal Justice and Free Legal Aid. Free Legal Aid Society formed in each state under Sec 304 Cr.P.C, according to which free legal aid has to be provided. Article 40 provides for Organization of Village Panchayat to function as Self Government. Article 44 provides for Uniform Civil Code for all the citizens. Article 45 provides for free and compulsory education.

Article 41 describes Right to work, to education and to public assistance in cases of employment, old age, sickness, disablement and other cases of undeserved want.

Article 42 provides that provisions shall be made by the state for securing just and human condition of work and maternity relief. Under this provision free maternity hospitals were opened across the country by successive governments.

Article 43 provides for living wage, conditions of work of worker ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

Article 46 provides that the state shall take special care of the economic and the educational interests of the SC/ST and other Weaker Sections by providing a) Reservation. b) Panjami lands c) Various Welfare Schemes d) Scholarships e) Hostels f) Coaching for competitive Examination to protect them from social injustice and all forms of exploitation. According to Article 47 the state should raise the level of nutrition and the standard of living of its people and the improvement of public health.

**3.3.2 Gandhian Principles:** The framers of the constitution were greatly influenced by Gandhian ideology which finds its expression in many articles here. They are

- The state shall organize village panchayats and endow them with such powers as may enable them to function as units of self government.



- The state shall promote with special care educational and economic interest of Harijans, scheduled tribes and weaker sections of the community.
- The state shall endeavor to promote cottage industries on individual or cooperative basis in rural areas.
- The state shall take steps for preserving and improving the breeds of milch and drought cattle including cows and calves and for prohibiting their slaughter.
- The state shall endeavor to effect prohibition of the consumption and except for medical purposes, of intoxicating drugs and drinks which are injurious to health.

**3.3.3 Liberal Principles:** This category of directive principles contains what may be called the liberal principles.

These principles were advocated by the liberal intellectuals for the betterment of the citizens of India. They are embodied in the following provisions of the constitution.

- The state shall endeavor to secure for the citizens a uniform civil code through the territory of India.
- The state shall endeavor to provide free and compulsory education for children below and up to 14 years of age within a period of ten years from commencement of the constitution
- The state shall endeavor to organize agriculture and animal husbandry on modern scientific lines.
- The state shall take steps to separate the judiciary from the executive in the public service of the state.
- The state shall endeavor to promote international peace and security; maintain just and honorable relations between nations; foster respect for international law and treaty obligations.
- The state shall encourage settlement of international disputes by arbitration.

As it has been said earlier there are certain articles in this chapter which can not be included in any of these categories. These principles may include in the category of general principles. Articles 36 and 37 of Constitution of India deal with the definitions and applications. According to these articles unless the context otherwise requires the state shall have the same meaning as in art III of the constitution Directive Principles of State Policy (QPSP) is not justifiable, but provides the fundamental in governance. Article 37 provides that these principles shall not be enforceable by any court of law and at the same time declares that they are not nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws. Article 49 which provides it is the obligation for the state to protect monuments and places or objects of artistic or historic interest which Parliament of India has declared of national importance may be included in this category.



### 3.4 Criticism of Directive Principles:

The Directive principles have been subjected to serious and searching criticisms. They are considered as mere platitudes without having any practical use for the people. There is no immediate practical social and economic program and as such they fall flat upon the people. These principles do not have any attraction for the masses because they are silent about the means of implementation. The formulation of the directive of state policy can hardly be considered inspiring. It is both vague and repetitive. The Directive principles are neither properly classified nor locally arranged. The Directive principles are evasive and ambiguous and by mixing up important matters like prohibition, compulsory education for children below and above the age of 14 with relatively less important matters such as that the state shall protect places of artistic or historic interest, they have reduced their urgency and importance. The Directive principles like the formulation found in some of the European constitutions do not have clear objectives and are evasive on the decisive social issues of labour management relations and the property complex as the key to the alternatives of private capitalism or socialism, laissez faire or planning.

The illogical arrangement and the curious combination of the different principles have also been criticized by many critics of the Indian constitution. It combines rather incongruously the modern with the old and provisions suggested by reason and science with provisions based purely on sentiments and prejudice. Some critics are of the opinion that the Directive principles are redundant and are incompatible with the sovereign status of the country. There is hardly a necessity of such instructions for a sovereign country. More over, the directive principles can not be followed and implemented at all times under all circumstances. A sovereign state must have freedom to change with policy in accordance with the requirements of the time.

In an age of reality the practicability, the soundness of the directive principles have also been challenged. The principle concerning prohibition miserly criticized as it causes great loss to the national exchequer. It does not serve any useful purpose. Morality cannot be enforced with the help of laws. It is pointed out that prohibition can hardly change drunkards into moralists. In the constituent assembly some members expressed apprehension that the Directive principles may become the cause of conflict between the president of India and the Prime Minister and between the Governors and their provincial ministers. If the Prime Minister gets the laws passed by the parliament, which violates the DP's, the President may withhold his assent from passing a bill on the ground that since these principles are fundamental in the governance of the country the Ministry has no right to ignore them. The vehement criticism of the Directive Principles may lead us to believe that they are useless and meaningless maxims or moral precepts. But there is great justification for their enumeration in the constitution. The directive principles though not legally enforceable, are nevertheless fundamental in the government of the country. A philosophy of new social and economic order is embodied in the principles. The framers of the constitution couldn't have ignored the impact of socialism in the middle of the 20th century.

The violation of directives is as contrary to the constitution as violation of the principles legally enforceable. By declaring them to be fundamental in the governance of the country the constitution has invested them with certain sanctities. The Directive principles have greatly helped in avoiding the ambiguities of the constitution. As the principles form a part of the constitution, a reference can be made to them whenever a difficulty arises regarding the interpretation of some of the vague provisions of the constitution. The directive principles have been of immense help in the interpretation of the fundamental rights. The imposition of the reasonable restrictions on

fundamental rights in the public interest is permitted by article 19. If a question as to whether a certain matter is in the interest of the public or not arises a reference to the directive principles can be made to come out of the thicket of the constitutional ambiguities. Most of the fundamental rights are subject to reasonable restrictions which may be imposed for the public purpose or in public interest. The courts can be and have been guided by the directive principles in determining whether the actual restrictions placed by law on the exercise of fundamental rights are reasonable are in public interest or whether they sub serve a public purpose.

Article 48 deals with organization of agriculture and animal husbandry.

Article 49 A provides for protection and improvement of environment and safeguarding of forests and wild life.

Article 50 provides for separation of judiciary from executive

Article 51 provides for (1) Promotion of International peace and security. (2) Maintain just and honorable relationship with nations (3) Foster respect for IN Law, treaties (4) Settlement of disputes by arbitration.

Article 51 A, Chapter IV A, added through 42nd amendment prescribes 10 duties for states. They are

To abide by Constitution and respect National Flag and National Anthem etc

To cherish and follow noble ideas that inspired freedom struggle.

To uphold and protect sovereignty, unity and integrity of India

To defend country and render national service whenever called for

To promote harmony among different sections of the people and renounce practice derogatory to the dignity of women.

To value and preserve the rich heritage of our composite culture

To protect and improve national environment including forests, lakes, rivers and wild life and to have compassion towards living creatures

To develop scientific temper, humanism and the spirit of inquiry and reform

To safeguard public property and to abjure violence

To strive towards excellence in all spheres

### 3.5 Summary:

An important feature of the constitution is the Directive Principles of State Policy. Directive Principles are not legally enforceable but guide the society to create a social order characterized by social, economic, and political justice, liberty, equality, and fraternity. The Directive principles of state are not justifiable but enforceable in people's court and their objective is to embody the concept of a welfare State. Unlike the fundamental rights they are positive in nature and help to implement some programs for the welfare of people. The Directive Principles of State Policy are found in Part IV, from Articles 36 to 50 of the Indian Constitution. They are superfluous or mere guidelines or pious principles and have no binding force on the State. The directive principles are

embodied in as many as 16 articles and cover a wide range of state activities. They explain the social, economic, legal, educational and international principles. To understand them easily in a systematic manner they have been classified into three categories namely the socialist, Gandhian and liberal. Those which were not included in these categories were placed in the fourth general category. From the angle of criticism they are considered as mere platitudes without having any practical use for the people. They are said to be arranged illogically and the combinations are very strange.

### **3.6 Self Assessment Questions:**

1. Explain the importance of Directive Principles in the constitution.
2. Write about the classification of Directive Principles.
3. Analyze the criticism leveled against Directive Principles.

### **3.7 Suggested Readings:**

1. Durga Das Basu: Introduction to the Constitution of India
2. Durga Das Basu: Law of the Press
3. Dr. Jan R. Hakemulder, Dr. Fay AC De Jonge and P.P. Singh : Media Laws and Ethics
4. B. N. Pandey: Indian Constitution
5. Kiran Prasad: The Philosophies of Communication and Media Ethics

## Lesson - 4

# EMERGENCY PROVISIONS - EFFECTS ON MEDIA

### 4.0 Objective:

On completion of this lesson you should be able to understand:

- Emergency provisions in the constitution
- State of emergency in India
- Emergency and media

### Structure:

- 4.1 Introduction
- 4.2 Emergency Provisions in The Constitution of India
- 4.3 State of Emergency in India
- 4.4 Emergency and Media
- 4.5 Summary
- 4.6 Self Assessment Questions
- 4.7 Suggested Readings

### 4.1 Introduction:

The Indian Constitution provides a detailed insight into the entire government structure, basic rights and duties of the citizen and special provisions. There are a total of 395 Articles in the constitution of India. Enacted on 26th of January, 1950, the Constitution contains Emergency and Special Provisions of the Indian Constitution. Special Provisions relating to certain clauses are included in Part XVI. The Constitution of India covers Emergency Provisions in Part XVIII.

### 4.2 Emergency Provisions in the Constitution of India:

According to our constitution as soon as the state of emergency is declared in the country fundamental rights stand suspended and the courts of law are debarred to enforce these. It is this provision which was very vehemently and bitterly opposed in the constituent assembly. The opposition felt that it was darkest day of the history when a provision was made for denying fundamental rights to our people. Under emergencies the people are denied to take shelter under the roof of judiciary in so far as fundamental rights are concerned. These also stand suspended when the people are arrested under Preventive Detention Act, which empowers the state to arrest a person for his being a danger to the security of the state.

The Emergency Provisions are mentioned from Article 352 to Article 360 of the Indian Constitution. Following are the Articles of the Indian Constitution, containing the Emergency Provisions.

According to article 352 due to external intrusion or war the President of India can declare a state of emergency through a Proclamation. It can be revoked or a varied proclamation can also be issued. However, the decision of the Cabinet ministers to issue such a proclamation must be sent to the President in written form prior to his issuance of the same. According to the Article, all such Proclamations should be presented to both the Houses of the Parliament. The Proclamations, if not accepted by a resolution, will be counted as ineffective after one month. If the Proclamation is not accepted after the passing of a second resolution, then it will become ineffective after the expiry of 6 months of the second resolution. It is also mentioned in the Article that not less than two-thirds of the members of any of the Parliamentary Houses should be required to pass a resolution. There are certain rules specified in this article regarding the President revoking or issuing a varied Proclamation during Emergency.

Article 353 states that the Proclamation of Emergency includes extending the executive power of the union to the states in the form of directions. The Parliament, as per this Article, can confer the power to make laws, upon the officers or authorities of the Union.

Provisions made under Articles 268 to 279 can be modified or exceptions can be made by the President of India by an order while the Proclamation period of emergency is going on. Information about all such orders must be conveyed to both the Houses of Parliament.

Article 355 bestows the duty of protecting States against external aggression and internal disturbance on the union. This Article states the fact that the Union or Center is solely responsible for defending the various states from all types of violence and aggressions erupting from outside and disturbances occurring within the nation's territory.

Article 356 has the provisions in case of failure of constitutional machinery in States. The President of India can take charge of a state if the reports submitted to him by the Governor suggest that the government of the state has become incapable of exercising the Constitutional powers. The President is also subjected to exercise the powers of the government of such state by Proclamation. The Proclamation issued under such circumstances becomes ineffective after 6 months from the date of issuance, if not revoked during this time period. All such proclamations have to be presented to both the Houses of Indian Parliament and will expire after two months. The Legislative powers of such state shall also be exercised by the Parliament. In the Houses of Parliament there are certain rules and regulations regarding the expiry of the Proclamation and the time period normally depends upon the fact whether it has been revoked earlier or not.

Article 357 deals with the exercise of legislative powers under proclamation issued under article 356. The powers of the Legislature shall be exercised by the Parliament during emergency. Parliament has the right to delegate Legislative powers to the President of India or any such authority. The President of India, after the Proclamation of Article 356, can make laws and shall have access to the consolidated fund, during the time period when the House of the People is not in operation.

Article 358: Provisions of article 19 during emergencies are suspended. Any provision under Article 19 will not effect during emergency and the states can make law and undertake executive action. However, only those laws and executive actions containing recital related to emergency during the Proclamation of Emergency are effective as per the Article.

Article 359: It deals with the suspension of the enforcement of the rights conferred by Part III during emergencies. The President of India can suspend all ongoing proceedings in any court of the nation during emergencies by an Order. The President can also call upon all pending court proceedings in case of emergencies. All such orders declaring the suspension of court proceedings have to be submitted to both the Houses of Parliament.

Article 359A: Repealed amendment has been done under the Constitution Act 1989

Article 360: Provisions as to financial emergency - a declaration shall be made by the President of India through a Proclamation regarding the financial crisis of the nation if such situation arises. Such a Proclamation can be revoked and, has to be presented in both the Houses of the Parliament. The Proclamation thus issued will become null and void after two months if the same is not approved through a resolution passed by the Houses of Parliament. In case the houses are not in session the article suggests certain specific guidelines regarding the proclamation. This Article also includes provisions relating to the salary and allowance reduction of those who are employed with Union and state departments. A provision relating to money bills and other financial bills passed by the state Legislature is mentioned in the Article. This provision states that all such bills have to be considered by the President during financial instability.

When proclamation of emergency is made Article 19 is suspended and the power of the legislature and the executive becomes wider. The suspension of Article 19 during the pendency of emergency removes the fetters on the legislature and executive powers by Article 19 and if legislature makes laws or the executive commits acts which are inconsistent with the rights guaranteed by Article 19, their validity is not open to challenge either during the continuance of the emergency or thereafter. Article 358 makes it clear that things done or omitted to be done during cannot be challenged even after emergency is over.

### 4.3 State of Emergency in India:

A state of emergency in India refers to a period of governance under an altered constitutional setup. It shall be proclaimed by the President of India, when he/she perceives grave threats to the nation from internal and external sources or during the financial crisis. Under the advice of the cabinet of ministers by using the powers vested in him largely by Part XVIII of the Constitution of India, the President can overrule many provisions of the constitution, which include fundamental rights and the acts that govern devolution of powers to the states.

The President can declare three types of emergencies:

- National Emergency
- State Emergency
- Financial Emergency



National emergency under article 352: National emergency is caused by war, external aggression or armed rebellion in the whole of India or a part of its territory. Such an emergency was declared in India in 1962 (Indo-China war), 1971 (Indo-Pakistan war), and 1975 (declared by Indira Gandhi to maintain law and order in the country).

The President can declare such an emergency only on the basis of a written request by the Council of Ministers headed by the Prime Minister. Such a proclamation must be approved by the Parliament within one month. Such an emergency can be imposed for six months and can be extended by six months by repeated parliamentary approval.

In such an emergency, Fundamental Rights of Indian citizens can be suspended. The six freedoms under Right to Freedom are automatically suspended. However, the Right to Life and Personal Liberty cannot be suspended according to the original Constitution. It modifies the federal system of government to a unitary one.

In January 1977 however, during the emergency declared controversially by Indira Gandhi, the government decided to suspend even the Right to Life and Personal Liberty by dispensing with Habeas corpus. The Parliament can make laws on the 66 subjects of the State List (which contains subjects on which the state governments can make laws). Also, all money bills are referred to the Parliament for its approval. The term of the Lok Sabha can be extended by a period of one year but not more than six months from the date when the emergency has ceased to exist.

**State emergency under article 356:** State emergency is declared on failure of constitutional machinery in a state. Nearly every state in India has been under a state of emergency at some point of time or the other. The state of emergency is commonly known as 'President's Rule'.

If the President is satisfied, on the basis of the report of the Governor of the concerned state or from other sources that the governance in a state cannot be carried out according to the provisions in the Constitution, he can declare emergency in the state. Such an emergency must be approved by the Parliament within a period of two months.

It is imposed for six months and can last for a maximum period of three years with repeated parliamentary approval every six months. But 42nd amendment act of 1976 extended the one time duration of state emergency from 6 months to 1 year. Therefore from now on after every one year Parliament needs to approve the same. If the emergency has to be extended for more than three years, it can be done by a constitutional amendment, as has happened in Punjab and Jammu and Kashmir. During such an emergency, the President can take over the entire work of the executive, and the Governor administers the state in the name of the President. The Legislative Assembly can be dissolved or may remain in suspended animation. The Parliament makes laws on the 66 subjects of the state list (see National emergency for explanation). All money bills have to be referred to the Parliament for approval. In this situation ministers of state legislature are not allowed to perform action in state.

**Financial emergency under article 360:** If the President is satisfied that there is an economic situation in which the financial stability or credit of India is threatened, he or she can declare financial emergency. Such an emergency must be approved by the Parliament within two months. It has never been declared. Such a situation had arisen but was avoided by putting the gold assets of India as collateral for foreign credit. It remains enforced till the President revokes



it.

In case of a financial emergency, the President can reduce the salaries of all government officials, including judges of the Supreme Court and High Courts. All money bills passed by the State legislatures are submitted to the President for his approval. He can direct the state to observe certain principles (economy measures) relating to financial matters. The phrase Emergency period used loosely, when referring to the political history of India, often refers to the third and the most controversial of the three occasions.

#### **In Indian History:**

In the country's history on three occasions a state of emergency was declared which lasted for many years.

1. For the first time in independent India from 26 October 1962 to 10 January 1968 during the India-China war emergency was declared when "the security of India" having been declared "threatened by external aggression".
2. For the same reason of "the security of India" having been declared "threatened by external aggression". Emergency was declared during Indo Pakistan war from 3 December 1971 to 1977. It was originally proclaimed during the Indo Pakistan war and was later extended along with the third proclamation.
3. Under controversial circumstances of political instability when Indira Gandhi was prime minister with the cause of threat due to internal disturbances emergency was declared from 26 June 1975 to 21 March 1977.

#### **4.4 Emergency and Media:**

When emergency is promulgated along with the common man, the judiciary and the media will have to face hardships and excesses of the emergency. The Constitution, which is the most sacred document of any functioning democracy, can be subverted in emergency rule. The fourth estate of democracy i.e. the media will be the first target. Censorship will be imposed on newspapers and no media will have the courage to defy the censorship orders. For the press, the emergency is a cruel reminder that the state can snatch its freedom arbitrarily. Hence, soon after the emergency ended, the Press Council of India was formed whose main aim was to safeguard the freedom of the press and to maintain and improve the standards of newspapers and news agencies in the country.

Few facts may be useful in understanding the enlargement of the power of the state to impose restrictions on the press by reason of proclamation of emergency. On December 3 1971 a proclamation under art 352 was issued in a view of aggression by Pakistan. While this emergency was continuing a second Proclamation, on the ground of internal disturbance was issued on June 26, 1975.

As a result Article 19 remained suspended by the operation of Article 358 and Orders under art , 359 were also issued by the President barring the right to enforce in the courts the fundamental rights under arts 14, 21 and 22. On January 8, 1976 an order under Art 19 was also issued barring the right to move any court for the enforcement of Art 19.

As a result of the forgoing constitutional suspensions consequential upon the Proclamation

of Emergency, neither any legislation nor any executive order could be challenged on the ground of violation of Arts 19, 20-22 so that the freedom of the Press and of journalists lay completely at the mercy of the government, without the risk of being challenged in a court of law. Emboldened by this change in the constitutional background, the government of India took the following repressive measures to curb the freedom of the press.

- Issued the Press Censorship Order on June 25, 1975 i.e. immediately after the issue of the Proclamation on the ground of internal disturbance.
- Cancelled the declaration made under the Press and Registration of Books Act, 1867 relating to over 2500 newspapers during the period of operation of the emergency of June, 1975
- Detained numerous journalists under the maintenance of internal security (MISA) act or the defense of India rules.
- A specific press law was enacted namely the prevention of objectionable Matter Act, 1976 empowering the government to proceed directly against offending newspapers by way of forfeiture and the like.
- Article 31D was indented in the constitution itself by the 42 nd amendment Act, 1976 giving absolute power to the government to deal with anti national activities.
- All the foregoing repressive measures have been lifted on the eve of or after the coming into power of the Janata Government
- Both the Proclamation of Emergency of 1971 and 1975 were revoked towards the end of March 1977
- The prevention of Publication of objectionable Matter Act 1976 has been repealed in April 1977
- The censorship Order has been revoked on 22.3.1977
- MISA detenues have been released
- Article 31D of the constitution has been omitted by passing the constitution (43rd amendment ) Act, 1977( April, 1978)

Articles 358 and 359 of the constitution have been amended in 1975 to control their arbitrary use and Art 361A has been inserted in order to give better protection to the reports of proceedings of the legislature.

#### 4.5 Summary:

The Indian Constitution contains Emergency and Special Provisions also. Special Provisions relating to certain clauses are included in Part XVI. Emergency Provisions are placed in Part XVIII of the constitution. Whenever government declares the state of emergency fundamental rights get automatically suspended. Even the courts also cannot enforce them. While drafting the constitution this provision was very vehemently and bitterly opposed in the constituent assembly because the fundamental rights also will be in a state of jeopardy and people become helpless on many occasions like arrests without justified cause. The rights are suspended when the people are

arrested under Preventive Detention Act, which empowers the state to arrest a person for his being a danger to the security of the state. The Emergency Provisions start from Article 352 to Article 360 of the Indian Constitution. Due to external intrusion or war the President of India can declare a state of emergency through a Proclamation. It can be revoked or a varied proclamation can also be issued. the proposal of the Cabinet ministers to issue such a proclamation must be approved by the President. The resolution also should have not less than two-thirds of the members of any of the Parliamentary Houses should be required to pass a resolution. In the state of emergency governance will be taken up under an altered constitutional setup. During this period President can overrule many provisions of the constitution, which include fundamental rights and the acts that govern devolution of powers to the states. Emergencies are of three types such as National emergency, state emergency and financial emergency.

#### **4.6 Self Assessment Questions:**

1. What is emergency? Describe the conditions under which emergency may be clamped in the country.
2. How types of emergencies are specified by the constitution of India?
3. write about the situation that led to claming of emergency in the country on various occasions.

#### **4.7 Suggested Readings:**

1. Durga Das Basu: Introduction to the Constitution of India
2. Durga Das Basu: Law of the Press
3. Dr. Jan R. Hakemulder, Dr. Fay AC De Jonge and P.P. Singh : Media Laws and Ethics
4. B. N. Pandey: Indian Constitution
5. Kiran Prasad: The Philosophies of Communication and Media Ethics

## **Lesson - 5**

# **PARLIAMENTARY, LEGISLATIVE PRIVILEGES AND MEDIA**

### **Objective:**

On completion of this lesson you should be able to understand:

- Parliamentary privileges
- Right to publication of proceedings
- Other privileges
- Legislative privileges
- Media privileges of parliament

### **Structure:**

- 5.1 Introduction**
- 5.2 Parliamentary Privileges**
  - 5.2.1 Constitutional Provisions**
  - 5.2.2 Important Privileges:**
    - 5.2.3 Breach of Privilege and Contempt of The House**
    - 5.2.4 Punishment for Breach of Privilege**
    - 5.2.5 Freedom of The Press and Parliamentary Privileges**
- 5.3 Right to Publication of Proceedings**
- 5.4 Other Privileges**
- 5.5 Legislative Privileges**
- 5.6 Media Privileges of Parliament**
- 5.7 Summary**
- 5.8 Self Assessment Questions**
- 5.9 Suggested Readings**

## 5.1 Introduction:

The concept of parliamentary and legislative privileges lies in the principle that a sovereign legislature should be able to perform its functions independently and effectively for which they are vested with some inherent or conferred powers with which they can punish the breach of these privileges. In order to enable the members of Parliament to perform their functions without any prejudice or pressure, the members are given certain rights and special treatment, which are known as Parliamentary privileges. Privileges are those rights which are available to a class of persons but not available to others. It means a special or exceptional right or freedom or an immunity enjoyed by a particular class of persons or some individuals. These privileges are more or less the same as the British House of Commons. Just like the contempt of court the breach of these privileges is considered to be contempt of parliament.

## 5.2 Parliamentary Privileges:

Articles 105(3) and 194(3) of the constitution empower parliament and state legislatures to enact laws codifying their privileges. The parliamentary privileges which refer to certain rights and immunities are enjoyed by each House of Parliament, their Committees collectively, and by members individually. Without these privileges the houses and its members cannot discharge their functions efficiently and effectively. They also safeguard the freedom, the authority and the dignity of Parliament. Parliamentary privileges are used in the context of rights and immunities. The House has the power to punish any individual or organization which commits contempt of the house or a breach of any of its privileges. Parliamentary privilege is a legal immunity with the help of which the legislators are granted protection against civil or criminal liability for their actions and at the same time if the member breaches the rules then he/she can be suspended or even expelled from the house.

The Parliamentary privileges are available only to two Houses, their members and their Committees. Though the President is a part of the Parliament except immunity on certain criminal and civil matters he is not covered by these privileges. Privileges are available to members of Parliament and its Committees as long as they have been working for them. The members do not enjoy any exemption from the operation of ordinary laws of land.

**5.2.1 Constitutional Provisions:** The privileges of members of Parliament are derived from three sources. First, there are certain privileges which are mentioned in the Constitution itself. Second, some of the privileges are specified in Statutes and the Rules of Procedure and Conduct of business in the Lok Sabha. Third, some of the privileges are derived from the precedents and conventions developed over a period of time.

Some of the privileges of the members of Parliament are mentioned in Article 105 of the Constitution, while the privileges of members of Legislative Assembly are mentioned in Article 194 of the Constitution. Article 105 provides the following:

- (i) Subject to the provision of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.
- (ii) No Member of Parliament shall be liable to any proceeding in any court in respect of anything said or any vote given by him in Parliament or any Committee. No

person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceeding.

- (iii) In other respects the power, privileges and immunities of each House of Parliament and of the members and of the Committees of each House shall be defined from time to time by Parliament by law.
- (iv) The 44<sup>th</sup> Amendment has made only verbal changes in the position of privileges. The members of Parliament in India enjoy the same type of privileges as its counterpart in Britain.

**5.2.2 Important Privileges:** The privileges of Parliament and its members are not codified so far. Some privileges expressly mentioned in Article 105 have been mentioned earlier. On the basis of parliamentary practices, established conventions, legal provisions and opinion of constitutional experts, the following privileges of Parliament and its members can be listed:

1. Freedom of speech inside the parliament Article 105 (1).
2. Immunity from court proceedings available to members of Parliament with respect to anything said or any vote cast by a member or anything published under the authority of parliament-Article 105 (2).
3. According to the provisions of Article 122, courts are prohibited to inquire into proceedings of Parliament. In other words, the courts can not question the legal validity of parliamentary proceedings.
4. It is provided in the section 135 A of the code of civil procedure that a member of Parliament shall not be arrested during the continuance of the session of the House, 40 days before the commencement of the Session and 40 days after the date of the conclusion of the session.
5. Members of Parliament are exempted from the obligation to serve as juries.
6. The immediate information is to be given to the House by the concerned authorities about the arrest or the release of a member of the House. The same rules also provide that a member of the Lok Sabha can not be arrested within the premises of the House without the prior permission of the Speaker.
7. House is not liable to disclose the proceedings or decision of a secret sitting of the Lok Sabha.
8. The members and other officers of the House (Lok Sabha) can not be compelled to appear as witness before the other House or the state Legislature. However, they can act as witness with their consent.
9. Also the officers and members of the Lok Sabha can not be compelled to give evidence before any court of Law without the permission of the House, with respect to any matter regarding the proceedings of the House.
10. The Parliamentary committees have the power to summon persons, papers and records relevant for an inquiry undertaken by the committee. The committee may

also administer oath to the persons appearing as witnesses. The evidence submitted before the committee can not be disclosed before the Report of the committee has been laid on the Table of the House.

11. In addition to the above privileges, the House as a collective entity also enjoys certain consequential privileges such as committing persons for the breach of the privileges of the House, compelling attendance of person as witnesses, regulating its own procedure, restricting publication of its debates and proceedings or to exclude strangers from the gallery of the House.

It should be noted that the most important privilege enjoyed by a member of Parliament is the freedom of speech inside the Parliament. Though, the right to freedom of speech is available to citizens also, it is subject to certain restrictions imposed under Article 19 (2). However, the members of Parliament are even free from these restrictions, while speaking inside the House. No action can be taken against them in any court of Law.

This was upheld by the, Supreme Court in the famous 'searchlight' case. Even if the speech of a member is tantamount to the contempt of the court, no action can be taken against such member in any court. In such matters, the house itself is authorised to take appropriate disciplinary action against the concerned member.

The members not only enjoy the privileges but have to abide by certain restrictions also imposed by the Constitution on the debates of Parliament. Thus, article 121 of the Constitution provides that no discussion shall take place in Parliament with respect to the conduct of any judge of the Supreme Court or the High Courts except upon a motion for the removal of the judge is under consideration in the House. There is no distinction between the privileges of the two Houses. Same privileges are available to the members of the both Houses of Parliament. Similar privileges are also available to the members of state Legislatures.

**5.2.3 Breach of Privilege and Contempt of The House:** Breach of privilege is an act of attack on or disregard of any privileges, rights or immunities of either House of Parliament or its committees or its members. On the other hand, the contempt of the House is defined as an act of omission which obstructs the Parliament or its members from efficient discharge of its functions or which has the effect of lowering the dignity of Parliament or its members.

Again, there are certain practices and conventions with respect to parliament which should be followed by concerned persons in usual course, but if they are not followed, it is considered a breach of privilege. Non-observance of some practices is simply termed as improper on the part of the concerned authorities. The example of these practices is not to make policy statement outside the Parliament if it is in session, extending full cooperation to the members of parliamentary committees during their tour, or displaying due courtesy to members of Parliament in the official functions etc.



**5.2.4 Punishment for Breach of Privilege:** Each House of Parliament or State Legislature is competent and empowered to punish persons including their own members. If they are found guilty of breach of privilege or contempt of the House, the punishment may be in the form of reprimanding or admonition or even imprisonment in extreme cases. The imprisonment may extend till the ongoing session of Parliament or the State Legislature as the case may be. In addition, the House may award other punishments to its members such as suspension from the House for a definite period or even expulsion from the House.

Any member may raise the question of breach of privilege by giving notice to that effect to the Secretary-General of the concerned House before the Commencement of the sitting of the day. If the Speaker or the Chairman of the House gives his consent to raise the matter in the House, the concerned member is allowed to raise the matter just after the Question Hour is over. The member first takes the leave of the House which should be agreed by not less than 25 members of the House. Then the matter is usually referred to the privilege committee for further examination. The Committee submits its report which may be agreed or disagreed by the house and its decision is final. Privilege is given priority over other matters included in the business of the House.

However, the House adopts a liberal view with respect to the majority of cases of breach of privileges. Most of the time, the unconditional apology tendered by the concerned offender may cool down the matter. Many a time, the Parliament finds it below their dignity to punish in each case of breach of privilege. The keystone of the entire edifice is the notion that the Parliament is the sole judge of the question whether there is a breach of privilege or not. Thus, their power to punish persons for the contempt of the House is not subject to judicial interference. This position was upheld by the Supreme Court in 1959 in the Searchlight case and further by the High Court of Allahabad in Keshav Singh case in 1965. The above legal position prevails even today. Thus, each House of Parliament or State Legislature is the master of its own procedure and is the sole judge of the question whether its contempt has been committed or not.

**5.2.5 Freedom of The Press and Parliamentary Privileges:** If the proceedings of the House are published under the authority of the House, the concerned persons shall not be liable to any judicial proceedings in the court of Law Normally, no restrictions are imposed on the publication of true proceedings of the House in the Newspaper. However, in the following cases, the publication in press involves the breach of privilege:

- (a) If newspaper reports are malafide and there is deliberate misrepresentation of facts,
- (b) If the proceeding of a committee is published before it submits its report to the house;
- (c) If a newspaper publishes the proceedings of a secret sitting of the House; and
- (d) If those portions of debates or proceedings are published which are expunged from the proceedings of the House.

It should be further noted that fair and valid criticism or shortcomings of the Parliament, published in the Newspapers or books are not punished. No action is taken in fair and bonafide criticism of the House.

### **5.3 Right to Publication of Proceedings:**

Clause (2) of Article 105 declares that no person shall be liable in respect of the publication as laid by order under the authority of a house of Parliament. Common law provides the defense of qualified privilege to fair and accurate unofficial reports of parliamentary proceedings, published in a newspaper or elsewhere. The Parliamentary Proceedings (Protection of Publication) Act, 1956 enacts that a person can not be taken to court is liable for to any proceedings, civil or criminal, in a court in respect of the publication of a substantially true report of the proceedings in either House of the Parliament, unless it is proved that the publication is made with malice.

### **5.4 Other Privileges:**

Clause (3) of Article 105, declares that the privileges of each House of Parliament, its members and committees shall be such as determined by Parliament from time to time. There are certain privileges that 'cannot be claimed by Parliament in India. The privileges of access to the sovereign, which is exercised' by the House of Commons doesn't have no application in India. Similarly, a general warrant of arrest issued by Parliament in India cannot claim to be regarded as a court of record in any sense. In India privilege in the case of parliament members is limited to civil causes but not to arrest on criminal charges or to detention under the Preventive Detention Act. One can not have privilege if arrest is made under s.151 Criminal Procedure Code. According to Article 361-A which was inserted by the 44th Amendment with effect from June 20, 1979 provides that no person shall be liable to any proceedings civil or criminal for reporting the proceedings of Parliament or a State Legislature. But if the reporting is proved to have been made with malice the person who does that will be liable for proceedings. This provision does not apply to the reporting of proceedings of secret sittings of the Houses.

Houses of Parliament or Legislature cannot take up privilege cases directly but can proceed quasi judicially or take up motions concerning privileges and immunities. In this they can remove obstructions to the performance of legislative functions of houses and their members. If any question of jurisdiction arises it has to be decided by a court of law in appropriate proceedings. The rules of each House provide for a committee of privileges. The matter of breach of privilege for contempt was referred to this committee which will have power to summon members or strangers before it. Refusal to appear or to answer or to knowingly to give false answer is itself a contempt. The committee's recommendations are reported to the House which discusses them and gives its own decision.

### **5.5 Legislative Privileges:**

Subject to the provisions of the constitution and the procedures of the Legislature, there shall be freedom of speech in the Legislature of every state.

1. No member of the Legislature of a State shall be liable to any proceeding in any court in respect of anything said or any vote or of any report, paper, votes or proceedings.

2. In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may be defined from time to time by the Legislature.
3. The clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak and take part in the proceedings of a House of the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature.

This article that applies to the State Legislatures, members and committees thereof is an exact reproduction of Article 105, which applies to both Houses of Parliament and committees thereof. The right of State Legislatures to punish for contempt can be discussed' with the base law of Powers, Privileges and Immunities of State Legislature.

### **5.6 Media Privileges of Parliament:**

Parliament, the Government and the people communicate with each other through the Press and other mass media, which includes the electronic media, viz. television, radio and film. The Press can discharge this function effectively only if it enjoys, what is termed as "Freedom of the Press" which is implicit in the Fundamental Right pertaining to the Freedom of Speech and Expression guaranteed to the citizens under article 19 (1) (a) of the Constitution of India. It is through the press and other mass media that Parliament enjoys so much publicity and it is through them that Parliament gathers information which helps it to supervise and control the Executive effectively. The Press is often called an extension of Parliament.

In its relations with Parliament, the Press enjoys some privileges but not at the cost of privileges of Parliament. The press can report proceedings of either House of Parliament, provided such reports are for the public good and is not actuated by malice. At the same time Parliament has the power to control and, if necessary, to prohibit the publication of its debates or proceedings and to punish, for the violation of its orders. Generally, there are no restrictions imposed on reporting of the proceedings of the Houses. But, if the proceedings of the Houses or for that matter, of its Committees are reported malafide or if there is any gross misrepresentation or suppression of the speeches of particular members, it is certainly a breach of privilege and contempt of the House warranting punishment. Similarly, the Press cannot publish the proceedings or evidence given before or any document presented to a Parliamentary Committee before these have been laid on the Table of the House nor it can disclose the proceedings or decisions' of a secret sitting of the House. Portions of debates expunged from the proceedings of the House by the Presiding Officer are not published.

### **5.7 Summary:**

There is a clear demarcation as to what all rights and privileges are absolute and what are not. In India Legislative Assemblies and Parliament never discharge any judicial function and their historical and constitutional background does not support their claim to be regarded as courts of record in any sense. No immunity from scrutiny by courts of general warrants issued by House in India can therefore be claimed. Both the Parliament and State Legislatures have a duty to look carefully before making any law, so that it doesn't harm other rights. It is also a duty of the members to properly use these privileges and not misuse them for alternate purposes that is not in the favour of general interest of nation and public at large. Thus what we must keep in mind is the fact that power corrupts and absolute power corrupts absolutely. For this not to happen' under

the privileges granted, the public and the other governing body should always be on vigil.

Privileges are the power, certain rights and special treatments which are bestowed on members of parliament to perform its functions independently and effectively are called parliamentary privileges. They help in functioning without any prejudice or pressure. Articles 105(3) and 194(3) of the constitution empower parliament and state legislatures to enact laws of privileges. They grant protection against civil or criminal liability for the actions of members and these rules are breached he/she can be suspended or even expelled from the house. The Parliamentary privileges are available only to two Houses, their members and their Committees. The most important privilege of a member of Parliament is the freedom of speech inside the Parliament. It is even free from these restrictions. While speaking inside the House no action can be taken against them in any court of Law. Certain restrictions also are imposed by the Constitution on the debates of Parliament. Privileges similar to those of parliament members are available to the members of state Legislatures also. Breach of privilege may invite action on certain occasions such as the contempt of the House that may lower the dignity of Parliament or its members. The houses of representatives are competent and empowered to punish persons including their own members, when they are declared guilty of breach of privilege or contempt of the House. Any member may raise the question of breach of privilege by giving notice to that effect to the Secretary-General of the concerned House before the Commencement of the sitting of the day. But often the House adopts a liberal view with respect to the majority of cases of breach of privileges. Generally no restrictions are imposed on the publication of true proceedings of the House in the Newspaper. However, in certain cases the press reports may lead to breach of privilege.

### **5.8 Self Assessment Questions:**

- 1) What are the parliamentary privileges under the Constitution of India?
- 2) How many types of privileges are incorporated in the constitution of India?
- 3) What actions can be initiated when breach of privileges are noticed?
- 4) Write about the legislative privileges of the parliament.

### **5.9 Suggested Readings:**

1. Durga Das Basu: Introduction to the Constitution of India
2. Durga Das Basu: Law of the Press
3. Dr. Jan R. Hakemulder, Dr. Fay AC De Jonge and P.P. Singh : Media Laws and Ethics
4. B. N. Pandey: Indian Constitution
5. Kiran Prasad: The Philosophies of Communication and Media Ethics

## **UNIT - II**

### **Lesson - 6**

# **LAW OF DEFAMATION**

#### **Objective:**

On completion of this lesson you should be able to understand:

- What constitutes criminal defamation?
- Elements of a cause of action
- What does not constitute defamation?
- Scope of the law
- Who may file the complaint?
- Punishment and defenses of defamation

#### **Structure:**

- 6.1 Introduction**
- 6.2 What constitutes criminal defamation?**
- 6.3 Elements of a cause of action**
- 6.4 What does not constitute defamation?**
- 6.5 Scope of the law**
- 6.6 Who may file the complaint?**
- 6.7 Punishment for defamation**
- 6.8 Defenses of defamation**
  - 6.8.1 Defense based on 'truth' and justification**
  - 6.8.2 Defence based on "Fair Comment"**
  - 6.8.3 Defense based on Privilege**
  - 6.8.4 Defense based on Malice**
  - 6.8.5 Defense based on Innocent Dissemination**
- 6.9 Summary**
- 6.10 Self Assessment Questions**
- 6.11 Suggested Books**

## 6.1 Introduction:

Defamation is taking away the fame from some one, which is also an offence punishable with imprisonment from the earliest times. Kautilya called it Vakarushyam in his book Arthashastra and prescribed a punishment for this "man hani" keeping in view the social conditions of the time. Many countries across the world have defamation laws in accordance with their social setup and legal system. The definition of defamation varies from jurisdiction to jurisdiction, but "there is common agreement that a communication that is merely unflattering, annoying, irksome, or embarrassing, or that hurts only the plaintiff's feelings, is not actionable." It may be by words, either spoken or intended to be read, or by signs or visible representation. Any person who makes or publishes any imputation concerning any person, knowing or having reason to believe that such imputation will harm the reputation of such person, is said, to defame that person. There is no separate law of defamation in India. The Indian penal code (IPC) has four sections which define elaborately what constitutes defamation and what the defenses and the punishments are. Section 499 defines the offence and defamation. It is very exhaustive with four explanations and 10 exceptions. Obviously, though the aggrieved person has the opinion to file a civil suit under common law there is no codified civil law of defamation in our country?

Defamation is a public communication that tends to injure the reputation of another. It is of two kinds, which includes both libel (written defamatory statements) and slander (oral ones). Defamation gives rise to both civil and criminal actions. The civil law relating to defamation is not codified in our country. Civil section against defamation is based on the English common law, subject to statutory exceptions. Criminal law of defamation is contained in sections 490 to 502 of the IPC and is very exhaustive. There is no civil action if defamation is of the spoken word. The press, being a written and printed, is likely to comment on offence of libel only. The main difference between civil suit and criminal proceedings for defamation is pertaining to the compensation. Intention is irrelevant in civil liability for defamation. Truth of the statement is the complete defense to a civil action for defamation. In criminal law the intention is essential for liability. Good faith is a defense in criminal law. But truth as such is no defense in criminal proceedings except under the first exception to section 499 of IPC. It is necessary to prove further that the defamatory publication is for the public good.

## 6.2 What constitutes criminal defamation?

Indian penal code section 499 of IPC says whoever by words either spoken or intended to be read, or by signs or by visible representation, makes or publishes any imputation concerning any person intending to harm, or having the reason to believe that such imputation will harm the reputation of such person is said to defame that person. There are 4 explanations and 10 exceptions in this section. An offence of defamation can be committed not only by spoken word or written statements but also by signs and visible representations. That means an offending cartoon or photograph may also give rise to action for defamation.

## 6.3 Elements of a cause of action:

Typically, the elements of a cause of action for defamation include:

1. A false and defamatory statement concerning another
2. The unprivileged publication of the statement to a third party (that is, somebody other than the person defamed by the statement);



3. If the defamatory matter is of public concern, fault amounting at least to negligence on the part of the publisher; and
4. Damage to the plaintiff

In the context of defamation law, a statement is "published" when it is made to the third party. That term does not mean that the statement has to be in print.

Damages are typically harmful to the reputation of the plaintiff. But depending upon the laws of the jurisdiction it may be enough to establish mental anguish. Most jurisdictions also recognize "per se" defamation, where the allegations are presumed to cause damage to the plaintiff. Typically, the following may constitute defamation per se:

- Attacks on a person's professional character or standing;
- Allegations that an unmarried person is unchaste;
- Allegations that a person is infected with a sexually transmitted disease;
- Allegations that the person has committed a crime of moral turpitude;

While actions for defamation have their roots in common law, most jurisdictions have now enacted statutes which modify the common law. They may change the elements of the cause of action, limit when an action may be filed, or modify the defenses to an action for defamation. Some may even require that the defendant be given an opportunity to apologize before the plaintiff can seek non-economic damages.

#### **6.4 What does not constitute defamation?**

Once an imputation is proved to be defamatory, it is for the exceptions to Sec 499.

Therefore, let us now study the exception to Sec. 499 IPC.

- It's not defamation to impute anything which is true is concerning any person if it is for public good that the imputation should be made or published. The accused should establish two ingredients to avoid the benefit under this exception. The first one is to prove that the imputation is true. The second one is to prove that it is made for the public good.
- It is not defamation to express in good faith any opinion regarding the conduct of a public servant in the discharge of public duties or regarding his character. This exception, relates to the defense of fair comment. The statement made by the accused is an opinion and not a statement of fact. It must have been made in good faith and in public interest. When the comment is on the character of the aggrieved person it must be related only to his conduct in public and the function he is performing
- It is not defamation to express in good faith any opinion regarding the conduct of any person touching a public question, and regarding his character so far as his character appears in that conduct and no further. This exception is related to fair comment only difference is that the opinion expressed relates to the conduct of

the person touching a public question. So, in the case of these exceptions the comment must have been made in good faith on a matter in which public interest is involved.

- It is not defamation to a substantially true report of the proceedings of court or on the result of any such proceedings. This exception comes under absolute privilege. Only thing is that it should be a mere report of the proceedings without any comment.
- It is not defamation to express in good faith any opinion regarding the merit of civil or criminal case, decided by a court, or regarding the conduct of any person as party, witness or agent, in any such case: or regarding the character of such person. This exception gives immunity to the publication of comments on the merits of the case which has already been decided by a court or comments relating to the conduct or character of any party, agent or witness. Only thing is that the opinion or comment is expressed in good faith
- It is not defamation to express in good faith any opinion regarding the merits of any performance which its author has submitted to the judgment of the public regarding the character of the author, so far as the character appears in such performance, and no further. This exception safeguards the reviews critiques of any artistic work or public performance. If the expression of the opinion is in good faith the newspaper or journalist is not liable for action.
- It is not defamation if a person having authority over another either conferred by law or arising out of a lawful contract passes in good faith, any censure on the conduct of that person.
- It is not defamation to prefer in good faith an accusation against any person to those having lawful authority over that person, regarding the subject matter of accusation. Journalists don't make accusations against any person to his or her higher officials. They publish what ever information they get expecting the lawful authority to act upon that. Therefore the imputation must be made with due care after satisfying oneself with the truth about it. They must be able to show from the circumstances that there is a preponderance of probability.
- It is not defamation to make imputation on the character of another provided that the imputation may be made in good faith for the protection of the interests of the person making it, or of any other person or for the public good. Under this exception publication of matter concerning general public good are covered. If the public interest could be secured by a private communication of the imputation, its publication is constructed by courts as indicating lack of good faith.
- It is not defamation to convey a caution in good faith to one person against another, provided that such caution is intended for the good of the person for whom it is conveyed or of the person whom in that person is interested, or for the public good. Here again the imputation published for the public good in good faith is accepted.

## 6.5 Scope of the law:

According to section 499 of IPC the four exceptions will help in understating the scope of the law

- **Explanation 1:** It may amount to defamation to impute anything to a deceased person if the imputation would harm the reputation of that person if living and is intended to be hurtful to the feelings of his family or other near
- **Explanation 2:** It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.
- **Explanation 3:** An imputation in the form of an alternative or expressed ironically may amount to defamation.
- **Explanation 4:** No imputation is said to harm a person's reputation unless that imputation directly or indirectly in the estimation of others, lowers the moral or intellectual character of the persons or lowers the character of that person introspect of this case his calling or lowers the credit of that persons or causes it to be believed that the body of that person is in loathsome state or in a state generally considered disrespectful.

## 6.6 Filing The Complaint:

According to CrPC 1973, normally only the aggrieved person can file a complaint for defamation but any body can file a complaint on behalf of a minor, idiot, lunatic, infirm person or a woman observing purdah etc. Any person who has been defamed is entitled to file civil suit. A heir or legal representation cannot in the ordinary circumstance sue on behalf of the deceased person, except where the libel is also defamatory to the heir who may be sued. The proprietor, editor, author, publisher and printer of a newspaper or journal would be jointly and separately liable for any defamatory matter published in the newspaper of journals and may be sued as such. But the aggrieved person may sue anyone often singly. The only thing is he cannot recover damages for the other for the same offence subsequently though all are separately liable. A complaint for defamation under section 499 IPC should be lodged within three years of the date of commission (publication of the offence).

## 6.7 Punishment for Defamation:

According to sections 500, 501 a, 501b, 502a, 502b of IPC whoever defames another shall be punished with simple imprisonment for a term which may extend to two years or with fine or with both. The offences are cognizable and bailable. Punishment for a journalist may be severe in view of the fact that the defamatory statement gets wide publicity. The offence may be further aggravated where a journalist makes reckless comment with an ulterior motive. His conduct subsequent to the publication and during the trial will also have a bearing on determination of the sentence. Printing or engraving matter known to be defamatory and sale of printed or engraved substance containing defamatory matter also is an offence punishable with simple imprisonment which may extend to two years or with fine or with both. A civil action for defamation is an action for damages for injury caused to the reputation of a person. Damages depend on the assessment of the reputation of that person by the judge. The amount of damage depends on the nature of

imputation, mode of publication, social standing of a person defamed and mitigating circumstances. A person of high social position and the aggravating circumstances may call for exemplary damages. In cases such as loss of business etc compensatory damages may be awarded. In other cases general damages are awarded for the annoyance or mental pain caused to the defamed person.

## 6.8 Defenses of Defamation:

There are four special defenses available to journalists in action for defamation.

They are;

Justification

Fair comment

Privilege

Apology

In an action for defamation the complainant has to first prove that the defamatory statement is published that it refers to him.

The defendant in his defense can prove that

1. The statement does not bear defamatory meaning
2. That it doesn't refer to the complainant or to any other person on behalf of whom the complainant can initiate criminal proceedings under criminal procedure code
3. That the statement is privileged
4. That the case is time barred
5. That the suit is barred by res judicata.

**6.8.1 Defense based on 'truth' and justification:** If the defendant can prove on the balance of probabilities that the defamatory statement was in fact true. The law of defamation is concerned with protecting reputations and the law will not protect character a person does not have.

There are two principal problems (aside from the legal requirements) concerning pleading the defense of justification. Firstly, any trial for defamation is likely to take place some time after the publication of the defamatory statements, and so witnesses may be awkward to locate or their testimony unreliable. Also, if witnesses are called to testify as to the truth of certain matters their character will be in issue and may raise numerous doubts and undermine the defense. Secondly, if the jury finds that the claimant has wrongly persisted with a defense of justification; so-called aggravated damages may be awarded.

If it is alleged that the claimant committed a particular offence and there is proof that 'he was suspected' of the offence this is insufficient to make out the defense of justification. But, if the defendant can show that a statement is substantially true, and is

inaccurate only in terms of minor and specific details proof of the substantial truth of the statement will constitute the defense of justification.

Section 8 of the Rehabilitation of Offenders Act, 1974 states that justification does not apply to a statement about a 'spent conviction' if the defendant acted maliciously. The Act provides offenders who have served less than two and half years in prison upon the expiry of which their conviction is to be treated as 'spent' and the offender 'rehabilitated'. If a rehabilitated offender brings an action for defamation against a person who has published statements about the offence he will not be able to raise the defense of justification if it can be shown that he i.e. defendant published the statements maliciously.

**6.8.2 Defence based on "Fair Comment":** To plead the defense of fair comment the defendant must show that the defamatory statement concerned a 'matter of public interest' and that the comment is the defendant's honestly held opinion based upon true facts and made without malice. The concept of public interest is fairly wide. It includes matters concerning government and other bodies relevant to public life. Matters that enter the public arena are also to be considered legitimate subjects.

If the court determines that the defamatory statement is a statement of opinion to make-out the defense of fair comment the defendant must show that the comment was based upon fact and that the facts were true. Otherwise, the defendant who splashed across the front of a newspaper that a particular politician is a 'libertine, swindler and tax-evader' could claim that it was his honestly held opinion and he could escape liability. Section 6 of the Defamation Act, 1952, addresses the matter of what facts must be proved. The defence of fair comment only applies 'to statements of opinion. There are no 'true' opinions, only 'fair' opinions.

**6.8.3 Defense based on Privilege:** On certain occasions and situations when freedom of communication is more important than the protection of reputation statements made on these occasions, or for these 'purposes,' are privileged. The right to sue is severely restricted or even taken away altogether if the statement was made on one of these occasions. The law recognizes two types of privilege:

1. Absolute privilege
2. Qualified privilege.

It is important to remember that privilege applies in order to protect freedom of speech

**Absolute Privilege:** If the defendant is able to show that the defamatory statement falls within the category of absolute privilege there will be no action for defamation. Thus, the defense of absolute privilege protects publications which are considered more important to society than the protection of the reputation of the person referred to in the statements.

**Qualified Privilege:** The defendant will have the defense of qualified privilege if the allegedly defamatory statement was made in circumstances where the maker of the statement had some interest or duty in making it to a person who has a corresponding interest in receiving it.

- 6.8.4 Defense based on Malice:** If the claimant is able to show that the defendant was motivated by malice notwithstanding that the statement was published on an occasion such that it attracts a qualified privilege the defense will be lost. The judge determines if on the facts there is evidence of malice that can be left to the jury although it is for the jury to decide if the defendant did in fact act maliciously. How can the claimant prove malice? In the beginning the claimant may seek to show that the defendant used the privilege which the law grants for purposes other than those for which it was granted; in such circumstances there is deemed to be malice on the part of the defendant and the defence of qualified privilege is lost.
- 6.8.5 Defense based on Innocent Dissemination:** Romer LJ outlined what an 'innocent' disseminator must establish: "...as regards a person who is not the printer or the first or main publisher of a work which contains a libel, but has only taken a subordinate part in disseminating it, in considering whether there had been publication of it' by him. The particular circumstances under which he disseminated the work must be considered. If he did it in the ordinary way the nature of the business and the way in which it was conducted must be looked at; and if he succeeds in showing.
- (1) That he was innocent of any knowledge of the libel contained in the work disseminated by him,
  - (2) That there was nothing in the work or the circumstances under which it came to him or was disseminated by him which ought to have led him to suppose that it contained a libel, and
  - (3) That, when the work was disseminated by him, it was not by any negligence on his part that he did not know that it contained the libel. Although the dissemination of the work by him was prima facie publication of it, he may nevertheless, on proof, of the before-mentioned facts, be held not to have published it. But the onus of proving such facts lies on him, and the question of Publication or non-publication is in such a case "One for the jury."
- 6.8.6 Defense based on offer of amends:** This defence was available under section 4 Defamation Act, 1952 and was known as unintentional defamation. It was rarely used and considered excessively complex. It has been replaced by sections 2, 3 and 4 of the Defamation Act I 996. When people are taken to task by others by defamation filing of cases or demand for action against them defamation becomes very common. The publicity that results from a defamation lawsuit can create a greater audience for the false statements than they previously enjoyed. If a newspaper or news show picks up the story of the lawsuit, false accusations that were previously known to only a small number of people may suddenly become known to the entire community, nation, or even to the world. As the media is much more apt to cover a lawsuit than to cover its ultimate resolution, the net effect may be that large number of people hears the false allegations, but never learn truth.

Another hindrance to these cases is the smaller damages. Though the defamation cases are very difficult to win, damage awards to them tend to be small. As a result, legal counsels are not so interested to take up defamation cases on a contingent fee basis, and the fees expended in litigating even a successful defamation action can exceed the



total recovery. Another significant concern is that, even where the statements made by the defendant are entirely false, it may not be possible for a plaintiff to prove all of the elements of defamation.

## 6.9 Summary:

Defamation is taking away the fame from some one, which is also an offence punishable with imprisonment from the earliest times. Section 499 of IPC deals with the offence and defamation procedures. The act is very exhaustive with four explanations and 10 exceptions. Defamation is a public communication which is likely to injure the reputation of another. It could be in two forms such as libel (written defamatory statements) and slander (oral ones). Defamation gives rise to both civil and criminal actions. The civil law relating to defamation is not confined in our country. Civil section against defamation is based on the English common law, subject to statutory exceptions. Criminal law of defamation is contained in sections 490 to 502 of the IPC and is very exhaustive. There is no civil action if defamation is of the spoken word. The press, being a written and printed medium, is likely to comment on various issues frequently. There are four exceptions in defamation. According to CrPC 1973, the aggrieved person can file a complaint for defamation. But if the complainant is a minor, idiot, lunatic, infirm person or a woman observing purdah any body can file a complaint on behalf of them. The proprietor, editor, author, publisher and printer of a newspaper or journal would be jointly and separately liable for any defamatory matter published and may be sued. Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years or with fine or with both." The offences are cognizable and bailable. There are four special defenses available to journalists in action for defamation. They are Justification Fair comment, Privilege and Apology.

## 6.10 Self Assessment Questions:

1. Describe various types of defamations.
2. List out the defenses of defamation and explain them.
3. Write about the procedure of lodging a complaint in the case of defamation.

## 6.11 Suggested Readings:

1. Durga Das Basu: Introduction to the Constitution of India
2. Durga Das Basu: Law of the Press
3. Dr. Jan R. Hakemulder, Dr. Fay AC De Jonge and P.P. Singh : Media Laws and Ethics
4. B. N. Pandey: Indian Constitution
5. Kiran Prasad: The Philosophies of Communication and Media Ethics

## Lesson - 7

# CONTEMPT OF COURTS ACT 1971

### Objective:

On completion of this lesson you should be able to understand:

- Types of contempt
- Object, third party
- Limitations

### Structure:

- 7.1 Introduction
- 7.2 Types of Contempt
- 7.3 Object
- 7.4 Third Party
- 7.5 Limitation
- 7.6 Summary
- 7.7 Self Assessment Questions
- 7.8 Suggested Readings

### 7.1 Introduction:

Anything that curtails or impairs the freedom of limits of the judicial proceedings results in hampering of the administration of Law and in interfering with the due course of justice is considered to be contempt of court. Oswald defined contempt to be constituted by any conduct that tends to bring the authority and administration of Law into disrespect or disregard or to interfere with or prejudice parties or their witnesses during litigation'. Halsbury defined contempt as consisting of 'words spoken or written which obstruct or tend to obstruct the administration of justice'. Black Rodgers enunciated that 'it is contempt of court to publish words which tend to bring the administration of justice into contempt, to prejudice the fair trial of any cause or matter which is the subject of civil or criminal proceeding or in any way to obstruct the cause of Justice.

### 7.2 Types of Contempt:

Section 2(a) of the Indian Contempt of Courts Act of 1971 specifies two types of contempt of court as 'civil contempt' and criminal contempt. There is general feeling that the existing law relating to contempt of courts is somewhat uncertain, undefined and unsatisfactory. The jurisdiction to punish for contempt of court touches upon two important fundamental rights of the citizens, i.e. the right to personal liberty and the right to freedom of expression. It was, therefore, considered

advisable to have the entire law on the subject scrutinized by a special committee which was set up in 1961 under the chairmanship of the late H N Sanyal, the then additional solicitor general. The committee made a comprehensive examination of the law and problems relating to contempt of court in the light of the petition obtaining in our own country and various foreign countries. The recommendations of the committee took note of the importance given to freedom of speech in the constitution and of the need for safeguarding the status and dignity of courts and interests of administration of justice. The recommendations of the committee have been generally accepted by the government after considering the view expressed on those recommendations by the state governments, union territory administrations, the Supreme Court, the High Courts and the judicial commissioners.

In the case of contempt *C.K. Daphtary vs. O.P. Gupta* (1971 1 SCC .626), the respondent published and circulated a booklet in public purporting to ascribe bias and dishonesty to Justice Shah while acting in his judicial capacity. Mr. C.K. Daphtary, along with others, filed a petition alleging that the booklet scandalized the judges who participated in the decision and brought into contempt the authority of the highest court of the land and thus weakened the confidence of the people in it. The Supreme Court, in examining the scope of the contempt of court, laid down that the test in each case is whether the impugned publication is a mere defamatory attack on the judge or whether it will interfere with the due course of justice or the proper administration of law by the court.

Contempt of Court Act passed in 1971 deals with such a concept that Article 129 and 215 of the Constitution of India empowers the Supreme Court and High Court respectively to punish people for their respective contempt. Section 10 of The Contempt of Courts Act of 1971 defines the power of the High Court to punish contempt of its subordinate courts. Power to punish for contempt of court under Articles 129 and 215 is not subject to Article 19(1) (a).

The elements generally needed to establish contempt are:

1. Making of a valid court order,
2. Knowledge of the order by respondent,
3. Ability of the respondent to render compliance, and
4. Willful disobedience of the order.

According to Lora Hardwick, there is a three-fold classification of Contempt:

1. Scandalizing the court itself.
2. Abusing parties who are concerned in the cause in the presence of court.
3. Prejudicing the public before the cause is heard.

However in India contempt of court only two types are considered.

1. Civil Contempt

Under Section 2(b) of the Contempt of Courts Act of 1971, civil contempt has been defined as willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court.

## 2. Criminal Contempt

Under Section 2(c) of the Contempt of Court's Act of 1971, criminal contempt has been defined as the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which

- i. Scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court, or
- ii. Prejudices, or interferes or tends to interfere with the due course of any judicial proceeding, or
- iii. Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

### 7.3 Object:

There can be no doubt that the purpose of contempt jurisdiction is to uphold the majesty and dignity of law courts and their image in the minds of the public is no way whittled down. If by contumacious words or writings the common man is led to lose his respect for the judge acting in the discharge of his judicial duties, then the confidence reposed in the courts is rudely shaken and the offender needs to be punished. In essence law of contempt is the protector of the seat of justice more than the person sitting or the judge sitting in that seat.

### 7.4 Third Party:

A third party to the proceeding may be guilty of contempt of court if they have a part to play in the offence. In *UK LED Builders Pty Ltd v Eagles Homes Pty Ltd* Lindgren J stated that "It is not necessary to show that a person who has aided and abetted a contempt of court was served with the order breached. It is necessary to show only that the person sought to be made liable knew of the order."

### 7.5 Limitation:

The Limitation period for actions of contempt is a period of one year from the date on which the contempt is alleged to have been committed.

### 7.6 Summary:

Anything that hinders the judicial proceedings results in hampering of the administration of Law and an act of interference during the course of justice is considered to be contempt of court. Black Rodgers enunciated that 'it is contempt of court to publish words which tend to bring the administration of justice into contempt, to prejudice the fair trial of any case. The contempt of court is two types such as 'civil contempt' or criminal contempt. The contempt of court deals with important fundamental rights such as the right to personal liberty and the right to freedom of expression. By means of the act Constitution of India empowered the Supreme Court and High Court respectively to punish people for their respective contempt. The Limitation period for actions of contempt is a period of one year from the date on which the contempt is alleged to have been committed.

**7.7 Self Assessment Questions:**

1. List out the types of contempt
2. Describe the concept of object in the context of contempt.
3. List out the limitations in the case of contempt and give some examples.

**7.8 Suggested Readings:**

1. Durga Das Basu: Introduction to the Constitution of India
2. Durga Das Basu: Law of the Press
3. Dr. Jan R. Hakemulder, Dr. Fay AC De Jonge and P.P. Singh : Media Laws and Ethics
4. B. N. Pandey: Indian Constitution
5. Kiran Prasad: The Philosophies of Communication and Media Ethics

## **Lesson - 8**

# **OFFICIAL SECRETS ACT 1923 VIS A VIS RIGHT TO INFORMATION ACT**

### **Objective:**

On completion of this lesson you should be able to understand:

- Penalties
- Prosecution and Penalties
- Official Secrets Act and Right to Information
- Scope of RTI Act
- Process of the RTI Act
- Exemptions
- Exclusions
- Role of the Government

### **Structure:**

- 8.1 Introduction**
- 8.2 Penalties**
- 8.3 Prosecution and Penalties**
- 8.4 Official Secrets Act and Right to Information**
- 8.5 Scope of RTI Act**
- 8.6 Process of the RTI Act**
- 8.7 Exemptions**
- 8.8 Exclusions**
- 8.9 Role of the Government**
- 8.10 Summary**
- 8.11 Self Assessment Questions**
- 8.12 Suggested Readings**



## 8.1 Introduction:

During the British rule, disclosure of Government Information, in India was governed by a law enacted called the Official Secrets Act of 1889 which was amended in 1923. This law provides security to the information related to security of the State, sovereignty of the country and friendly relations with foreign states, and also deals with the provisions which prohibit disclosure of non-classified information. Along with these the Indian Civil Service conduct rules and the Indian Evidence Act impose further restrictions on government officials' powers to disclose information to the public. The Official Secrets Act 1923 is India's anti-espionage act held over from British colonization. According to the act any action which involves helping an enemy state against India is considered as violation of secrecy of the act. One cannot approach, inspect, or even pass over a prohibited government site or area. According to this Act, helping the enemy state in the form of communicating a sketch, plan, model of an official secret or of official codes or passwords, to the enemy is punishable.

## 8.2 Penalties:

- (1) If any person for any purpose prejudicial to the safety or interests of the State, (a) approaches, inspects, passes over or is in the vicinity of or enters any prohibited place; or (b) makes any sketch, plan, model, or drawing which is directly or indirectly useful to an enemy; or (c) obtains, collects, records or publishes or communicates to any other person any secret official code or password, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States; he shall be punishable. The punishment would be imprisonment for a term which may extend, where the offence is committed in relation to any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of Government or in relation to any secret official code, to fourteen years and in other cases to three years.
- (2) On a prosecution for an offence punishable under this section, no such act needs to be proved against a person. He may be convicted directly if, from the circumstances of the case or his conduct or his known character it appears that his purpose was prejudicial to the safety or interests of the State, and if the material used in any prohibited place, or relating to collected, recorded, published or communicated by any person other than a lawful authority, and the purpose was prejudicial to the safety or interests of the State, shall be presumed to have been made, obtained, collected, recorded, published or communicated for a purpose prejudicial to the safety or interests of the State.
- (3) Communications with foreign agents to be evidence of commission of certain offences.
- (4) If any person is having any secret official code or password or any sketch, plan, model, article, note, document or information which relates to or is used in a prohibited place or relates to anything in such a place or if any person voluntarily receives any secret official code or password or any sketch, plan, model, article, note document or information knowing or having reasonable ground to believe that the code, password, sketch, plan,

model, article, note, document or information is communicated in contravention of this Act, he shall be guilty of an offence under this section.

- (5) If any person for the purpose of gaining admission or of assisting any other person to gain admission to a prohibited place or for any other purpose prejudicial to the safety of the State use any naval, military, air force, police or other official uniform; produce false documents, reports; forges, alters, tampers with the passes, permits, certificates, license or any other such document of defence officers; personates or falsely represents himself as the employee of a defence organization and produce documents in an unauthorized manner he may be considered as guilty of an offence under this law and shall be punishable with imprisonment for a term which may extend to three years or with fine, or with both.
- (6) Interfering with officers of the police or members of the Armed Forces of Union who are engaged on the duties of guard, sentry, patrol etc. may lead to punishment.
- (7) If any person fails to give any such information or to attend to the authorized police officers he shall be punishable.
- (8) If any person attempts to commit or abets the commission of any offence under this Act shall be punishable with the same punishment, and be liable to be, proceeded against in the same manner as if he had committed such offence.
- (9) If any person knowingly harbors any person who is about to commit or who has committed an offence he shall be guilty of an offence under this act. It shall be the duty of every person having harbored, met or assemble in any premises to inform Superintendent of Police or other police officer not below the rank of Inspector. If any person fails to give any such information, he shall be guilty of an offence under this section. A person guilty of an offence under this section shall be punishable with imprisonment of three years, or with fine, or with both.
- (10)
  - (1) If a Presidency Magistrate, Magistrate of the first class or Sub-Divisional Magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Act has been committed or is about to be committed, he may grant a search-warrant authorizing any police officer named therein, not being below the rank of an officer in charge of a police station. The officer may enter at anytime any premises or place named in the warrant, if necessary, by force, and to search the premises or place and every person found therein, and to seize any sketch, plan, model, article, note or document. He has reasonable ground for suspecting that an offence under this Act has been or is about to be committed.
  - (2) Where it appears to a police officer, not being below the rank of Superintendent, that the case is of great emergency, and immediate action is necessary, he may by a written order give to any police officer the warrant of a Magistrate.
  - (3) Where action has been taken by a police officer he shall, as soon as may be, report such action, in a presidency town to the Chief Presidency Magistrate, and outside such town in the District or Sub-Divisional Magistrate.

- (11) If the person committing an offence under this Act is a company, its in-charge director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

### 8.3 Prosecution and Penalties:

Punishments under the Act range from three to fourteen years imprisonment. A person prosecuted under this Act can be charged with the crime even if the action was unintentional and not intended to endanger the security of the state. The Act only empowers persons in positions of authority to handle official secrets, and others who handle it in prohibited areas or outside them are liable for punishment. In case of any proceedings against a person for the fact that he has been in communication with, or attempted to communicate with a foreign agent he may be prosecuted. Journalists also have to help members of the police forces above the rank of the sub-Inspector and members of the Armed forces with investigation regarding an offence, to including revealing his sources of information, if required. Under the Act, search warrants may be issued at any time if the magistrate feels that based on the evidence in front of them there is enough danger to the security of the state. Uninterested members of the public may be excluded from court proceedings if the prosecutions feel that any information which is going to, be passed on during the proceedings is sensitive. This also includes media; so the journalists will not be allowed to cover that particular case. If a company is the offender under this Act, everyone involved with the management of the company including the board of directors can be liable for punishment. In the case of a newspaper every person including the editor, publisher and the proprietor can be jailed for an offence.

### 8.4 Official Secrets Act and Right to Information:

In the Official Secrets Act, 1923, clause 6, information from any governmental office is considered official information; hence it can be used to override freedom of information requests. This was criticized severely by many. As a sequel to this the Right to Information Act (RTI) was enacted by the Parliament "to provide for setting out the practical regime of right to information for citizens." The Act applies to all States and Union Territories of India, except the State of Jammu and Kashmir, which is covered under a State; level law. Under the provisions of the Act, any citizen may request information from a "public authority" i.e. a body of Government or "instrumentality of State" which is required to reply expeditiously or within thirty days. The Act also requires every public authority to computerize their records for wide dissemination and to proactively publish certain categories of information so that the citizens need minimum recourse to request for information formally. This law was passed by Parliament on 5 June 2005 and came fully into force on 13 October 2005. Information disclosure in India was hitherto restricted by the Official Secret Act, 1923 and various other special laws, which the new RTI Act now relaxes. The RTI Laws were first successfully enacted by the state governments of Tamil Nadu (1997), Goa (1997), Rajasthan (2000), Karnataka (2000), Delhi (2001), Maharashtra (2002), Madhya Pradesh (2003), Assam (2002) and Jammu and Kashmir (2004). The Maharashtra and Delhi State level enactments are considered to have been the most widely used. The Delhi RTI Act is still in force. Jammu & Kashmir has its own Right to Information Act of 2009, the successor to the repealed J&K' Right to Information Act, 2004 and its 2008 amendment.'

Passage of the law at national level however, proved to be a difficult task. Keeping the experiences of state governments in passing practicable legislation, the Central Government appointed a working group under H. D. Shourie whose draft, in an extremely diluted form, was the basis for the Freedom of Information Bill, 2000. It ultimately became law under the Freedom of Information Act, 2002. This Act was severely criticized for permitting too many exemptions, not only under the standard grounds of national security and sovereignty, but it also for requests that would involve "disproportionate diversion of the resources of a public authority". There was no upper limit on the charges that could be levied. There were no penalties for not complying with a request for information. This Act, consequently did not see the light and never came into effect.

The fiasco of Freedom of Information Act led to greater pressure for a better 'National RTI enactment. The first draft of the Right to Information Bill was presented to Parliament in December, 2004. After intense debate, more than a hundred amendments were made between December 2004 and 15 June 2005 to the act when the bill finally passed. The Act came fully into effect on 12 October 2005.

### 8.5 Scope of RTI Act:

The Act is applicable to all constitutional authorities, including the executive, legislature and judiciary; any institution or body established or constituted by an act of Parliament or a state legislature. It is also defined in the Act that bodies or authorities' established or constituted by order or notification of appropriate government including' bodies. "Owned; controlled or substantially financed" by government, or non-Government organizations "substantially financed, directly or indirectly by fund~" provided by the government are also covered in it. Private bodies are not within the Act's ambit directly. However, information that can be accessed under any other law in force by a public authority can also be requested for. In a landmark decision of 30-Nov-2006 on the case of 'Sarbjit Roy vs DERC' the Central Information Commission also reaffirmed that privatized public utility companies continue to be within the RTI Act- their privatization notwithstanding. The Act also explicitly overrides the Official Secrets Act and other laws in force on 15 July 2005 to the extent of any inconsistency

The Act specifies that citizens have a right to

- Request any information (as defined)
- Take copies of documents,
- Inspect documents, works and records,
- Take certified samples of materials of work
- Obtain information in the form of printouts, diskettes, floppies, tapes, video cassettes 'or in any other, electronic mode' or through printouts.

### 8.6 Process of the RTI Act:

Under the Act, organizations must appoint their Public Information Officer (PIO). Any person may submit a request to the PIO for information in writing and the PIO must provide information to citizens of India who request information under the Act. If the request pertains to another public authority (in whole or part) it is his responsibility to transfer/forward the concerned portions of the request to a PIO of the other within 5 days, In addition, every public authority is

required to designate Assistant Public Information Officers (APIOs) to receive RTI requests and appeals for forwarding to the PIOs of their public authority. The citizen making the request is not obliged to disclose any information except his name and contact particulars.

The Act specifies time limits for replying to the request.

- If the request has been made to the PIO; the reply is to be given within 30 days of receipt. If the request has been made to an APIO, the reply is to be given within 135 days of receipt of the request.
- If the PIO transfers the request to another public authority (better concerned with the information requested), the time allowed to reply is 30 days but computed from the day after it is received by the PIO of the transferee authority.
- Information concerning corruption and Human Rights violations by scheduled Security agencies (those listed in the Second Schedule to the Act) is to be provided within 45 days
- But the prior approval of the Central Information Commission.

However, if life or liberty of any person is involved; the PIO is expected to reply within 48 hours. Since the information is to be paid for, the reply of the PIO is necessarily limited to either denying the request (in whole or part) and/or providing a computation of "further fees", The time between the reply of the PIO and the time taken to deposit the " further fees for information is excluded from the time allowed. If information is not provided within this period, it is treated as deemed refusal. Refusal 'with or without reasons may be ground for appeal or complaint. Earlier, information not provided in the times prescribed is to be provided free of charge.

For applying a request one has to pay a fee of Rs. 10, Rs. 2 per page of information and Rs.5 for each hour of inspection of documents after the first hour. If the applicant is a below poverty card holder, then no fee shall apply. Such BPL Card holders have to provide a copy of their BPL card along with their application to the Public Authority. State Governments and High Courts fix their own rules. Chief Information Commissioner (CIC) is the head of all the information offices. The State Information Commission will be constituted by the State Government through a Gazette notification. It will have one State Chief Information Commissioner (SCIC) and not more than 10 State Information Commissioners (SIC) to be appointed by the Governor.

At the end of year CIC is required to present a report which contains: (a) the number of requests made to each public authority; (b) the number of decisions where applicants were not given permission to access to the documents which they request, the 'provisions of the Act under which these decisions were made and the number of times such provisions were filed; (c) details of disciplinary action taken against any officer in respect of the administration of the Act; (d) the amount of charges collected by each public authority under the Act. PIO shall deal with requests from persons seeking information and where the request cannot be made in writing, to render reasonable assistance to the person to reduce the same in writing.



## 8.7 Exemptions:

The following items are exempted from disclosure

- Information disclosure which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence; information which has been expressly forbidden to be published by any court of law or Tribunal or the disclosure of which may constitute contempt of court; Information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature
- Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
- Information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
- Information received in confidence from foreign Government;
- Information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
- Information which would impede the process of investigation or apprehension or prosecution of offenders;

Cabinet papers including records of deliberations of the council of Ministers, Secretaries and other officers; information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual (but it is also provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied by this exemption). Notwithstanding the exemptions, a public authority may allow access to information, if "Public interest outweighs" the harm to the protected interests.

## 8.8 Exclusions:

Central Intelligence and Security agencies specified in the Second Schedule like IB, RAW, Central Bureau of Investigation (CBI), Directorate of Revenue Intelligence, Central Economic Intelligence Bureau, Directorate of Enforcement, Narcotics Control Bureau, Aviation Research Centre, Special Frontier Force, BSF; CRPF, ITBP, CISF, NSG, Assam Rifles, Special Service Bureau, Special Branch (CID), Andaman and Nicobar, The Crime Branch-CIO-CB, Dadra and Nagar Haveli and Special Branch, Lakshadweep etc. Agencies specified by the State Governments through a notification will also be excluded. The exclusion, however, is not absolute and these organizations have an obligation to provide information pertaining to allegations of corruption and human rights violations. Further, information relating to allegations of human rights violation could be given but only with the approval of the Central or State Information Commission.

## 8.9 Role of The Government:

To create awareness about the act, section 26 of the Act enjoins the central government, as also the state governments to initiate necessary steps to

- Develop educational programs for the public especially disadvantaged communities on RTI.
- Encourage public authorities to participate in the development and organization of such programs, promote timely dissemination of accurate information to the public and train officers and develop training materials.
- Compile and disseminate a User Guide for the public in the respective official language. Publish names, designation, postal addresses and contact details of PIOs and other information such as notices regarding fees to be paid, remedies available in law if request is rejected etc.
- The Central Government, State Governments and the Competent Authorities as defined in section 2(e) are vested with powers to make rules to carry out the provisions of the Right to Information Act, 2005.
- If any difficulty arises in giving effect to the provisions in the Act, the Central Government may, by Order published in the official Gazette, make provisions necessary/ expedient for removing the difficulty.

## 8.10 Summary:

The Official Secrets Act of 1889 which was amended in 1923 law deals with the information related to security of the State, sovereignty of the country and friendly relations with foreign states. It also deals with the provisions which prohibit disclosure of non-classified information. Punishments under the Act could range from three to fourteen years of imprisonment. Even if the action was unintentional and not intended to endanger the security of the state the concerned person may be prosecuted under this act. The Act only empowers persons in positions of authority to handle official secrets, and others who handle it in prohibited areas or outside them are liable for punishment. According to the right to information act the citizens have a right to request for any information (as defined), take copies of documents, inspect documents, works and records, take certified samples of materials of work, obtain information in the form of printouts, diskettes, floppies, tapes, video cassettes 'or in any other, electronic mode' or through printouts. The Act specifies time limits for replying to the request. For applying a request one has to pay a fee of Rs. 10, Rs. 2 per page of information and Rs.5 for each hour of inspection of documents after the first hour. At the end of year Chief information commissioner presents a report about the number of requests, as to how many decisions were made, details of disciplinary action taken against any officer in respect of the administration of the Act should be mentioned. When the information disclosure harms the competitive position of a third party, when it impedes the process of investigation or apprehension or prosecution of offenders the information need not be declared. To create awareness about the act, section 26 of the Act enjoins the central government, as also the state governments to initiate necessary steps.



**8.11 Self Assessment Questions:**

1. Explain the history of official secrets act.
2. List out the provisions official secrets act
3. Explain the context which forced the designing of the Right to Information act.

**8.12 Suggested Readings:**

1. Durga Das Basu: Introduction to the Constitution of India
2. Durga Das Basu: Law of the Press
3. Dr. Jan R. Hakemulder, Dr. Fay AC De Jonge and P.P. Singh : Media Laws and Ethics
4. B. N. Pandey: Indian Constitution
5. Kiran Prasad: The Philosophies of Communication and Media Ethics

## Lesson - 9

# PRESS AND REGISTRATION OF BOOKS ACT

### Objective:

On completion of this lesson you should be able to understand:

- Declaration
- Registration of Books
- Registration of newspapers
- Registrar of newspapers
- Inclusion of leaflets
- Amendment of section 5(2) of the Act
- Enforcement of Regulation 96 under the Post Office act

### Structure:

- 9.1 Introduction
- 9.2 Declaration
- 9.3 Registration of Books
- 9.4 Registration of Newspapers
- 9.5 Registrar of newspapers
- 9.6 Inclusion of leaflets
- 9.7 Amendment of section 5(2) of the Act
- 9.8 Enforcement of Regulation 96 under the Post office act
- 9.9 Summary
- 9.10 Self Assessment Questions
- 9.11 Suggested Readings

## 9.1 Introduction:

Among the various acts that are relevant to media, Press and Registration of books act is an important one. This is the oldest surviving act in this regard and also remained as the fundamental law governing the rules for the regulation of the publication of newspapers and printing presses and also for the preservation of copies of books and newspapers printed in India and for the registration of such books and newspapers.

This was enacted in 1867 for regulating printing presses and newspapers for preservation of copies of books printed in India and for the registration of such books and periodicals. The act deals with

The registration of printing presses;

The registration of newspapers and periodicals and;

The registration and preservation of books

## 9.2 Declaration:

No newspaper shall be published in India, except in conformity with the rules herein after laid down within the provisions of this act. A formal declaration has to be submitted before the designated authorities for starting a Newspaper. A person who doesn't ordinarily reside in India or a minor can't file a declaration or edit a newspaper. If the declaration is made in accordance with the provisions of the law and if no other paper bearing the same or similar title is already in existence in the same language or the same state then the magistrate cannot refuse to authenticate the declaration. However, before authentication he must make an inquiry from the Registrar of Newspapers of India (RNI) about the existence of such other paper. Similarly no printing press can be set up without making a relevant declaration. For having a press to print books or newspapers a declaration must be made before the district presidency or sub divisional magistrate giving description of its location.

- The authentication is an administrative and not a judicial function and the magistrate must perform it without exercising his personal discretion. After the declaration the publication of the newspaper should be started within a specific period. The magistrate can cancel the declaration and force closure of a newspaper for irregular publication. To start it again a fresh declaration must be filed. In case of any other newspaper the maximum period of non publication must not exceed 12 months in order to keep the declaration alive. Two copies of each issue of a newspaper and up to three copies of each book must be delivered in a prescribed manner to the government free of expense. The declaration can be cancelled by the magistrate after giving opportunity to show cause to the concerned person. His decision can be challenged in an appeal before the press and registration appellate Board. The Board comprises a Chairman, another member nominated by the Press Council of India.
- The printer and the publisher of every such newspaper shall appear in person or by an agent authorized on his behalf in accordance with rules made under section 20, before a District, Presidency or Sub-divisional Magistrate within whose local

jurisdiction such newspaper shall be printed or published and shall make and subscribe, in duplicate, the following declaration.

- Every declaration shall specify the title of the newspaper, the language in which it is to be published and the periodicity of its publication and shall contain such other particulars as may be prescribed.
  - Whenever the title of any newspaper or its language or the periodicity of its publication is changed, ownership and place of publication of a newspaper is changed the declaration shall cease to have effect and a new declaration shall be necessary before the publication of the newspaper is continued.
  - As often as the printer or the publisher leaves India for a period exceeding ninety days or incapable of carrying out his duties for a period exceeding ninety a new declaration shall be necessary.
  - Every declaration made in respect of a newspaper shall be void, where the newspaper does not commence publication
  - Within six weeks of the authentication of the declaration under section 6, in the case of a newspaper to be published once a week or oftener;
  - Within three months of the declaration, in the case of any other newspaper, and in every such case, a new declaration shall, be necessary before the newspaper can be published.
  - Where, in any period of three months, any daily, tri-weekly, biweekly or fortnightly newspaper publishes issues the number of which is less than half of what should have been published in accordance with the declaration made in respect thereof, the declaration shall cease to have effect and a new declaration shall be necessary before the publication of the newspaper can be continued.
  - Where any other newspaper has ceased publication for a period exceeding twelve months, every declaration made in respect thereof shall cease to have effect, and a new declaration shall be necessary before the newspaper can be re-published.
  - Every existing declaration in respect of a newspaper shall be cancelled by the Magistrate before whom a new declaration is made and subscribed in respect of the same provided that no person who does not ordinarily reside in India or who has not attained majority shall be permitted to make the declaration prescribed by this section, nor shall any such person edit a newspaper.
- (1) Each of the two originals of every declaration shall be authenticated by the signature and Official Seal of the Magistrate before whom the said declaration shall have been made. One of the set of originals shall be deposited among the records of the office of the Magistrate, and the other shall be deposited among the records of the High Court of Judicature, or other principal Civil Court of original jurisdiction for the place where the said declaration shall have been made.

- (2) In any legal proceeding whatever, civil or criminal, the production of a copy of such declaration shall be held to be sufficient evidence as against the person whose name shall be subscribed to such declaration.

The officer-in-charge of each original of the declaration shall allow any person applying to inspect that original on payment of a fee of one rupee, and shall give to any person applying a copy of the said latter declaration, attested by the seal of the Court having custody of the original, on payment of a fee of two rupees. In all trials the attested copy of the latter declaration shall be put in as evidence. The former declaration shall not be taken to be evidence that the declaration was at any period subsequent to the date of the latter declaration, printer or publisher of the newspaper; therein mentioned. A copy of the letter of declaration attested by the official seal of the Magistrate shall be forwarded to the Press Registrar.

If, the Magistrate empowered under this Act, is of opinion that any declaration made in respect of a newspaper should be cancelled, he may give the concerned person an opportunity of showing cause against the action proposed to be taken, hold an inquiry into the matter and if he is satisfied that

- (i) The newspaper, in respect of which the declaration has been made, is being published, in contravention of the provisions of this Act or rules made there under; or
- (ii) The newspaper mentioned in the declaration has a title which is the same as, or similar to, that of any other newspaper published either in the same language or in the same State; or
- (iii) The printer or publisher has ceased to be the printer or publisher of the newspaper mentioned in such declaration; or
- (iv) The declaration was made on false representation or on the concealment of any material fact or in respect of a periodical work which is not a newspaper; the Magistrate may cancel the declaration.

Within sixty days from the date on which such order is communicated to him the grieved person can appeal to the Press and Registration Appellate Board. It consists of a Chairman and another member to be nominated by the Press Council of India, established under section 4 of the Press Council Act, 1978, from amongst its members. The Appellate Board may entertain an appeal after the expiry of the said period, if it is satisfied that the appellant was prevented by sufficient cause from preferring an appeal in time. On receipt of an appeal under this section, the Appellate Board may, after calling for the records from the Magistrate and after making such further inquiries as it thinks fit, confirm, modify put aside the order appealed against. The Appellate Board may, regulate its practice and procedure and its decision shall be final.

- Printed copies of the whole of every book with all maps, prints or other engravings belonging thereto, finished and colored in the same manner as the best copies of the same, shall be delivered by the printer at such place and to such officer as the State Government shall, by notification in the Official Gazette, from time to time, directly and free of expense to the Government.
- The officer to whom a copy of a book is delivered under the last foregoing section shall give to the printer a receipt in writing therefore.

- The copy delivered in pursuance to clause (a) of the first paragraph of section 9 of this Act shall be disposed of as the State Government shall from time to time determine .... The printer of every newspaper in India shall deliver a copy at such place and to such officer as the State Government may, by notification in the Official gazette, direct, and .free of expense to the Government as soon as it is published.
- Whoever shall print or publish any book or paper otherwise than in conformity with the rule contained in section 3 of this Act shall, on conviction before a Magistrate, be punished by fine or imprisonment for a term not exceeding six month or by both.
- Whoever keep in his possession any such press as aforesaid, in contravention of any of the provision contained in section 4 of this Act shall on conviction before a Magistrate, be punished by fine not exceeding two thousand rupees, or by simple imprisonment for a term not exceeding six months or by both.
- Any person who shall, in making any declaration or other statement under the authority of this Act, make a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall on conviction before a Magistrate, be punished by fine not exceeding two thousand rupees, and imprisonment for a term not exceeding six months.
- Whoever shall edit, print or publish any newspaper without conforming to the rules herein before laid down may be punished with fine not exceeding two thousand rupees, or imprisonment for a term not exceeding six months, or both. Where an offence is committed in relation to a newspaper the Magistrate, also cancel the declaration in respect of the newspaper. If any person who has ceased to be a printer or publisher of any newspaper fails or neglects to make a declaration in compliance with section 8, he shall, on conviction before a Magistrate, be punishable by fine not exceeding two hundred rupees.
- If any printer of any such book as is referred to in section 9 of this Act shall neglect to deliver copies of the same pursuant to that section, he shall for every such default forfeit to the Government such sum not exceeding fifty rupees as a Magistrate having jurisdiction in the place where the book was printed may, on the application of the officer to whom the copies should have been delivered or of my person authorized by that officer in this behalf, determined to be in the circumstances a reasonable penalty for the default and in addition to such sum, such further sum as the Magistrate may determine to be the value of the copies which the printer ought to have delivered.
- If any publisher or other person employing any such printer shall neglect to supply him, the maps, prints or engravings which may be necessary to enable him to comply with the provisions of that section, such publisher or other person shall for every such default forfeit to the Government a sum not exceeding fifty rupees such further sum as the Magistrate may determine to be the value of the maps, prints or engravings which such publisher or other person ought to have supplied.

- If any printer or any newspaper published in India neglects to deliver copies of the same be punishable, on conviction by a Magistrate having Jurisdiction in the place where the newspaper was printed, with fine which may extend to fifty rupees for every default. If any publisher of any newspaper published in India neglects to deliver copies of the same in compliance with section 11 B, he shall, on the complaint of the Press Registrar, be punishable, on conviction by a Magistrate having jurisdiction in their place where the newspaper was printed, by fine, 'which may extend to fifty rupees for every default.
- Any sum forfeited to the Government under section 16 may be recovered, under the warrant of the Magistrate determining the sum, or of his successor in office

### 9.3 Registration of Books:

There shall be kept at such office, and by such officer as the State Government shall appoint in this behalf, a, book to be called a Catalogue of Books printed in India, wherein shall be registered by a memorandum of every book-which shall have been delivered pursuant to clause (a) of the first paragraph of section 9 of this Act. Such memorandum shall (so far as may be practicable) contain the following particulars

- (1) The title of the book and the contents of the title-page, with a translation into English of such title and content, when the same are in the English Language;
- (2) The language in which the book is, written
- (3) The name of the author, translator or editor of the book or any part thereof;
- (4) The subject
- (5) The place of printing and the place of publication;
- (6) The name or firm of the printer and the name or firm of the publisher;
- (7) The date of issue from the press or of the publication;
- (8) The number of sheets, leaves or pages;
- (9) The size;
- (10) The first, second or other number of the edition;
- (11) The number of copies of which the edition consists;
- (12) Whether the book is printed [cyclostyled or lithographed];
- (13) The price at which the book is sold to the public; and
- (14) The name and residence of the proprietor of the copyright or of any portion of such copyright. Such memorandum shall be made and registered in the case of each book as soon as practice.

The memoranda registered during each quarter in the said catalogue shall be published in the Official Gazette as soon as or may be after the end of such quarter, and a copy of the memoranda shall be sent to the Central Government.



## 9.4 Registration of Newspapers:

The Central Government may appoint a Registrar of Newspapers of India and such other / officers under the general superintendence and control of the Press Registrar for the purpose of performing the function assigned to them by or under this act and may, by general or special order; provide for the distribution or allocation of function to be performed by them under this Act.

- (1) The Press Registrar shall maintain in the prescribed manner a register of newspaper.
- (2) The Register shall, as far as may be practicable, contain the following particulars about every newspaper published in India, namely;
  - (a) The title of the newspaper;
  - (b) The language in which the newspaper is published;
  - (c) Periodicity of the publication of the newspaper;
  - (d) The name of the editor, printer and publisher of the newspaper;
  - (e) The place of printing and publication;
  - (f) The average number of pages per week;
  - (g) The number of days of publication in the year;
  - (h) The average number of copies printed, the average number of copies sold to the public and the average number of copies distributed free to the public, the average being calculated with reference to such period -as may be prescribed;
  - (i) Retail selling price per copy;
  - (j) The names and addresses of the owners of the newspaper and such other particulars relating to ownership as may be prescribed; -
  - (k) Any other particulars, which may be prescribed.
- (3) On receiving information from time to time about the aforesaid particulars, the Press Registrar shall make relevant entries and may make such necessary alterations as per corrections.
- (4) On receiving a copy of declaration from the magistrate the Press Registrar shall issue a certificate of registration - in respect of that newspaper to the publisher there of.
- (5) It shall be the duty of the publisher of every newspaper to furnish to the Press Registrar an annual statement in respect of the newspaper at such time and containing such of the particulars referred to in the act.
- (6) The publisher of every newspaper shall furnish to the Press Registrar such returns, statistics and other information with respect to any of the particulars as required by the act from time to time require.

- (7) The Press Registrar or any gazetted officer authorized by him in writing in this behalf shall, for the purpose of the collection of any information relating to a newspaper, have access to any relevant record or document relating to the newspaper in the possession of the publisher thereof, and may enter at any reasonable time any premises where he believes such record or document to be and may inspect and take copies of the relevant records or documents or ask any question necessary for obtaining any information required to be furnished under this Act.
- (8) The Press Registrar shall prepare, in such form and at such time each year as may be prescribed, an annual report containing a summary of the information obtained by him during the previous year in respect of the newspapers in India and giving an account of the working of such newspaper, and copies thereof shall be forwarded to the Central Government.
- (9) On the application of any person for the supply of the copy or any extract from the Register and on payment of such fee as may be prescribed, the Press Registrar shall furnish such copy to the applicant in such form and manner as may be prescribed.
- (10) Subject to the provisions of this Act and regulation made there under, the Press Registrar may delegate all or any of his powers under this Act to any officer subordinate to him.
- (11) If the publisher of any newspaper refuses or neglects to comply with the provision of section 19D or section 19E; or publishes in the newspaper any particulars relating to the newspaper which he has reason to believe to be false he shall be punishable with fine, which may extend to five hundred rupees.
- (12) If any person engaged in connection with the collection of information under this Act, willfully disclose any information or the contents of any return given or furnished under this Act otherwise than in execution of his duties under this Act or for the purposes of the prosecution of an offence under this Act or under the Indian Penal Code, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

## 9.5 Registrar of Newspapers:

There is provision for appointment of press registrar by the governments of India for the whole of the country. The press registrar maintains register containing the following particulars of each newspaper. Title, language, periodicity, name of the editor, printer, and publisher, place of printing and publication, average number of pages per week, number of days of publication in the year, average number of copies printed, sold and distributed free, retail selling price per copy and names and addresses of owners. He issues a certificate of registration to the publisher of the newspaper. He does this on receipt of copy of the declaration from the magistrate who has authenticated it. It is the duty of the publisher to furnish annual statement of the above particulars about his newspaper as may be specified by the press registrar to the Press registrar's office. The rules require the publication in the first issue after the last day of February each year the name, address, nationality of the editor and publisher and the name of all those holding one per cent or more shares in the newspaper. The newspaper is also obliged to furnish returns, statistics and other information as the press registrar may from time to time require. Non compliance attracts a fine of five hundred rupees. The Press Registrar has a right of access to records and documents of the newspaper for the purpose of collection of any information about it.

**Penalties:**

If a newspaper doesn't print the name of the printer and publishes and also the name of the place of printing / publishing properly the printer or published can be fined up to 2000 rupees or imprisoned up to six months or punished by both. The same punishment can be awarded for keeping a press without making declaration or for making false statement or for editing, printing or publishing a newspaper without conforming to the rules. In addition to this punishment the magistrate may also cancel the declaration in respect of the newspaper. Non compliance with the requirements regarding the delivery of copies of newspaper will invite a penalty of up to Rs. 30 for each default. In case of publication of a book, the value of the copies of the book may be charged.

**9.6 Inclusion of Leaflets:**

The first important criticism that has been made by two state governments is that leaflets may not come within the purview of section 3 of the act which say that every book or paper printed within India shall have printed legibly upon it the name of the printer and the place overprinting and if the book on paper be published the name of the publisher and the place of publication. The section is not confined to newspapers whose term is defined in section 1 of the act and strictly construed even invitation cards for social functions or for that matter even visiting cards would be paper printed and will have to comply with the requirements of section 3.

**9.7 Amendment of section 5(2) of the Act:**

Under section 5(2) of the Act it is open to any person to declare his intention of starting a paper, but it is not incumbent on him to start such a paper within any specified period after the declaration. Amendment of section 5 and section 8 of a paper ceases publication. The declaration however continues to stand and there is no ready means of verifying whether the particular paper is still alive. It is optional on the part of a person who has ceased to publish a paper either because he has transferred it to another person because he has discontinued publication of the paper to file a declaration to this effect.

Section 5(3) the press law enquiry committee has recommended that temporary changes in the place of printing a publication may merely be notified to the Magistrate within 24 hours and if this is done there need be no fresh declaration so long as the printer and publisher continue to be the same.

Section 5(4) the Press Law Enquiry Committee have also recommended that a new declaration should be necessary only if the printer and publishers are absent from the Indian Union for a period longer than 30 days. Another important omission in the provision of the Act is a requirement for registration and filing of at least one copy of each printed paper, book or periodical with the National Library of India.

**9.8 Enforcement of Regulation 96 under the Post office act:**

This regulation prohibits the transmission of news by inland post by newspapers that are enjoying the concession. If the rules laid down under the Press and Registration of Books Act have not been complied with, if a press registrar is appointed it would be one of his duties to inform the appropriate postal authorities of the papers who have not complied with the requirements of the Press and Registration of Books act and have thus forfeited their right to the facility of postal transmission.

## 9.9 Summary:

Press and Registration of books act was enacted in 1867 for regulating printing presses and newspapers. It also discusses about preservation of copies of books as well as periodicals. No newspaper shall be published in India, except in conformity with the rules laid in the act. The printer and the publisher of every such newspaper shall appear in person or by an agent authorized on his behalf before a District, Presidency or Sub-divisional Magistrate within whose local jurisdiction such newspaper shall be printed or published and shall make and subscribe, in duplicate, the necessary declaration. If the newspaper does not commence publication every declaration made in respect of a newspaper shall be void. For every book published in the country a memorandum shall be registered, the first paragraph of which shall contain, the title of the book and the contents of the title-page, the language, name of the author, translator or editor of the book, the price and other details. The Central Government may appoint a Registrar of Newspapers of India and such other / officers under the general superintendence and control of the Press Registrar for the purpose of performing the function assigned to them by or under this act and may, by general or special order; provide for the distribution or allocation of function to be performed by them under this Act. He shall maintain a register of newspapers which contain the details of the title, the language, periodicity of the publication of the newspaper; name of the editor, printer and publisher of the newspaper etc. Penalties are levied if a newspaper doesn't print the name of the printer and publisher and also the name of the place of printing / publishing etc. Under the Post office act the transmission of news by inland post by newspapers that are enjoying the concession is regulated.

## 9.10 Self Assessment Questions:

1. Explain the process of registration of Books
2. What are differences between registration of newspapers and books?
3. Describe the role of Registrar of newspapers
4. 'Inclusion of leaflets' is a debatable issue. Explain the reasons of it.
5. Explain the amendment of section 5(2) of the Act

## 9.11 Suggested Reading:

1. Durga Das Basu: Introduction to the Constitution of India
2. Durga Das Basu: Law of the Press
3. Dr. Jan R. Hakemulder, Dr. Fay AC De Jonge and P.P. Singh : Media Laws and Ethics
4. B. N. Pandey: Indian Constitution
5. Kiran Prasad: The Philosophies of Communication and Media Ethics

## **Lesson - 10**

# **WORKING JOURNALISTS AND OTHER NEWSPAPER EMPLOYEES (CONDITIONS OF SERVICE AND MISCELLANEOUS PROVISIONS) ACT 1955**

### **Objective:**

On completion of this lesson you should be able to understand:

- Chapter II of the act
- Non journalist's in newspapers
- Application of certain acts to news paper employees
- Miscellaneous
- Setting of the wage board

### **Structure:**

- 10.1 Introduction**
- 10.2 Chapter II**
- 10.3 Non journalist's in newspapers**
- 10.4 Application of certain acts to news paper employees**
- 10.5 Miscellaneous**
  - 10.5.1 Retrenchment**
  - 10.5.2 Termination of Service without notice**
  - 10.5.3 Payment of Gratuity**
  - 10.5.4 Hours of Work**
  - 10.5.5 Normal Working Days**
  - 10.5.6 Compensation for Overtime work**
  - 10.5.7 Holidays**
  - 10.5.8 Leave**
- 10.6 Demand to amend the working Journalist act.**
- 10.7 Summary**
- 10.8 Self Assessment Questions**
- 10.9 Suggested Readings**

## 10.1 Introduction:

The Act was made to regulate services of working journalists and other persons employed in newspaper establishments. The Act specifies that Newspaper Employee means any working Journalist and includes any other person employed to do any work in or in relation to any newspaper establishment. He is a person whose principal avocation is journalism and who is employed either on a whole-time or part-time basis in, or in relation to, one or more newspaper establishment, and includes an editor, a lead writer, news-editor, sub-editor, feature-writer, copy-tester, reporter, correspondent, cartoonist, news-photographer and proofreader. But, it does not include any such person who is employed mainly in a managerial or administrative capacity or being employed in a supervisory capacity, perform, either by the stature of duties attached to his office or by reasons of the power vested in him, and function mainly of a managerial nature.

## 10.2 Chapter II:

- (1) The provisions of the Industrial Disputes Act, 1947 as in force for the time being shall subject to the modifications specified in sub section (2) apply to or in relation to working journalists as they apply to or in relation to workmen within the meaning of that Act.
- (2) Section 25-F of the aforesaid Act in its application to working journalists shall be construed as if in clause (a) thereof, for the period of notice referred to there in relation to the retrenchment of a workman, the following periods of notice in relation to the retrenchments of a working journalist had been substituted namely
  - a) 6 months in the case of an editor and
  - b) Three months in the case of any other working journalist
- (3) Where at any time between the 14th day of July, 1954 and the 12th day of March, 1955 any working journalist had been retrenched he shall be entitled to receive from the employer.
  - a) Wages for one month at the rate to which he was entitled immediately before his retrenchment, unless he had been given one month's notice in writing before such retrenchment and
  - b) compensation which shall be equivalent to fifteen days average pay for every completed year of service under that employer or any part thereof in excess of six months
- (4) Where
  - a) Any working journalist has been in continuous service whether before or after the commencement of this Act, for not less than three years in any newspaper establishment and
    - His services are terminated by the employer in relation to that of newspapers establishment for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action or
    - He retires from service on reaching the age of superannuation or

- b) Any working journalist who has been in continuous service whether before or after the commencement of this act for not less than ten years of service in any newspaper organization and retires from service on or after the 1st day of July 1961
- c) Any working journalist have been in continuous service whether before or after the commencement of this Act for not less than three years in any newspaper establishment
- d) Any working journalist dies while he is in service in any newspaper establishment his nominee or nominees if there is no nomination his family be paid. On termination, retirement, resignation or death by the employer in relation to that establishment, gratuity which shall be equivalent to 15 days average pay for every completed year of service or any part there of in excess of 6 months.

Journalist referred in clause (b) the total amount of gratuity that shall be payable to him shall not exceed twelve and half months average pay.

The working journalist who is employed in any newspaper establishment where in more than six working journalists were employed on any day of the twelve months immediately the commencement of this Act, the gratuity payable be equivalent to 15 days pay for every completed year of service or any part there of in excess of 6 months.

- (5) Any dispute where a working journalist has voluntarily resigned from service in any newspaper establishment on the ground of conscience shall be deemed to be an industrial dispute within the meaning of the industrial disputes act 1947 or any corresponding law relating to investigation and settlement of industrial disputes in force in any state.
- (6) Where a nominee is a minor and the gratuity under subsection (1) has become payable during his minority it shall be paid to a person appointed under subsection (3) of section 5 -A
- (7)
  - (1) Subject to rules that may be made under this act number of hours work working journalists required to work or allowed to work in any newspaper establishment are not more than one hundred and forty four hours during any period of four consecutive weeks exclusive of the time for meals.
  - 2) Every working journalist shall be allowed during any period of seven consecutive days rest for a period of not less than twenty four consecutive hours and the period between 10 PM and 6 PM being included therein.
- (8) Without prejudice to such holidays, casual leave or other kinds of leave as may be prescribed; every working journalist shall be entitled to
  - a) Earned leave on full wages for not less than one eleventh of the period spent on duty
  - b) Leave on medical certificate on one half of the wages for not less than one eighteenth of the period of service
- (9) 1) The central government may in the manner here in after provided,



- a) Fix rates of wages in respect of working journalists
  - b) Revise from time to time at such intervals as it may think fit the rates of wages fixed under this section or specified in the order made under section 6 of the Working journalists (fixation of wages) act 1958
  - 2) The rates of wages may be fixed or revised by the central government in respect of working journalists for time work and for piece work
- (10) For the purpose of fixing and revising rates of wages in respect of working journalists under this act central government shall as and when necessary constitute a wage board which shall consists of
- a) Two persons representing employers in relation to newspaper establishments'
  - b) Two persons representing working journalists
  - c) Three independent persons one of who shall be a person who is or has been , a judge of high court or the supreme court and who shall be appointed by that government as the chairman there of
- 1) The board shall call upon newspaper establishments and working journalists and other persons interested in the fixation or revision of rates of wages of working journalists to make such representations as they may think fit as respects the rates of wages which may be fixed or revised under this act in respect of working journalists.
  - 2) People can make representations to board in writing and state the rates of wages they feel are reasonable.
  - 3) The board shall take into account the representation aforesaid if any and after examining the materials placed before it make such recommendations as it thinks fit to the central governments about revision of rates of wages in respect of working journalists.
  - 4) In making the recommendation the board takes the cosy prevalent rates of wages for the comparable employment the circumstances relating to the newspaper industry in different regions of the country and to any other circumstances which to the board may seem relevant.
- (11)
- 1) The board may exercise all or any of the powers which an industrial Tribunal constituted under the industrial disputes Act, 1947 exercises for the adjudication of an industrial dispute referred to it and shall subject to the provisions quoted in this act have power to regulate its own procedure
  - 2) Any representation made to the board and any documents furnished to it by way of evidence shall be open to inspection on payment of such fee may be prescribed by any person interested in the matter.
  - 3) If for any reason a vacancy occurs in the office of chairman or any other member of the board the central government shall fill the vacancy by appointing another person.

- (12) 1) As soon as the recommendations of the board are received the central government shall make an order in terms of the recommendations or subject to such modifications if any a it thinks fit being modifications which in the opinion of the central government do not effect important alteration in the character of the recommendations.
- 2) The central government may make modifications in the recommendations not begin as it thinks may fit but it will give choice to all persons likely t o be affected there by in such a manner as may be prescribed and shall take into account any representation which they may make in this behalf in writing
- 3) Refer the recommendations to the board and shall consider it as further recommendations and make an order either in terms of the recommendations or with such modifications of the nature referred to asit thinks fit
- 4) These modifications also will be published in official gazette together with recommendations of the board relating to the order and the order shall come into operation on the date of publications or on such date whether prospectively or retrospectively as may be specified in the order.
- (13) On the coming into operation of an order of the central government under section 12 every working journalist shall be entitled to be paid by his employer wages at the rate which shall in no case be less than the rates of wages specified in the order.
- 13 A 1) Notwithstanding anything contained in this Act, where the Central Government is of opinion that it is necessary so to do it may after consultation with the Board by notification in the official gazette fix interim order rates of wages in respect of working journalists
- 2) Any interim rates of wages so fixed shall be binding on all employers in relation to newspaper establishments and every working journalist shall be entitled to be paid wages at a rate which shall in no case be less than interim rates of wages fixed.
- 3) Interim rates of wages fixed shall remain in force until the order of the central government under section 1 comes into operation

### 10.3 Non journalists in newspapers:

The central government may fix rates of wages in respect of non journalists newspaper employees and revise from time to time at such intervals as it may think fit. The wages are fixed for time work and piece work. For fixing their wages the central government constitutes a wage board which consists of two person representing non journalists newspaper employees, three independent persons one of whom shall be a persons who is or has been a judge of a High court and who shall be appointed by the government as the chairman there of. All the conditions that are applicable to non working journalists shall also apply to these non journalists' newspaper employees.

### 10.4 Application of certain acts to news paper employees:

The provision of the industrial employment (standing orders) Act, 1946 as in force for the time being shall apply to every newspaper establishment where in twenty or more employees are employed or were employed on any day of the preceding twelve months as if such newspaper

establishment were an industrial establishment to which the aforesaid newspaper establishments if the newspaper employees were a workman within the meaning of the act. The employee's Provident act, 1952 shall apply to every newspaper establishment in which twenty or more persons are employed on any day.

## 10.5 Miscellaneous:

- 1) The provisions of this act shall have effect notwithstanding anything inconsistent there with contained in any other law or in theorems of any award, agreement or contrary of service whether made before or after the commencement of this act
- 2) Nothing can prevent a newspaper employee from entering into any such agreement for granting his rights or privileges in respect of any matter which is favorable to him
- 3) If a employee's PF is pending he or some body authorized by him make an application to the sate government or such authority and get a certificate for the amount to the collector who in turn shall proceed to recover that amount in the same manner as an arrear of land revenue.
- 4) In these cases the state government may refer it to a labor court which is constituted under industrial disputes act to investigate and settle the matter.
- 5) The decision of the labor court may be forwarded by it to authority found due by the labour court recovered.
- 6) Every employer in relation to a newspaper establishment shall prepare and maintain registers records and muster rolls. To supervise them government may appoint inspectors and define their local limits also.

These inspectors may request an employer to furnish records of any other relevant information, go to any newspaper organization and demand for accounts, books, registers and their documents relating to the employment of persons or the payment of wages in the establishment, examine the premises, make copies of or take extracts from any book register of other documents maintained in relation to the newspaper establishment and exercise any such power to protect the welfare of the newspaper employee.

- 7) If any employer contravenes any of the provisions of this act or any rule or order he shall be punished with fine up to 200 rupees. If the offence is committed by a company the person who is in charge of the company shall be deemed to be guilty and shall be liable to be proceeded against and punished accordingly. If the offence is committed by the company and it has the consent of any director, manager, secretary or other officer they may be deemed to be guilty and shall be liable to be proceeded against and punished accordingly.

**10.5.1 Normal Working Days:** The number of hours which shall constitute a normal working day for working journalists exclusive of time for meals shall exceed six hours per day in case of a day shift and five and half hours per day in case of night shift and no working journalist shall ordinarily be required or allowed to work for longer than the number of hours constituting a normal working day.

- 10.5.2 Compensation for Overtime work:** When a working journalist works for more than six hours on any day in the case of day shift and more than five and half hours in case of night shift, he shall in respect of that overtime work, be compensated in the form of hours of rest equal in number to the hours for which he has worked overtime.
- 10.5.3 Holidays:** A working journalist shall be, entitled to 10 holidays in a calendar year and shall be entitled to wages on holidays if he was on duty. A working journalist shall be entitled to wages for weekly day of rest if he was on duty.
- 10.5.4 Leave:** A female working journalist who has put in not less than one year service in the newspaper establishment in which she is for the time being employed shall be granted maternity leave on full wages on production of a medical certificate from an authorized medical practitioner for a period which may extend for three months from the date of its commencement or six weeks from the confinement which ever is earlier. Leave of any other may be granted in continuation of maternity leave. Maternity leave shall also be granted in case of miscarriage, including abortion, subject to the condition that the leave does not exceed six weeks.
- Quarantine leave on full wage shall be granted by newspaper establishment on the certificate of authorized medical practitioner for a period not exceeding 21 days or in exceptional circumstances 30 days.
  - A working journalist who has no leave to his credit may be granted at the discretion of newspaper establishment in which such working journalist is employed leave not due. Study leave may be granted in same pattern. ..
  - A working journalist shall be eligible for casual leave at the discretion of newspaper establishment for 15 days in a calendar year

## 10.6 Indian Journalists' demands to amend the Working Journalists

### Act:

- (1) An amendment to make the non-implementation of wage awards a cognizable offence to ensure that no newspaper management gets away into not to implementing it.
- (2) Amendment to increase the age of superannuation from 58 to 60 years.
- (3) To amend the provisions of gratuity in working journalists act to provide for grant of gratuity after 5 year service.
- (4) To make it mandatory for the employers to issue appointment letters to all permanent and part-time correspondents, by whatever name called, according to a fixed form as suggested by Bachawat wage board.

### 10.7 Summary:

The Act was made to regulate service conditions of service of working journalists and other persons employed in newspaper establishments. The Act applies to Newspaper Employees or any other person employed to do any work in newspaper establishment. He is a person whose

principal avocation is that of a journalist and who is employed in one or more newspaper establishment. Working journalists includes an editor, a lead writer, news-editor, sub-editor, feature-writer, copy-tester, reporter, correspondent, cartoonist, news-photographer and proofreader, but, not people who are in managerial or administrative capacity or being employed in a supervisory capacity, perform, either by the stature of duties attached to his office or by reasons of the power vested in him, and function mainly of a managerial nature.

The central government may fix rates of wages in respect of non journalists , newspaper employees and revise from time to time at such intervals as it may think fit. Certain acts also apply to news paper employees. The provision of the industrial employment (standing orders) Act, 1946 as in force. for the time being shall apply to every newspaper establishment where in twenty or more employees are employed or were employed on any day of the preceding twelve months as if such newspaper establishment were an industrial establishment to which the aforesaid newspaper establishments if the newspaper employees were a workman within the meaning of the act. The employee's Provident act, 1952 shall apply to every newspaper establishment in which twenty or more persons are employed on any day. Terms of retrenchment, termination of service without notice, mode of payment of gratuity etc were also laid in the act. Hours of Work, number of normal working days, and compensation for overtime work, holidays, leave, setting of the wage board etc are also established through the act.

### **10.8 Self Assessment Questions:**

1. Explain the significance of the Chapter II of the working journalists act.
2. Describe the role of non journalist's in newspapers
3. List out various applications of the acts to news paper employees
4. Explain the procedure of setting up of the wage board

### **10.9 Suggested Readings:**

1. Durga Das Basu: Introduction to the Constitution of India
2. Durga Das Basu: Law of the Press
3. Dr. Jan R. Hakemulder, Dr. Fay AC De Jonge and P.P. Singh : Media Laws and Ethics
4. B. N. Pandey: Indian Constitution
5. Kiran Prasad: The Philosophies of Communication and Media Ethics







## Lesson - 11

# COPY RIGHT ACT

### Objective:

On completion of this lesson you should be able to understand:

- Reports of meetings
- Ownership of copy right and the rights of the owner
- Term of copy right
- Term of copyright Government works
- Licenses by owners of copyright
- Compulsory license in works with the public

### Structure:

- 11.1 Introduction
- 11.2 Reports of meetings
- 11.3 Ownership of copy right and the rights of the owner
- 11.4 Term of copy right
- 11.5 Term of copyright Government works
- 11.6 Licenses by owners of copyright
- 11.7 Compulsory license in works with the public
- 11.8 Summary
- 11.9 Self Assessment Questions
- 11.10 Suggested Readings

### 11.1 Introduction

It may be mentioned that the registration of a copyright is not compulsory or a pre-condition in India for acquiring a copyright or for enforcing the rights there under. A register kept at the Copyright Office, in which the names of titles or works and the names and addresses of authors, publishers, and owners of copyright are entered. The Copyright Board then examine the reasonableness of the charges or royalties claimed by a copyright society and to consider applications for the grant of licenses for public performances of works etc.

Chapter III clearly states that copyright will subsist throughout India in literary, dramatic, musical, and artistic works. Copyright also subsists in cinematograph films and sound recordings. The work must, however, be first published in India and the author of the work must be a citizen

of India. The meaning and scope of a copyright in respect of the above classes of works has been explained in Chapter III. This includes inter alia, reproduction, performance, communication, translation, or adaptation of a work. Rental rights are also recognized as a part of the copyright in a work such as a cinematograph film or a computer program.

Copy right law deals with works published in newspapers, periodicals and other publications. To have better legal position on these publications and their authorities one should have an idea of the general principles of copy right act and its various aspects of special interest to media owners and professional.

Copy right means the right to copy or to reproduce a work. The law protects a literary, dramatic, musical or artistic work produced in this country (or in any country subscribing to the international copyright conventions) against plagiarism. The term literary works means a written work and included newspapers. The law of copy right is based on principles that an original work needs protection, but on the other hand a limited amount of freedom to reproduce parts of other peoples copy righted work is datable in the interest of advancement of knowledge. The person who owns the copy right has the exclusive right to reproduce it but subject to certain qualifications. These qualifications are recognized in view of public interest.

The three basic questions of importance are in what matters the copy right act is applied, who owns the copy right in the case of a particular work, when the right is infringed what are possible legal excuses that have to be understood by people.

There is no copy right in news or in information itself. It subsists only in the form in which they are expressed because lot of skill and labour goes into the writing of stories or features and in the selection and arrangement of the material. Copy right subsists in any original literary, artistic or other creative work. It is connected with the form. A news organization's expression of the news through it's choice of words and their juxtaposition is copy rightable. Thus a story about a court case or a council meeting can simultaneously appear in more than one newspaper where the newspaper can either get the information directly from the parties or from somewhere else. But the copy right act prevents the newspaper which get's information from other sources prevents it from using the same words because the copy right is in the form of words in which the facts are shaped.

The copy right doesn't apply for ideas. If a photographer takes a photograph the photo graph will have a copy right on its own. Nobody can use his photograph without prior permission. But somebody else can go to the same place and click another photo on which he will copyright. In 1985 an interesting case, Bombay judgment was reported regarding the copy right case. It arose out of notice of motion to restrain the defendant by an order or injunction of the court from distributing circulation from releasing in any manner a movie Kamla for public or private exhibition and for certain other relief. The first plaintiff was the company which publishes the Indian express while the second plaintiff was Aswin Sarin, journalist working for the Indian express. Sarin has published certain articles in the Indian Express regarding flesh trade that flourished in the state of Madhya Pradesh Sarin had purchased a women and brought her to Delhi. The defendants who won that case were persons concerned with the production of th film kamla. The film had been produced on the basis of th above story published by the Indian express which and created a sensation in the state of Madhya Pradesh. The films story was same as Sarins story in Express. More over in the film some episodes which were defamatory of the profession of journalism had been added. The Indian express and Sarin sued the defendants from breach of copy right as well

as for defamation. The court held that there can be no copy right in a theme or in an episode. Copy right can subsist only in the form, manner and arrangement of the theme.

### **Copy right in title and the wrong of "passing off"**

There is no copy right in the title of a newspaper or magazine but the owner of the title does have a remedy where another publication is started with the same title and where it is possible that some potential readers might take it to be the original one.

## **11.2 Variour Occasions**

Where a speaker or lecture speaks from prepared notes, there is copy right in the speech and a verbatim report of the speech or lecture published without permissions will infringe it. The defense of air dealing may cover most cases if the matter relates to a current event. Moreover, if reporters are invited to a lecture then consent to publication of the gist of the lecture can be inferred.

### **Obscene Matter:**

In law no copy right is recognized in obscene matter.

### **Ownership at Copy Right:**

As to ownership at copy right the basic rule is that copy right in a work initially belongs to its author. But exceptions or qualification to this rule exist and should be borne in mind, wherever relevant.

### **Employees:**

Employers and other persons frequently write articles in newspapers and periodicals. Questions possibly arise as to the ownership of copyright in the articles so published in copy right law. The general principle is that when the employee is engaged in a literary or other work which is the subject of copy right than not the author but employer of the author shall be the first owner of the copy right of the work is made in the course of the authors employment. Thus the private eye reproduced extracts from the column of Nora Beloff (columnist of the Observer) copy right did not belong to Nora Beloff, an employee.

### **Confidential Information:**

The scope of the employees ownership of the copy right is thus somewhat more restricted than is usually thought. At the same time, it is to be remembered that even where the copyright in a particular work is not vested in the master of authors the master is still entitled to restrain his servant from, making unconscious use of information gained by the servant in his employment. The master will be so entitled to restrain publication when the publication involves a disclosure of his secrets or confidences.

### **Freelance Writers:**

In principle a person other than an employee who has made a contribution to a newspaper owns the copy right in the contribution. Articles set in that newspaper by a freelance writer remain the copyright of the writer for all forms of reproduction, unless there is some special arrangement to the contrary. Thus a publisher cannot reproduce these articles in another of his publications without the authors permission. A freelancer retains the full rights of his copy (subject to negotiations) even if he receives retainer.

**Readers' Letters:**

A reader submitting a letter to a newspaper for publication still retains his copy right but he is giving the paper an implicit license to reproduce his letter in the paper or one occasion only by sending in the letter. The implied license is for a single publication without payment. Any further printing would require the readers consent. The newspaper cannot reproduce the letter on a second occasion later. It could however quote from parts of his letter in a follow-up story because that reproduction would be "fair dealing" for the purpose of criticism, review, reporting current events etc.

Can the editor alter the letter sent by the reader? There is some doubt on this point. In one English case it was held that in the absence of express or implied prohibition, the editor has the right to make reasonable alterations.

**Material Sent Free to Newspapers:**

There is copy right in such material that is sent free of charge to newspapers an official of a local association may find it part of his duty to make available to the paper free of charge, his annual report. He is implicitly consenting to the reproduction of the associations report but the copyright is still the associations and they can withdraw the facility or start to make a charge or prevent another journal from copying it.

**Photographs:**

Copy right of photograph is owned by the person commissioning the photograph or if it has not been commissioned then the person owning the photographic material. Thus a photographer's employer will own the copyright of a picture taken in the course of the work. If a staff photographer uses his employer's photo materials the employer owns it. One of the difficulties for newspapers wanting to use a borrowed photograph or document or plans does not know who owners. The copyright of wedding picture affords a good example of the difficult if it has been commissioned the photographs customer will own it if there is no agreement to the contrary. If it has taken "on spec" the photographer will own it.

**Commissioned Photograph:**

The rule in the case of engravings , photographs, portraits or sound recording which are commissioned by a person paying or agreeing to pay is that the copy right belongs to the person who commissioned the job.

**Public Place:**

To photograph a building or a place of sculpture or similar work that is permanently displayed in a public place is neither an infringement of copyright nor it is the publication of the picture so taken.

**Assignment and License:**

Copy right can be transferred like other property or it may be bequeathed by a will or sold. When the owner disposes of the copy right he is said to assign it (either free or on payment)An assignment may be for reproduction in one form only or in one country only. Without assigning the copy right, an owner can license a production while still retaining the ownership of copyright thus a photographic agency can consent to a newspaper using a once only on payment of a fee or free of

charge. A license merely make legal what otherwise would have been illegal. The assignee alone has the right to reproduce the copyright material.

### **Fair Dealing:**

An act otherwise amounting to infringements may be protected if there is a recognized legal defense. The defense of "fair dealing" gives newspapers and periodicals in number of different circumstances valuable protection when using copyright material or reproducing extracts from the work of others. Under copyright law, fair dealing "with a literary dramatic musical or artistic work for the purposes of criticism or review or for reporting current events shall not constitute an infringement of copy right provided it is permissible to report and quote from books , plays , films other publications and so on when writing any criticism, story or feature.

The law says there cannot be a fair dealing" if there is reproduction of a substantial part of the worke the authors of one of the standard text books on copy right say: any extract may be published its publication is genuinely intended to enable the reviewer to make his comments and not to enable the reader of the review to enjoy the work concerned without buying it.

## **11.3 Ownership of copy right and the rights of the owner:**

Chapter IV of the Act concerns itself with the ownership of a copyright and the rights of the owner. Subject to certain exceptions, the author of a work is the first owner of the copyright. The exceptions include proprietary rights in a magazine in which an article is first published or the commissioning of an artistic work or a work produced under a contract of service. In case of films, the copyright vests with the film producer. Similarly in cases of musical works recorded on phonograph record, the copyright vests with the manufacturer of the original master record from which other records are made. The owner of a copyright can assign his rights there under in terms and conditions set out in a written document.

First owner of copyright: - Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein:

Provided that

- (a) In the case of a literary, dramatic or artistic work made by the author in the course of his employment.' by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work;
- (b) Subject to the provisions of clause (a), in case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph. film made, for valuable consideration at the instance of any person, such person shall; in the absence of any agreement to the contrary, be the 'first owner of the copyright therein;
- (c) In the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which clause (a) or clause (b) does not apply, the

employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright there in;

- (d) In the case of the Government work, Government shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;
- (1) The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof:

Provided that in the case of the assignment of copyright in any future work, the assignment shall be effect only when the work comes into existence.

- (2) Where the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee as respects the rights so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of copyright and the provisions of this Act shall have effect accordingly.
- (3) In this section, the expression "assignee" as respects the assignment of the copyright in any future work includes the legal representatives of the assignee, if the assignee dies before the work comes into existence.

No assignment of the copyright in any work shall be valid unless it is in writing signed by the assignor or by his duly authorized agent.

Transmission of copyright in manuscript by testamentary disposition. Where under a bequest a person is entitled to the manuscript of a literary, dramatic or musical work, or to an artistic work, and the work was not published before the death of the testator, the bequest shall, unless the contrary intention is indicated in the testator's will or any codicil thereto, be construed as including the copyright in the work in so far as the testator was the owner of the copyright immediately before his death.

#### **11.4 Term of Copy Right:**

The term of a copyright was initially fixed at 50 years but by an amendment to the Act with effect from 28th December, 1991, the period was increased to 60 years. In the case of a published literary, dramatic, musical and artistic work (other than a photograph) the period is reckoned from the beginning of the year after the death of the author. In the case of a photograph, cinematograph film or a sound recording the period is reckoned from the year following the publication of the work

- (1) Copyright shall subsist in any literary, dramatic, musical or artistic work (other than a photograph) published within the lifetime of the author until fifty years from the beginning of the calendar year next following the year in which the author dies.
- (2) The author shall, in the case of an anonymous work of joint authorship, be construed
  - (a) Where the identity of one of the authors is disclosed, as references to that author;
  - (b) Where the identity of more authors than one is disclosed, as references to the author who dies last from amongst such authors.



- (1) In the case of literary, dramatic or musical work or an engraving, in which copyright subsists at the date of the death of the author or, in the case of any such work of joint authorship, at or immediately before the date of the death of the author who dies last, but which, or any adaptation of which, has not been published before that date, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the work is first published or, where an adaptation of the work is published in any earlier year, from the beginning of the calendar year next following that year.
- (2) For the purpose of this section a literary, dramatic or social work or an adaptation of any such work shall be deemed to have been published, if it has been performed in public or if any records made in respect of the work have been sold to the public or have been offered for sale to the public.

In the case of a photograph copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the photograph. is published.

In the case of a cinematograph film, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the film is published. In the case of a record, copyright shall subsist until fifty years from the beginning of the calendar or next following the year in which the record is published...'

### **11.5 Term of Copyright to Government Works:**

In the case of Government work, where Government is the first owner of the copyright therein, copyright shall subsist until fifty years from the beginning of the calendar year next following year in which the work is first published.

Term of copyright in works of international organization

In the case of a work of an international organization to which the provisions of section 41 apply, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the work is first published.

The owner of the copyright is entitled to grant any interest in the copyright by a license given by him in writing.

### **11.6 Licenses by Owners of Copyright:**

The owner of the copyright in any existing work or the prospective owner of the copyright in any future work may grant any interest in the right by license in writing signed by him or by his duly authorized agent. Provided that in the case of a Licensor hitting to copyright in any future work, the, license shall take effect only when the work comes into existence.

### **11.7 Compulsory License in Works With The Public:**

- (1) If at any time during the term of copyright in any Indian work which has been published or performed in public, a complaint is made to the copyright Board that the owner of copyright in the work



- (a) Has refused to republish or allow the republication of the work or has refused to allow the performance in public of the work, and by reason of such refusal the work is withheld from the public; or:
- (b) Has refused to allow communication to the public by radio-diffusion of such work or in the case of a record the work recorded in such record, on terms which the complaint considers reasonable;

#### **License to produce and publish translations**

- (1) Any person may apply to the Copy right Board for a license to produce and publish a translation of a literary or dramatic work in any language.
- (2) Every such application shall be made in such form as may be prescribed and shall state the proposed retail price of a copy of the translation of the work.
- (3) Every applicant for a license under this section shall; along with his application, deposit with the Registrar of Copyrights such fee as may be prescribed.
- (4) Where an application is made to the Copyright Board under this section, it may, after holding such inquiry as may be prescribed, grant to the applicant a license, not being an exclusive license, to produce and publish a translation of the work in the language mentioned in the application, condition the applicant shall pay to the owner of the copyright in the work royalties in respect of copies of the translation of the work sold to the public, calculated at such rate as the Copyright Board may, in the circumstances of each case, determine in the prescribed manner.

#### **Provided that no such license shall be granted, unless-**

- (a) A translation of the work in the language mentioned in the application has not been published by the Owner of the copyright in the work or any person authorized by him, within seven years of the first publication of the work, or if a translation has been so published, it has been out of print;
- (b) The applicant has proved to the satisfaction of the Copyright Board that he had requested and had been denied' authorization by the owner of the copyright to produce and publish such translation, or that he was\unable to find the owner of the copyright;
- (c) Where the applicant was unable to find the owner of the copyright, he had sent a copy of his request for such authorization to the publisher whose name appears from the work, not less than two months before the application for the license;
- (d) The Copyright Board is satisfied that the applicant is competent to produce and publish a correct translation of the work and possesses the means to pay to the owner of the copyright the royalties payable to him under this section
- (e) The author has not withdrawn from circulation copies of the work and
- (f) An opportunity of being heard is given, wherever practicable to the owner of the copyright in the work.

Chapter VI of the Act concerns itself with the rights of broadcasting organizations and of performers'. This right subsists for 25 years beginning from, the calendar year next following the year of broadcast. An amendment made in 1999 this right now subsists for 50 years from the beginning of the calendar year next following the year' of performance. Both these rights are not absolute in as much as these rights are deemed not to be infringed if a recording of such a broadcast or performance is made for private use or for bona fide purposes such as research, teaching, or as news of current events etc.

Chapter IX of the Act deals with a copyright obtained in a foreign country. The applicability of the Copyright Act to foreign works is reciprocal.

Chapters X and XI of the Act deal with the registration and infringement of copyright while Chapters XII to XIV deal with civil remedies and criminal offences under the Act.

In terms of Section 51 of the chapter XI, a copyright is said to be infringed when a person violates the exclusive right of the owner of a copyright without a license having been granted to him to exploit the work commercially by way of sale or hire or distribution or exhibition.

On the other hand, Section 52 of the Act provides that certain acts shall not constitute an infringement of copyright. While a large number of such exceptions have been mentioned, it may be useful to refer only to a few of them such as fair dealing in a literary, dramatic, musical or artistic work for the purposes of private use, criticism, or review thereof; in respect of a computer program, making copies there of or adaptation of the; computer program will not be an infringement of the copyright if the purpose is to utilize the program for which it was supplied or to make back-up copies thereof for protection against loss or destruction or damage.

Unauthorized hire and sale of copies of video films, cassette recordings for public performances and books is regarded as violation of Copyright Laws in India. Against such violations definite measures have, been provided under the Indian Copyright Act as amended in 1984 and 1994 The civil remedies postulated by the Act are those of an injunction, damages, and rendition of accounts, etc. The punishment for a criminal violation was, initially, punishable with imprisonment up to a period of one year or with fine or both but after piracy became a major problem, the period of imprisonment has been made a minimum of six months and it may extend up to three years. Similarly, a minimum fine of Rs.50, 000 can be imposed which may extend up to Rs.2,00,000.

## 11.8 Summary:

Copy right law deals with works published in newspapers, periodicals and other publications. Media owners and professional should have an idea of the general principles of copy right act and its various aspects. The law protects a literary, dramatic, musical or artistic work produced against plagiarism. The author will have the exclusive right to reproduce it but subject to certain qualifications. There is no copy right in news or in information itself. It subsists only in the form in which they are expressed because lot of skill and labour goes into the writing of stories or features and in the selection and arrangement of the material. Copy right subsists in any original literary, artistic or other creative work. It is connected with the form. A news organization's expression of the news through it's choice of words and their juxtaposition is copy rightable. Whereas the copy

right doesn't apply for ideas.

Reports of meetings and obscene matter should be dealt with cautiously because on some occasions the news or photos may violate copy right act. The right on every work of the right vests with the author only. Freelance writers and readers who write letters enjoy the copy right on their works. In the case of photos the photographer or the person who supplied photo material enjoys the copy right. For engravings, photographs, portraits or sound recording the person who commissioned the job enjoys the copy right.

Copy right can be transferred like other property or it may be bequeathed by a will or sold. When the owner disposes of the copy right he is said to assign it (either free or on payment). Earlier the term of a copyright was fixed at 50 years which was later increased to 60 years.

### **11.9 Self Assessment Questions:**

- 1) What are the salient features of Copyright Act?
- 2) Explain the ownership of copy right and the rights of the owner
- 3) What is the term of the copy right act?
- 4) Write about the term of copyright Government works
- 5) What are general types of licenses issued under this act?

### **11.10 Suggested Readings:**

1. Durga Das Basu: Introduction to the Constitution of India
2. Durga Das Basu: Law of the Press
3. Dr. Jan R. Hakemulder, Dr. Fay AC De Jonge and P.P. Singh : Media Laws and Ethics
4. B. N. Pandey: Indian Constitution
5. Kiran Prasad: The Philosophies of Communication and Media Ethics

## **UNIT - 3**

### **Lesson 12**

# **Prasar Bharati (Broadcasting Corporation of India) Act**

#### **Objective:**

On completion of this lesson you should be able to understand:

- Term of office, conditions of service
- Removal and Suspension of Chairman and Members
- Meetings of Board
- Transfer of service of existing employees to corporation
- Functions and Powers of Corporation
- Establishment of Broadcasting Council
- Jurisdiction of broadcasting council
- Fund of Corporation
- Miscellaneous powers of Prasar Bharati

#### **Structure:**

- 12.1 Introduction**
- 12.2 Term of office, conditions of service**
- 12.3 Removal and Suspension of Chairman and Members**
- 12.4 Meetings of Board**
- 12.5 Transfer of service of existing employees to corporation**
- 12.6 Functions and Powers of Corporation**
- 12.7 Establishment of Broadcasting Council**
- 12.8 Jurisdiction of broadcasting council**
- 12.9 Fund of Corporation**
- 12.10 Miscellaneous powers of Prasar Bharati**
- 12.11 Summary**
- 12.12 Self Assessment Questions**
- 12.13 Suggested Readings**

## 12.1 Introduction:

Prasar Bharati, India's largest public broadcaster is an autonomous corporation of the Ministry of Information and Broadcasting, Government of India. It comprises Doordarshan Television Network and All India Radio. It was established on November 23, 1997 following a demand that the government owned broadcasters in India should be given autonomy like those in many other countries. The Parliament of India passed an Act to grant this autonomy in 1990, but it was not enacted until September 15, 1997.

The activities of Prasar Bharati are governed by a Board i.e Prasar Bharati Board headed by a Chairman. The board will have an elected Member, an executive Member other Members from departments such as Finance, Personnel. One Member would be nominated by the Union Ministry of Information and Broadcasting. The Executive Member, Member (Finance) or Member (Personnel) are considered as whole time Members. Part-time Member of the Board does not include an ex-officio Member, the Nominated Member or an elected Member. Six Part-time Members, Director-Generals of Akashvani and Doordarshan act as ex-officio Members. One representative of the Union Ministry of Information and Broadcasting will be nominated by that Ministry; and two representatives of the employees of the corporation, of whom one shall be elected by the engineering staff from amongst themselves and one shall be elected by the other employees from amongst themselves. The 'Chairman and the other Members, except the ex-officio Members, the nominated Member and the elected Members shall be appointed by the President of India on the recommendation of a committee consisting of

- (a) The Chairman of the Council of States, who shall be the Chairman of the Committee;
- (b) The Chairman of the Press Council of India and
- (c) A nominee of the President of India.

The Chairman and the Part-time Members shall be persons of eminence in public life. The Executive Member shall be a person having special knowledge or practical experience in the matters of administration, management, broadcasting, education, literature, culture, arts, music, dramatics or journalism. The Member (Finance) shall be a person having special knowledge or practical experience in respect of financial matters and the Member (Personnel) shall be a person having special knowledge or practical experience in respect of personnel management and administration basing on the recommendations made by the committee.

A "Non-lapsable Fund" was set up from the commercial revenues of Akashvani and Doordarshan to meet the expenditure of certain schemes. Prasar Bharati (Broadcasting Corporation of India) shall have perpetual succession and a common seal with power to acquire, hold and dispose of property, to contract, and can sue others for legal rights and can be sued. The headquarters of the Corporation shall be at New Delhi and the Corporation may establish offices, Kendra's or stations at other places in India and outside India also with the prior approval of the Central Government. The general superintendence, direction and management of the affairs of the Corporation vests in the Prasar Bharati Board which may exercise all such powers and do all such acts and things as may be exercised or done by the Corporation under this Act. The Corporation may appoint such committees as may be necessary for the efficient performance, exercise and discharge of its functions, powers and duties. According to the regulations the corporation may associate with any person whose assistance or advice it may need but that

person so associated shall have the right to take part in the discussions of the Board relevant to the purposes for which he has been associated, but shall not have the right to vote.

## 12.2 Term of office, conditions of service:

The Chairman shall be part-time Member and shall hold office for a term of six years from the date on which he enters upon his office. The Executive Member, the Members of Finance and Personnel shall be whole-time Members and every such Member shall hold office for a term of six years from the date on which he enters upon his office or until he attains the age of sixty-two years whichever is earlier. The term of office of part-time Members shall be six years, but one-third of such Members shall retire on the expiration of every second year. The term of office of an elected Member shall be two years or will continue till he ceases to be an employee of the corporation, whichever is earlier. As soon as or may be after the establishment of the Corporation, the resident of India may, by order, make such provision as he thinks fit for curtailing the term of office of some of the part-time Members then appointed in order that one-third of the Members holding office as such part time Members shall retire in every second year thereafter. Where before the expiry of the term of office of a person holding the office of Chairman, or any other Member; a vacancy arises, such vacancy shall be deemed to be a casual vacancy and the person appointed will be in office till the time of the retirement of the predecessor. The Whole-time Members shall be the employees of the Corporation and are entitled to salaries and allowances and shall be subject to conditions of service in respect of leave, pension, provident fund and other matters as may be prescribed. The Chairman and Part-time Members shall be entitled to such allowances as may be prescribed. The Executive Member shall be the Chief Executive of the Corporation and shall, subject to the control and supervision of the Board, exercise such power and discharge such functions of the Board as it may delegate to him.

## 12.3 Removal and Suspension of Chairman and Members:

- (1) The Chairman or any other Member, except an ex-officio Member, the Nominated Member and an elected Member shall only be removed from his office by order of the President of India on the ground of misbehavior after the Supreme Court, suggests them to be removed.
- (2) The President may suspend the Chairman or other Member, except an ex-officio Member, the nominated Member or an elected Member, in respect of whom a reference has been made to the Supreme Court until the President has passed orders on receipt of the report of the Supreme Court on such reference.
- (3) The President may, by order, remove the Chairman or any Whole-time Member from his office, if such Chairman or such Whole-time Member
  - (a) Ceases to be a citizen of India; or
  - (b) Is adjudged an insolvent; or
  - (c) Engages in any paid employment outside his office during his term; 'or
  - (d) Is convicted of any offence involving moral turpitude; or
  - (e) Is, in the opinion of the President, unfit to continue in office by reason of infirmity of body or mind

The President may, by order, remove any part-time Member from his office if he is adjudged an insolvent or is convicted of any offence involving moral turpitude or where he is, in the opinion of the President unfit to continue in office by reason of infirmity of body or mind.

- (4) If the Chairman or any whole-time Member, except any ex-officio Member, the nominated Member or any elected Member, is interested in any contract or agreement made by or on behalf of the Corporation or the Government of India or the Government of a State or, participates in any way in the office of profit thereof, or in any benefit or emolument arising there from than as a Member, and in common with other Members of an incorporated company, he shall be deemed to be guilty of misbehavior.
- (5) If a Part-time Member is, or becomes in any way concerned, or interested in any contract, or agreement made by or on behalf of the corporation, he shall be deemed to be guilty of misbehavior.
- (6) The Chairman or any other Member may resign his office by giving notice in writing to the President of India.

## **12.4 Meetings of Board:**

There shall not be less than six meetings of the board every year but three months shall not intervene between one meeting and the next meeting. A Member shall be deemed to have vacated his office if he absents himself for three consecutive meetings of the Board without the leave of the Chairman. All questions which come up before any meeting of the Board shall be decided by a majority of the votes of the Members present and voting and, in the event of an equality of votes, the Chairman, or in his absence, the person presiding, shall have and exercise a second or casting vote.

## **12.5 Transfer of service of existing employees to corporation:**

The Central Government may transfer any of the officers or other employees serving in the Akashvani or Doordarshan who are engaged in the performance of those functions to the Corporation. An officer or other employee transferred cease to be an employee of the Central Government and become an employee of the Corporation with such designation as the Corporation may determine. Remuneration, other conditions of service including pension, leave and provident fund shall continue to be an officer or other employee of the corporation unless and until his employment is terminated by the corporation.

- (a) by the scale of pay Every officer or other employee transferred shall, within six months from the date of transfer, exercise his option, in writing, to be governed (a) by the scale of pay applicable to the post held by birth in the Akashvani or Doordarshan immediately before the date of transfer or by the scale applicable to the post under the Corporation to which he is transferred
- (b) Leave, provident fund, retirement and other terminal benefits admissible to employees of the Central Government in accordance with the rules or orders of the Central government, as amended from time to time If the employee is officiating



in a higher post under the Government either in a leave vacancy or any other vacancy of a specified duration, his pay on transfer shall be protected for the unexpired period of such vacancy.

- (c) No officer or other employee transferred
  - (a) Shall be dismissed or removed by an authority subordinate to that competent to make a similar or equivalent appointment under the Corporation as may be specified in the regulations;
  - b) Shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

## 12.6 Functions and Powers of Corporation:

The primary duty of the Corporation is

1. To organize and conduct public broadcasting services to inform, educate and entertain the public and to ensure a balanced development of broadcasting on radio and television.
2. The Corporation shall, in the discharge of its functions, be guided by the following objectives, namely
  - Upholding the unity and integrity of the country and the values enshrined in the Constitution;
  - Safeguarding the citizen's right to be informed freely, truthfully and objectively on all matters of public interest, national or international, and presenting a fair and balanced flow of information including contrasting views without advocating any opinion or ideology of its own;
  - Paying special attention to the fields of education and spread of literacy, agriculture, rural development, environment, health and family welfare, science and technology;
  - Providing adequate coverage to the diverse cultures and languages of the various regions of the country by broadcasting appropriate programs;
  - Providing adequate coverage to sports and games so as to encourage healthy competition and the spirit of sportsmanship;
  - Providing appropriate programs keeping in view the special needs of the youth
  - Informing and stimulating the national consciousness with regard to the status and problems of women and paying special attention to the upliftment of women;
  - Promoting social justice, combating exploitation, inequality and such evils as untouchability and advancing the welfare of the weaker sections of the society.
  - Safeguarding the rights of the working classes and advancing their welfare;
  - Serving the rural and weaker sections of the people and those residing in border regions, backward or remote areas

- Providing suitable programs keeping in view the special needs of the minorities and tribal communities
  - Taking special steps to protect the interests of children, the blind, the aged, the handicapped and other vulnerable sections of the people;
  - Promoting national integration by broadcasting in a manner that facilitates communication in the languages in India; and facilitating the distribution of regional broadcasting services in every state in the languages of that State;
  - Providing comprehensive broadcast coverage through the choice of appropriate technology and the best utilization of the broadcast frequencies .available and ensuring high quality reception
  - Promoting research and development activities in order to ensure that radio and television broadcast technology are constantly updated; and
  - Expanding broadcasting facilities by establishing additional channels of transmission at various levels.
- (3) In particular, and without prejudice to the generality of the foregoing, provisions, the corporatisation has the capacity.
- (a) To ensure that broadcasting is conducted as a public service to provide and produce programmes
  - (b) To establish a system for the gathering of news for radio and television;
  - (c) To negotiate for purchase or otherwise acquire, programs and rights or privileges in respect of sports, other events, films, serials, occasions, meetings, functions or incidents of public interest, for broadcasting and to establish procedures for allocation of such programs, rights or privileges to the services
  - (d) To establish and maintain a library or libraries of radio, television and other materials;
  - (e) To conduct or commission, from time to time, programs; audience research, market or technical service, which may be released to such persons and in such manner and subject to such terms and conditions as the Corporation may think fit;
  - (f) To provide such other services as may be specified by regulations.
- (4) On behalf of the Central Government and in accordance with such terms and conditions as may be specified by that Government the corporation manages the broadcasting of external programmes and monitoring of broadcasts made by organizations outside India on the basis of arrangements made for reimbursement of expenses by the Central Government.

- (5) For the purposes of ensuring that adequate time is made available for the promotion of the objectives set out in this section, the Central Government shall have the power to determine the maximum limit of broadcast time in respect of the advertisement.
- (6) The Corporation shall have powers to determine and levy fees and other service charges for or in respect of the advertisements and such programs as may be specified by regulations.

### **12.7 Establishment of Broadcasting Council:**

- (1) To receive, consider complaint and to advise the corporation in the discharge of its functions in accordance with the objectives a broadcasting Council would be formed.
- (2) The Council shall consist of
  - (i) A President and ten other Members who are persons of eminence in public life;
  - (ii) Four Members of Parliament, of whom two from the House of the People to be nominated by the Speaker thereof and two from the Council of States to be nominated by the Chairman thereof.
- (3) The President shall be a whole-time Member and every other Member shall be a part time Member and the President or the part-time Member shall hold office as such for a term of three years from the date on which he enters his office.
- (4) The Broadcasting Council may constitute such number of Regional Councils as it may deem necessary to aid and assist the Council in the discharge of its functions.
- (5) The President of the Broadcasting Council shall be entitled to such salary and allowances and shall be subjected to such conditions of service in respect of leave, pension (if any), provident fund and other matters as may be prescribed.

### **12.8 Jurisdiction of the broadcasting council:**

- The Broadcasting Council shall receive and consider complaints from any person or group of persons alleging that a certain program or broadcast or the functioning of the corporation in specific cases or in general is not in accordance with the objectives for which the Corporation is established
- A complaint shall be made in such manner and within such period as may be specified by regulations.
- The Broadcasting Council shall follow such, procedure as it thinks fit for the disposal of complaints received by it.
- If the complaint is found to be justified either wholly or in part, the Broadcasting Council shall advise the Executive Member to take appropriate action.
- If the Executive Member is unable to accept the recommendation of the Broadcasting Council, he shall place such recommendation before the Board for its decision thereon.

- If the Board is also unable to accept the recommendation of the Broadcasting Council, it shall record its reasons therefore and inform the Broadcasting council accordingly.
- Wherever the Broadcasting Council deems it appropriate, it may, for reasons to be recorded in writing, require the Corporation to broadcast its recommendations with respect to a complaint in such manner as the council now deem fit.

### **12.9 Fund of Corporation:**

- (1) The corporation shall have its own fund and all the receipts of the Corporation including the amounts which stand transferred to the corporation shall be credited to the fund and all payments by the Corporation shall be made there from.
- (2) All money belonging to the fund shall be deposited in one or more nationalized banks in such manner as the Corporation may decide.
- (3) The Corporation may spend such sums as it thinks fit for performing its functions under this Act and such sums shall be treated as expenditure payable out of the Fund of the Corporation. Explanation for the purpose of the section, 'nationalized bank' means a corresponding new bank specified in the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) or a corresponding new bank specified in "the First Schedule to the Banking Companies Act, 1980.

### **12.10 Miscellaneous powers of Prasar Bharati:**

- (1) Certain powers are vested with the Central Government to give directions:
  - The Central Government may, from time to time as and when occasion arises, issue such directions as it may think necessary in the interests of the sovereignty, unity and integrity of India or the security of the State or preservation of public order requiring it not to make a broadcast on a matter specified in the direction or to make a broadcast on any matter of public importance specified in the direction.
  - Where the Corporation makes a broadcast in pursuance of the direction issued under subsection (1) the fact that such broadcast has been made in pursuance of such direction may also be announced along with such broadcast if the corporation so desires.
  - A copy of every direction issued under sub-section (1) shall be laid before each House of Parliament.
- (2) The Central Government may require the Corporation to furnish such information as that Government may consider necessary.
- (3) Report to Parliament in certain matters and recommendations as to action against the Board

- Where the Board persistently makes default in complying with any directions issued under section 23, or fails to supply the information required under section 24, the Central Government may prepare a report thereof and lay it before each House of Parliament for any recommendation thereof as to any action including suppression of the Board which may be taken against the Board
  - On the recommendation of the Parliament, the President may by notification supersede the Board for such period not exceeding six months, provided that before issuing the notification. The President shall give a reasonable opportunity to the Board to show cause as to why it should not be superseded and shall consider the explanations and objections, if any of the Board.
  - Upon the publication of the notification
    - (a) All the Members shall, as from the date, suppression, vacate their offices as such;
    - (b) All the powers, functions and duties which may, by or under the provisions of this Act be exercised or discharged by or on behalf of the Board, shall until the Board is reconstituted under this Act, be exercised and discharged by such person or persons as the President may direct.
  - On the expiration of the period of suppression specified in the notification issued under subsection, the President may reconstitute the Board by fresh appointments, and in such a case, any person who had vacated his office' under clause (a) of sub-section, shall not be disqualified for appointment provided that the President may, at any time before the expiration of the period of super session, take action
  - The Central Government shall cause the notification issued under-sub-section (2) and a full report of the action taken under this section to' be laid before each House of Parliament.
- (4) The office of the Member of the Broadcasting Council of the Committee shall not disqualify its holder for being chosen as or for being a Member of either House of Parliament.
- (5) The Chairman and every other Member, every officer or other employee of the Corporation and every Member of a Committee, the President and every Member of the Broadcasting Council or every Member of a Regional Council or a Recruitment Board shall be deemed to be a public servant.
- (6) No suit or other legal proceeding shall lie against the Corporation, the chairman or any Member or officer or other employee thereof or the President or a Member of the Broadcasting Council or a Member of a Regional Council or a Recruitment Board for anything which is in good faith.
- (7) All orders and decisions of the Corporation shall be authenticated by the signature of the Chairman or any other Member authorized by the Corporation. All other

instruments executed by the Corporation shall be authenticated by the signature of the Executive Member or by any officer of the Corporation authorized by him in his behalf.

- (8) The Corporation may, by general or special order, delegate powers to the Chairman or any other Member or to any officer of the Corporation, subject to such conditions and limitations.
- (9) The Corporation shall prepare an annual report once in every calendar year, in such form and within such time as may be prescribed, giving a full account of its activities during the previous year. The copies of which shall be laid before each House of Parliament. The Broadcasting Council shall prepare an annual report once in every calendar year, in such form and within such time as may be prescribed, giving a full account of its activities during the previous year and copies thereof shall be forwarded to the Central Government and that Government shall cause the same to be laid before each House of Parliament.
- (10) Every rule and every regulation made under this Act shall be laid before each 'House' of Parliament and get it approved.
- (11) If any difficulty arises in giving effect to provisions of this Act, the Central Government may make such provisions as it may deem necessary, for the removal of the difficulty.

### 12.11 Summary:

Prasar Bharati, which comprises Doordarshan Television Network and All India Radio is an autonomous corporation of the Ministry of Information and Broadcasting, Government of India. Its activities are governed by a Board headed by a Chairman. He along with members shall be appointed by the President of India on the recommendation of a committee. To meet the expenditure of Prasa Bharati a "Non-lapsable Fund" drawn from the commercial revenues of Akashvani and Doordarshan was setup. For the efficient performance, exercise and discharge of functions, powers and duties the corporation may appoint committees. The primary duty of the Corporation is to organize and conduct broadcasting services to inform, educate and entertain the public and to ensure a balanced development of broadcasting on radio and television. The Corporation shall be guided by certain objectives like upholding the unity and integrity of the country and the values, safeguarding the citizen's right to be informed and pay special attention to the fields of education, agriculture, rural development, environment, health, family welfare, science and technology etc. Promoting social justice, combating exploitation, inequality and such evils as untouchability and advancing the welfare of the weaker sections of the society are also the primary objectives of it. Broadcasting Council shall be established to receive, consider complaints and to advise the corporation in the discharge of its functions in accordance with the objectives. The Council shall receive and consider complaints about programs or broadcast or the functioning of the corporation in specific cases or in general.

**12.12 Self Assessment Questions:**

1. What are the terms of office and conditions of service of Prasar Bharati.
2. What are the functions and powers of the Corporation?
3. Explain the miscellaneous powers of Prasar Bharati
4. Elaborate the jurisdiction and the procedure to be followed by broadcasting council

**12.13 Suggested Readings:**

1. Durga Das Basu: Introduction to the Constitution of India
2. Durga Das Basu: Law of the Press
3. Dr. Jan R. Hakemulder, Dr. Fay AC De Jonge and P.P. Singh : Media Laws and Ethics
4. B. N. Pandey: Indian Constitution
5. Kiran Prasad: The Philosophies of Communication and Media Ethics



## Lesson - 13

# THE CABLE TELEVISION NETWORKS (REGULATION) ACT, 1995.

### Objective:

On completion of this lesson you should be able to understand:

- Chapter II
- Transmission of Programs
- Seizure and Confiscation
- Offences and penalties under this act
- Chapter V

### Structure:

- 13.1 Introduction
- 13.2 Chapter II
- 13.3 Transmission of Programs
- 13.4 Seizure and Confiscation
- 13.5 Offences and penalties under this act
- 13.6 Chapter V
- 13.7 Summary
- 13.8 Self Assessment Questions
- 13.9 Suggested Readings

### 13.1 Introduction:

An Act to regulate the operation of cable television networks in the country and for matters' connected therewith or incidental thereto was enacted by Parliament in the form of The Cable Television Networks (Regulation) Act. The act came into effect in 1995 was amended in years 2000 and 2011.

According to the act an officer is the

- (i) A District Magistrate, or
- (ii) A Sub-divisional Magistrate, or
- (iii) A Commissioner of Police,

and any other officer notified in the Official Gazette, by the Central Government or the State Government, to be an authorized officer for the local limits of jurisdiction as may be determined by that Government. According to the act 'Cable operator' is any person, who provides cable service through a cable television network or otherwise controls or is responsible for the management and operation of a cable television network.

- Cable service is defined as the transmission of programs by cables including re-transmission of any broadcast television signals
- 'Cable television network means any system consisting of a set of closed transmission paths, associated signal generation, control and distribution of equipment designed to provide cable service for reception by multiple subscribers.
- 'Person' means,
  - (i) An individual who is a citizen of India;
  - (ii) An association of individuals or body of individuals, whether incorporated or not, whose members are citizens of India;
  - (iii) A company in which not 'less than fifty-one per cent of the paid-up share capital is held by the citizens of India;

'Program' means any television broadcast and includes

- (i) Exhibition of films, features; dramas, advertisements and serials through video cassette recorders or video cassette players;
- (ii) Any audio or visual or audio-visual live performance or presentation, and the expression 'programming service' shall be construed accordingly;

## 13.2 Chapter II:

This chapter II of the Act deals with the Regulation of Cable TV Network.

1. No person shall operate a cable television network unless he is registered as a cable operator under this Act
2. Any person who is operating or is desirous of operating a cable television network may apply for registration as a cable operator to the registering authority. An application shall be made in such form and be accompanied by such fee as may be prescribed. On receipt of the application, the registering authority shall satisfy itself that the applicant has furnished the required information and on being so satisfied, register the applicant as a cable operator and grant him a certificate of such registration.

## 13.3 Transmission of Programs:

- (1) Where the Central Government is satisfied that it is necessary in the public interest to do so, it may, by notification in the Official Gazette, make it obligatory for every cable operator to transmit or retransmit program of any pay channel through an addressable system and different dates may be specified for different states, cities, towns or areas, as the case may be.

- (2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, specify one or more free-to-air channels to be included in the package of channels forming basic service tier and any or more such channels may be specified, in the notification, genre-wise for providing a program mix of entertainment, information, education and such other programs.
- (3) The Central Government may specify in the notification referred to in sub-section (2), the number of free-to-air channels to be included in the package of channels forming basic service tier for the purposes of that sub-section and different numbers may be specified for different states, cities, towns or areas, as the case may be.
- (4) If the Central Government is satisfied that it is necessary in the public by notification in the Official Gazette, specify the maximum amount which a cable operator may demand from the subscriber for receiving the programs transmitted in the basic service tier provided by such cable operator.
- (5) Notwithstanding anything contained in sub-section (4), the Central Government may, for the purposes of that sub-section, specify in the notification referred to in that sub-section different maximum amounts for different states, cities, towns or areas, as the case may be.
- (6) Notwithstanding anything contained in this section, programs of basic service tier shall be receivable by any subscriber on the receiver set of a type existing immediately before the commencement of the Cable Television Networks (Regulation) Amendment Act, without any addressable system attached with such receiver set in any manner.
- (7) Every cable operator shall publicize, in the prescribed manner, to the subscribers the subscription rates and the periodic intervals at which such subscriptions are payable for receiving each pay channel provided by such cable operator.
- (8) The cable operator shall not require any subscriber to have a receiver set of a particular type to receive signals of cable television network.
- (9) Every cable operator shall submit the report to the Central government in the prescribed form and manner containing the information regarding
  - (i) The number of total subscribers
  - (ii) Subscription rates
  - (iii) Number of subscribers receiving programs transmitted in. basic service tier or particular program or set of programs transmitted by pay channel

The Cable operator shall submit a report periodically at regular intervals which shall also contain the rate of amount payable by the cable operator to any broadcaster.

**As per the act**

- (a) 'Addressable system' means an electronic device or more than one electronic devices put in an integrated system through which signals of cable television network

can be sent in encrypted or unencrypted form, which-can be decoded by the device or devices at the premises of the subscriber within the limits of authorization made, on the choice and request of such subscriber, by the cable operator to the subscriber.

- (b) 'Basic service tier' means a package of free.-to-air channels provided by a cable operator for a single price to the subscribers of the area in which his cable television network is providing service and such channels are receivable for viewing by the subscribers on the receiver set of a type existing immediately before the commencement of the Cable Television Networks (regulation) Amendment Act, 2002 without any addressable system attached to such receiver set in any manner;
  - (c) 'Channel' means a set of frequencies used for transmission of a program
  - (d) 'Encrypted', in respect of a signal of cable television network, means the changing of such signal in a systematic way so that the signal would be unintelligible without a suitable receiving equipment and the expression 'unencrypted' shall be construed accordingly;
  - (e) 'Free-to-air channel', in respect of a cable television network, means a channel, the reception of which would not require the use of any addressable system to be attached with the receiver set of a subscriber;
  - (f) 'Pay channel', in respect of a cable television network, means a channel the reception of which by the subscriber would require the use of an addressable system to be attached to his receiver set.'
4. No person shall transmit or re-transmit any program through a cable service unless such program is in conformity with the prescribed program code prescribed.
  5. No person shall transmit or re-transmit any advertisement through a cable service unless such advertisement is in conformity with the prescribed advertisement code prescribed.
  6. Every cable operator shall maintain a register in the prescribed form indicating therein in brief 'the programs transmitted or re-transmitted through the cable service during a month and such register shall be maintained by the cable operator for a period of one year after the actual transmission or re-transmission of the said programs.
  7. Every cable operator shall, from the commencement of the Cable Television Networks (Regulation) Amendment. Act, 2000, retransmit at least two Doordarshan terrestrial channels and one regional language channel of a state in the prime band, in satellite mode on frequencies other than those carrying terrestrial frequencies. The channels shall be re-transmitted without any deletion or alteration of any program transmitted on such channels.
  8. No cable operator shall on and from the date of the expiry of a period of three years from the date of the establishment and publication of the Indian Standard by the Bureau of Indian Standards in, accordance with the provisions of the Bureau of Indian Standards Act, 1986, use any equipment in his cable television network unless such equipment conforms to the said Indian standards.

9. Every cable operator shall ensure that the cable television network being operated by him does not interfere, in any way, with the functioning of the authorized telecommunication systems.

### **13.4 Seizure and Confiscation:**

This chapter deals with the seizure and confiscation of certain equipment:

1. If any authorized officer has reason to believe that the provisions are being contravened by any cable operator, he may seize the equipment being used by such cable operator for operating the cable television network. No such equipment shall be retained by the authorized officer for a period exceeding ten days from the date of its seizure unless the approval of the District Judge, within the local limits of whose jurisdiction such seizure has been made for such retention. The equipment seized shall be liable to confiscation unless the cable operator from whom the equipment has been seized registers himself as a cable operator within a period of thirty days from the date of seizure of the said equipment.
2. No seizure or confiscation of equipment shall prevent the infliction of any punishment to which the person affected thereby is liable under the Act.
3. Giving of opportunity to the cable operator of seized equipment
  - (1) No order adjudicating confiscation of the equipment referred to in section 12 shall be made unless the cable operator has been given a notice in writing informing him of the grounds on which it is proposed to confiscate such equipment and giving him a reasonable opportunity of making a representation in writing, within such reasonable time as may be specified in the notice against the confiscation. If no notice is given within a period of ten days from the date of the seizure of the equipment, such equipment shall be returned after the expiry of that period to the cable operator from whose session it was seized.
4. Any person aggrieved by any decision of the court adjudicating a confiscation of the equipment may prefer an appeal to the court to which an appeal lies from the decision of such court. The appellate court may, after giving the appellant an opportunity of being heard, pass such order as it thinks fit confirming, modifying or revising the decision appealed against or may send back the case with such directions as it may think fit for a fresh decision or adjudication, as the case may be, after taking additional evidence if necessary.

### **13.5 Offences and Penalties Under This Act:**

1. Whoever contravenes any of the provisions of this Act shall be punishable, for the first offence, with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both. For every subsequent offence, with imprisonment for a term which may extend to five years and with fine which may extend to five thousand rupees the contravention of section 4A shall be a cognizable offence

## 2. Offences by Companies:

- (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company; as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised due diligence to prevent the commission of such offence.
- (2) Notwithstanding any thing contained in sub-section(1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any negligence' on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (3) No court shall take cognizance of any offence punishable under this Act except upon a complaint in writing made by any authorized officer.

## 13.6 Chapter V:

This chapter of the Act gives the miscellaneous powers of the Act such as

### 1. Power to prohibit transmission of certain programs in public interest:

Where any authorized officer, thinks it necessary or expedient so to do in the public interest, he may, by order, prohibit any cable operator from transmitting or re-transmitting any program or channel if, it is not in conformity with the prescribed program code referred to in section 5 and advertisement code referred to in section 6 or if it is likely to promote, on grounds of religion, race, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, linguistic or regional groups or castes or communities or which is likely to disturb the public, tranquility.

### 2. Power to prohibit operation of cable television network in public interest:

Where the Central Government thinks it necessary or expedient to do in public interest, it may prohibit the operation of any cable television network in such areas as it may, by notification in the Official Gazette, specify in this behalf.

3. The provisions of this Act shall be in addition to, and not in- derogation of, the Drugs and Cosmetics Act, 1940, the Pharmacy Act, 1948, the Emblems and Names (Prevention of improper Use) Act, 1950, the Drugs (Control) Act, 1950, the Cinematograph Act, 1952, the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, the Prevention of Food Adulteration Act, 1954, the Prize Competitions Act, 1955, the Copyright Act, 1957, the Trade and Merchandise Marks Act, 1958, the Indecent Representation of Women (Prohibition) Act, 1986 and the Consumer Protection Act, 1986.



#### 4. Power to Make Rules:

The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act in particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely

- The form of application and the fee payable, the manner of publicizing the subscription rates and the periodical intervals at which such subscriptions are payable, the form and manner of submitting report and the interval at which such report shall be submitted periodically
  - The program code, the advertisement code, the form of register to be maintained by a cable operator, any other matter which is required to be, or may be, prescribed.
  - Every rule made under this Act shall be laid, before the parliament and both Houses should agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.
5. The Cable Television Networks (Regulation) Ordinance, 1995 is hereby repealed. Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provision of this Act.

### 13.7 Summary:

To regulate the operation of cable television networks in the country Cable Television Networks (Regulation) Act, was enacted in 1995. According to the act every cable operator has to transmit or retransmit program of any pay channel through an addressable system and different dates may be specified for different states, cities, towns or areas, as the case may be. It may specify one or more free-to-air channels to be included in the package of channels forming basic service. It shall allow a mix of entertainment, information, education and such other programs. It may specify the maximum amount which a cable operator can demand from the subscriber for receiving the transmission of programs. Every cable operator shall disclose the subscription rates at the periodic intervals and also shall submit a report periodically at regular intervals which shall also contain the rate of amount payable by the cable operator to any broadcaster. The operators have to oblige the prescribed program code as well as the advertisement code. According to the act they shall retransmit at least two Doordarshan terrestrial channels and one regional language channel of a state in the prime band. The act also deals with the seizure and confiscation of certain equipment when the provisions are being contravened by any cable operator. Whoever contravenes any of the provisions of this Act shall be punishable, for the first offence, with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both.



**13.8 Self Assessment Questions:**

1. Write about the guidelines of act for transmission of programs.
2. Under what circumstances the seizure and confiscation of equipment is taken up.
3. What are the offences and penalties generally levied under Cable TV act?

**13.9 Suggested Readings:**

1. Durga Das Basu: Introduction to the Constitution of India
2. Durga Das Basu: Law of the Press
3. Dr. Jan R. Hakemulder, Dr. Fay AC De Jonge and P.P. Singh : Media Laws and Ethics
4. B. N. Pandey: Indian Constitution
5. Kiran Prasad: The Philosophies of Communication and Media Ethics

## Lesson - 14

# SATELLITE REGULATIONS IN INDIA

### Objective:

On completion of this lesson you should be able to understand:

- Commercialization of space
- Transponder leasing
- Satellite manufacturing
- Background of the market in India
- Satellite regulatory policies
- Telecom regulatory conditions

### Structure:

- 14.1 Introduction
- 14.2 Commercialization of space
- 14.3 Transponder leasing
- 14.4 Satellite manufacturing
- 14.5 Background of the market in India
- 14.6 Satellite regulatory policies
- 14.7 Telecom regulatory conditions
- 14.8 Summary
- 14.9 Self Assessment Questions
- 14.10 Suggested Readings

### 14.1 Introduction:

Market and Regulatory Overview deals with an analysis of the current supply and demand situation of transponder capacity in India. It also deals with how this is affected by the 'present regulatory environment, which essentially requires providers of Indian domestic services (i.e. up links from India, with intended coverage of India) to use INSAT satellites. Meanwhile new pressures have been brought to bear within Indian government circles to introduce fresh restrictions to services via satellite that emanate from outside India. The present satellite policy in India is artificially suppressing the demand, which in turn leads directly to a reduction in growth, profits and therefore lower tax revenues. Another direct consequence is a slowdown in the creation of new jobs. While

it is difficult to quantify such losses, we can look to the example of another large country with infrastructure challenges for an insight into their likely magnitude.

Telecast of program on a global scale is possible because of media broadcast transponder as there are innumerable service providers to provide worldwide teleport solutions through KU, eKU, DBS, C and various other bandwidths. All these support numerous inaccessible hubs on various contents, providing radio broadcasting, TV broadcasting, transponder leasing and allied satellite services to the global clients. They are not able to get high end solutions for multimedia broadcasting, content distribution, IP connectivity and other telecom and sitcom requirements on short term basis. The availability of various media broadcast transponder helps the people to enjoy unremitting services and with no tensions one is able to watch or listen to their favourite channels or programme. Thus people globally can view both the national and the international channels quite easily and affordably.

## 14.2 Commercialization of Space:

The commercial use of space includes satellite navigation systems, satellite television and satellite radio. In 2004, global investment in all space sectors was estimated to be \$50.8 billion. The first commercial use of satellites began with the Telstar 1 satellite, launched in 1962, which was the first privately-sponsored space launch, funded by AT&T and Bell Telephone Laboratories. Telstar 1 was capable of relaying television signals across the Atlantic Ocean, and was the first satellite to transmit live television, telephone, fax, and other data signals. Two years later, the Hughes Aircraft Company developed the Syncom 3 satellite, a geosynchronous communications satellite, leased to the Department of Defense. Commercial possibilities of satellites were further realized when the Syncom 3, orbiting near the International Date Line, was used to telecast the 1964 Olympic Games from Tokyo to the United States.

On April 6, 1965, the Hughes Aircraft Company placed the Intelsat I communications satellite geosynchronous orbit over the Atlantic Ocean. Intelsat I was built for the Communications Satellite Corporation (COMSAT), and demonstrated that satellite-based communication was commercially feasible. Intelsat I allowed for near-instantaneous contact between Europe and North America by handling television, telephone and fax transmissions. Two years later, the Soviet Union launched the Orbita satellite, which provided television signals across Russia, and started the first national satellite television network. Similarly, the 1972 Anik A satellite, launched by Telesat Canada, allowed the Canadian Broadcasting Corporation to reach northern Canada for the first time. Beginning in 1997, Iridium Communications began launching a series of satellites known as the Iridium satellite constellation, which provided the first satellites for direct satellite telephone service.

In 1994, DirecTV debuted by introducing a dish 18 inches in diameter. In 1996, Astro started in Malaysia with the launch of the MEASAT satellite. In November 1999, the Satellite Home Viewer Improvement Act became law, and local stations were then made available in satellite channel packages, fueling the industry's growth in the years that followed. By the end of 2000, DTH subscriptions totaled over 67 million.

## 14.3 Transponder Leasing:

Businesses that operate satellites often lease or sell access to their satellites to data relay and telecommunication firms. This service is often referred to as transponder leasing. Between

1996 and 2002, this industry experienced a 15 percent annual growth. The United States accounts for about 32 percent of the world's transponder market.

#### 14.4 Satellite Manufacturing:

Commercial satellite manufacturing is defined by the United States government as satellites manufactured for civilian government or non-profit use. Not included are satellites constructed for military use, nor for activities associated with any human space flight program. Between the years of 1996 and 2002, satellite manufacturing within the United States experienced an annual growth of 11 percent. The rest of the world experienced higher growth levels of around 13 percent. Less than 43 percent of the satellites launched in 2002 for commercial use were manufactured in the United States.

The fundamental aim of the Policy Frame-work for Satellite Communications in India approved by the Cabinet is to develop a healthy and thriving communications satellite and ground equipment industry as well as satellite communications service industry in India. Also, use and further development of the capabilities built in India in the area of satellites, launch vehicles and ground equipment design and sustaining these capabilities is an equally important aim. Making available the infrastructure built through INSAT to a larger segment of the economy and population is another corner stone of the Policy. Encouraging the private sector investment in the space industry in India and attracting foreign investments in this area are other specific goals. The norms, guidelines and procedures have been evolved so as to help reach these aims and goals.

The Frame-work for Satellite Communication Policy in India as approved by Government in 1997 is as follows:-

- (i) Authorise INSAT capacity to be leased to non-government (Indian and foreign) parties following certain well defined norms;
- (ii) Allow Indian parties to provide services including TV up linking through Indian Satellites, subject to certain terms and conditions which are to be spelt out;
- (iii) Authorize Indian Administration in consultation with Department of Space and other concerned regulatory authorities to inform, notify, co-ordinate and register satellite systems and networks by and for Indian private parties following certain well defined and transparent norms. The satellite systems of all Government agencies shall be established by Department of Space.
- (iv)
  - (a) Operation from Indian soil with foreign satellites may be allowed only in special cases to be notified. These may be in the case of overseas services using international inter-governmental systems, systems owned and operated by Indian Parties but registered in other countries before rules for registrations have been formulated in India, international private systems where there is a substantial Indian participation by way of equity or in kind contribution and where considered necessary reciprocal arrangements could be worked out with the country/countries of registration or ownership.
  - (b) While operations from Indian soil may be allowed with both Indian and foreign Satellites, proposals envisaging use of the Indian satellites will be accorded preferential treatment.

- (c) Satellite broadcasting including Direct to Home (DTH) TV broadcasting, may be licensed by the Licensing Authority constituted under the relevant statute, on Indian Satellite Systems or any other satellite system, excepting those prohibited for the purpose by the competent authority, notified by the Central Government in this regard, on technical or security considerations. In cases where operations of services with foreign satellites are licensed, the Licensing Authority at the time of renewal or re-issue of licenses for these services, will require the licensee to opt for the Indian Satellite System subject to availability of capacity which meets the requirement of the service.

### **14.5 Background of the market in India:**

Indian space satellite market has improved over these years and achieved many mile stones with the strong support of ISRO and Ministry of Science and Environment. Till early 1990's, the Indian satellite market was dominated by INSAT with limited domestic capacity, and by INTELSAT. Later, foreign as well as Indian companies have entered the country triggering of a host of domestic as well as international players into the television business. The situation has witnessed the mushrooming of channels like Zee TV as well as joint ventures with big names of entertainment such as CNN - IBN, Times Warner groups etc. into the country. The sudden surge of channels created a great demand for transponders for which the services of satellites belonging to various foreign countries were utilized. Many indigenous channels uplinked their programme content from foreign land. The phenomenal growth of internet providers also added to the demand.

In India DTH services were started in the year 2001 after the DTH licensing procedures were drafted by the government. Starting with Zee TV's Dish TV many television channels and telephone service providers like Airtel etc also have entered the DTH market. Space TV, Sun TV and reliance' group's Big TV also have entered into the business.

### **14.6 Satellite Regulatory Policies:**

Though in the initial days C band services provided by the satellites were utilized later new policies were designed to promote KU band. This was necessitated because of the introduction of DTH services. For many years C-band services have enjoyed a relatively benign regulatory regime. Later, several new regulations were effected with which C-band customers had constraints in providing service to or within India. The proposed new regulations seem to be designed to restrict the ability of customers to access foreign satellites for such services (bringing them into line with restrictions on Ku-band service). Concurrent with this, the Indian Government is also introducing new restrictions for content providers, including that broadcasters will henceforth need to be registered in India. Not only the DTH operators were even the VSAT operators also interested to use KU band as it could reduce operating cost. By using Ku-band equipment costs can be lowered to a great extent. In all these the key component of VSAT and DTH services is satellite capacity. Under India's present regulatory regime, any company wishing to provide a subscription based television service to customers in India must uplink from Indian Territory, and further must use either an Indian satellite, or a satellite system approved by India's Department of Space ("DOS"). The approval process for using non Indian satellites involves DOS, the Wireless Planning Committee ("WPC") and the Information & Broadcasting Ministry ("MIB"). Preference is given to INSAT satellites; operated by ISRO.

Earlier when INSAT was not able to cater to the Indian operators the private players have hired the leases from satellites of foreign origin Thailand's Thaicom for C-band, New Skies and SES Americom for Ku-band were leased out by ISRO which in turn provided the services to private broadcasters through its commercial arm Antrix, But since the transponder capacity of INSAT satellite also was not enough to meet its demand it limited the ability of any company wishing to use Indian uplinked Ku-band transponders, whether DTH or VSAT.

## 14.7 Telecom Regulatory Conditions:

Until now, regulatory approval for satellites coordinated with INSAT space segment has not been unreasonably withheld. However, the situation changed with cabinet considering measures to make C-band usage as difficult as the present Ku-band restrictions. Demand in India for C-band capacity is growing by approximately 5% per year. INSAT's C-band capacity is virtually fully leased, with foreign operators providing necessary additional bandwidth.

Assumes successful launch of INSAT 4B and 4C, and renew equal availability of capacity currently leased to ISRO, DO and Dish. Although New Skies has managed to secure Dish TV later it also may move onto move to one of the INSAT 4 series satellites.

Ku-band Demand table (DTH only, VSAT not included)

The total supply of Ku-band capacity from INSAT 4A, 4B and 4C will be limited to 36 transponders. The INSAT Ku-band offering will be fully committed on launch with no additional growth opportunity for customers, and no significant capacity available for VSAT customers. INSAT has announced plans to offer an additional 36 transponders within 2-3 years, but this would be an unacceptable time lag for customers who need to grow their businesses.

It will not be feasible for DTH (and a likely number of VSA T) customers to take additional capacity at different orbital slots because of the requirement to install two dishes. Neither is it a business-friendly policy to require new entrants to commence at one orbital location, grow their business and then face the disruption of having to reappoint all of their subscribers to a different satellite. There is a significant cost associated with this, in the range of US\$40-100 per site, depending on location, and statistically 10% of all subscribers are "lost" in any reappoint exercise. Therefore, a requirement to reprint customers is a very unattractive option.

By means of regulations usage of both C band and KU band were controlled. The tightening was necessitated to protect INSAT's commercial interests. India announced in October 2005 a US\$50 million project called the Pan African Network (PAN), a satellite and fiber optic network that will link 53 African countries and provide tele-medicine, tele-education and communications services. This desire to expand satellite and communications services into other countries sits squarely at odds with India's objective to restrict foreign access to its own market. While the Ku-band regulations have been in place for several years the move to bring C-band regulation into similar restrictive line is' negative news for both satellite operators and their customers. From a regulatory viewpoint, presently the only company able to supply Ku-band capacity in India for DTH or VSAT use is INSAT. Clearly, INSAT will not have sufficient capacity to satisfy the total demand within the next 2-4 years (even assuming INSAT 4B and 4C are both successfully launched). As previously noted, ISRO recently received approval to begin building another three satellites to provide expansion .capacity, but these will not be available for another 3-4 years.



Therefore, without an Open Sky policy, potential DTH companies will have no choice but to either curtail their operations, or postpone them until such time as sufficient capacity is available. This will result directly in a less attractive service offering, reduced profits, consequent reduced corporate taxes and lower jobs growth. As we have seen, it is also likely that the VSAT community will demand some of the planned Ku-band capacity which is presently earmarked for virtually exclusive DTH use.

On face of it the joint venture between Measat and Antrix would appear to be encouraging to other satellite operators and end users. However, this is not the case, as it represents a private agreement, not a loosening of the present restrictive policies.

In conclusion, an Open Sky policy will serve to expand the current market, without negative impact on INSAT's business prospects. It should be noted that INSAT regards its role as a public not-for-profit service, which is reflected in pricing well below international standards. Thus an Open Sky policy will be of major benefit to broadcasters, VSAT operators and the Indian Government. Conversely, the proposed tightening of C-band regulation to match the present Ku-band restrictions will be harmful to broadcasters, VSAT operators and the Indian Government. Therefore CASBAA and GVP, on behalf of their member constituency (which includes many Indian companies) are firmly opposed to any further restrictions on foreign satellite operations in India, and fully support the Telecom Regulatory Authority of India's efforts to achieve an Open Sky policy".

## 14.8 Summary:

KU, eKU, DBS, C and various other bandwidths are enabling the improvement of broadcast facilities in the country. The commercial utility also includes satellite navigation systems, satellite television and satellite radio. Some organizations are engaged in transponder leasing in which they often lease or sell access to the firms to data relay and telecommunication firms. This industry has experienced a 15 percent annual growth between 1996 and 2002. The United States accounts for about 32 percent of the world's transponder market. But regulatory environment and new policies have introduced restrictions to services via satellite both within and from outside the country. The satellite policy in the country has been suppressing the demand leading to decline in growth, profits and lower tax revenues ultimately leading to a slowdown of employment opportunities.

The Satellite Communication Policy of the country, 1997 authorized INSAT capacity to be leased to non-governmental agencies with certain guidelines. Parties may be allowed to provide services including TV uplinking. Government departments and other concerned regulatory authorities are allowed to inform, notify, co-ordinate and register satellite systems and networks. Indian space satellite market has improved over these years and achieved many milestones with the strong support of ISRO and Ministry of Science and Environment. The Indian satellite market was dominated by INSAT and by INTELSAT. Later, many foreign and domestic companies have entered the country. DTH services have also improved upon in the country from the year 2001 onwards. Many operators have entered the market of DTH. To facilitate the DTH services along with the C band new policies were designed to promote KU band. Therefore, without an Open Sky policy, potential DTH companies will have no choice but to either curtail their operations, or postpone them until such time as sufficient capacity is available.



**14.9 Self Assessment Questions:**

1. Explain the Indian scenario of satellite operations regarding the broadcast facilities.
2. Discuss the satellite manufacturing facilities in the country.
3. Describe the Telecom regulatory policies in detail.

**14.10 Suggested Readings:**

1. Durga Das Basu: Introduction to the Constitution of India
2. Durga Das Basu: Law of the Press
3. Dr. Jan R. Hakemulder, Dr. Fay AC De Jonge and P.P. Singh : Media Laws and Ethics
4. B. N. Pandey: Indian Constitution
5. Kiran Prasad: The Philosophies of Communication and Media Ethics

## Lesson - 15

# CINEMATOGRAPHY ACT

### Objective:

On completion of this lesson you should be able to understand:

- Certification of films for public exhibition
- Examination of films
- Advisory Panels
- Certification of films
- Principles for guidance in certifying films
- Appeals
- Constitution of Appellate Tribunal
- Suspension and Revocation of Certificate
- Review of orders by Central Government
- Revision powers of the Central Government
- Regulation of exhibitions by means of cinematographs
- Power to suspend exhibition of films

### Structure:

- 15.1 Introduction**
- 15.2 Certification of films for public exhibition**
- 15.3 Examination of films**
- 15.4 Advisory Panels**
- 15.5 Certification of films**
- 15.6 Principles for guidance in certifying films**
- 15.7 Appeals**
- 15.8 Constitution of Appellate Tribunal**
- 15.9 Suspension and Revocation of Certificate**
- 15.10 Review of orders by Central Government**
- 15.11 Revision powers of the Central Government**

**15.12 Penalties for contraventions****15.12.1 Penalties for contraventions of this part****15.12.2 Power of Seizure****15.12.3 Delegation of Powers by Board****15.12.4 Power to direct exhibition of films****15.12.5 Power to make rules****15.12.6 Power to Exempt****15.13 Regulation of exhibitions by means of cinematographs****15.14 Power to suspend exhibition of films****15.14.1 Penalties for contravention of this Part****15.14.2 Power to revoke license****15.14.3 Power to make rules****15.14.4 Power to exempt****15.14.5 Repeal****15.15 Summary****15.16 Self Assessment Questions****15.17 Suggested Readings****15.1 Introduction:**

The cinematography act, 1952 was passed by the Parliament on 21st March, to make provision for the certification of films for exhibition and for regulating exhibitions by means of cinematographs.

**15.2 Certification of Films for Public Exhibition:**

- (1) For the purpose of sanctioning films certification for public exhibition, the Central Government may constitute a Board to be called the Board of Film certification which shall consist of a Chairman and not less than twelve and not more than twenty-five members shall be appointed by the Central Government.
- (2) The Chairman of the Board shall receive such salary and allowances as may be determined by the Central Government and the other members shall receive such allowances or fees for attending the meetings of the Board as may be prescribed.
- (3) The other terms and conditions of service of the members of the Board shall be such as may be prescribed.

### 15.3 Examination of Films:

- (1) Any person desiring to exhibit any film shall apply to the Board for a certificate. The Board may after examining or having the film examined in the prescribed manner
  - (i) Sanction the film for unrestricted public exhibition. If the Board is of the opinion that the question as to whether any child below the age of twelve years may be allowed to see such a film should be considered by the parents or guardian. The Board may sanction the film for unrestricted public exhibition with an endorsement to that effect; or
  - (ii) Sanction the film for public exhibition, restricted to adults or sanction the film for public exhibition restricted to members of any profession or any class of persons, having regard to the nature, content and theme of the film; or
  - (iii) Direct the applicant to carry out such excisions or modifications in the film as it thinks necessary before sanctioning the film for public exhibition or
  - (iv) Refuse to sanction the film for public exhibition.
- (2) No action shall be taken by the Board except after giving an opportunity to the applicant for representing his views in the matter.

### 15.4 Advisory Panels:

For the purpose of enabling the Board to efficiently discharge its functions the Central Government may establish advisory panels at regional centers. Each of which shall consist of persons who are qualified to judge the effect of films on the public, as the Central Government may think fit to appoint there to. At each regional centre there shall be as many regional officers who would help in the examination of films. The Board may consult in such manner as may be prescribed any advisory panel in respect of any film for which an application for a certificate has been made. It shall be the duty of every such advisory panel to examine the film and to make recommendations to the Board as it thinks fit. The members of the advisory panel shall not be entitled to any salary but shall receive such fees or allowances as may be prescribed.

### 15.5 Certification of Films:

If, after examining a film or having it examined in the prescribed manner, the Board considers that

- (a) The film is suitable for unrestricted public exhibition, or,
- (b) As the case may be, for unrestricted public exhibition 'with an endorsement of the nature mentioned in the provision shall grant to the person applying for a certificate in respect of the film a "U" certificate or,
- (c) As the case may be, a "UA". certificate; or

The film is not suitable for unrestricted public exhibition, but is suitable for public exhibition restricted to adults or

- (d) As the case may be, is suitable for public exhibition restricted to members of any profession or any class of persons, it shall grant to the person applying for a certificate in respect of the film an "A" certificate or, a "S" certificate; and cause the film to be so marked by the prescribed manner. But the applicant shall not be liable for punishment under any law relating to obscenity in respect of any matter contained in the film for which certificate has been granted.
- (2) A certificate granted or an order refusing to grant a certificate in respect of any film shall be published in the Gazette of India.
- (3) Subject to the other provisions contained in this Act, a certificate granted by the Board under this section shall be, valid throughout India for a period of ten years.

### **15.6 Principles for Guidance in Certifying Films:**

- (1) A film shall not be certified of the public exhibition if in the opinion of the authority it is against the interests of sovereignty and integrity of India, security of the State, friendly relations with foreign States, public order, decency or morality, or involves defamation or contempt of court or is likely to incite any offence.
- (2) The Central Government may issue directions setting out the principles which shall guide the competent authority to grant certificates for public exhibition of films.

### **15.7 Appeals:**

- (1) Any person applying for a certificate in respect of a film who is aggrieved by any order of the Board (a) refusing to grant a certificate or (b) granting only an "A" certificate; or (c) granting only a "S" certificate; or (d) granting only a "UA" certificate; or (e) directing the applicant to carry out any excisions or modifications, may, within thirty days from the date of such order, prefer an appeal to the Tribunal. Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from the filing the appeal within the aforesaid period of thirty days, allow such appeal to be admitted within a further period of thirty days.
- (2) Every appeal under this section shall be made by a petition in writing and shall be accompanied by a brief statement of the reasons for the order appealed against where such statement has been furnished to the appellant and by such fees, not exceeding rupees one thousand, as may be prescribed to.

### **15.8 Constitution of Appellate Tribunal:**

- (1) For the purpose of hearing appeals against any order of the Board the Central Government shall, by notification in the Official Gazette, constitute an Appellate Tribunal.
- (2) The head office of the Tribunal shall be at New Delhi or at other place as the Central Government specify.

- (3) The Tribunal shall consist of a Chairman and not more than four other members appointed by the Central Government.
- (4) A person shall not be qualified for appointment as the Chairman of the Tribunal unless he is a retired Judge of a High Court or is a person who is qualified to be a Judge of a High Court.
- (5) The Central Government may appoint persons who, in its opinion, are qualified to judge the effect of films on the public, to be members of the Tribunal.
- (6) The Chairman of the Tribunal shall receive such salary and allowances as may be determined by the Central Government and the members shall receive such allowances or fees as may be prescribed.
- (7) Subject to such rules as may be made in this behalf, the Central Government may appoint a Secretary and such other employees as it may think necessary for the efficient performance of the functions of the Tribunal under this Act.
- (8) The Secretary to, and other employees of, the Tribunal shall exercise such powers and perform such duties as may be prescribed after consultation with the Chairman of the Tribunal.
- (9) The other terms and conditions of service of the Chairman and members of, and the Secretary to, and other employees of, the Tribunal shall be such as may be prescribed.
- (10) Subject to the provisions of this Act, the Tribunal may regulate its own procedure.
- (11) The Tribunal may, after making such inquiry into the matter as it considers necessary, and after giving the appellant and the Board an opportunity of being heard in the matter, make such order in relation to a film as it thinks fit and the Board shall dispose of the matter in conformity with such order.

### **15.9 Suspension and Revocation of Certificate:**

- (1) Central Government may suspend a certificate granted for such period as it thinks fit or may revoke such certificate if it is satisfied the
  - (i) The film in respect of which the certificate was granted, was being exhibited in a form other than the one in which it was certified; or
  - (ii) The film or any part of it is being exhibited in contravention of the provisions of this part or the rules made there under.
- (2) Where a notification under sub-section (1) has been published, the Central Government may require the applicant for certificate or any other person to whom the rights in the film have passed, or both, to deliver up the certificate and all duplicate certificates, if any, granted in respect of the film to the Board to any person or authority specified in the said notification.
- (3) No action under this section shall be taken except after giving an opportunity to the person concerned for representing his views in the matter.

- (4) During the period in which a certificate remains suspended the film shall be deemed to be an uncertified film

### **15.10 Review of orders by Central Government:**

- (1) Where an applicant for a certificate or any other person to whom the rights in the film have passed, is aggrieved by any order of the Central Government under section 5E, he may, within sixty days of the date of publication of the notification in the Official Gazette, make an application to the Central Government for review of the order, setting out in such application the grounds on which he considers such review to be necessary: Provided that the Central Government may, if it is satisfied that the applicant for a certificate or that other person was prevented by sufficient cause from filing an application for review within sixty days, allow such application to be filed within a further period of sixty days.
- (2) On receipt of the application the Central Government may, gives the aggrieved 'person a reasonable opportunity to explain the matter and after making such further inquiry, pass such order as it thinks fit, confirming, modifying or reversing its decision and the Board shall dispose of the matter in, conformity with such order.

### **15.11 Revision Powers of The Central Government:**

- (1) The Central Government may, of its own motion, at any stage, call for the record of any proceeding in relation to any film which is pending before, or have been decided by, the Board, or, as the case may be, decided by the Tribunal (but not including any proceeding in respect of any matter which is pending before the Tribunal. After inquiry into the matter it may make such order and the Board shall, dispose of the matter. Sometimes no such order shall be made prejudicially affecting any person applying for a certificate or to whom a certificate has been granted after giving him an opportunity for representing his views in the matter. According to the Central Government sometimes need not disclose any fact which it considers to be against public interest.
- (2) Without prejudice to the powers conferred on it under sub-section (1), the Central Government may, by notification in the official gazette, direct that (a) a film which has been granted a certificate shall be deemed to be an uncertified film in the whole or any part of India; (b) a film, which has been granted a "U" certificate or a "UA" certificate or a "S" certificate shall be deemed to be a film in respect of which an "A" certificate has been granted; or (c) the exhibition of any film be suspended for such period as may be specified in the direction: Provided that no direction issued under clause (c) shall remain in force for more than two months from the date of the notification.
- (3) No action shall be taken except after giving an opportunity to the person concerned for representing his views in the matter.
- (4) During the period in which a film remains suspended the film shall be deemed to be an uncertified film



- (5) Information and documents to be given to distributors and exhibitors with respect to certified films. Any person who delivers any certified film to any distributor or exhibitor shall in such manner as may be prescribed, notify to the distributor or exhibitor, as the case may be, the title, the length of the film, the number and the nature of the certificate granted in respect thereof and the conditions, if any, subject to which it has been so granted, and any other particulars respecting the film which may be prescribed.

#### 15.12.1 Penalties for contraventions of this part:

If any person

- (a) Exhibits or permits to be exhibited in any place any film other than a film which has been certified by the Board as suitable for unrestricted public exhibition or for public exhibition restricted to adults [or to members of any profession or any class of persons] and which, when exhibited, displays the prescribed mark of the Board and has not been altered or tampered with in any way since such mark was affixed thereto, (ii) any film, which has been certified, by the Board as suitable for public exhibition restricted to adults, to any person who is not an adult, (iii) any film which has been certified by the Board as suitable for public exhibition restricted to any profession or class of persons, to a person who is not a member of such profession or who is not a member of such class, or
- (b) Without lawful authority (the burden of proving which shall be on him), alters or tampers' with any film after it has been certified, or
- (c) Fails to comply with the provision, contained in section 6A or with any order made by the Central Government or by the Board in the exercise of any of the powers or functions conferred on it by this Act or the rule made there under
- (d) They shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to one lakh rupees or with both. In the case of a continuing offence with a further fine which may extend to twenty thousand rupees for each day during which the offence continues: Provided that a person who exhibits or permits to be exhibited in any place a video film in, contravention of the provisions of sub clause (i) of clause (a) shall be punishable, with imprisonment for a term which shall not be less than three months, but which may extend to three years and with fine which shall not be less than twenty thousand rupees, but which may extend to one lakh rupees. In the case of a continuing offence with a further fine which may extend to twenty thousand rupees for each day' during which the offence continues: Provided further that a court may, for adequate and special reasons to be mentioned in the judgment, impose sentence, of imprisonment for a term of less than three months, or a fine of less than twenty thousand rupees.
- (e) It shall be lawful for any Metropolitan Magistrate, or any Judicial Magistrate of the first class to pass a sentence or fine exceed in five thousand rupees on any person convicted of any offence punishable under this Part: 5\*[Provided also] that no distributor or exhibitor or owner or employee of a cinema house shall be liable to punishment for contravention of any condition of endorsement of caution on a film certified as "UA" under this Part

- (2) If any person is convicted of an offence punishable under this section committed by him in respect of any film, the convicting court may further direct that the film shall be forfeited to the Government.
- (3) The exhibition of a film, in respect of which an "A" certificate or a "S" certificate or a "UA" certificate has been granted, to children below the age of three years accompanying their parents or guardians shall not be deemed to be an offence.

#### **15.12.2 Power of Seizure:**

- (1) Where a film for which no certificate has been granted is exhibited, or a film certified as suitable for public exhibition restricted to adults is exhibited to any person who is not an adult or a film is exhibited in contravention of any of the other provisions contained in this Act or of any order made by the Central Government the Tribunal or the Board in the exercise of any of the powers conferred on it, any police officer may, enter any place in which he has reason to believe that the film has been or is being or is likely to be exhibited, search it and seize the film.
- (2) All searches under this Act shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches.

**15.12.3 Delegation of Powers by Board:** The Central Government may, by general or special order; direct that any power, authority or jurisdiction exercisable by the Board in relation to the certification of the firms under this part and subject to such conditions, if any, as may be specified in the -order, be exercisable also by the Chairman or any other member of the Board, and anything done or action taken by the Chairman or other member, specified in the order shall be deemed to be a thing done or action "taken by" the Board.

The Central Government may, by order and subject to such conditions and restrictions as may be prescribed, authorize the regional officers to issue provisional certificates.

**15.12.4 Power to direct exhibition of films:** For the purpose of exercising any of the powers conferred on it by this Act, the Central Government the Tribunal or the Board may require any film to be exhibited before it or before any person or authority specified by it in this behalf.

#### **15.12.5 Power to make rules:**

- (1) The Central Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Part.
- (2) In particular, and without prejudice to the generality of the foregoing power, rules made under this section may provide for,
  - (a) The allowances or fees payable to the members of the Board;
  - (b) The terms and conditions of service.ofthe members of the Board;
  - (c) The manner of making an application to the Board for a certificate and the manner in which a film has to be examined by the Board and the fees to be levied there of or;

- (d) The association of regional officers in the examination of films, the conditions and restrictions subject to which regional officers may be authorized under section 7B to issue provisional certificates and the period of validity of such certificates
- (e) The manner in which the Board may consult any advisory panel in respect of any film;
- (f) The allowances or fees payable to the members of advisory panel;
- (g) The marking of the films;
- (h) The allowances or fees payable to the members of the Tribunal;
- (i) The powers and duties of the Secretary to, and other employees of, the Tribunal;
- (j) The other terms and conditions of service of the Chairman and members of, and the Secretary to, and other employees of the Tribunal;
- (k) The fees payable by the appellant to the Tribunal in respect of an appeal;
- (l) The conditions (including conditions relating to the length of films in general or any class of films, in particular) subject to which any certificate may be granted, or the circumstances in which any certificate shall be refused
- (m) Any other matter which is required to be or may be prescribed.

House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall, thereafter, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

**15.12.6 Power to Exempt:** The Central Government may, by order in writing exempt subject to such conditions and restrictions, if any, as it may impose, the exhibition of any film or class of films from any of the provisions of this part or of any rules made there under.

### **15.13 Regulation of exhibitions by means of cinematographs:**

No person shall give an exhibition by means of a cinematograph elsewhere than in a place licensed under this Part or otherwise than in compliance with any conditions and restrictions imposed by such license. The authority having power to grant licenses under this Part also referred to as the licensing authority shall be the District Magistrate. Provided that the State Government may, by notification in the Gazette, constitute, for the whole or any part of a Union territory, such other authority as it may specify in the notification to be the licensing authority for the purposes of this Part.

**Restrictions on powers of licensing authority:**

- (1) The licensing authority shall not grant a license under this 'Part, unless it is satisfied that, adequate precautions have been taken in the place, in respect of which the license is to be given, to provide for the safety of persons attending exhibitions therein.
- (2) Subject to the foregoing provisions of this section and to the control of the State Government, the licensing authority may grant licenses under this Part to such persons as that authority thinks fit and on such terms and conditions and subject to such restrictions as it may determine.
- (3) Any person aggrieved by the decision of a licensing authority refusing to grant a license under this Part may, within such time as may be prescribed, appeal to the State Government or to such officer as the State Government may specify in this behalf and the State Government or the officer, as the case may be, may make such order in the case as it or he thinks fit.
- (4) The Central Government may, from time to time, issue directions to licensee's generally or to any licensee in particular for the purpose of regulating the exhibition of any film or class of films, so that scientific films, films intended for educational purposes, films dealing with news and current events, documentary films or indigenous films secure an adequate opportunity of being exhibited, and where any such directions have been issued those directions shall be deemed to be additional conditions and restrictions subject to which the license has been granted.

**15.14 Power to suspend exhibition of films:**

- (1) The Lieutenant-Governor or, as the case may be, the Chief Commissioner, in respect of the whole or any Part of a Union territory, and the District Magistrate in respect of the district within his jurisdiction; may, if he is of opinion that any film which is being publicly exhibited is likely to cause a breach of the peace, by order, suspend the exhibition of the film and during such suspension the film shall be deemed to be an uncertified film in the State, part or district, as the case may be.
- (2) Where an order has been issued by the Chief Commissioner or a District Magistrate, as the case may be, a copy thereof, together with a statement of reasons therefore, shall forthwith be forwarded by the person making the same to the Central Government, and the Central Government may either confirm or discharge the order.
- (3) An order made under this section shall remain in force for a period of two months from the date thereof, but the Central Government may, if it is of opinion that the order should continue in force, direct that the period of suspension shall be extended by such further period as it thinks fit.

**15.14.1 Penalties for contravention of this Part:** If the owner or person in charge of a cinematograph uses the same or allows it to be used, or if the owner or occupier of any place permits that place to be used in contravention of the provisions of this Part or of the rules made there under, or of the conditions and restrictions upon or subject to which

any license has been granted he shall be punishable with fine which may extend to one thousand rupees and, in the case of a continuing offence, with a further fine which may extend to one hundred rupees for each day during which the offence continues.

**15.14.2 Power to revoke license:** Where the holder of a license has been convicted of an offence the license may be revoked by the licensing authority.

**15.14.3 Power to make rules:** The Central Government may, by notification in the Official Gazette, make rules (a) prescribing the terms, conditions and restrictions, if 'any, subject to which licenses may be granted under this Part; (b) providing for the regulation of cinematograph exhibitions for securing the public safety (c) prescribing the time within which and the conditions subject to which an appeal may be preferred.

Every rule made by the Central Government under this Part shall be laid, as soon as may be after it is made, before each House of Parliament

**15.14.4 Power to exempt:** The Central Government may, by order in writing exempt, subject to such conditions and restrictions as it may impose any cinematograph exhibition or class of cinematograph exhibitions from any of the provisions of this Part or of any rules made there under.

**15.14.5 Repeal:** The Cinematograph Act, 1918 (2 of 1918), is hereby repealed: Provided that in relation to Part A States and Part B States the repeal shall have effect only in so far as the said Act relates to the sanctioning of cinematograph films for exhibition.

## 15.15 Summary:

The cinematography act was brought in to make provision for the certification of films for exhibition and for regulating exhibitions by means of cinematographs. To facilitate certification of films for public exhibition Central Board of Film certification shall be established. Any person who wants to exhibit a film shall apply to the Board for a certificate which may, after examining or having the film examined in the prescribed manner shall issue certificates such as U, UA, A, S or may not sanction permission to screen it at all. To help the board in discharging its functions the Central Government may establish advisory panels at regional centers. A film shall not be certified for the public exhibition if it is found to be against the interests of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency or morality, or involves defamation or contempt of court or is likely to incite any offence. If any applicant is denied certificate or if he feels that the decision of the board is not justified he may appeal to the Tribunal. To hear the appeals against any order of the Board the Central Government shall constitute an Appellate Tribunal. After necessary enquiry is made the tribunal may make such an order in relation to a film as it thinks fit and the Board shall dispose of the matter in conformity with such order. The certificate issued may be suspended, revoked or reviewed by Central Government: If a film is screened against the certification rules a police officer may, enter any place in which the film is being exhibited, search it and seize the film. The Lieutenant-Governor or, the Chief Commissioner or the District Magistrate is of opinion that any film which is being publicly exhibited is likely to cause a breach of the peace, can suspend the exhibition of the film. Powers to revoke license, to make rules, to exempt or repeal are vested with the Central Government may, by order in writing exempt, subject to such conditions and restrictions as it may impose any cinematograph exhibition or class of cinematograph exhibitions from any of the provisions of this part or of any rules made there under.

**15.16 Self Assessment Questions:**

- 1) What are the salient features of the cinematography Act?
- 2) What are the salient features of the cinamatography Act?
- 3) What is the impact of open sky policy on cable operators?

**15.17 Suggested Readings:**

1. Durga Das Basu: Introduction to the Constitution of India
- 2 .Durga Das Basu: Law of the Press
3. Dr.Jan R.Hakemulder, Dr. Fay AC De Jonge and P.P.Singh :Media Laws and Ethics
4. B. N. Pandey: Indian Constitution
5. Kiran Prasad: The Philosophies of Communication and Media Ethics

## **UNIT - 4**

### **Lesson - 16**

# **PRESS COUNCIL OF INDIA**

#### **Objective:**

On completion of this lesson you should be able to understand:

- Origin of the Press Council of India
- Objects and functions of the council
- Powers of the Council
- Functioning of council
- Guidelines for press
- Enquiries

#### **Structure:**

- 16.1 Introduction**
- 16.2 Origin of the Press Council of India**
- 16.3 Objects and functions of the council**
- 16.4 Powers of the Council**
- 16.5 Functioning of council**
- 16.6 Guidelines for press**
- 16.7 Enquiries**
- 16.8 Summary**
- 16.9 Self Assessment Questions**
- 16.10 Suggested Readings**

#### **16.1 Introduction:**

Press Council is a mechanism for the Press to regulate itself. The raison d'etre of this unique institution is rooted in the concept that in a democratic society the press needs to be free and responsible. For the effective functioning of the press as the watchdog of public interest, it must have a secure freedom of expression, untouched by any authority, organized bodies or individuals. But, this freedom of the press shall be enjoyed with due sense of responsibility. The Press must, therefore abide by the norms of journalistic ethics and maintain high standards of professional conduct.



Whenever the norms are breached and the freedom is defined by unprofessional conduct, a way must exist to check and control it. But, control by Government or official authorities may prove destructive of this freedom. Therefore, the best way is to let the peers of the profession, assisted by a few discerning laymen to regulate it through a properly structured representative impartial machinery. Hence, the Press Council of India was commissioned. A need for such a mechanism has been felt for a long time both by the authorities as well as the Press itself all over the world, and a search for it resulted in the setting up of the first Press Council known as the Court Of Honor for the Press in Sweden in 1916. The idea gained quick acceptance in 'other Scandinavian countries, and later in other parts of Europe, Canada, Asia, Australia and New Zealand. Today, the Press Councils or similar other media bodies are in place in more than four dozen nations.

The basic concept of the Press Councils and similar media bodies' world over is self-regulation. "The sole aim of journalist should be service. The press is a great power, but just as unchained torrent of water submerges the whole country side and devastates crops, even so an uncontrolled pen serves but to destroy. If the control is from without, it proves more poisonous than want of control. It can be profitable only when exercised from within."

## 16.2 Origin of the Press Council of India:

The First Press Commission (1954) came across instances of yellow journalism of one type or another, scurrilous writing-often directed against communities or groups, sensationalism, bias in presentation of news and lack of responsibility in comment, indecency and vulgarity and personal attacks on individuals in some section of the Press.

The Commission, however, pointed out "whatever the law relating to the Press may be, there would still be a large "quantum of objectionable journalism which, though not falling within the purview of the law, would still require to be checked." It felt that the best way of maintaining professional standards of journalism would be to bring into existence a body of people principally connected with the industry whose responsibility would be to arbitrate on doubtful points and to censure anyone who is violating code of journalistic ethics.

The Commission recommended the setting up of a Press Council. Among the objectives visualized for the Council were

- To safeguard the freedom of the press,
- To ensure on the part of the Press the maintenance of High standards of public taste and to foster due sense of both the rights and responsibilities of citizenship and
- To encourage the growth of sense of responsibility and public service among all those engaged in the profession of journalism.

The Commission recommended the establishment of the Council on a statutory basis on the ground that the Council should have legal authority to make inquiries as otherwise each member, as well as the Council as a whole, would be subject to the threat of legal action from those whom it sought to punish by exposure.

### 16.3 Objects and functions of the council:

The Press Council may in furtherance of its objects, perform the following functions namely

1. To help newspapers and news agencies to maintain their independence;
2. To build up a code of conduct for them as well as journalists in accordance with high professional standards;.
3. To ensure on the part of newspapers, news agencies and journalists the maintenance of high standards of public taste and foster a due sense of both the rights and responsibilities of citizenship;
4. To encourage the growth of a sense of responsibility and public service among all those engaged in the profession of journalism;
5. To keep under review any development likely to restrict the ~supply and dissemination of news of public interest and importance,
6. To keep under review cases of assistance received by any newspaper or news agency in India from foreign sources including such cases as are referred to it by the Central Government or are brought to its notice by any individual, association of persons or any other organsaiton. Provided that nothing in this clause shall preclude the Central Government from dealing with any case of assistance received by a newspaper or news agency in India from foreign sources in any other manner it thinks fit
7. To undertake studies of foreign newspapers, including those brought out by any embassy or other representatives in India of a foreign state, their circulation and impact.
8. To provide facilities for the proper education and training of persons in the profession of journalism
9. To promote a proper functional relationship among all classes of persons engaged in the production or publication of newspapers
10. To concern itself with developments such as concentrations of or other aspects of ownership of newspapers and news agencies which may affect the independence of the press;
11. To undertake such studies, including a study of the ownership or financial structure of newspapers, and if necessary, to suggest remedies therefore;
12. To promote technical or other research;
13. To do acts that may be incidental or conducive to the discharge of the above functions.

## 16.4 Powers of the Council:

The powers of the Press Council are provided in Section 14 and 15 of the Act as under

### Censure:

- 1) When a complaint was made to it or when the council has reason to believe that a newspaper or news agency has offended against the standards of journalistic ethics or public taste or that an editor or a working journalist has committed any professional misconduct, the Council may after giving the newspaper, or news agency, the editor or journalist concerned an opportunity of being heard, hold an inquiry in such a manner as may be provided by the regulations made under this Act and, if it is satisfied that it is necessary to do, it may, for reasons to be recorded in writing warn, admonish or censure the newspaper, the news agency, the editor or 'the journalist, as the case' may be. Provided that the Council may not take cognizance of a complaint if in the opinion of the Chairman, there is no sufficient ground for holding an inquiry.
- 2) If the council is of the opinion that it is necessary or expedient in public interest so to do, it may require any newspaper to publish there in such manner as the Council thinks fit, any particulars relating to any inquiry under this section against a newspaper or news agency, an editor or a journalist working therein, including the name such newspaper, news agency, editor or journalist.
- 3) Nothing in sub-section (1) shall be deemed to empower the Council to hold an inquiry into any matter in respect of which any proceeding is pending in a court of law.
- 4) The decision of the Council shall be final and shall not be questioned in any court of law.

### General Powers of the Council:

- (1) For the purpose of performing its functions or holding any inquiry under this Act, the Council shall have the same powers throughout India as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters namely:
  1. Summoning and enforcing the attendance of persons and examining them on oath;
  2. Requiring the discovery and inspection of documents
  3. Receiving evidence on affidavits
  4. Requisitioning any public record and copies thereof from any court or office;
  5. Issuing commissions for the examination of witnesses or documents; and
  6. Any other matter, which may be prescribed.

- (2) Nothing shall be, deemed to compel any newspaper, news agency, editor or journalist to disclose the source of any news or information published, by' that newspaper or received or reported by that news agency, editor or journalist
- (3) Every inquiry held by the Council shall be deemed to be a judicial proceeding within the meaning of section 193 and 228 of the Indian Penal Code.

The Council may if it considers it necessary for the purpose of carrying out its objects or for the performance of any of its functions under this Act, make such observations, as it may think fit, in any of its decisions or reports, respecting the conduct of any authority, including Government.

#### **Fee and Funding of the Council:**

The council may for the purpose of performing its functions under this act, levy such fees at such rates and in such manner as may be prescribed from registered newspapers and news agencies and different rates may be prescribed for different newspapers having regard to their circulation and other matters. To perform its functions under the Act, fee is collected at the prescribed rates from registered newspapers and news agencies. Along with this the Central Government may also grant such sums of money which could be necessary for the performance of its functions.

#### **16.5 Functioning of council:**

The Council functions by means of enquiry Committees, on cases against the Press for violation of the norms of journalism or by the Press for interference with its freedom by the authorities. According to the procedure the complainant writes to the editor of the respondent newspaper, drawing his attention to things such as breach of journalistic ethics or an offence against public taste. Apart from furnishing to the council a cutting of the matter complained against, it is incumbent on the complainant to ensure that no proceedings are pending in any court of law in respect of any matter alleged in. the complaint. The reason for this is that the Council cannot deal with any matter which is sub judice.

If the Chairman finds that there are no sufficient grounds for inquiry, he may dismiss the complaint and report it to the Council. Otherwise the Editor of the newspaper or the journalist concerned is asked to show cause why action should not be taken against him. On receipt of the written statement and other relevant material from the editor or the journalist, the Secretariat of the Council places the matter before the Inquiry Committee.

On the basis of the facts on record and affidavits or the oral evidence adducted before it, the Committee formulates its findings and recommendations and forwards them to the Council, which may or may not accept them. Where the Council is satisfied that a newspaper or news agency has offended against the standards of journalistic ethics or public taste or that an editor or working journalist has committed professional misconduct, the Council may warn, admonish or censure the newspaper, the news agency, the editor or journalist, or disapprove the conduct thereof, as the case may be. In the complaints lodged by the Press against the authorities, the Council is empowered to make such observations as it may think fit in respect of the conduct of any authority including government. The Council expects the parties to cooperate with it in the conduct of its business. In December 1992 the Council received a reference from the Central Government soliciting its views on "whether a; procedure can be laid down to ensure that newspapers/magazines censured by the Press Council for breach of guidelines in connection with communal writings, can be deprived of incentives from government, such as advertisements

etcetera, and whether the Press Council would be in a position to suggest what action should be taken when it holds a newspaper/magazine guilty of breach of guidelines." The Council considered the matter in the meeting held in June 1993 in the light of the stand adopted by it in the past against arming the Council with punitive powers. Having considered the matter in depth, the Council felt that the moral authority presently exercised by the Council is quite effective and the Council does not need any punitive powers in showing the Press the path of self-regulation.

## 16.6 Guidelines For Press:

Since its establishment in 1966, the Council has rendered several momentous adjudications and issued guidelines which may have a lasting impact on the press in the country. A study of these adjudications would show that the Council has been unquestionably successful in its efforts towards achieving the objects set before it of not only preserving the freedom of the press but also ensuring that the standards of journalism are maintained and improved.

- The Council has issued guidelines and recommended policy framework on various matters concerning the Press and the people. In addition, the Chairmen of the Council have been guiding the press through statements whenever a serious situation arose in which the Press was expected to work with restraint and circumspection. They also reacted sharply through such statements whenever organized major offensives were made against the Press. In 1969, the Council issued a 10-point guidelines laying down norms and standards in reporting and commenting on matters which bear on communal relations. Without being exhaustive the guidelines listed and explained what would be offending against journalistic propriety and ethics, and should, therefore, be avoided.
- Again, in the wake of the happenings in 'Ayodhya in 1990, the Council while reiterating the 1969 guidelines issued another 12-point guideline in the light of the new experience.

The Council has over the years formulated policy framework in respect of such subjects as rules of accreditation, newsprint, advertisements, selection of journalists for accompanying the President, the Prime Minister etc. on their foreign tours. It had issued guidelines and recommended policy framework on various matters concerning the Press and the people. In addition, the Chairmen of the Council have been guiding the Press through statements whenever a serious situation arose in which the Press was expected to work with restraint and circumspection. They also reacted, sharply through such statements whenever organized major offensives were made against the Press.

## 16.7 Enquiries:

Apart from inquiring into the regular complaints, the Council has held a number of special inquiries, mostly suo motu, but sometimes on complaints into incidents and matters concerning the press. Following a complaint by Gautam Das, Editor, Daily Deshar Katha, a Bengali newspaper of Agartala, in the state of Tripura in 1990 regarding frequent violent attacks on the employees and hawkers of his newspapers by Congress workers. The Press Council set up a Special Committee to make a thorough on-the-spot inquiry. The Committee visited Agartala and heard the representatives of the Government of Tripura and the complainant. As a result the Government of Tripura assured that they would take all necessary steps to prevent recurrence of such incidents and provide full security to Deshar Katha.

**Ayodhya:**

In the wake of the demolition of the disputed shrine at Ayodhya the reports of numerous attacks on journalists/press media photographers/cameramen who were covering the happenings at Ayodhya on 6.12.1992 and there about were found in newspapers. As the matter was of great urgency and concern, a Special Inquiry Committee headed by the Chairman of the Council was set up to inquire into the matter. He appealed to the authorities to ensure that the press is allowed to function freely and fearlessly to disseminate information on matters of public importance.

**Punjab Terrorism :**

An inquiry was held into the pressures and problems confronting the Press and its personnel during acts of terrorism in Punjab. Adopting the report of the Special Committee, captioned 'Overcoming Fear' the Council extended its full support to the Punjab Press in its efforts to inform the people truthfully and impartially of the events and circumstances in the State and in resisting any code or norm sought to be imposed on it through force or intimidation, by any extraneous authority or organization.

**Jammu and Kashmir:**

Similarly, a special inquiry was held on the problems faced by the Press in Jammu and Kashmir. Adopting the report of this committee in July 1991, the Council said the critical importance of information and communication in the complex and difficult situation in Kashmir had not been adequately realized either by the government or by the media itself. It suggested a series of measures to respond effectively to the various aspects of the situation.

**Election Surveys:**

The Press Council of India having considered the question of desirability or otherwise of publication of findings of pre-poll surveys and the purpose served by them is of the view that the newspapers should not allow their forum to be used for distortions and manipulations of the elections and should not allow themselves to be exploited by the interested parties. The Press Council, therefore, suggests that whenever the newspapers publish pre-poll surveys, they should take care to preface them conspicuously by indicating the institutions which have carried such surveys, the individuals and organizations which have commissioned the surveys, the size and nature of sample selected, the method of selection of the sample for the findings and the possible margin of error in the findings. The Press Council, therefore, requests the Press to abide by the following guideline in respect of the exit-polls. No newspaper shall publish exit-poll surveys, however, genuine they may be, till last of the polls.

**Portrayal of Women in Media (1996):**

The Central government in February 1995 forwarded to the Press Council for its views, the recommendations of Maharashtra Government on the possible role of audio-visual and print media in the advancement of the cause of women. A Sub-Committee of the Council interacted with prominent film/media personalities and other eminent persons. Its report was adopted by the Council on January 8, 1996. While concurring with and endorsing the recommendations of Maharashtra Government's Policy for Women, the Council made seventeen more recommendations,



**Favor to Journalists:**

The public outcry in 1998 over the reported attempts to win over the media through gifts and favors had prompted the Press Council of India to undertake a comprehensive study of the issue with regard to all kinds of favours/ benefits, either in cash or in kind in the form of concessions, gifts, land house facilities etc., extended to journalists (both editors and other than editors) news agencies, newspaper establishments and owners by various authorities during the 10 year period from 1985-95. The Committee in its report, as adopted by the Council on 22.1.1998, listed the undue favors as apart from these facilities for journalistic work and observed that ultimately the strength of the moral fabric of the press itself shall decide whether or not to be swayed by the inducements and enticements thrown its way by those in power.

**Protection of confidential sources of information:**

In Contempt of Court proceedings the press usually makes the plea that it should not be forced to disclose confidential source. "Such a plea for justification has been permitted on a limited basis. The Press's right to hold on to its sources of information has been balanced against other aspects of public interest. By way of tail piece, it has also been added that the 'press often demands the right to break confidence more than they plead the right to hold on to their own confidential sources. It is only fair that each claim should be balanced against other claims without conceding total primacy to the press in respect of its investigative and truth verification functions". According to the Law Commission of India's recommendation no court shall require a person to disclose the source of information contained in a publication for which he is responsible, where such information has been obtained by him on the express agreement or implied understanding that the source will be kept confidential". The Press Council of India is also a member of World Association of Press Council which seeks to promote self regulation at international level. The present Chairman of the Council is Justice Markandeya Katzu.

**Press and Registration Appellate Board:**

Section 27 of the Press Council Act, 1978, entrusts the Council with the functions of the Press and Registration Appellate Board. It hears appeals against unlawful cancellation of declarations of newspapers or non-authentication there of by the District Magistrate.

**Press Council of India frames Guidelines for Financial Journalists:**

1. The Press Council of India counseled reporters/financial journalists/newspaper establishments to refrain from receiving any gift/grants/concessions/facilities, etc., either in cash or kind which are likely to compromise free and unbiased reporting on financial matters.
2. The Council in its Report observed that the financial journalists today enjoy considerable influence over reader's minds and, therefore, they owe it to them to present a balanced and objective view of the financial dealings, status and prospects of a company.
3. The Council feeling concerned over the malpractices in the corporate sector and after holding detailed deliberations and discussions with the representatives financial institutions and journalists, has recommended the guidelines enumerated below for observance by the financial journalists. The financial journalists should not



accept gifts, loans, trips, discounts, preferential shares or other considerations which compromise or are likely to compromise his position.

### 16.8 Summary:

Press Council of India was established to regulate the Press in the country. Though it enjoys immense freedom it shall be guarded with due sense of responsibility. To maintain high standards and professional conduct the Press must work under the purview of the norms of journalistic ethics. This attitude had created such a situation across the world facilitating the formation of press councils. The basic concept of the Press Councils and similar media bodies' world over is promoting the concept of self-regulation. The First Press Commission (1954) recommended the setting up of a Press Council with the objectives of safeguarding the freedom of the press and to ensure high standards of public taste and to encourage the growth of sense of responsibility and public service among all those engaged in the profession of journalism. The powers of the Press Council are provided in Section 14 and 15 of the Act in which one such power is that the decision of the Council shall be final and shall not be questioned in any court of law. For the purpose of performing its functions or holding any inquiry under this Act, the Council shall have the same powers throughout India as are vested in a civil court

The Council functions by means of enquiry Committees, on cases against the Press for violation of the norms of journalism or by the Press for interference with its freedom by the authorities.

### 16.9 Self Assessment Questions:

1. Explain the powers of Press Council of India.
2. What are the objectives of PCI ?
3. Write about certain case where PCI has sought explanation from press.

### 16.10 Suggested Readings:

1. Durga Das Basu: Introduction to the Constitution of India
2. Durga Das Basu: Law of the Press
3. Dr. Jan R. Hakemulder, Dr. Fay AC De Jonge and P.P. Singh : Media Laws and Ethics
4. B. N. Pandey: Indian Constitution
5. Kiran Prasad: The Philosophies of Communication and Media Ethics

## Lesson 17

# CODES SUGGESTED FOR THE PRESS COUNCIL OF INDIA AND PRESS COMMISSIONS

### Objective:

On completion of this lesson you should be able to understand:

- Codes for press
- Broad principles

### Structure:

- 17.1 Introduction
- 17.2 Codes for Press
- 17.3 Broad Principles
- 17.4 Summary
- 17.5 Self Assessment Questions
- 17.6 Suggested Readings

### 17.1 Introduction:

Press Council Act, 1978, enjoins the Council to build up a Code of Conduct for newspapers, news agencies and journalists in accordance with the high professional standards to help and guide the newsmen. Building of such a Code is a dynamic process which has to keep pace with time and events. The expression "build up" indicates that the code may be evolved by the Press Council on case by case basis through its adjudications.

### 17.2 Codes for Press:

A compendium of broad principles evolved by the Press Council through its adjudications/ guidelines was first published in the year 1984 by the Council in collaboration with the Indian Law Institute under the title "Violation of Journalistic Ethics and Public Taste". This compilation of principles is sorted out from the decisions or adjudications of the Council or the guidelines issued by it or its Chairman. In 1986, the second part of the compendium was published.

Since 1986 there has been a continuous increase in the complaints which necessitated the code. Later Council formulated an elaborate and comprehensive second edition of the guide. It also deals with the concept of right to privacy and lays down the guidelines to be followed in this behalf. The law of defamation has also been dealt with in some of its aspects for the guidance of the press, public servants and public figures.

The Council has in an important adjudication respecting alleged defamation of public officials of a Municipal Committee held that the remedy of action for damages against the Press are the media is simply not available to public officials with respect to their acts and conduct relevant to the discharge of their official duties, even if the publication is based on facts and statements which are not true, unless the official establishes that the publication was made with reckless disregard for the truth.

In such a case it will be enough of the defendant (member of the press are media) to prove that he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is true. But where the publication is proved to be false and actuated by malice or personal animosity, the defendant would have no. defense and would be liable for the damages. However, a public official enjoys the same protection as any other citizen in matters not relevant to the discharge of his duties. Of course Judiciary and Parliament and State Legislatures represent exception to this rule as the former is protected by the power to punish for its contempt and the latter by their privileges under Articles 105 and 194 respectively of the Constitution. The Council has further held that this does not mean that the Official Secrets Act, 1923 or any similar enactment or provision having the force of law does not bind the press are media. It has also been held that there is no law empowering the State and its officials to prohibit or to impasse a prior restraint up on the press/media.

With regard to 'public official's claim to' privacy, the Council has laid down that if there is a clash between the public official's privacy and the public's right to know about his personal conduct, habits, personal affairs, and traits of character impinging upon or having a bearing on the due discharge of his official duties, the former must yield to the latter. However, in matters of personal privacy which are not relevant to discharge of his official duties, the public official enjoys the same protection as any other citizen.

This Guide as a whole suggest a war of steering safely and responsibly through the minefield of legal, moral and ethical problems, which confront the editors, journalists and owners of newspapers everyday. The Guide is not a compilation of cast- iron principles but contains broad, general principles, which, if applied with due discernment and adaptations to varying circumstances of each case, will help the journalists to self-regulate the conduct of their profession along the path-or professional rectitude. These are by no means exhaustive nor are they meant to obtain a rigidity which could hinder the unfettered working of the Press.

### **17.3 Broad Principles:**

Some of the subjects on which broad principles were evolved by the Council in course of its adjudication in respect of standards of journalism and the freedom of the Press are summarized here

#### **Communal Writings:**

Scurrilous and inflammatory attacks should not be made on communities' and individuals. Any news on communal events based on rumors will be violative of the journalistic ethics. Similarly, distorted reporting making important permissions will not be correct. While it is the legitimate function of the Press to draw attention to the genuine grievance of any community with a view to seeking redress in a peaceful and legal mariner, 'there should be no, invention or exaggeration of grievances, particularly those which tend to promote communal discord. It will be highly conducive

to the creation of a healthy and peaceful atmosphere if sensational, provocative and 'alarming headlines are avoided, and acts of violence or vandalism are reported in such a manner as may not undermine people's confidence, in law and order machinery of the State and may at the same time have the effect of discouraging and condemning such activities.

Defaming a community is a serious matter and ascribing to it a vile, anti-national activity is reprehensible and amounts to journalistic impropriety. There is no impropriety in publishing historical facts in order to warn the present generation against repetition of past mistakes even though these mistakes may not be palatable to a particular community. There is no objection in making statements about religious communities if they are couched in temperate language and are not exaggerated or incorrect.

**Journalistic impropriety:** Some of the principles evolved by the Council through its adjudications in respect of journalistic impropriety are:

Any matter discussed or disclosed in confidence ought not to be published without obtaining the consent of the source. If the editor finds that the publication is in the public interest, he should clarify it in an appropriate footnote that the statement or discussion in question was being published although it had been made "off the record".

An advertisement containing anything unlawful or illegal or the one which is contrary to good taste or journalistic ethics or propriety should not be published. Proper care should be taken by newspapers in maintaining accuracy in respect of quotations. Where a newspaper is charged with violation, of journalistic ethics, a plea that it has ceased publication will afford the editor no defense, since it is his conduct which is subject of the complaint.

**Obscenity and Bad Taste:** The meaning of taste varies according to the context. For a journalist it implies that "which on grounds of decency or propriety he should not publish" where a matter has "a tendency to stimulate sex feelings" its publication in a journal meant for the lay public, young or old, undesirable. Exploitation of sex falls short of good taste. Public taste is to be judged in relation to the environment, milieu as well notions of taste prevailing in contemporary society. The basic test of obscenity is whether the matter is so gross or vulgar that it is likely to deprave or corrupt. Another test is whether depiction of the scene and 'language used can be regarded as filthy, repulsive, 'dirty or lewd. '

Whether 'a story is obscene or not, will depend on such factors as literary or cultural nature of the magazine, and the social theme of the story. The relevancy of a picture to the subject matter of a magazine or a paper has a bearing on, the question whether the matter published falls below the standards of public taste. One of the relevant factors for judging whether the picture falls below the standard of public taste will be the purpose or nature of the magazine - whether it relates to art, painting, medicine, research or reform of sex.

The Press Council expressed concern over the increasing instances of obscene advertisements in the print media. It was opposed to censorship but favored preventive steps to check any obscene material at pre-publication stage. Since most of such advertisements are routed through advertising agencies, the Council felt that this task should not be difficult if these agencies were to exercise more caution and restrain in preparing and releasing the advertisements that may be considered objectionable to family viewing by an average citizen. It felt that the Association of Advertising Agencies of India as an Umbrella organization of all these advertising

agencies could play a very meaningful and positive role in the matter and sought its cooperation to contain advertisements that are likely to damage the socio-cultural" ethos of the country in the longer run. The Council appealed to the newspapers also to carefully scrutinize the advertisements received by them either directly from the advertisers or through the advertising agencies and exercise a self-restraint by rejecting such advertisements as may be considered obscene and objectionable. It has also reiterated the following guidelines framed by it to counter against obscene publication. "Newspapers shall not display advertisements which are vulgar or which through depiction of a woman in nude or lewd posture, provoke lecherous attention of males as if she herself was commercial commodity for sale".

Whether a picture is obscene or not, is to be judged in relation to three tests; namely:

- (i) Is it vulgar and indecent?
- (ii) Is it a piece of mere pornography?
- (iii) Is its publication meant merely to make money by titillating the sex feeling of adolescents and among who it is intended to circulate? In other words, does it constitute an unwholesome exploitation for commercial gain. Other relevant considerations are whether the picture is relevant to the subject matter of the magazine that is to say; whether its publication serves any preponderating social or public purpose in relation to art, painting, medicine, research or reform of sex.

### **Right of Reply:**

The prime principle that emanates from the various adjudications on this subject upholds the editors' discretion in publication of letters. He would, however, be expected to voluntarily rectify an incorrect statement or report on a matter of public nature; the general reader can claim a locus standi on the basis of the public right, to know. Besides, any person who has been specifically referred to in a publication can claim an automatic right to reply in the columns of the paper. Though the Council does not have, the power to force a newspaper to publish, a rejoinder it may direct it to publish the, particulars of the inquiry against it.

### **Pre-Verification of News:**

Verification of news is not necessary before publication, especially when the report has slanderous or libelous overtones or could lead to communal tension; nor can the publication of rumors as views of a cross-section of people be justified under any circumstances. The editor shall make necessary amends when any false or distorted publication is brought to his notice.

### **Defamation - Scurrilous Writings:**

Under the second exception to Section 499 of the Indian Penal Code it is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct and no further. The Council has accordingly held the opinion that fair comments on the public life cannot be held to be improper. But if any factual statements are made, they must be true and correct. In case a defamatory element is involved" more good faith will not be a defense in any civil action for damages.

**Right to Privacy Vs. Public Figures:**

The Press Council of India formulated guidelines to achieve a balance between the right to privacy of the public persons and the right of the press to have access to information of public interest and importance. The issue under heated debate at both national and international level and the international conference of the World Association of Press Councils (WAPC) held in April 1998 in Delhi stressed that there is a need for reconciliation between three competing constitutional values at play on this count, viz:

(a) an individual's right to privacy, (b) freedom of the press, and, (c) the people's right to know about public figures in public interest.

The Council has prepared a report on the issue and framed the guidelines as follows:

"Right to privacy is an inviolable human right: However, the degree of privacy differs from person to person and from situation to situation. The public person who functions under public gaze as an emissary/representative of the public cannot expect to be afforded the same degree of privacy as a private person. His acts and conduct are of public interest ('public interest' being distinct and separate form of interest to the public. Even if conducted in private it may be brought to public knowledge through the medium of the press. The press has, however, 'a corresponding duty to ensure', that the information about such acts and conduct of public interest of the public person is obtained through fair means, is properly verified and then reported accurately. For obtaining the information in respect of acts done or conducted away from public gaze, the press is not expected to use surveillance devices. For obtaining information about private talks and discussions, while the press is expected not to badger the public persons, the public persons are also expected to bring, more openness in their functioning, and co-operate with the press in its duty of informing the public about the acts of their representatives".

**B. Freedom of the press****1. Threats to Press Freedom**

An attack on a paper or those connected with it editorially or in management; with a 'view to pressurizing or intimidating them for the opinion expressed 'in the paper, constitutes a gross interference with the freedom of the Press (case of Malayala Manorama, PCI Review, Jan 1983 p.62).

Tendencies to cover newspapers to desist from publishing facts or toe a particular line are matters of concern. (Case of Malayala Manorama, PCI Annual Report 1968, p. 38)

The local administration is expected to help the journalist to perform his duties without being under duress or pressure (case of Blitz, PCI Review April 1984, p. 30)

Implication of an editor of a newspaper in a fabricated case by the police authorities with a view to harassing him for his treatment of the news or critical writings amounts to interference in the freedom of the Press. (Case of Mahajati, PCI Review October 1983, p. 55).

Group raids on newspaper offices by unruly mobs interfere with the freedom of the Press. Suitable precautionary protective measures ought to be taken by the police. The same applies to blockade of newspapers offices. (Suo motu .action by the Press Council against the government of Karnataka, PCI Review April 1982, p. 36).



Harassment and victimization of journalists by police is a direct attack on the freedom of the Press (Case of Madhya Pradesh Small Newspapers' Association, PCI Annual Report 1972, p. 66).

Seizure of camera and removal of film by police from a Press Photographer while covering the news would amount to preventing the journalist from performing his duties and is a matter to be viewed seriously (Case of Searchlight, PCI Annual Report 1972, p. 65).

Filing of motivated, frivolous cases against a journalist would amount to interfering with his functions (Case of Malayala Manorama, PCI Annual Report, 1968, p. 38 and PCI Annual Report 1967, p. 52-58).

Any attempt by a minister to browbeat a reporter into toeing his line in the matter of reporting would be inconsistent with maintaining the proper-standards of ministerial conduct towards the Press. (Case of Dainik Janambhumi, PCI Annual Report 1980, p. 56). Disaccreditation and withdrawal of housing facilities from a newspaper correspondent because of articles/news items written by him would amount to an attempt to pressurize the correspondent and, therefore, the Press. (Case of Chandigarh Union of Journalists, PCI Annual Report, 1974, p. 68)

The Press and Registration of Books Act, 1867, does not empower the District Magistrate to obtain "Assurance Letters" from prospective editors before granting or refusing a declaration. (Case of U.P Small and Medium Newspapers Editors' Council, PCI Review, Jan. 1983, p. 58)

Declaration of newspapers under the Press and Registration of Books Act, 1867, cannot be cancelled on the ground that the newspapers concerned were indulging in yellow journalism. Any complaint in regard to yellow journalism should be filed with the Press Council (Suo Motu action by the Press Council, PCI Annual Report 1983, p.37)

Closeness of the date of appearance of a critical article and the date of disaccreditation would be material factors determining whether the disaccreditation was on account of that article'. (Case of Sarita, Mukta etc., PCI Annual Report 1981 p. 60).

## **2. Advertisement and Press Freedom:**

The giving or withholding of advertisements, whether by individuals or by the government as a lever to influence the editorial policy constitutes a threat to and jeopardizes the liberty of the Press, meaning in this context the freedom of the editor. This is especially so in case of the government since it is the trustee of public funds and, therefore, bound to utilize them without discrimination.(Case of Tribune, PCI Annual Report 1970, p. 45)

Advertisements, from any party including the government cannot be claimed as a (Matter of right by a newspaper. Government can frame its policy of placing advertisements based on objective criteria. But this should be based upon publicly stated, principles without taking into consideration the editorial policy of the paper. (Cases of Saptahik Mujahid, PCI Review July 1983, p. 44, and Tribune, PCI Annual Report 1970, p. 45)

If an editor is guilty of an action or an impropriety, he can proceed against it personally but this would not justify denial of advertisements to the paper of which he happens to be the editor. This applies to an employee or even the proprietor of a newspaper. (Case of Searchlight and Pradeep, PCI Annual Report 1974, p. 11)



The outside activities of the editor or other journalists might throw light on what he wrote for the paper, and in the event of such writings being improper, action against the paper is justified. However, this is for improper publication and for the employees' activities .

### 3. Impropriety and Press Freedom:

It is improper to offer an inducement to a journalist to adopt a particular line of comment, and for the journalist to accept such an inducement. In the event, of improper inducement being offered by the government the situation would be worse.

It is improper for a journalist to accept an assignment which would be incompatible with the integrity and dignity of his profession or exploitation of his status as journalist. (Ibid)

The editor of a newspaper cannot be asked to divulge the source of information of a letter published in his paper (Case of Arjun Baan, PCI Review, July 1983, p. 53).

Asking a journalist to divulge his personal and confidential source of information amounts to violation of his obligation to report on events of public interest and constitutes a threat to Press freedom. (Case of Press Correspondent, Hind Samachar, PCI Annual Report 1973, p. 27)

The editor of a newspaper cannot be directed by the police to alert his correspondent against the publication of a news item relating to the acts of the police, as it would be against the fundamental right of the Press. (Case of Vishwa M, PCI Review, October 1983, p. 52)

The motivated stoppage of subscription of teleprinter service of a news agency due to the feeling that reportage of a certain situation was exaggerated and to pressurize the agency would amount a threat to the freedom of the press. (Case of ex-Member of Parliament, PCI Annual Report 1972, p. 7)

Singling out news dispatches, to a newspaper and arrest of editors for activities in discharge of their professional duties and issue of warning letter from the government to newspapers to desist from publishing anything relating to certain activities of some groups, could legitimately give rise to an apprehension of threat to the freedom of the Press. (Suo motu action by the Press Council, PCI Review April 1983, p. 52)

## 17.4 Summary:

The Council was setup to build up a Code of Conduct for newspapers, news agencies and journalists in accordance with the high professional standards to help and guide the newsmen. Since 1986 there has been a continuous increase in the complaints which necessitated the code. Later Council formulated an elaborate and comprehensive second edition of the guide. It also deals with the concept of right to privacy and lays down the guidelines to be followed in this behalf. The law of defamation has also been dealt with in some of its aspects for the guidance of the press, public servants and public figures. With regard to 'public official's claim to' privacy, the Council has laid down that if there is a clash between the public official's privacy and the public's right to know about his personal conduct, habits, personal affairs, and traits of character impinging upon or having a bearing on the due discharge of his official duties, the former must yield to the latter. However, in matters of personal privacy which are not relevant to discharge of his official duties, the public official enjoys the same protection as any other citizen.

**17.5 Self Assessment Questions:**

1. Trace the background for formulation of codes for press.
2. Explain the various codes for press
3. List out the broad principles of codes of press

**17.6 Suggested Readings:**

1. Durga Das Basu: Introduction to the Constitution of India
2. Durga Das Basu: Law of the Press
3. Dr. Jan R. Hakemulder, Dr. Fay AC De Jonge and P.P. Singh : Media Laws and Ethics
4. B. N. Pandey: Indian Constitution
5. Kiran Prasad: The Philosophies of Communication and Media Ethics

## Lesson - 18

# CODES FOR RADIO AND TELEVISION

### Objective:

On completion of this lesson you should be able to understand:

- Broadcast code in India
- Code of conduct for television and broadcasts during elections
- AIR guidelines for national calamities

### Structure:

#### 18.1 Introduction

#### 18.2 Broadcast Code in India

#### 18.3 Code of conduct for television and broadcasts during elections

#### 18.4 AIR guidelines for national calamities

#### 18.5 Summary

#### 18.6 Self Assessment Questions

#### 18.7 Suggested Readings

### 18.1 Introduction:

Free speech and an informed public are vital to a democratic society. In the context of serious criticism raised against some channels after the Mumbai blasts and court cases on certain programmes like Big Boss serious discussions were started about the code of radio and television. Television in India has come to the forefront in the last 10 years. From two channels prior to 1991, there are now around 500 channels with multiple operators and niche channels. This explosion has posed challenges for ethics, accountability and transparency across the industry.

### 18.2 Broadcast Code in India:

The rules of programming in the programme code of the Cable Act of 1995 came into effect. Since the ministry cannot monitor the content of each of them, the sector has remained virtually without any regulation.

Rule 7 (11), Cable Television Network Rules, 1994 states: "No programme shall carry advertisements exceeding 12 minutes per hour.

Although, the Broadcast Code was chiefly set up to govern the All India Radio, they have ideally been practiced by all Broadcasting and Television Organization;

- 1) To ensure the objective presentation of news and fair and unbiased comment
- 2) To promote the advancement of education and culture
- 3) To raise and maintain high standards of decency and decorum in all programmes
- 4) To provide programmes for the young which, by variety and content, will inculcate the principles of good citizenship
- 5) To promote communal harmony, religious tolerance and international understanding
- 6) To treat controversial public issues in an impartial and dispassionate manner
- 7) To respect human rights and dignity

The greatest difficulty about setting standards is that there cannot be a standard code for all times because the standards of morality keep evolving.

Though the government proposed a regulatory measure in the form of Broadcasting Service Regulation Bill in 2007 it was strongly opposed by many parties. Whenever the content proposals are mooted it is considered as an exercise of censorship as is the case with the existing Indian censorship system of movies.

The efforts of News Broadcasters' Associations leading to the submission of a proposal to the Centre marked an important step towards establishing internal or self-regulatory checks. The proposal includes designing a Code of Ethics and the setting up of a Disputes Redressal Authority to entertain and decide on complaints regarding the content of any broadcast. Within India's complex, dynamic and evolving media environment, one alternative form of regulation can be a concept called co-regulation. It is a cooperative form of regulation to achieve public objectives, some elements of self-regulation as well as of traditional command and control regulation. The advantages of co regulation can be the expertise and flexibility offered by a more specialized industry-based organization and also a detached regulatory organization that is accountable. though there is no perfect system the key stakeholders such as private broadcasters, government, civil society and viewers have to come together to evolve a system to meet the larger goals.

Broadcast on All India Radio by individuals will not permit

1. Criticism of friendly countries;
2. Attack on religions or communities;
3. Anything obscene or defamatory;
4. Incitement to violence or anything against maintenance of law & order
5. Anything amounting to contempt of court;
6. Aspersion against the integrity of the President, Governors and the Judiciary.
7. Attack on a political party by name;

8. Hostile criticism of any State or the Center;
9. Anything showing disrespect to the Constitution or advocating change in the Constitution by violence; but advocating changes in a constitutional way should not be debarred.
10. Appeal for funds except for the Prime Minister's National Relief Fund, at a time of External Emergency or if the Country is faced with a natural calamity such a floods, earthquake or cyclone.
11. Direct publicity for or on behalf of an individual or organization which is likely to benefit only that individual or organization.
12. Trade names in broadcasts which amount to advertising directly (except in Commercial Services).

The code applies to criticism in the nature of personal tirade either of a friendly Government or of political party or of the Central Government or any State Government. But it does not debar reference to and/or dispassionate discussion of policies pursued by any of them. If a Station Director finds that the above Code has not been respected in any particular manner by an intending broadcaster he will draw the latter's attention to the passage objected to. If the intending broadcaster refuses to accept the Station Director's suggestions and modify his accordingly, the Station Director will be justified in refusing his or her broadcast. Cases of unresolved differences of opinion between a Minister of State Government and the Station Director about the interpretation of the Code with regard to a talk to be broadcast by the former will be referred to the Minister of Information and Broadcasting, Government of India who will decide finally whether or not any change in the text of the talk is necessary in order to avoid violation of the Code.

### **18.3 Code of Conduct for Television and Broadcasts During Elections:**

The Election Commission (EC) recognises the significance of television and radio in the coverage of elections. Their reach is widespread and the impact is substantial. On the one hand, the electronic media can be misused to favour one party or another. But on the other hand, the EC recognises that electronic media can, if used properly be an important source of information for voters across the country. It can provide the widest first hand education for voters on political parties, their symbols, various leaders and different issues in the election. This is why electronic media all over the world is the single biggest source of information of voters in terms of debates, campaign, coverage etc. It is essential therefore that a model code of conduct is established for electronic media both to ensure that it is not misused as well as to ensure that it be used in the best interest of democracy and the voter.

Listed below are the Dos and Don'ts for election coverage on electronic media.

1. There should be no coverage of any election speeches or other material that incites violence, against one religion, against one language, against one group etc.
2. In any constituency, only one candidate should not be projected. While it is not necessary to cover every single candidate at least the more important candidates should be covered in the reports from a constituency to the maximum possible extent.

3. The following could be covered in a balanced and fair manner:-
  - Campaigning and excerpts from campaign speeches.
  - Symbols, banners, flags and other campaign materials of parties.
  - Results of opinion polls by non-political, professional organisations with a proven track record.
  - Party manifestoes (critical analysis of which is also perfectly legitimate.)
  - Candidates and their views in different constituencies across the country.
  - The positions taken by the main parties on different issues important to the electorate.
  - Debates between major parties and candidates.
  - Analysis of previous voting patterns, victory margins, swings etc.
4. By the balanced and fair means it is meant that among the major political parties:-
  - No political parties should be given substantially more coverage than others. The balance need not be achieved in any single day or in a single story, but over a reasonable period of time, say one week.
  - Balance does not mean each party must get exactly the same air time to the last second, but parties should be given broadly the same amount of time.
  - Balance implies that to no reasonable person should it appear that one political party is being projected to the exclusion of others.
5. Procedures
  - All producers must record a copy of their programme off air for use as reference in case of any dispute.
  - The EC shall be the final arbiter in any dispute.
6. The final interpretation of any disputed passage or story should be with
  - In case of disagreement with the broadcaster, one authority could be nominated by the Election Commission who could take a decision immediately when approached.

Opinion/ Gallop Polls are not to be published/broadcast during the period 48 hrs before each phase of polling till the completion of the phase of polling. Exit poll results are not to be published/broadcast before the completion of each phase of polling.

## 18.4 AIR Guidelines For National Calamities:

According to the style book of news services divisions of All Indian Radio,

1. Give due priority for all news about calamities such as cyclones floods, fire etc.
2. Only authentic news should be disseminated
3. Figures about death, losses etc. should be based on official or equally reliable sources
4. Where forewarning can prevent the widespread damage, and reduce human misery and avert loss of life, break of the regular programmes and issue of the warning in all the bulletins particularly those beamed toward the affected region must be carried and given top priority. Warnings, announcements regarding relief measures and such statements of leaders would build up morale of the affected people. In serious situations transmissions should be kept open whole day long and not restricted merely to their regular transmission hours.
5. In case of drought or cyclones avoid giving monetary quantification of loss to crops until a figure is available from an official source.

### Code for Broadcast Journalists:

The members of Radio and Television New Directors Association (RTNDA) recognize the responsibility of broadcast journalists to promote and to protect the freedom to report independently about matters of public interest and to present a wide range of expressions, opinions and ideas.

The codes of ethics for broadcasting in Radio and TV covers the following features:

- Broadcast journalists will inform the public in an accurate, comprehensive and fair manner about events and issues of importance.
- Broadcast journalists will report factors such as race, national or ethnic origin, color, religion, sexual orientation, marital status or physical or mental disability only when they are relevant.
- Broadcast journalist's will present news and public affairs without distortion. Interviews may be edited provided that the meaning is not changed or misrepresented. Broadcast journalists will not present news that is rehearsed or re-enacted without informing the audience. Newsrooms should take steps to ensure the authenticity of amateur video and audiotape before broadcasting it. Editorials and commentary will be identified as such.
- Broadcast journalists will respect the dignity; privacy and well being of everyone with whom they deal and will make every effort to ensure that newsgathering and reporting does not unreasonably infringe privacy except when necessary in the public interest. Hidden audio and video recording devices should only be used when it is necessary to the credibility or accuracy of a story in the public interest.



- Independence is a fundamental value and we will resist any attempts at censorship that would erode it. Broadcast journalists will resist pressures to change or alter the news. Intrusion into content, real or apparent shall be resisted.
- Producers of news broadcasts will not pay subjects or source that have a vested interest in a story. Commentators or contracted experts are exempted.' Broadcast journalists will not accept financial compensation from those who seek to influence news coverage thereby compromising journalistic integrity and independence.
- Broadcast journalists will govern themselves on and off the job in such a way as to avoid conflict of interest, real or apparent.
- Errors will be quickly acknowledged and publicly corrected.
- Broadcast journalists will treat people who are subjects and sources with decency. They will use special sensitivity when dealing with children. They will strive to conduct themselves in a courteous and considerate manner, keeping broadcast equipment as unobtrusive as possible. They will strive to prevent their presence from distorting the character or importance of events.
- In reporting matters that are or may 'be before the' courts, broadcast journalists, shall ensure that their reporting does not interfere with the rights of an individual to a fair trial.
- Reporting on criminal activities such as taking people as hostages, prison uprisings or terrorist acts will be done in a fashion that do not knowingly endanger lives, offer comfort and support or provide vital information to the perpetrator(s). RTNDA members will contact neither victims nor perpetrators of a criminal activity during the course of 'the event for the purpose of conducting an interview that would interfere with a peaceful resolution.
- Plagiarism is unacceptable. Broadcast journalists will strive to honor the intellectual property of others, including video and audio materials.
- Broadcast journalists will seek to remove any impediments to or bans on the gathering or reporting of news in the public interest.
- Broadcast journalists will make every effort to attribute news on the record. Confidential sources should be used only when it is clearly in the public interest to gather or convey important information or when a person providing information might be harmed.

Members of the RTNDA will respect the provisions of this Code and the RTNDA itself will take all reasonable steps to encourage that all 'broadcast journalists are aware of and observe the Code, even if they are not themselves members of the RTNDA.

#### 18.4 AIR Guidelines for National Calamities

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- Broadcast journalists will respect the dignity; privacy and well being of everyone with whom they deal and will make every effort to ensure that newsgathering and reporting does not unreasonably infringe privacy except when necessary in the public interest. Hidden audio and video recording devices should only be used when it is necessary to the credibility or accuracy of a story in the public interest.

- Independence is a fundamental value and we will resist any attempt at censorship that would erode it. Broadcast journalists will resist pressures to change or alter the news. Intrusion into content, real or apparent shall be resisted.
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- Broadcast journalists will govern themselves on and off the job in such a way as to avoid conflict of interest, real or apparent.
- Errors will be quickly acknowledged and publicly corrected.
- Broadcast journalists will treat people who are subjects and sources with decency. They will use special sensitivity when dealing with children. They will strive to conduct themselves in a courteous and considerate manner, keeping broadcast equipment as unobtrusive as possible. They will strive to prevent their presence from distorting the character or importance of events.
- In reporting matters that are or may 'be before the' courts, broadcast journalists, shall ensure that their reporting does not interfere with the rights of an individual to a fair trial.
- Reporting on criminal activities such as taking people as hostages, prison uprisings or terrorist acts will be done in a fashion that do not knowingly endanger lives, offer comfort and support or provide vital information to the perpetrator(s). RTNDA members will contact neither victims nor perpetrators of a criminal activity during the course of 'the event for the purpose of conducting an interview that would 1nterfere with a peaceful resolution.
- Plagiarism is unacceptable. Broadcast journalists will strive to honor the intellectual property of others, including video and audio materials.
- Broadcast journalists will seek to remove any impediments to or bans on the gathering or reporting of news in the public interest.
- Broadcast journalists will make every effort to attribute news on the record. Confidential sources should be used only when it is clearly in the public interest to gather or convey important information or when a person providing information might be harmed.

The members of Radio and Television New Directors Association (RTNDA) recognize the responsibility of broadcast journalists to promote and to protect the freedom to report independently about matters of public interest and to present a wide range of expressions, opinions and ideas. According to the codes of ethics broadcast journalists shall inform the public in an accurate, comprehensive and fair manner about events and issues of importance. They shall report factors such as race, national or ethnic origin, color, .religion, sexual orientation, marital status or physical or mental disability only when they are relevant and present news and public affairs without distortion. Interviews may be edited provided that the meaning is not changed or

misrepresented. Broadcast journalists will not present news that is rehearsed or re-enacted without informing the audience. Newsrooms should take steps to ensure the authenticity of amateur video and audiotape before broadcasting it. Editorials and commentary will be identified as such. AIR has separately formulated guidelines for national calamities also. Keeping the Concepts of priority, authenticity, reliability shall be given due importance in the coverage of the natural calamities.

### 18.5 Summary:

Free speech and an informed public are vital to a democratic society. The explosion in the information, news and entertainment field has posed challenges for ethics, accountability and transparency. In the process of communicating to the society a series of broadcast codes were developed to control the content and programmes of radio and television across the country. Separate codes were designed in general and for special occasions also. Code of the Cable Act of 1995, the Broadcast Code set up to govern the All India Radio, apply to Broadcasting and Television Organization;

The greatest difficulty about setting standards is that there cannot be a standard code for all times because the standards of morality keep evolving.

Though the government proposed a regulatory measure in the form of Broadcasting Service Regulation Bill in 2007 it was strongly opposed by many parties. Whenever the content proposals are mooted it is considered as an exercise of censorship as is the case with the existing Indian censorship system of movies.

The efforts of News Broadcasters' Associations leading to the submission of a proposal to the centre marked an important step towards establishing internal or self-regulatory checks. The proposal includes designing a Code of Ethics and the setting up of a Disputes Redressal Authority to entertain and decide on complaints regarding the content of any broadcast. Within India's complex, dynamic and evolving media environment, one alternative form of regulation can be a concept called co-regulation. It is a cooperative form of regulation to achieve public objectives, some elements of self-regulation as well as of traditional command and control regulation. Broadcast on All India Radio doesn't allow criticism in the nature of personal tirade either of a friendly government or of political party or of the central government or any state government. If the Station Director of any AIR station finds that the above Code has not been respected in any particular manner he will draw the latter's attention to the objectionable material requesting for changes. The Election Commission (EC) recognises the significance of television and radio in the coverage of elections. Their reach is widespread and the impact is substantial. On the one hand, the electronic media can be misused to favour one party or another. But on the other hand, the EC recognises that electronic media can, if used properly be an important source of information for voters across the country. It can provide the widest first hand education for voters on political parties, their symbols, various leaders and different issues in the election. This is why electronic media all over the world is the single biggest source of information of voters in terms of debates, campaign, coverage etc. It is essential therefore that a model code of conduct is established for electronic media both to ensure that it is not misused as well as to ensure that it be used in the best interest of democracy and the voter.

Opinion/ Gallop Polls are not to be published/broadcast during the period 48 hrs before each phase of polling till the completion of the phase of polling. Exit poll results are not to be published/broadcast before the completion of each phase of polling.

**18.6 Self Assessment Questions:**

1. Write about Broad cast code.
2. Describe the code of Act India Radio.
3. What regulations are to be followed during elections by broad cast media?

**18.7 Suggested Readings:**

1. Durga Das Basu: Introduction to the Constitution of India
2. Durga Das Basu: Law of the Press
3. Dr. Jan R. Hakemulder, Dr. Fay AC De Jonge and P.P. Singh : Media Laws and Ethics
4. B. N. Pandey: Indian Constitution
5. Kiran Prasad: The Philosophies of Communication and Media Ethics

## Lesson - 19

# INFORMATION TECHNOLOGY ACT - 2008

### Objective:

On completion of this lesson you should be able to understand

- Electronic governance
- Legal recognition of Electronic Signature
- Publication of rules, regulation, etc, in Electronic Gazette
- Attribution, acknowledgement and dispatch of electronic records
- Electronic signature certificates
- Suspension of Digital Signature Certificate
- Revocation of Digital Signature Certificate
- The cyber appellate tribunal
- Offences
- Cyber laws

### Structure:

- 19.1 Introduction**
- 19.2 Electronic governance**
- 19.3 Legal recognition of Electronic Signature**
- 19.4 Publication of rules, regulation, etc, in Electronic Gazette**
- 19.5 Attribution, acknowledgement and dispatch of electronic records**
  - 19.5.1 Secure Electronic Record and Signature**
  - 19.5.2 Security Procedures and Practices (Amended vide IT AA 2008)**
  - 19.5.3 Application for license**
  - 19.5.4 Notice of suspension or revocation of license**
  - 19.5.5 Access to computers and data**
- 19.6 Electronic signature certificates**
- 19.7 Suspension of Digital Signature Certificate**
- 19.8 Revocation of Digital Signature Certificate**

- 19.9 The cyber appellate tribunal**
  - 19.9.1 Appeal to Cyber Regulations Appellate Tribunal**
  - 19.9.2 Procedure and Powers of the Cyber Appellate Tribunal**
  - 19.9.3 Right to Legal Representation**
- 19.10 Offences**
  - 19.10.1 Tampering with Computer Source Documents**
  - 19.10.2 Computer Related Offences (Substituted vide IT AA 2008)**
  - 19.10.3 Punishment for sending offensive messages through communication Service**
  - 19.10.4 Punishment for identity theft (Inserted Vide ITA 2008)**
  - 19.10.5 Punishment for cyber terrorism**
  - 19.10.6 Punishment for publishing or transmitting obscene material in electronic form**
  - 19.10.7 Punishment for publishing or transmitting**
  - 19.10.8 Punishment for publishing or transmitting of material**
  - 19.10.9 Power to issue directions**
  - 19.10.10 Punishment for Disclosure of information in breach of lawful contract**
  - 19.10.11 Power of Police Officer and Other Officers to Enter Search etc**
- 19.11 Cyber laws**
- 19.12 Summary**
- 19.13 Self Assessment Questions**
- 19.13 Suggested Readings**

## **19.1 Introduction:**

The Information Technology Act, 2008 provides legal recognition for the transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "Electronic Commerce". This involves the use of alternatives to paper based methods of communication and storage of information, to facilitate electronic filings of documents with the Government agencies and further to amend the Indian Penal Code, Indian Evidence Act, 1872" The Bankers' Books Evidence Act, 1891, and the Reserve Bank of India Act, 1934 for matters connected therewith or incidental thereto.

## **19.2 Electronic Governance:**

In legal recognition of Electronic Records "any law provides that information or any



other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is:

- (a) Rendered or made available in an electronic form; and
- (b) Accessible so as to be usable for a subsequent reference.

### **19.3 Legal Recognition of Electronic Signature:**

Where any law provides that information or any other matter shall be authenticated by affixing the signature or any document should be signed or bear the signature of any person then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied, if such information or matter is authenticated by means of digital signature affixed in such manner as may be prescribed by the, Central Government.

- (a) the filing of any form from use of Electronic Records and Electronic Signature: (a) the filing of any form, application or any other document with any office, authority, body or agency owned, or controlled by the appropriate, Government in a particular manner;
- (b) The issue or grant of any license, permit, sanction or approval by whatever name called in a particular manner;
- (c) Receipt or payment of money in a particular manner, then, notwithstanding anything contained in any other law for the time being in force, such-requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government;

**Retention of Electronic Records:** Where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall be deemed to have been satisfied if such documents, records or information are retained in the electronic form. The electronic record is retained in the format in which it was, originally generated. The details which will facilitate the identification of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record. Provided that this clause does not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be dispatched or received.

### **19.4 Publication of Rules, Regulation, etc, in Electronic Gazette:**

According to the act any rule, regulation, order, bye-law notification or any other matter shall be published in the Official Gazette, then, such requirement shall be deemed to have been satisfied if such rule, regulation, order, bye-law, notification or any other matter is published in the Official Gazette or Electronic Gazette. Provided that, Where' any rule, regulation, order, bye-law, notification or any other matter published in the Official Gazette or Electronic Gazette, the date of publication shall be deemed to be the date of the Gazette which was first published in any form. Some sections confer right to insist document should be accepted in electronic form Nothing shall confer a right upon any person to insist that any Ministry or Department of the Central Government or the State Government or any authority or body of it should accept, issue, create, retain and preserve any document in, the form of electronic records or effect any monetary transaction in the electronic form.

## 19.5 Attribution, Acknowledgement and Dispatch of Electronic Records:

An electronic record shall be attributed to the originator

- (a) If it was sent by the originator himself;
- (b) By a person who had the authority to act on behalf of the originator in respect of that electronic record; or
- (c) By an information system programmed by or on behalf of the originator to operate automatically.

**19.5.1 Secure Electronic Record and Signature:** Where any security procedure has been applied to an electronic record at a specific point of time, then such record shall be deemed to be a secure electronic record from such point of time to the time of verification. An electronic signature shall be deemed to be a secure electronic signature if:

- (i) The signature creation data, at the time of affixing signature, was under the exclusive control of signatory and no other person; and the signature creation data was stored and affixed in such exclusive manner as may be prescribed.

**19.5.2 Security Procedures and Practices (Amended vide IT AA 2008):** The Central Government may prescribe the security procedures and practices provided that in prescribing such security procedures and practices, the Central Government shall have regard to the commercial circumstances, nature of transactions and such other related factors as it may consider appropriate.

**19.5.3 Application for License:** Every application for issue of a license shall be in a form as may be prescribed by central Government and it shall be accompanied by a certification practice statement a statement including the procedures with respect to identification of the applicant; payment of such fees, not exceeding twenty-five thousand rupees as may be prescribed by the Central Government and the necessary documents. An application for renewal of a license shall be accompanied by such fees, not exceeding five thousand rupees, as may be prescribed by the Central Government and shall be made not less than forty-five days before the date of expiry of the period of validity of the license. The Controller may then grant the license or reject the application. After the necessary enquiry is made and if the controller is satisfied the application for the issue or renewal of the license is considered. If incorrect or false particulars are found, failed to comply with the terms and conditions, to maintain the standards, contravened any provisions of this act, rule, and regulation or order made there under, revoke the license. No license shall be revoked unless the certifying authority has been given a reasonable opportunity of showing cause against the proposed revocation.

**19.5.4 Notice of suspension or revocation of license:** The license of the Certifying Authority is suspended or revoked; the Controller shall publish notice of such suspension or revocation, as the case may be, in the data-base maintained and the data base shall be, made available through a web site which shall be accessible round the clock. The Controller may; if he considers necessary, publicize the contents of the data-base in such electronic or other media, as he may consider appropriate.

**19.5.5 Access to computers and data:**

- (1) Without prejudice to the provisions of sub-section (1) of section 69, the Controller or any person authorized by him shall, if he has reasonable cause to suspect that any contravention of the provisions of this chapter made there under has been committed, have access to any computer system, any apparatus, data or any other material connected with such system, for the purpose of searching or causing a search to be made for obtaining any information or data contained in or available to such computer system.
- (2) For the purposes of sub-section (1), the Controller or any person authorized by him may, by order, direct any person in charge of, or otherwise concerned with the operation of the computer system, data apparatus or material, to provide him with such reasonable technical and other assistance as he may consider necessary.

**Surrender of License**

- (1) Every Certifying Authority whose license is suspended or revoked shall immediately after such suspension or revocation, surrender the license to the Controller.
- (2) Where any Certifying Authority fails to surrender a license under sub-section (1), the person in whose favor a license is issued, shall be guilty of an offense and shall be punished with imprisonment which may extend up to six months or a fine which may extend up to ten thousand rupees or 'with both'.

**Disclosures**

- (1) Every Certifying Authority shall disclose in, the manner specified by regulations:
  - (a) Its Electronic Signature Certificate (Amended vide IT AA 2008)
  - (b) Any certification practice statement relevant thereto;
  - (c) Notice of revocation or suspension of its Certifying Authority certificate, if any; and
  - (d) Any other fact that materially and adversely affects either the reliability of a Electronic Signature Certificate, which that Authority has issued, or the Authority's ability to perform its services. '
- (2) Where in the opinion of the Certifying Authority any event has 'occurred' any situation has arisen which may materially and adversely affect the integrity of its computer system or the conditions subject to which a Electronic Signature Certificate was granted, then, the Certifying Authority shall
  - (a) Use reasonable efforts to notify any person who is likely to 'be affected by that occurrence; or
  - (b) Act in accordance with the procedure specified in its certification practice statement to deal with such event or situation.

**19.6 Electronic Signature Certificates:**

Certifying Authority to issue Electronic Signature Certificate

- (1) Any person may make an application to the Certifying Authority for the issue of a

Digital Signature Certificate in such form as may be prescribed by the Central Government.

- (2) Every such application shall be accompanied by such fee not exceeding twenty-five thousand rupees as may be prescribed by the Central Government to be paid to the Certifying Authority: Provided that while prescribing fees :under sub-section (2) different fees may be prescribed for different classes of applicants.
- (3) Every such application shall be accompanied by a certification practice statement or where there is no such statement, a statement containing such particulars, as may be specified by regulations.
- (4) On receipt of an application under sub-section '( 1), the Certifying Authority, may, after consideration of the certification practice statement or the other statement under sub-section (3) and after making such enquiries as it may deem fit, grant the Digital Signature Certificate or for reasons to be recorded in writing~ reject the application.

### **19.7 Suspension of Digital Signature Certificate:**

- (1) Subject to the provisions of sub-section (2), the Certifying Authority which has issued a Digital Signature Certificate may suspend such Digital Signature Certificate:
  - (a) On receipt of a request to that effect from:
    - (i) The subscriber listed in the Digital Signature Certificate; or
    - (ii) Any person duly authorized to act on behalf of that subscriber;
  - (b) If it is of opinion that the Digital Signature Certificate should be suspended in public Interest.
- (2) A Digital Signature Certificate shall not be suspended for a period exceeding fifteen days unless the subscriber has been given an opportunity of being heard in the matter.
- (3) On suspension of a Digital Signature Certificate under this section, the Certifying Authority' shall communicate the same to the subscriber.

### **19.8 Revocation of Digital Signature Certificate:**

- (1) A Certifying Authority may revoke a Digital Signature Certificate issued by it:
  - (a) Where the subscriber or any other person authorized by him makes a request to that effect; or
  - (b) Upon the death of the subscriber; or
  - (l) Upon the dissolution of the firm or winding up of the company where the subscriber is a firm or a company.

- (2) Subject to the provisions of sub-section (3) and without prejudice to the provisions of subsection (1), a Certifying Authority may revoke a Digital Signature Certificate which has been issued by it at any time, if it is of opinion that:
  - (a) The subscriber has been declared insolvent or dead or where a subscriber is a firm or a company, which has been dissolved, wound-up: or otherwise ceased to exist. a material fact represented in the Digital Signature Certificate is false or has been concealed;
  - (b) A requirement for issuance of the Digital Signature Certificate was not satisfied;
  - (l) The Certifying Authority's private key or security system was compromised in a manner materially affecting the Digital Signature Certificate's reliability;
  - (d) The subscriber has been declared insolvent or dead or where a subscriber is a firm or a company, which has been dissolved, wound-up or otherwise ceased to exist.
- (3) A Digital Signature Certificate shall not be revoked unless the subscriber has been given an opportunity of being heard in the matter.
- (4) On revocation of a Digital Signature Certificate under this section, the Certifying Authority shall communicate the same to the subscriber.

## 19.9 The Cyber Appellate Tribunal:

The Central Government shall, by notification, establish one or more appellate tribunals to be known as the Cyber Appellate Tribunal also specify the matters and places in relation to which it may exercise jurisdiction. It consists of a chairperson and members. Chair person shall appoint a presiding officer. The selection of Chairperson and Members will be made in consultation with the Chief Justice of India. The jurisdiction, powers and authority of the Tribunal may be exercised by the Benches which are constituted by the chairperson of the Cyber Appellate Tribunal with one or two members of such Tribunal as the Chairperson may deem fit.

The Benches shall sit at New Delhi and, at such other places and may exercise their jurisdiction. Members of a tribunal may shift from one Bench to another Bench. If the case or matter is of such a nature that it ought to be heard by a Bench consisting of more members, the case or matter may be transferred by the Chairperson to such Bench as the Chairperson may deem fit. The chairperson of the Cyber Appellate Tribunal may transfer any case pending before one Bench, for disposal to any other Bench. If the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the 'point, 'or points on which they differ, and make a reference to the Chairperson of the Cyber Appellate Tribunal who shall hear the point or points himself and such point or points shall be decided according to the opinion of the majority of the Members who have heard the case, including those who first heard it. The Presiding officer Chairperson or Member of the Cyber Appellate Tribunal may, by notice in writing under his hand addressed to the central Government, resign his office.

**19.9.1 Appeal to Cyber Regulations Appellate Tribunal:** Any person aggrieved by an order by a Controller or an adjudicating officer' may prefer an appeal to a Cyber Appellate Tribunal having jurisdiction in the matter. No appeal shall lie to the Cyber Appellate Tribunal from an order made by an adjudicating officer with the consent of the parties. Every appeal shall be filed within a period of forty-five days from the date on which a copy of the order made by the controller or adjudicating officer is received by the person aggrieved and it shall be in such form and be accompanied by such fee as may be prescribed. The Cyber

Appellate Tribunal shall send a copy of every order made by it 'to the parties to the appeal and to the concerned Controller or adjudicating officer. The appeal filed before the Cyber Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavor shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

**19.9.2 Procedure and Powers of the Cyber Appellate Tribunal:** (1) The Cyber Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Cyber Appellate Tribunal shall have powers to regulate its own procedure including the place at which it shall have its sittings. The Cyber Appellate Tribunal shall have, for the purposes of discharging their functions under this Act; the same powers as are vested in a civil court under the Code of Civil Procedure. Every procedure before the Cyber Appellate Tribunal shall be deemed to be a judicial proceeding and the Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

**19.9.3 Right to legal representation:** The appellant may either appear in person or authorize one or more legal practitioners or any of its officers to present his or its case before the Cyber Appellate Tribunal. No court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under this Act or the Cyber Appellate Tribunal.

## 19.10 Offences

**19.10.1 Tampering with Computer Source Documents:** Whoever knowingly or intentionally conceals, destroys or alters or intentionally or knowingly causes another to conceal, destroy or alter any computer source code used for a computer, computer program, computer system or computer network, when the computer source code is required to be kept or maintained by law for the time being in force, shall be punishable with imprisonment up to three years, or with fine which may extend up to two lakh rupees, or with both.

**19.10.2 Computer Related Offences (Substituted vide IT AA 2008:** If any person, dishonestly, or fraudulently, does any act. Referred to in section 43, he shall be punishable with imprisonment for a term which may extend to two three years or with fine which may extend to five lakh rupees or with. both.

**19.10.3 Punishment for sending offensive messages through communication Service, etc:** Any person who sends, by means of a computer resource or a communication device, a) Any information that is grossly offensive or has menacing character; or

b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, or ill will, persistently makes by making use of such computer resource or a communication device,

c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages (Inserted vide IT AA 2008) shall be punishable with imprisonment for a term which may extend to two three years and with fine.



Whoever dishonestly receives or retains any stolen computer resource or communication device knowing or having reason to believe the same to be stolen computer resource or communication device, shall be punished with imprisonment of either description for a term which may extend to three years or with fine which may extend to rupees one lakh or with both.

**19.10.4 Punishment for identity theft (Inserted Vide ITA 2008):** Whoever, fraudulently or dishonestly make use of the electronic signature, password or any other unique identification feature of any other person, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to rupees one lakh. Whoever, by means of any communication device or computer resource cheats by personation, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to one lakh rupees.

**19.10.5 Punishment for cyber terrorism:**

- (I) Whoever with intent to threaten the unity, integrity, security or sovereignty of India to strike' terror in the people or any section of the people by
  - (i) Denying or cause the denial of access to any person authorized to access computer resource;
  - (ii) Attempting to penetrate or access a computer resource without authorization or exceeding authorized access; or
  - (iii) Introducing or causing to introduce any Computer Contaminant.

and by means of such conduct causes or is likely to cause death or injuries to persons or damage to or destruction of property or disrupts or knowing that it is likely to cause damage or disruption of supplies or services essential to the life of the community or adversely affect the critical information infrastructure or

- (8) Knowingly or intentionally penetrates or accesses a computer resource without authorization or exceeding authorized access, and by means of such conduct obtains access to information, data or computer database that is restricted for reasons of the security of the State or foreign relations; or any restricted information, data or computer database, with reasons to believe that such information, data or computer database so obtained may be used to cause or likely to cause injury to the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence, or to the advantage of any foreign nation, group of individuals or otherwise, commits the offence of cyber terrorism.
- (2) Whoever commits or conspires to commit cyber terrorism shall be punishable with imprisonment which may extend to Imprisonment for life.

**19.10.6 Punishment for publishing or transmitting obscene material in electronic form:**

Whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be



punished on first conviction with imprisonment of either's description for a term which may extend to two three years and with fine which may extend to five lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which .may extend to five years and also with fine which may extend to ten lakh rupees.

**19.10.7 Punishment for publishing or transmitting of material containing sexually explicit act etc. in electronic form**

Whoever publishes or transmits or causes, to be published or transmitted in the electronic form any material which, contains, sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to 'ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years 'and also with fine which may extend to ten lakh rupees. These sections do not extend to any book, pamphlet, paper, writing, drawing, painting, representation or figure in electronic form.

**19.10.8 Punishment for publishing or transmitting of material depicting children in sexually explicit act etc. in electronic form.**

Whoever,

- (a) Publishes or transmits or, causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct or
- (b) Creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner or
- (c) Cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the, computer resource or
- (d) Facilitates abusing children, online or
- (e) Records in any electronic form own abuse or that of others pertaining to sexually explicit act with children, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with a fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.

**19.10.9 Power to issue directions for blocking for public access of any information through a computer resource**

- (1) Where the Central Government or any of its officer specially authorized by it in his behalf is satisfied that it is necessary or expedient so to do in the interest of

sovereignty and integrity of India, defense of India, security of the State, friendly relations with foreign states or public order or for preventing incitement to the commission of any cognizable offence relating to above, it may subject to the provisions of sub-sections

- (2) For reasons to be recorded in writing, by order direct any agency of the Government or intermediary to block access by the public or cause to be blocked for access by public any information generated, transmitted, received, stored or hosted in any computer resource.
- (3) The procedure and safeguards subject to which such blocking for access by the public may be carried out shall be such as may be prescribed.
- (4) The intermediary who fails to comply with the direction issued under sub-section (1) shall be punished with an imprisonment for a term which may extend to seven years and also be liable to fine.

**19.10.10 Punishment for Disclosure of information in breach of lawful contract:** Any person including an intermediary who, while providing services under the terms of lawful contract, has secured access to any material containing personal information about another person, with the intent to cause or knowing that he is likely to cause wrongful loss or wrongful gain discloses, without the consent of the person concerned or in breach of a lawful contract, such material to any other person shall be punished with imprisonment for a term which may extend to three years, or with a fine which may extend to five lakh rupees, or with both.

**19.10.11 Power of Police Officer and Other Officers to Enter Search etc:**

- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any police officer, not below the rank of a Inspector or any other officer of the Central Government or a State Government authorized by the Central Government in this behalf may enter any public place, search and arrest without warrant any person found therein who is reasonably suspected of having committed or of committing or of being about to commit any offence under this Act
- (2) Where any person is arrested by an officer other than; a police officer, such officer shall, without unnecessary delay, take or send the person arrested before a magistrate having jurisdiction in the case or before the officer-in-charge of a police station.
- (3) The provisions of the Code of Criminal: Procedure,-1973 shall, subject to the provisions of this section, apply, so far as may be, in relation to any entry, search or arrest, made under this section

## 19.11 Cyber laws:

Cyber crime is an unlawful act wherein the computer is either a tool or a target or both. Cyber crimes can involve criminal activities that are traditional in nature, such as theft, fraud, forgery, defamation and mischief all of which are subject to the Indian Penal Code. The abuse of computers has also given birth to new age crimes that are addressed by the Information Technology

Act, 2000. Laws related to Cyber Crime were replaced by Cyber Laws or Internet laws. From the perspective of e-commerce in India, the IT Act 2008 and its provisions contain many positive aspects. First, the implications of these provisions for the e-businesses would be that email would now be a valid legal form of communication in our country that can be duly produced and approved in a court of law. Companies shall now be able to carry out electronic commerce using the legal infrastructure provided by the Act. All the sections and relevant clauses are explained in detail in the above chapter on the IT Act, 2008. To summarize, Chapter-II of the Act specifically stipulates that any subscriber may authenticate an electronic record by affixing his digital signature. It further states that any person can verify an electronic record by use of a public key of the subscriber.

The Act details about Electronic Governance and provides inter alia amongst others that where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is rendered or made available in an electronic form; and accessible so as to be usable for a subsequent reference. The said chapter also deals with the legal recognition of Digital Signatures. Chapter-IV of the act gives a scheme for Regulation of Certifying Authorities. The Act envisages that the Controller of Certifying Authorities who shall perform the function of exercising supervision over the activities of the Certifying Authorities as also is laying down standards and conditions governing the Certifying Authorities as also specifying the various forms and content of Digital Signature Certificates. The Act recognizes the need for recognizing foreign Certifying Authorities and it further details the various provisions for the issue of license to issue Digital Signature Certificates.

Chapter-VII of the Act deals with the scheme of things relating to Digital Signature

Certificates. The duties of subscribers are also enshrined in the said Act.

Chapter-IX of the said Act talks about penalties and adjudication for various offences. The penalties for damage to computer, computer systems etc. has been fixed as damages by way of compensation not exceeding Rs. 1,00,00,000 to affected persons. The Act talks of appointment of any officers not below the rank of a Director to the government of India or an equivalent officer of state government as an Adjudicating Officer who shall adjudicate whether any person has made a contravention of any of the provisions of the said Act or rules framed there under. The said Adjudicating Officer has been given the powers of a Civil Court.

Chapter-X of the Act talks of the establishment of the Cyber Regulations Appellate Tribunal, which shall be an appellate body where appeals against the orders passed by the Adjudicating Officers, shall be preferred. Chapter-XI of the Act talks about various offences and the said offences shall be investigated only by a Police Officer not below the rank of the Deputy Superintendent of Police. These offences include tampering with computer source documents, publishing of information, which is obscene in electronic form, and hacking, The Act now allows Government to issue notification on the web thus heralding e-governance.

In view of the 'growth in transactions and communications carried out through electronic records, the act seeks to empower government departments to accept filing, creating and retention of official documents in the digital format. The Act has also proposed a legal framework for the authentication and origin of electronic records and communications through digital signature. Entry of corporate companies' in the business of being Certifying Authorities for issuing Digital Signatures Certificates is a welcome trend. Digital signatures have been given legal validity and

sanction in the Act. The Act enables the companies to file any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in electronic form by means of such electronic form as may, be prescribed by the appropriate Government.

### 19.12 Summary:

The Information Technology Act, 2008 provides legal recognition for the transactions carried out by means of electronic data interchange and other means of electronic communication. This involves the use of alternatives to paper based methods of communication and storage of information, to facilitate electronic filings of documents with the Government agencies and further to amend many acts such as the Indian Penal Code, Indian Evidence Act, 1872" The Bankers' Books Evidence Act, 1891, and the Reserve Bank of India Act, 1934 for matters connected therewith or incidental thereto.

Electronic governance, Legal recognition of Electronic Signature, Use of Electronic Records and Electronic Signature, Retention of Electronic Records, Publication of rules, regulation, etc, in Electronic Gazette, Attribution, acknowledgement and dispatch of electronic records, Disclosures, Electronic signature certificates, Suspension of Digital Signature Certificate, Revocation of Digital Signature Certificate are also crucial.

The cyber appellate tribunal, Appeal to Cyber Regulations Appellate Tribunal: Any person aggrieved by an order by a Controller or an adjudicating officer' may prefer an appeal to a Cyber Appellate Tribunal having jurisdiction in the matter. No appeal shall lie to the. Cyber Appellate Tribunal from an order made by an adjudicating officer with the consent of the parties. Every appeal shall be filed within a period of forty-five days from the date on which a copy of the order made by the controller or adjudicating officer is received by the person aggrieved and it shall be in such form and be accompanied by such fee as may be prescribed. The Cyber Appellate Tribunal shall send a copy of every order made by it 'to the parties to the appeal and to the concerned Controller or adjudicating officer. The appeal filed before the Cyber Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavor shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal. Offences such as Tampering with Computer ource Documents, Computer Related Offences (Substituted vide IT AA2008) are punishable under the act. Punishment could be awarded for sending offensive messages through communication Service, for identity theft (Inserted Vide ITA 2008), cyber terrorism, for publishing or transmitting obscene material in electronic form, for publishing or transmitting of material containing sexually explicit act etc. in electronic form, for publishing or transmitting of material depicting children in sexually explicit act etc. in electronic form, for disclosure of information in breach of lawful contract and power to issue directions for blocking for public access of any information through a computer resource

Cyber crime is an unlawful act wherein the computer is either a tool or a target or both. Cyber crimes can involve criminal activities that are traditional in nature, such as theft, fraud, forgery, defamation and mischief all of which are subject to the Indian Penal Code. The abuse of computers has also given birth to new age crimes that are addressed by the Information Technology Act, 2000. Laws related to Cyber Crime were replaced by Cyber Laws or Internet laws.

### 19.13 Self Assessment Questions:

1. List out the publication of rules, regulation, etc, in Electronic Gazette.
2. Write about Electronic signature certificates and suspension and revocation of Digital Signature Certificate.
3. Explain the concept of Electronic governance.
4. Describe the functions of the cyber appellate tribunal
5. Write about the offences of :

#### **Tampering with Computer Source Documents:**

Computer Related Offences (Substituted vide IT AA 2008

Punishment for sending offensive messages through communication Service, etc:

Punishment for identity theft (Inserted Vide ITA 2008):

Punishment for cyber terrorism:

Punishment for publishing or transmitting obscene material in electronic form

Punishment for publishing or transmitting of material containing sexually explicit act etc. in electronic form

6. Explain about cyber laws.

### 19.14 Suggested Readings:

1. Durga Das Basu: Introduction to the Constitution of India
2. Durga Das Basu: Law of the Press
3. Dr. Jan R. Hakemulder, Dr. Fay AC De Jonge and P.P. Singh : Media Laws and Ethics
4. B. N. Pandey: Indian Constitution
5. Kiran Prasad: The Philosophies of Communication and Media Ethics

## **UNIT - 5**

### **Lesson - 20**

# **MEDIAS ETHICAL ISSUES**

#### **Objective:**

On completion of this lesson you should be able to understand:

- Privacy
- Communal Writings
- Sensationalism
- Yellow Journalism
- Media bias

#### **Structure:**

- 20.1 Introduction**
- 20.2 News**
- 20.3 Privacy**
  - 20.3.1 US Tort Privacy Law:**
  - 20.3.2 Data Protection as Right of Privacy**
  - 20.3.3 India**
- 20.4 Communal Writings**
- 20.5 Sensationalism**
- 20.6 Yellow Journalism**
- 20.7 Media Bias**
  - 20.7.1 Reasons for Bias**
  - 20.7.2 Structural Factors**
- 20.8 Summary**
- 20.9 Self Assessment Questions**
- 20.10 Suggested Readings**

## 20.1 Introduction:

Media ethics deals with specific issues, ethical principles and standards which are related to print media, broadcast media, films, theatre as well as the internet. The field covers many varied and highly controversial topics, ranging from corporate communications, war journalism, entertainment, advertising, blogging to privacy etc. Ethical issues of media are diversified and multitude in nature. One such wider segment is news and its coverage by media. With corporatisation and globalization the definition of news drastically changed and policies of media organizations and their perspective of looking at the news angle in various issues has raised ethical dilemmas.

## 20.2 News:

News can manipulate and be manipulated. Governments and corporations may attempt to manipulate news media; governments, for example, by censorship, and corporations by share ownership. The methods of manipulation are subtle and many. Manipulation may be voluntary or involuntary. Those being manipulated may not be aware of this. The recent incidents of Mumbai blasts have thrown many questions for discussion about news and public interest. Public opinion is divided in such instances where some people argued that every citizen is entitled to know what is happening and the other section opined that anything that disturbs the peace, tranquility and above all if the news creates problems for the government functionaries it should be regulated. Revelation of military secrets and other sensitive government information may be contrary to the public interest, even if it is true. Information about celebrities and their personal life can neither be completely public nor private. Hence they often become contentious in news. Publication is not necessarily justified simply because the information is true. Privacy is also a right, and one which conflicts with free speech.

## 20.3 Privacy:

"Privacy" is widely recognized as a legal right, but has a range of different meanings. These include restraints on intrusion into the home, confidentiality of correspondence, freedom to make certain fundamental decisions, control of personal data, anonymity, and many others. Countries differ on the specific understandings of privacy, their laws that help in protecting the privacy of individuals or organizations. Since the end of World War II, international legal agreements have recognized privacy as a human right because "laws protecting privacy are the means through which the collective acknowledges rules of civility that are designed to affirm human autonomy and dignity". The Universal Declaration of Human Rights provides that "no one shall be subject to arbitrary interference with his privacy, family, home, or correspondence." The International Covenant on Civil and Political Rights and the European Convention on Human Rights contain identical provisions. The "Right to Privacy" clause of the American Convention on Human Rights likewise provides that "no one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence."

A number of countries recognize privacy in their constitutions. In South Korea the Constitution states: "The privacy of no citizen shall be infringed." Similarly, the Basic Law of Germany protects privacy as part of "human dignity," "inviolability of the home," and the "privacy of correspondence, posts and telecommunications." In other countries like Brazil, Ireland, India, Japan, the Netherlands, Russia, and the United States privacy emanates from constitutions. In



addition to the constitutional guarantee of privacy, many nations regulate privacy as a civil or criminal offense through statutes. Although many European nations had adopted privacy laws prior to the Directive taking effect in 1998, the Directive significantly increased the scope and burden of privacy law throughout Europe. Argentina, Australia, Canada, Hong Kong, Japan, Singapore, South Korea, Switzerland, Taiwan etc. The other nations have also adopted broad data protection statutes. Common law has also played a significant role in evolving privacy requirements, especially in the United States and New Zealand.

**20.3.1 US Tort Privacy Law:** US common law, and later statutes, have also provided for four types of privacy torts over the years. First, the tort of unreasonable intrusion requires that it involve one's invasion of the solitude of another or his private affairs and that it be "highly offensive to a reasonable person." Second, the tort of disclosure of embarrassing facts applies to publication of private information that would be "highly offensive to a reasonable person" and is not of "legitimate public concern." The third privacy tort is publicity that places a person in a false light before the public. To be actionable under the false light tort, the publication must be both false and highly offensive to a reasonable person. The final privacy tort is for commercial appropriation of an individual's name, likeness, or other personal characteristic without permission. Most state laws require that the appropriation be for "direct commercial gain"; the activities of the press rarely are found to satisfy this requirement. Because they restrict expression and therefore must withstand first amendment review, they are rarely successful. To date, only a few awards to privacy tort plaintiffs have ever survived the Supreme Court's First Amendment scrutiny.

**20.3.2 Data Protection as Right of Privacy:** Privacy concerns almost always respond to new technologies. The latter third of the twentieth century witnessed the creation of a new and different form of privacy protection - data protection - in response to the development of computers since the 1960s. These data protection laws have evolved over the past three decades, and they have taken widely varying forms in different countries. Data protection laws generally focus on investing individuals with control over the collection and use of information about themselves.

**20.3.3 India:** The Press Council of India, formulated guidelines' to achieve a balance between the right to privacy of the public persons and the right of the press to have access to information of public interest and importance. The issue under heated debate at, both national and international level and the international conference of the 'World Association of Press council (WAPC) held in April 1998 in Delhi, stressed that there is a need for reconciliation between three 'competing constitutional values at play on this count, viz (a) an individual's right to privacy; (b) freedom of the press, and (c) the people's right to know about public figures in public interest. The Council has prepared a report on the issue and framed the guidelines as follows:

- Right to privacy, is an inviolable human right. However, the degree of privacy differs from person to person and from situation to situation.
- The public person who functions under public gaze as an emissary/ representative of the public cannot expect to be afforded the same degree of privacy as a private

person. His acts and conduct are of public interest even if conducted in private may be brought to public knowledge through the medium of the press.

- The press has, however, a corresponding duty to ensure that the information about such acts and conduct of public interest of the public person is obtained through fair means, is properly verified and then reported accurately.
- For obtaining the information in, respect of acts done or conducted away from public gaze, the press is not expected to use surveillance devices.
- For obtaining information about private talks and discussions, while the press is expected not to badger the public persons, the public persons are also expected to bring more" openness in their functioning and co-operate with the press in its duty of informing the public about the acts of their representatives.
- Journalistic ethics may conflict with the law over issues such as the protection of confidential news sources. There is also the question of the extent to which it is ethically acceptable to break the law in order to obtain news. For example, undercover reporters may be engaging in deception, trespass and similar tots and crimes.

## 20.4 Communal Writings:

Coverage of communal conflicts had often become contentious and invited more allegations. Though it is the bounded duty of media to inform the people scurrilous and inflammatory attacks, hide the reality and deviate from reality. Reporters should desist from the coverage of the communal violence based on rumours and unconfirmed reports. Similarly, distorted reporting and making important omissions will not be correct. It is the legitimate function of the press to draw attention to the genuine grievance of any community with a view to seeking redress in a peaceful and legal manner. There should be no hype or exaggeration of grievances, particularly those which tend to promote communal discord. Causing damage to a community is a serious matter and ascribing to it a vile, anti-national activity is reprehensible and amounts to journalistic impropriety. Making exaggerated or incorrect statements about religious communities and unwarranted suggestions for them by media would create disturbances in society. Verification of news is necessary before publication or broadcasting, especially when the report has slanderous or libelous overtones or could lead to communal tension. The gate keepers such as editors shall make necessary amends when any false or distorted publication is brought to his notice.

The press council of India had issued some guidelines for reporting communal disturbances. They are

- The state government should take upon themselves the responsibility of keeping a close watch on the communal writings that might spark off tension, destruction and death and bring them to the notice of the council.
- The government may have the occasion to take action against erring papers of editors. But it must do so within the boundaries of law.

- The authorities should not take measures like cut in advertisements, cancellation of accreditation, cut in newsprint quota and other facilities.
- Provocative and sensational headlines should be avoided by the press.
- Headlines must reflect and justify the matter printed under them.
- Figures of casualties given in headlines should preferably be on the lower side in case of doubt about their exactness and when the numbers reported by various sources differ widely.
- Headings containing allegations made in statement should either identify the person/body making the allegation or at least should carry quotation marks. News reports should be devoid of comments and value judgments
- Presentation of news should not be motivated or guided by partisan feelings nor should it appear to be so.
- Language employed in writing the news should not irritate and such as may foster feelings or amity among communities and groups
- Corrections should be promptly published with due prominence and regrets expressed in serious cases.
- It will help a great deal if in service training is given to journalists for inculcation of all these principles.

## 20.5 Sensationalism:

Sensationalism may be defined as a theoretical concept that encompasses those features of journalistic products that are capable of attracting the attention of the audience. Since the early days of newspapers, complaints about sensationalism have recurrently emerged in public discussions about the quality of journalistic products. These complaints pictured sensationalist news as a journalistic device being designed merely to attract the attention of large audiences at the expense of informing them properly about socially significant events. In its defense, it has been argued that sensationalist news is an appropriate response to the evolutionarily developed human habit of attending to information that increases the chances of survival and reproduction. Traditionally, sensationalism in the news has been conceived of mainly in terms of story content. Stories about topics such as crime, violence, natural disasters, accidents, and fire were considered as sensational. However, this definition of sensationalism provided no theoretical basis to explain why sensationalism would attract the attention. It also provided no theoretical basis for the negative effects sensationalism is often accused of. Against this background, the concept of sensationalism gradually evolved in the late 1990s. Notably, Grabe et al. and Hendriks Vettehen et al. provided a foundation of the concept in psychological theories of information processing, more specifically in the notion that certain types of stimuli elicit automatic attentive processes. In the context of news processing, these stimuli are referred to as sensationalist features.

Three categories of sensationalist features may be distinguished: basic needs content, tabloid packaging, and vivid storytelling. Basic needs content includes audio, visual, and verbal news content that may be considered as important to every person because of its reference to

basic human needs; e.g., stories about sex, violence, criminality, disasters, or famines. Tabloid packaging refers to formal features in news reports that represent unexpected or changing information. In television news, it includes transitions between scenes or camera shots as the most obvious examples, but also camera movements, uncommon editing techniques, and decorative techniques such as the insertion of music. In newspapers, extraordinarily large headlines or pictures may be considered as examples. Vivid storytelling refers to the inclusion in news stories of information that is either concrete or proximate to the audience. Well-known examples of vivid storytelling are the insertion of brief comments by lay persons on an issue in news reports, or the insertion of a report on an individual case history. In journalistic as well as scientific discourse, sensationalism has been theoretically linked to the mechanisms of market-driven journalism. The central hypothesis concerning sensationalism holds that an increasing competition puts pressure on news producers and owners to capture the attention of the audience. Sensationalism in the news is considered a successful way of achieving this. In line with this view, several studies have provided indications of trends toward more sensationalist television news, both in the U.S. and in Europe. However, the evidence is correlative, implying that increases in sensationalism may be attributed to developments that coincide with increasing competition, e.g., technological innovations, or trends in journalists' role perceptions. Because the concept of sensationalism is based on theories of information processing, predictions about cognitive processing of more or less sensationalist news could be tested. Notably, some studies have shown that the use of sensationalist features in news stories increases attentiveness during the viewing process, but that an unrestricted use of sensationalist devices (e.g., the tabloid packaging of a news topic with basic needs content) will induce cognitive overload, which will harm the storage of the news messages. Moreover, other studies have shown that a vivid way of storytelling differentially draws attention to the vivid parts of the informational content, which can lead to distorted comprehension and judgments. Although knowledge concerning the antecedents of sensationalism and the cognitive processing of sensationalism is accumulating, less is known about audience preferences for sensationalism. Future studies might focus on the relation between the presence of sensationalism in journalism and audience preferences for sensationalism. In addition, it might focus on audience variables that may relate to preferences for sensationalism, notably the sensation seeking personality trait. Sensational, provocative news as well as photos should be avoided and acts of violence or vandalism be reported in such a manner as may not undermine people's confidence in law and order machinery of the State.

## 20.6 Yellow Journalism:

Yellow journalism is an exaggerated or biased writing in the guise of fact. Though the story is factual it is presented in a sensational or distorted way. It may be used to invoke fear, loathing, uncertainty, or even sympathy in readers. The pioneers of yellow journalism are William Randolph Hearst and Joseph Pulitzer. In 1895, Pulitzer's paper, New York World, was the top paper in New York City and the surrounding area. Then Hearst bought the New York Journal, and quickly became Pulitzer's main competitor. The term yellow journalism came from a fight between the two papers over a cartoonist, who created a strip called the "Yellow Man." The comic strip used a special no-smudge yellow ink. Hearst took the cartoonist away from Pulitzer to create the comic strip in his paper. Pulitzer then hired a second cartoonist to duplicate the work of the first catapulting both the papers to a war over who could sell the most copies. To achieve circulation the papers started using sensationalism; altering the facts and writing outrageous headlines to

attract sales which ended up in a war between Spain and USA in 1898. Pulitzer and Hearst both had a huge role in how the American public viewed Cuba in its bid for independence from Spain. The papers emphasized the wrong-doings of the Spanish army, but breezed over any faults of the Cuban troops. Both papers, however, called for United States intervention, leading to the United States' involvement in the war. Yellow journalism has been used in every war the US has been involved in since then, portraying the opposite side as evil, subhuman, or similarly worth attacking. It has been used for political and social gain. The use of yellow journalism has mostly moved past the greed of newspaper owners, and is now used mostly to alter public opinion.

## 20.7 Media Bias:

A bias can be understood as a preference or inclination. A media bias, the opposite of objectivity, can be defined as differential treatment of (e.g., favoring) a particular side of an issue, which can be measured quantitatively or qualitatively. If one side receives proportionally less news coverage, or apparently more negative, inaccurate, or unbalanced coverage, a bias is shown. Some may argue that an absolute objectivity is impossible to achieve, and therefore the term "bias" - the antonym of "objectivity" - should be replaced by a term such as "favoritism." McQuail (1992) identifies four types of bias on the basis of a typology of open versus hidden, and intended versus unintended. A partisan bias is open and intended, such as an editorial endorsement. Propaganda is intentional yet hidden, such as the result of a firm's or a government's public relations efforts. An unwitting bias is open and unintended, such as the fact that certain news topics are covered while others are not. Finally, ideology is unintended and hidden, and therefore is difficult to define or detect as it is "embedded in text". Interestingly, the accusation that the news media have a liberal which is ideological bias is common in the US.

The media bias generally consists of three aspects: the ideologies and party affiliations of journalists, actual media content, and the structure of media organizations. Using the United States as an example, its news media are constantly accused of having a liberal bias. Most reporters in large media outlets identify themselves as liberal and supporters of the Democratic Party, which is perceived as a type of bias. Even though anecdotal examples of liberal or pro democratic coverage can be found occasionally, most systematic analyses of media content have found little or no political or partisan bias in mainstream news media. Another group of media critics believes that mainstream media, especially those in the US, have a conservative bias, partially due to the media's corporate ownership, as evidenced by their support for a capitalist and two-party-system status quo. Some observers argue that alternative political views are often considered un-newsworthy and therefore are ignored by mainstream media or receive unfairly negative coverage. In addition to partisan or political biases, the media have been accused of having racial, gender, religious, and class biases.

**20.7.1 Reasons for Bias:** Media critic Michael Parenti offers several explanations for a general belief that the media have a political bias. First, due to the media's corporate ownership, conservative voices are dominant and can repeat their complaints more often than liberal critics. Second, conservative politicians and commentators habitually attack the media to put them on the defensive. Third, the reporting of social realities in the news, such as wrongdoings in the government and large corporations, or poverty and pollution, can be considered liberal in nature. Similarly, a group of media scholars argue that conservative and Republican elites' strategic and frequent complaints have convinced both the media and the general public of the existence of a liberal and pro-Democratic bias. Another



line of research offers an alternative understanding of the perception of a media bias. "Hostile media" studies suggest that supporters of an issue or a group tend to believe the media favor their opponents. In other words, supporters of political or social groups or issues tend to perceive the media as being unfair or even hostile to their own cause or side while favoring their opponents, and hence a media bias is perceived. Therefore, the perception of a media bias is likely caused by an observer's own bias. However, this argument does not exempt journalists from taking responsibility for accurate and objective reporting. One more approach to understanding perceived biases in the media is the fact that audiences are likely to seek exposure to political information they tend to agree with, and process information in a way that matches their existing view. However, if they happen to see a viewpoint in the news that they disagree with, they likely perceive a bias. At the same time, consumers may categorically assume all information from a certain source is completely biased and therefore not worth their attention. If citizens in a society are not exposed to, or are not open-minded about, perspectives they do not necessarily agree with, there can be some negative consequences in a participatory democracy.

**20.7.2 Structural Factors:** Conceptually, biases are difficult to avoid because news content is a reality selectively constructed by journalists. Because of limited space and time in any medium (known as the "news hole"), decisions on topics and reporting angles must be made, and any selection itself can be seen as a form of bias. Certain forms of biases have been well studied, such as the overrepresentation of "official sources" and the lack of alternative viewpoints in the news. Possible explanations for such phenomena include the structure of a news organization, the ritual of news gathering, and the position of news organizations in a social structure. Studies on the production of news, particularly on news gathering and gate keeping, suggest that journalists often operate under a news beat system, which makes news gathering easier given a news organization's limited resources. This system is biased toward official sources because they are easy to access. Also, journalists are socialized to adopt certain criteria of newsworthiness, which also might favor the power status quo. For instance, a reporter would automatically contact the spokespersons of the local police or fire department when a fire or crime occurs, likely because such officials are most apt to have relevant information. In addition, journalists are trained to judge newsworthiness in a way that reflects the power structure in society. For instance, politicians and business leaders are considered more important than common citizens. Therefore, the former group's voices are heard more frequently in the news.

## 20.8 Summary:

Specific issues, ethical principles and standards which are related to print media, broadcast media, films, theatre as well as the internet are often discussed for their coverage and operationalisation in terms of ethics and morals. Though many of the mass media prefer to inform the people in a transparent, objective manner they are also influenced to take up commercial overtones. In covering conflicts, political news. Governance and to simultaneously protect their interests even the serious mass media have been skewing towards commercialization, sensationalism, bias etc. Revelation of military secrets and other sensitive government information, Privacy which conflicts with free speech and handling of communal conflicts had often invited criticism. Sensationalism, yellow journalism are nothing but an exaggerated or biased writings in the guise of fact. The media bias, on the other hand is nothing but differential treatment to a (e.g., favoring) a particular side of an issue.

**20.9 Self Assessment Questions:**

1. Explain how media bias influences the political interests of the nation as well as at regional level.
2. Write the case studies of sensationalism and explaining them in detail.
3. Is 24 hr television evading the privacy? Explain how.
4. Communal writings influence various sections of the society in a pattern of multitude.

**20.10 Suggested Readings:**

1. Durga Das Basu: Introduction to the Constitution of India
2. Durga Das Basu: Law of the Press
3. Dr. Jan R. Hakemulder, Dr. Fay AC De Jonge and P.P. Singh : Media Laws and Ethics
4. B. N. Pandey: Indian Constitution
5. Kiran Prasad: The Philosophies of Communication and Media Ethics



## Lesson - 21

# ETHICAL ISSUES OWNERSHIP OF MEDIA

### Objective:

On completion of this lesson you should be able to understand:

- Ethics applied to media
- Ownership in the Media
- Ethical issues and ownership
- Advertising Ethics
- Self-Regulation of the Media
- Invasion of Privacy
- Role of Press and Media Councils
- Ombudsman
- Accountability

### Structure:

- 21.1 Introduction
- 21.2 Ethics applied to media
- 21.3 Ownership in the Media
- 21.4 Ethical issues and ownership
- 21.5 Self-Regulation of the Media
- 21.6 Invasion of privacy
- 21.7 Role of Press and Media Councils
- 21.8 Ombudsman
  - 21.8.1 Role of Press Ombudsman
  - 21.8.2 The work of the Ombudsman
  - 21.8.3 Indian Scenario
- 21.9 Accountability
  - 21.9.1 Accountability of the News
  - 21.9.2 Media Accountability
  - 21.9.3 Watch dog Role
- 21.10 Summary

**21.11 Self Assessment Questions****21.12 Suggested Readings****21.1 Introduction:**

Various forms of economic intervention have been adopted, especially in relation to the newspaper press (broadcasting being separately regulated in this respect). In some countries limits have been set to the degree of concentration of ownership. Questions of media ethics address the way media practitioners such as journalists, public relations (PR) representatives, bloggers, technical support staff - resolve various types of dilemmas they face, as well as the value judgments that media audiences make regarding media content and performance. What does it mean to be "responsible" as a media professional? How should journalists balance the need for sensitivity with their mission to convey accurate, comprehensive depictions of events? What should a PR practitioner do when the interests of a business client conflict with professional values of public service and transparency? How do newspaper readers and television viewers expect news organizations to minimize potential harm to people without sanitizing the news? These are examples of key questions that concern media ethicists.

**21.2 Ethics Applied to Media:**

The purpose of ethics is not to provide clear-cut answers regarding what constitutes good behavior or the "right" thing to do, but to enable people to resolve conflicts and dilemmas by asking the right questions based on the promotion and prioritization of key ethical principles and values. While the broader principles mentioned above play a central role in media ethics theorizing and research, they often manifest themselves in more specific values that are enshrined across media sectors. Media professionals must be committed to a spirit of public service. They must be above-board, or transparent, in their work. They must take reasonable steps to minimize harming others in the course of carrying out their duties. They must allow their audiences to hold them accountable for their performance. Most cases in media ethics involve events or decisions in which two or more of these values come into conflict, and media practitioners must decide which will be given priority in a particular decision and why. Such real-life dilemmas are referred to as applied ethics. Since media ethics is concerned with such fundamentals of behavior, the field incorporates several other dimensions of media. For example, media ethics research addresses the evolution of ethical standards and norms, questions of how ethical orientations influence professional behavior, and assumptions and implications of legal and policy decisions. Much of the media ethics literature that deals with these and other areas generally falls into one or two categories: philosophical explications for normative theorizing and empirical research on issues of media sociology.

**21.3 Ownership in The Media:**

Structures of media ownership take the form of either public or private enterprises. Public media can be state-owned as in the former Soviet Union or state-managed, controlled by the government in power such as China's ruling Communist Party newspaper, Renmin Ribao, or can have a charter making them relatively independent of the state or governing power such as Britain's BBC. The type of structure, public or private, does not necessarily correspond either to the degree of professional freedom enjoyed by the media organ or to its quality. Some African broadcast media are modeled on the BBC but operate with far less openness and with frequent political interference.

Privately controlled media, especially of the publicly traded stockholder type, have become more prevalent worldwide during the past 25 years. In the US, one of the prevailing patterns of broadcast ownership is control by major banking and financial institutions. The major stockholders and board members of leading broadcasting networks include such banks as Bank America, Citigroup, Chase Manhattan, Bankers Trust, Washington Mutual, and Morgan Guaranty Trust, which interlock not only with the media and other major industries but also among themselves; they are thereby able to exercise significant influence over fiduciary functions and management hiring in the media. Major media organizations also interlock with Fortune 500 corporations, including airline, energy, nuclear power, insurance, telecommunications and weapons industries.

Media policy in Australia, New Zealand, Canada, and Western Europe has followed a similar pattern of consolidation. The very high concentration of media ownership in Australia is led by Rupert Murdoch's New York-based News Corporation (which formerly had its headquarters in Adelaide), which alone controls some 70 percent of the country's newspapers. News Corporation, along with John Fairfax Holdings, the Harris Group, and West Australian Newspapers, make up the Australian Associated Press, which dominates national news distribution in the print and broadcast media (Given 2001). Similarly, New Zealand is dominated by four foreign-owned giant media corporations. In Canada, media ownership patterns did not significantly change until the mid-1990s, when the government's Canadian Radio-Television and Telecommunications Commission (CRTC) liberalized ownership rules to permit companies to own multiple television stations in the larger markets.

## 21.4 Ethical Issues and Ownership:

Many of the ethical issues are cropping up in media sector because there are no limits on the concentration of media ownership. Global changes in media ownership, new ways of carrying out gate keeping across national boundaries and emerging shared norms of professionalism all give greater emphasis to this perspective. Given the international reach of the current media, "global events" along with the local events such as the coverage of recent Mumbai blasts have been increasingly raising the subject of ethics. Although much of news originates from within large media organizations, alternative forms are widely available. The underlying premise of "alternative news" is that media ownership, with its bias towards capital and government, is an impassible barrier to news of public importance. Editors and journalists cannot operate independently according to their professional norms and ethics. Hence the issue of ethics is getting complicated day by day. The Press Council of India states that 'while newspapers are entitled to ensure, improve or strengthen their financial viability by all legitimate means the press shall not engage in cross commercialism or unseemly cut throat commercial competition with their rivals in a manner repugnant to high professional standards and good taste. Price wars and commercial competition in the field of mass media assumed the shape of unfair trade practices repugnant to journalistic ethics.

**21.4.1 Acts relating to advertising:** Though mass media leave no chance to make money through advertisements various laws pertaining to the field were in force to control them. Some of them are:

- Section 292 and 293 of Indian penal code, 1860 prohibits the dissemination of any obscene matter. The Indian post office act, 1898 imposes a similar prohibition on the transmission of obscene matter through the post. The customs act, 1962, allows the detention and seizure of any obscene matter sought to be imported into the

country.

- The Young Persons (harmful publications) act, 1956 prohibits the dissemination of publication deemed to be harmful to the persons under the age of 20 years.
- The Indecent Representation of (prohibition) act 1986 prohibits the depiction of women in an indecent or derogatory manner in the mass media.
- The Children act, 1960 prohibits the disclosure of the name and address and other particulars of any child involved in certain proceedings.
- The Emblems and Names (Prevention of improper use) act, 1950 forbids the use of emblems that are official insignia by any private party of certain names.
- The prevention of insults to the national honour act, 1971 forbids bringing into contempt the national flag or the constitution of India in any manner.
- The Indian Penal Code, 1860 prohibits the publication of any matter connected with unauthorized lotteries, while the Indian Post Office Act, 199 imposes a similar prohibition on the transmission of such matter by post. Indian penal code, 1869: The act prohibits the publication of appeals using national symbols for furthering the prospects of any candidate at an election.
- The Drugs and Magic Remedies (objectionable advertisements) act, 1954 prohibits advertisements of products and services claiming to cure certain medical conditions.
- The Prize Competition act, 1979: It prohibits the publication of matter which authorizes price competitions, while the price chits and money circulation schemers (banning) act, 1978, imposes a similar prohibition in respect of chits and money circulation schemes.

**21.4.2 Paying for Editorial Coverage:** It has become common to find instances of garnering publicity by paying for editorial space. It is a different matter that many media houses facilitated the process on their behalf.

**21.4.3 Ambush Marketing:** This happens when an organization represents itself as being associated with an event when it has no official, legal or moral right to do so. Instances would include putting paid for signage at events when it has no relevance to the event, sponsorship of individual teams, ad time around broadcasting major promotions coinciding with the event, give a way outside the event when it doesn't have a sponsor.

## 21.5 Self-Regulation of The Media:

Media self-regulation is the setting of rules for the media and oversight of compliance with those rules by media organizations or by users. Self-regulation should be distinguished from state or statutory regulation (i.e., regulation by law or by a statutory regulatory authority). Self-regulation include dispute resolution procedures, rating boards, codes of conduct, and at the level of the user, technical measures such as filtering, encryption, and pin numbers that regulate children's and others' behavior. Self-regulation is often seen as more attractive than state regulation because it has legitimacy with the industry, is more flexible in responding to change, and can offer an alternative

to state and political interference with media content. On the other hand, it is often criticized for the same reasons: because it is overly flexible and too close to the industry to offer genuine protection of the public interest. The sanctions of self-regulation are generally seen as weaker than those available to statutory bodies or through legal process. Usually, exclusion from the trade association or self-regulatory scheme is the ultimate sanction. In the case of press and broadcasting, there may be an obligation to publish a retraction or apology. Forms of self-regulation are in some cases linked to statutory schemes. For example, the self-regulatory ratings provided by the Motion Picture Association of America and the British Board of Film Classification are adopted in the statutory framework for video rental or film exhibition. Such hybrids between state and self-regulation are referred to as co-regulation or regulated self-regulation. Press codes focus on the practice of ethical journalism, in matters such as intrusion into privacy and accuracy of information provided. Codes for the electronic gaming sector focus narrowly on protection of minors and content standards. In the context of convergence these sectoral differences will be increasingly significant as codes and self-regulatory schemes overlap and potentially conflict.

### **21.6 Invasion of Privacy:**

According to Clarence Jones more and more people do not sue for defamation but for invasion of privacy against media as privacy cases focus on personal and emotional beliefs in conflict with each other. The press council of India in its norms of journalistic conduct, 2005 says the press shall not intrude or invade the privacy of an individual unless outweighed by genuine overriding Public interest, not being a prurient or morbid curiosity. So, however, once that matter becomes a matter of public record, the right of privacy no longer subsists. And it becomes a legitimate subject for comment by the press and media, among others".

### **21.7 Role of Press and Media Councils:**

In various countries press and media councils have been formed to protect and ensure that the basic tenets of journalistic ethics, morality and public welfare are upheld. Press council acts as a regulatory body and serves a dual constitutional purpose. It protects the freedom of the press, independence of the newspapers and news agencies not only from government authorities but also from other external and internal interests and forces. Existence of such a mechanism prevents legal restrictions being placed on the press by the government. The PCI also discharges its advisory jurisdiction by giving opinions to the government and other bodies on various questions related to the working of the mass media. It has the power to decide on complaints made by individuals and public authorities against print media organizations and media personnel. The PCI however has no jurisdiction over radio, television and other such non print mass media.

Press Council of India is a statutory body in India that governs the conduct of the print and broadcast media. It is one of the most important bodies that sustain democracy, as it has supreme power in regards to the media to ensure that freedom of speech is maintained. It was established to preserve the freedom of the press and to maintain and improve the standards of newspapers and news agencies and protect their independence. It developed a general code of conduct for journalists to ensure high professional standards and create awareness about their rights and responsibilities. However, it is also empowered to hold hearings on receipt of complaints and take suitable action wherever appropriate. It may either warn or censure the errant journalists on finding them guilty. It did so on 21 July, 2006, when it censured three newspapers Times of India (Delhi and Pune), Punjab Kesri (Delhi) and Mid Day (Mumbai) for violation of norms of journalistic conduct.

The press council of India has constitution protection its actions can not be questioned unless it is proved to be in violation of the constitution.

### 21.7.1 Press Council and Ethical Issues:

On certain issues which are considered as ethical and effect wider section of the society the Press Council of India (PCI) formulated guidelines. Issues like communal disturbances, plagiarism, correction or apology for error and maintaining confidentiality are some such examples.

- PCI states 'news, views or comments relating to communal or religious disputes/ clashes shall be published after proper verification of facts and presented with due caution and restraint in a manner which is conducive to the creation of an atmosphere congenial to communal harmony, amity and peace. Sensational, provocative and alarming headlines are to be avoided'.
- It warns against defamatory writing and states that a newspaper should not publish anything which is manifestly defamatory or libelous against any individual organization unless after due care and checking it has sufficient reason to believe that it is true and its publication will be for public good.
- The PCI also warns against the publication photographs which might be considered lewd, vulgar or pornographic. If the photograph is arousing feelings of sexual excitement it should be avoided by the newspaper.
- Regarding communal disturbances PCI suggested that news reports should be devoid of comments and value judgments. Presentation of news should not be motivated or guided by partisan feelings nor should it appear to be so. Language employed in writing the news should be temperate and such as may foster feelings or amity among communities and groups. Corrections should be promptly published with due prominence and regrets expressed in serious cases. Provocative and sensational headlines should be avoided by the press.
- Under the mandate of section 13(2)(b) of the Press Council Act, 1978 has built up a set of guidelines to facilitate the functioning of the media. Of these, the guidelines on coverage of HIV/AIDS related matter was drawn up in the year 1993.
- PCI formulated certain guidelines about the coverage of election and says that it is the duty of the press to give objective reports about elections and candidates. The newspapers can't indulge in unhealthy election campaigns, exaggerated reports about any candidate/party or incident during election. The press shall observe all the directions/ orders/ instructions of the election Commission/ returning officers of the chief electoral officer issued from time to time.
- In case of plagiarism the PCI states that using or passing off the writings or ideas of another's as one's own without crediting the source, is an offense against the ethics of journalism. If it does so the lifting newspaper must duly acknowledge the source of the report. Features and articles should not be lifted without permission and proper acknowledgment.



- When any factual error or mistake is detected or confirmed, the newspaper should publish the correction promptly with due prominence and with apology of expression of regrets in a case of serious lapse. The newspaper should promptly and with due prominence, publish either in full or with due editing, free of cost, at the instance of the person affected or feeling aggrieved or concerned by the impugned publication a contradiction/ reply/clarification or rejoinder sent to the editor in the form of a letter or note.
- If information is received from a confidential source, the confidence should be respected. The journalist cannot be compelled by the PCI to disclose such source, but it shall not be regarded as a breach of journalistic ethics if the source is voluntarily disclosed in proceedings before the council by the journalist who considers it necessary to repel effectively a charge against her/him.
- Regarding the reference to caste, religion or community the guidelines say that in general, identification of a person by his caste or a particular class should be avoided, particularly when the news report conveys a sense or attributes a conduct or practice derogatory to that caste.
- Press council also observed that there are grounds which justify the publication of derogatory, scurrilous or defamatory material about an individual where there is no public interest is involved. The media should not base its comments about the fresh actions of an individual on that person's previous behavior if it has no relevance to the present situation.
- Giving much of importance to national interest the PCI states that newspapers shall as a matter of self regulation, exercise due restraint and caution in presenting any news, comment or information which is likely to cause harm to the nation or right of the citizens. Any wrong depiction which may go against the interests of the country must be immediately and prominently retracted with expression of regret.

## 21.8 Ombudsman:

This concept of press ombudsman or reader's editor is being more commonly practiced in the USA. It is a form of self regulation which provides a semiautonomous complaints and disputes resolution mechanism within a single media organization. For example, the Asahi Shimbun in Japan established a committee to resolve complaints as early as 1922. For these internal self-regulatory mechanisms to be effective, it is generally accepted that ombudsmen or complaints committees should enjoy independence of action within the organization and have a protected employment status. In addition, journalists may be subject to the code of conduct of a professional organization such as a trade union. In some cases, professional associations demand compliance with a code of professional ethics.

### 21.8.1 Role of Press Ombudsman:

The ombudsman appeared officially in 1809, in Sweden, with the status of minister and the function of controlling the public power and listening to the appeals of the citizens against government organs. Later, the ombudsmen were adopted in other countries; mainly the Scandinavian ombudsmen were created against ethnical discriminations. They have the Parliament Ombudsmen,



that of the consumers, etc. Before the Swedish experience (in the XIX century), there had been "listeners". We know that in ancient Rome The Tribune of the Pleb listened to the complaints of the citizens. In Colonial Brazil, the bishops had the function of "Listeners which gave birth to the popular expression (in Brazil): "Complain to the bishop". The first press ombudsman appears in the U.S.A. in July 1967, with the function of listening to the complaints of the readers of the Louisville Courier Journal and of the Louisville Times, both in Louisville, Kentucky. In spite of that the first ombudsman with a public column has been Richard Harwood, in The Washington Post, in 1970. The American pioneers in the creation of the press ombudsman in questioned by the Japanese. The Japanese newspaper Yomiuri Shimbun guaranteed that, in 1938, it had already a professional with a function similar to that of the ombudsman. In Brazil, the first newspaper to adopt ombudsmen has been the "Folha de S. Paulo". In 1989, it chose Caio Tolio Costa to occupy the function. Other newspapers have tried to create it first. According to Caio Tolio, the first publication that tried to implement the function was the Jornar do Brasil, in 1982, and didn't succeed because various journalists invited to occupy the function refused it. According to him, the main competition of the Folha, de Estadp de S. Paulo tried to create the function. Directors and journalists of the Estado discussed the subject with specialists of the Navarra University and everything was being prepared for the implementation of the project, until finally in the middle of 1990, this project was abandoned since the Folha de S. Paulo had created the office first. Folha's experience was pioneer not only in relation to the press, but also in relation to any kind of institution. After the attitude of the Folha, many enterprises, public organs and even county administrations adopted ombudsmen.

Canada also has a federal act regarding access to information. The Access to Information Act allows any individual to apply for access to a government document, and, like its US counterpart has exemptions to the presumption of openness. Unlike in the United States, however, individuals who believe they have been improperly denied access to a record under the Act can appeal to the Office of the Information Commissioner of Canada. The Information Commissioner is an independent ombudsman appointed by Parliament to investigate complaints under the Act and mediate disputes. The Commissioner has strong investigative powers and annually ranks government agencies on their compliance with the Act.

### **21.8.2 The Work of The Ombudsman:**

Most of the times, the ombudsman has three functions: listening to the readers, writing a daily a bulletin criticizing the paper (which circulates internally among the journalists) and preparing a weekly column to be published. Some ombudsmen don't have columns for public criticism. In these cases, the work of the ombudsman is very similar to that of a complaints department and loses its function, which is to stimulate the reflection of main issues and the debate about the process of journalistic production. To make their work, the ombudsmen need independence in relation to the direction of the paper. Because of that, some guaranties are given to this profession as stability during his mandate (in the Folha it is of a year, which can be prorogated for two years more). To avoid his involvement with the orientation of the publication generally the ombudsman's room is located far from the editorship,. In the case of the Folha, the ombudsman has an office in a building near by.

### **21.8.3 Indian Scenario:**

The Indian media also has adopted this practice of ombudsman. To promote fair journalism some news organizations have adopted the system of appointing an internal editorial ombudsman.

Such a person will generally be a senior journalist and his work would be independent in nature. He tries to ascertain whether the grievances of readers, listeners and viewers are genuine and if required need redressing. An ombudsman is not merely meant to take an impartial view of complaints made by the constituents of a media organization, on occasion, ombudsmen have the penalties on errant employers or contributors to media houses. This is a way in which media organizations are accountable to society. This practice of self regulation will help in mediating conflicts developed because of various pressures and to maintain accountability. The Chennai based "The Hindu" also had appointed a reader's editor who functions on the lines of ombudsman. Here, the newspaper itself takes up some news, issues and discusses them at length. Readers enquire, opinions are also taken up in a bigger way. In Andhra Pradesh, HMTV 24/7 television news channel has also appointed a senior most journalist and academician to look into the complaints, enquires and ambiguities of news coverage.

## 21.9 Accountability:

Accountability and responsibility are linked to the general notion of answerability. Responsibility is concerned about the question of 'what', while accountability is related more to 'how'. Otherwise stated, the key issue of responsibility is to define to what social needs the media should respond while that of accountability has to do with how to compel the media to respond to those needs. According to Dennis McQuail media accountability refers to both "voluntary and involuntary processes by which the media answer directly or indirectly. It can be considered to involve two sub-dimensions: liability for any harm caused by publication and answerability for the quality of publication.

### 21.9.1 Accountability of The News:

The notion of media accountability concerns how to balance freedom and social responsibility in various aspects such as media structure, performance, and products. Accountability of the news is a notion concerning media products, especially public affairs reporting. News accountability may involve two different sub-dimensions: liability and answerability. Liability deals with the issues of how to prevent or reduce potential harm or danger caused by news content and focuses on imposing on the media material penalties based upon private or public laws.

On the other hand, answerability concerns how to control and improve the quality of news and emphasizes more noncoercive measures such as debate, negotiation, and dialogue between the news media and their claimants. The notion of answerability is most concretely expressed in various codes of ethics or professional conduct that journalists or media industries have voluntarily accepted as their own professional or managerial guidelines. It further underscores the role of news critics and those people affected by the news, beyond that of media owners and practitioners. In sum, news accountability is a normative notion which explores how to balance freedom and quality content serving public interests, and it can best be reached by combining external (or imposed) and internal (or voluntary) regulations.

The law and codes of ethics deal with essentially the same issues and they mainly include: truthfulness, honesty, accuracy of information; correction of errors; prohibition of discrimination on the basis of race/ethnicity/religion; respect for privacy; prohibition of accepting bribes or any other benefits; fair means in information collection; prohibition of any outsider influences on the journalistic work; prohibition of discrimination on the bases of sex/social class; freedom of expression of any kind; and professional secrecy. And these issues can be condensed into a few more fundamental

normative expectations for the news: freedom and independence, equality and diversity, and truthfulness. These can also be regarded as the most essential qualities required for the news to be socially accountable.

### **21.9.2 Media Accountability:**

Media accountability refers to the general belief that mass media has to be accountable in the public's interest, that is, they are expected to behave in certain ways that contribute to the public good. Despite this, the media can enjoy the freedom in its varied formats of news presentation. However, the concept of accountability is not clearly defined. It often collides with commercial interests of media owners; legal issues such as the constitutional right to the freedom of the press in the U.S.; and governmental concerns about public security and order. Several international organizations, like International Freedom of Expression Exchange, Freedom House, International Press Institute, World Press Freedom Committee and the Inter American Press Association, watch over governmental control of the press. We are, living amidst the fallout of the most controversial conflict of our times, where media plays a vital role with greater responsibility and can affect the public disburse on international politics, economy and society at large. When the media's relation to power is at the forefront of political discussion and news reporting can lead to decisions on whether or not to go for war. Everything can be affected by journalists (media), as peace activist and their mediation at the world. Media are free to criticize established institutions. They assist the process of self examination, which is essential to self-governance. They must not enslave and more dependent on big sponsored money to carry out the dictate of the states, autocrats, military establishments, communal organizations and imperial psychology.

### **21.9.3 Watch Dog Role:**

Media with its great responsibility as the watchdog of the society can analyze the nature of armed conflict and internal violence with its strategic forecast of racial, ethnic, political, cultural, religion, and economic factors. With preventive diplomacy and the first hand 'experience of war and its consequences, destruction, 'loss of life, economy of the home front and victim of genocide and the causes of conflict in the wider context, media can help the victims by shedding light on the emergence of radical Islam in a constructive way devoid of provocative semantics by debating on the resolution of conflict, the diplomacy and peace keeping and the role of superpowers. Media could address the challenges of tomorrow, potential conflict, promotion of negotiation and the formulation of general norms international behavior and growing needs of regional co-operation.

Media with its new information and communication' technology can analyze the 'minds of political parties, pressure groups, new social movements, contemporary problems of citizen and states for public information and opinion construction, but often fails due to self-critical examination of the news, opinions, articles and editorials on conflict and violence. Media ignores the possible consequences of fabricated, biased or sensitive information being portrayed among the people at large, which lead to misunderstanding and preaching of hatred, fear and communal feeling as a way out for arm conflict and internal violence. It is the moral responsibility of media to address the nature and sources of interstate and internal conflicts as well as the method to prevent this conflict and deal with its consequences, and with its scholarly research it can contribute to reducing the sources of conflict to produce a more just and peaceful world.

### 21.10 Summary:

Various forms of economic intervention have been adopted, especially in relation to the newspaper press (broadcasting being separately regulated in this respect), and in some countries limits have been set to the degree of concentration of ownership. Questions of media ethics address the way media practitioners such as journalists, public relations (PR) representatives, bloggers, technical support staff - resolve various types of dilemmas. The purpose of ethics is not to discuss as to what is good behavior or the "right" thing, but to help in resolving conflicts and dilemmas by asking the right questions based on the promotion and prioritization of key ethical principles and values. The broader principles play a central role in media ethics theorizing and research, they also manifest themselves in more specific values that are enshrined across media sectors. Media professionals must be committed to a spirit of public service. They must be above-board, or transparent, in their work. Structures of media ownership take the form of either public or private enterprises. "Public" refers to those media funded at least partially out of general public revenues, whereas in the general sense "private" means media whose financing is provided by individuals, families, or groups. Global changes in media ownership, new patterns of gate keeping in print media, the oldest notion of advertising as a least ethical profession have often raised doubts about the sincerity in dealing with public issues.

### 21.11 Self Assessment Questions:

1. List out the Ethics applied to media
2. Explain the ownership patterns in the Media
3. Explain how ethical issues and ownership are inter related?
4. Trace the importance of advertising ethics in the era of globalization.
5. Self-Regulation of the Media need of the hour. Explain.
6. What are the possible ethical questions raised in Corporate Communications

### 21.12 Suggested Readings:

1. Durga Das Basu: Introduction to the Constitution of India
2. Durga Das Basu: Law of the Press
3. Dr. Jan R. Hakemulder, Dr. Fay AC De Jonge and P.P. Singh : Media Laws and Ethics
4. B. N. Pandey: Indian Constitution
5. Kiran Prasad: The Philosophies of Communication and Media Ethics