MEDIA LAWS AND ETHICS

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UNIT

1

AN INTRODUCTION TO CONSTITUTION AND MEDIA LAWS

STRUCTURE

1.1. INTRODUCTION

Media Law and Ethics equips prospective mass communication professional with the basic legal and ethical safeguards to perform his or her job within the acceptable legal and ethical boundaries. Ignorance of the law is neither an excuse for breaking the law, nor is an excuse for violating the code of ethics of any profession. It is for this reason that the professional must be conversant with what is legally and ethically expected of him.

The relationship between individuals and groups, which results in interdependency between them, always brings about overlapping functions, conflicting rights, competing interests, and neglected duties/expectations. The interrelationships and interdependence between individuals and groups define society. It is as a result that law is set in not only to define individuals' rights, interests and obligations but also to set the limit to which a right is exercised in relation to other rights and obligations. Thus, as put by Elias (1969), the law remains an umpire.

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1.2. MEDIA LAWS AND ETHICS

Media ethics is the subdivision of applied ethics dealing with the specific ethical principles and standards of media, including broadcast media, film, theatre, the arts, print media and the Internet. Before describing the constitution of India first we would like to highlight the meaning of law.

Law is the overall guiding principle of human conducts. A law is basically a body of principles or rules which are the bases of a society. Members of a society are meant to abide by the law established by it. It is very hard to have a society without a set of laws guiding it. Human life needs a proper rule of conduct or principle at every step. It is also important for a successful society. Law according to Oyakhilomen, controls, regulates, enforces and punishes. It is very uncommon to have a society absolutely free of law, i.e., a state of anarchy. Whether consciously or unconsciously; written or unwritten; observed or violated; elements of law exist in every society. Oyakhilomen writes: Society cannot exist without rules of social order. Hence every civilised society has its publicly recognised authority for declaring, administering and enforcing its laws. Can you for a moment visualise a state without law and any enforcement system (if such state ever existed)? Suppose the Nigeria Police Force were to observe one day public holiday. What would you find? The state of normlessness or lawlessness is shade or too worse than the perpetual state of warfare and reign of terror and fear. This is a mirror of the state of nature whereas Thomas Hobbes stated in The Leviathan: "each man was his own master; personal force alone determined each man's position. Life in these conditions was solitary, nasty, brutish and short". This leads one to appreciate the fact that the society cannot exist without rules of social order—law. The picture of a state without law helps to bring to the fore, what the functions of law would be in the society. There are various definitions of law by various law professionals and authors. Some of them are as follows:

- A rule of conduct or procedure established by custom, agreement, or authority.
- A code of principles based on morality, conscience, or nature.
- A law is a rule of conduct of any organised society, however simple or small, that are enforced by threat of punishment if they are violated. Modern law has a wide sweep and regulates many branches of conduct.
- A body of rules of conduct of legal force and effect, prescribed, recognised, and enforced by controlling authority.

Oyakhilomen agrees that law has no universally acceptable definition because many of the definitions put forward are conceived from individuals' perspectives of law. He thereafter highlighted and discussed some definitions from which a few are extracted for the purpose of this course. According to him, law is:

(a) "A set of rules governing human activities and relations." He stated that this definition appears extremely wide, accommodating rules of every game, of clubs, even of gangs of thieves. It is all encompassing.

(b) "A rule of action prescribed or dictated by some superior which some inferior is bound to obey" and is applied indiscriminately to all kinds of actions, whether animate or inanimate, rational or irrational (Blackstone), or

(c) A command set either directly or circuitously by a sovereign individual or body to members of some independent political society in which his authority is supreme (John Austin). He discusses Blackstone and Austin's definitions as being silent on omission or inaction. 'Description of law as a rule of action is wide enough to cover: rules of a father to his son, or rules of a husband to his spouse which are no law' he submitted.

(d) A body of principles recognised and applied by the state in the administration of justice. He asks if the state does not apply moral principles, which do not answer the descriptions of law.

(e) Rules, which the courts will follow, the prophecies of what the courts will do, in fact, and nothing more pretentious. This is a classic egg and the chick case.

(f) Rules, which the courts—the judicial organs of that body—lay down for the determination of legal rights and duties. In other words, law means the rules of court.

(g) An aggregation of legislations and accepted legal principles and the body of authoritative groups of judicial and administrative actions. He submits that this definition is more a description than a definition.

(h) A general body of such rules of conduct expressing the will of the ruling class as are established by legislation and such customs and rules of community life as are sanctioned by the government; the application of which body of rules is secured by the coercive force of the state for the protection, consolation, and development of the social relations and the public order, beneficial and desirable for the ruling class. A general body of such rules of human conduct established or sanctioned by the government power, the execution of which rules is secured by the coercive power of the state.

1.2.1 Origin of Law

Law, according to some scholars, is as old as man. In the Quran, God created the first man, Adam and his wife, Eve put them in the paradise. God enacted law for them (the dos and the don'ts) to serve as their guiding principles. And He said:

"O Adam! Dwell you and wife in the paradise and eat both of you freely with pleasure and delight, of things therein as wherever you will, but come not near this tree or you both will be of the wrongdoers."

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From this Quran verse, it is established that God enacted laws for the first man and his wife, which set for them the limit in the use of the provision in the paradise. God also stipulated the measure for the violation of the laws and the punishment that goes along with it is stated in verse 36 of the same chapter. Similar quotation can be found in the Bible. The other laws that testify to the earlier historical record of law are Mosaic laws (10 commandments) in the Old Testament. Whether divine or man-made, law is law, once it satisfies all or any of the conditions highlighted, namely:

- controls
- regulates
- enforces
- punishes.

Law is very wide and all encompassing and that is why every profession, like every society, has its own law or form of law. The laws that affect businesses are known as business laws or company laws or law of contracts, while those that affect property are known as property laws. It therefore implies that the laws that control, regulate, enforce and punish in the operation of mass media are Media Laws.

1.2.2 Importance of Law

The importance of law is discussed below.

1. **Protection of interests:** Von Ihering has said that, "the purpose of law is the protection of interests." But what is interest and whose interest? There are various interests within a society or a state competing for protection and actualisation. According to Akinfeleye, interests are of two categories:
   - Individual or personal interest
   - Public/State/Societal interest

   (a) **Individual interest:** Each member of a society has his personal interest to protect. His interest is important to him for his personal development, protection and gains. The interest of an individual is limited by the interest of others within the same society. This means that an individual should not protect his or her interest at the detriment of violating the interest of other individual members.

   (b) **Public/state/societal interest:** Though there are arguments on whether public interest is the same thing as state interest, our focus here is likened both to mean the collective interest of individual members of a state. The good of the individual is not itself an end, but only a means of securing the good of the society.

In essence, the society is a higher conception than the individual so that the individual can desire the common interest in addition to his own. Andrei Vyshinsky's view is that law and the state are one so that any criminal act is

a danger to the regime and the state. He thought that emphasis on individual was a mere cloak to shroud the exploitation of workers by the bourgeoisie. In the western philosophy, the function of law is to hold a balance between interests of the individual and those of the state.

2. **Protection of life, national security, public safety and social welfare:** You can imagine a state of lawlessness, where the right of an individual is not defined and the limitation to the right in order to protect the right of another individual is not set, only those who have the will would have their way. Law protects the rights, duties of people, be it political, social, economic or cultural.

3. **Protection of life:** There are a number of incidents taking place all the time which could be harmful to people. This leads to the need of making law. People need a proper code of life. They need to know their rights as well as others' right; only then they could lead a peaceful life. According to Sohn, law is the sum of rules, which regulates the life of the people, or creates social order and organisation that are necessary for preservation of life and ordered control of the life of the community. He explained that the private law governs the rights and duties of individuals while public law regulates the relationship between the individual and the state.

   The essence of law is to reconcile conflicting interests of individuals and collective interests of the public such that peaceful coexistence would be ascertained. Von Ihering sees the function of preserving life from the angle of striking a balance between egoistic and altruistic motives. He said that the purpose is the universal principle of the world. The purpose of human violation is the satisfaction derivable from acts. The purpose of law is the protection of interests.

4. **National security and public safety:** National security is the protection of a state and its human and material resources against both internal and external forces. According to Elias, state security includes all the means at a government's disposal for securing or protecting the nation or state from the danger of subjugation either by an external power or through internal insurrection. Nigerian laws forbid any Nigerian or foreigner living within the country from carrying ammunition around without legal permission to do so or rising against the constituted authority as these may constitute threat to national security.

   Sometimes, individual rights are violated to ensure that the state is secured from certain danger. For example, people's right to freedom of movement may be deprived when a curfew or a state of emergency is declared in a state to let peace rein.

   Since individuals constitute the public, public safety would therefore mean the safety of life and property of every Nigerian against all that may constitute threat. Emergency powers to incarcerate persons who

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commit or are suspected of having committed an offence, and to stop and search without warrant any receptacle suspected to contain explosives, firearms and ammunition, exist for purposes of national security and public safety. Moreover, both the military and the police have powers to order the detention of "trouble maker" whose freedom is reasonably considered prejudicial to the society.

5. **Social welfare of state:** Oyakhilomen (2009) highlights the under listed as means through which laws ensure social welfare of state:
   - The Constitution and various statutes enhance freedom. It is by law slave trade and slavery extraction of executive bride price or discrimination against Osu caste was abolished. Law frowns at arbitrary arrest and detention, and guarantees right of freedom of movement, speech and association. Writ of habeas corpus or fundamental rights enforcement proceedings are provided by law where one's freedom is curtailed wrongfully.
   - Tax laws provide money for social amenities.
   - Traffic laws provide for orderliness on the highways.
   - Law of contract encourages business transactions and allows them to strive.
   - Law of tort protects proprietary rights and freedom of property, and commands compensation, damages or other remedies in case of trespass.
   - Arbitration laws and rules of courts provide ways of setting disputes when they arise.
   - Law performs normative and social functions by pointing to direction of wrong committed by members of the public and helping or supporting state functionaries, operators and machinery of society.
6. **Maintenance of justice and fairness in society:** Justice and fairness come from nowhere other than from the application of laws. Oyakhilomen (2009) expresses the view of some writers, who equate law with justice, contending that law ought to be just. Jus naturale, jus gentium and equity and its body of rules were developed out of the desire and search for justice, fairness and good conscience, for all people. In contrary, justice is an absolute requirement and the judges in applying the law must be fair, impartial and devoid of personal prepossession or idiosyncrasy. The essences of law to ensure justice are as follows:
   - To hold everybody accountable in the same proportion for equal functions given to them or obligations expected of them by the law.
   - To give everybody equal chance to contest, compete or access public gains or opportunities.
   - To give equal right to all for fair trial.

- To give equal right to all to prosecute and to appeal.
- To give to all equal right to be heard and equal and proportionate time to defend in a trial.
- To give equal and proportionate punishment and equal and proportionate damages to the condemned and the claimant respectively especially where the same or similar interpretations of status are applicable.

7. **Law as an agent of change and transformation:** A change in any aspect of law in a society would definitely bring a change within that society. It is not all the times that a change in any aspect of law or introduction of a new law brings about positive change. For example, there was a motion moved in the Nigeria National Assembly to legalise homosexuality. If such a bill was passed to law, it might have negative effect within the state.

Besides, if laws provide for adequate remedies, such laws would transform the society. Most often people are not used to change except they consider certain benefits or see deterrents, which they are also likely to be subjected to. Notion of law changes from society to society, from one generation to another even within the same society.

Oyakhilomen adds that law:

.....tries to maintain the established social order and at the same time, effect social change to meet modern requirements of a new society, taking cognizance of and responding to new learning, new facts, different set of prejudices, disparity in sets of questions people ask daily, in sets of values, economics, education, social achievement and ideological orientation and very importantly quest for ideals of justice and for a transformed and better society.

1.3. CONSTITUTION OF INDIA

A country is governed by a set of policies through a framework of laws, rules and regulations. Constitution of a democratic country is a fundamental legal document which lays down the basic structure of the government, and other public bodies, their powers, functions; rights and duties of its people and their interrelations. It also contains the principles to be followed by the state in the governance of the country.

Constitution of India is the supreme law of the land and as such, all other laws are subordinate to it. It is supreme because it was made by the people. In a democracy, people are supreme and the law made by them is naturally superior to the laws made by any public authority, be it parliament or the other. India being the largest democracy in the world has the largest written constitution with 395 Articles in 22 parts with 12 schedules. All matters of public governance are regulated by the provisions of constitution.

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All public authorities—legislative, administrative and judicial—derive their power directly or indirectly from it and the Constitution derives its authority from the people.

The Constitution of India was framed by the Constituent Assembly. This Assembly was an indirectly elected body. Idea for a Constituent Assembly for drafting a constitution for India was first provided by Bal Gangadhar Tilak in 1895. The Draft of Indian Constitution was presented in October 1947. President of the Drafting Committee was Dr. Bhim Rao Ambedkar who was the first law minister of independent India. The total time consumed to prepare the draft was 2 years, 11 months and 18 days. The Indian Constitution was enacted on November 26, 1949 and was brought into force on January 26, 1950.

1.3.1 Broad Framework of the Constitution

As the Constitution is the supreme law of India, it lays down the framework defining fundamental political principles; establishes the structure, powers, and duties of Government; and sets out fundamental rights, directive principles and the duties of citizens.

1.3.2 Basic Structure of the Constitution

The basic structure is well reflected in the preamble to the Indian constitution. A preamble is a foreword which states the objectives sought to be achieved. It is also a base for interpreting the provisions of Constitution. The Preamble contains the ideals, objectives and basic philosophy of the Constitution. The salient features of the Constitution have evolved directly and indirectly from these objectives which flow from the Preamble. Hence it is important to know its contents.

1.3.3 Preamble

Having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens:

- Justice, social, economic and political;
- Liberty of thought, expression, belief, faith and worship;
- Equality of status and of opportunity; and to promote among them all
- Fraternity assuring the dignity of the individual and the unity and integrity of the Nation

The first line of the preamble starts with

'We the people of India" and ends with "Hereby adopt, enact and give to ourselves this constitution."

From the above, it is obvious that it was people of India who made constitution for themselves. They utilised the services of forums like Constituent Assembly and Drafting Committee in preparing the master document for them.

The Preamble explains the objectives of the Constitution in two ways: one, about the structure of the governance and the other, about the ideals to be achieved in independent India. The objectives, which are laid down in the Preamble, are:

Meaning of the expressions 'Sovereign Socialist, Secular Democratic Republic'

Sovereignty means Independent authority of a state and it is not controlled by any other state or external power. It is free from any type of external control. Legal sovereignty is vested in the people of India and political sovereignty is distributed between the Union and the States.

The word "Socialist and Secular" was added by the 42nd Amendment to the Constitution. The word socialist aims to secure to the people-social, economic and political justice. The word Socialist highlights the ideals of a welfare state. It means to reduce economic disparities among the people and to ensure a decent standard of life to the working people.

Secular India means that the State protects all religions equally and it doesn't oppose or support any religion.

Democratic Republic means India is ruled by the elected representatives of the people and there is no external authority to control it. In short, it means Indian government is run by the people and for the people.

To conclude we can say that India is envisaged as an independent democratic state with the ideals of a welfare state and with the policy of secularism. Other features of Indian Constitution also enable us to understand the structure of Indian polity.

1.4. SALIENT FEATURES OF INDIAN CONSTITUTION

Indian constitution has the following features:

- India is a federal State with unitary features. A federal state has dual authority system of Central Government and the State Government. States are autonomous and they manage their own affairs with limited intervention of the Centre. In a unitary state, union Govt. has central authority with delegated powers to the States.
- India is a parliamentary type of democracy in which parliament is the supreme legislative body of peoples representatives. The President is the fountain head of Justice and acts only on the advice of Council of Ministers including the Prime Minster.

  For example, the USA is a federal state and the UK is an example of a unitary government. India is not a perfect federation like America. It has adopted the Canadian Model.
- **Independent Judiciary:** Indian constitution has created three organs; executive, legislature and judiciary. These three function independently but with coordination. One of the basic features of a federal structure is independent judicial system. Supreme Court of India is the Apex Court with High Courts in each state. They act independently with the power of judicial review of the central and the state legislations.

- **Single Citizenship:** Though India is federal; there is a single citizenship for all its citizens.
- **Adult Franchise:** All the citizens of the age of 18 years and above have right to vote irrespective of their caste, creed, religion, status, etc.
- **Fundamental Rights:** Indian constitution has placed certain restrictions/limitations on the powers of the states. In other words, it recognises certain rights of the people as basic and fundamental. The states cannot take them away ordinarily. Those rights are called fundamental rights and they can be enforced against the State through courts.

  For example, Right to do a business or a profession of choice is a fundamental right and it cannot be denied by State ordinarily.
- **Directive Principles of State Policy:** Part IV of the constitution provides for the list of directive principles. These are the directions to the states. Unlike fundamental rights, these cannot be enforced against a state but still these are fundamental in the governance of the country.

1.4.1 Federal Vs Unitary

The federal system has the features of

- Dual authority, i.e., Union and state government.
- Written and Rigid (not easily amendable) constitution.
- Independent judiciary.
- Distribution of powers between union and the states.
- Supremacy of the constitution.

Indian constitution has all the above features which make it federal. Besides the above, it has some unitary features also:

For example:

- Single citizenship
- Power to make law on state subject (i) on national importance, (ii) to give effect to international agreements, (iii) during emergency, etc.
- Power to declare emergency both political and financial and imposition of president rule in a state.
- Power to decide and demark territorial boundaries of a state.

Though India is structurally federal, it is unitary in times of war, emergency, etc. Indian constitution differs in certain fundamental aspects from federal systems of the world. The mode of formation explains this.

1.4.2 The Mode of Formation

In American system, federal union is formed by an agreement between a number of sovereign and independent states, surrendering a part of their sovereignty to a new central organisation. In Canadian federal union, the provinces of a unitary state may be transformed into a federal union to make

it autonomous. India had a thoroughly centralised unitary constitution until Government of India Act, 1935 set up a federal system in the manner as in Canada, viz., by creation of autonomous units and combining them into a federation by one and the same Act.

So India is a Canadian type of federation and not that of American. In this context it is relevant to quote Article 1 of the Indian Constitution. "India, that is Bharat, shall be union of states" (not federation of states).

Judicial View: The question as to whether the Indian Constitution is federal with unitary features or unitary with some federal features came up in various cases before the Supreme Court and the High Courts. The majority of the Supreme Court judges in Kesvananda Bharati vs State of Kerala were of the view that the federal features form the basic structure of the Indian Constitution.

Preamble represents the vision of the people of India. Other parts of the constitution enable us to understand that India is a federal state with unitary features. Fundamental rights and directive principles of state policy with fundamental duties are the special features.

Fundamental Rights

Part III of the Indian Constitution guarantees six categories of fundamental rights. These are:

1. Right to Equality – Articles 14 to 18
2. Right to Freedom & Personal Liberty—Articles 19 to 22
3. Right against Exploitation—Articles 23 and 24
4. Right to Freedom of Religion—Articles 25 to 28
5. Cultural and Educational Rights—Articles 29 and 30
6. Right to Constitutional Remedies—Article 32

No fundamental right in India is absolute and reasonable restrictions can be imposed in the interest of the state by valid legislation and in such case the Court normally would respect the legislative policy behind the same.

1.5. LAW RELATING TO THE FREEDOM OF PRESS

Freedom of the press or freedom of the media is the freedom of communication and expression through mediums including various electronic media and published materials. While such freedom mostly implies the absence of interference from an overreaching state, its preservation may be sought through constitutional or other legal protections.

Freedom of expression is a universal human right. It is not the prerogative of the politician. It is not the privilege of the journalist. It should not be the casualty of their skirmishes, nor regarded as a matter of little importance to anyone else. Freedom of expression is fundamental to a democratic society.

Democracy is government by the people. This should require the participation of all. Yet it would be meaningless without information to inform, debate, shape policy, or found judgement. Proper democracy entails an open society. A free press is an essential prerequisite to an open society. The media searches out and circulates information, ideas, comment and opinion. It provides the means for a multiplicity of voices to be heard. At national, regional and local level, it is expected to be the public's watchdog, activist and guardian as well as educator, entertainer and contemporary chronicler.

Indian journalist exercises only the people's free speech. The media has few special rights. It has traditionally sought to resist new restrictions upon freedom of expression in general or special controls upon the press. The media has normally campaigned for greater rights of the public:

- to promote freedom of speech,
- to enlarge freedom of information and
- to safeguard the freedom of the press which encapsulates those rights.

Media rarely face the same degree of intimidation or censorship as crude as assassination which is the everyday reality of some of their overseas counterparts. But they do face a range of legal restrictions which inhibit freedom of expression.

These include the libel laws, official secrets and anti-terrorism legislation, the law of contempt and other legal restrictions on court reporting, the law of confidence and development of privacy actions, intellectual property laws, legislation regulating public order, trespass, harassment, anti-discrimination and obscenity. There are some special provisions for journalism and other literary and artistic activities, chiefly intended as protection against prior restraint, in the data protection and human rights legislation. There are some additional, judicial safeguards requiring court orders or judicial consent before the police can gain access to journalistic material or instigate surveillance in certain circumstances, but, in practice, the law provides limited protection to journalistic material and sources.

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 sub clause (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, court, defamation, or incitement to an offense".

Laws such as the Official Secrets Act and Prevention of Terrorist Activities Act (PoTA) have been used to limit press freedom. Under PoTA, a person could be detained for up to six months for being in contact with a terrorist or terrorist group. PoTA was repealed in 2006, but the Official Secrets Act 1923 continues.

For the first half-century of independence, media control by the state was the major constraint on press freedom. Indira Gandhi famously stated in

1975 that All India Radio is "a Government organ, it is going to remain a Government organ..."

With the liberalisation starting in the 1990s, private control of media has burgeoned, leading to increasing independence and greater scrutiny of government.

1.5.1 Understanding Mass Media and Its Forms

In a layman understanding of the media, it is avenue through which information or messages find way to their destination from their origin. According to Joseph Dominick, a medium is the channel through which a message travels from the source to the receiver. The medium used to relay information varies to the form of communication that such medium is used for. Interpersonal media such as oral communication and body language are used for interpersonal communication while mass media such as radio, television and newspaper are used for mass communication.

Forms of Mass Media

There are two main categories under which various mass media could be classified. They are: (a) Print media (b) Electronic media.

(a) **Print media:** Print media covers all form of publications meant for the mass distribution of information to the members of the public. This can also be categorised into:

- **Periodic**—Those that are published at a specific interval. It may be daily, weekly, fortnightly, monthly, biannually, annually, etc. Examples of this are:

  (*i*) Newspapers (*ii*) Magazines (*iii*) Journals (*iv*) Billboards (Not electric)

- **Non-periodic**—Those that their publications are not regular. They are published for specific goals based on the requirement or at the time they are needed. They include: (*i*) Books (*ii*) Posters (*iii*) Handbills (*iv*) Billboards (Not electric).

With the evolution of print media people had a great thirst for information. They take print media as their foremost source of information. Hence, the medium starts playing three main roles which are as follows:

- Information
- Entertainment
- Guidance

With the addition of features and columns and magazines, people's interest was enhanced and they started idealising the writers. They take their writings as their guidance. Observing the great importance of media, there should be some limitations set for it. So that writers do not go beyond the ethics. Their writings and publications should be checked and controlled. For this reason, certain laws to regulate

media were formulated to keep a check on it. Hence, laws and ethical principles were formulated for print media, which are to be obeyed by the publishers as enumerated in subsequent modules. Some of the laws and ethics still regulate the print media up till today.

(b) **Electronic media:** Electronic media is also known as broadcast media plus other unconventional social media. It covers all form of media that transmit information on air with the aid of transmitter and other electronic devices to the mass audience. It can be categorised into: Conventional: These are mainstream broadcast media that relay information through a particular channel or frequency. The regular broadcast media are just two:

- Television
- Radio Unconventional

These forms of broadcast media do not operate on channel or frequency base. Unlike conventional media, messages from this form of media are neither vetted nor verifiable. These media comprise:

(*i*) Internet (*ii*) Computers (*iii*) Facebook (*iv*) Youtube, etc.

Then, with the gain in popularity of electronic media, there was a need to put checks on them. So, different regulatory committees were made to formulate regulating codes for them. With the passage of time many codes were formulated and applied for them. By now a proper and complete code of principles is being set for the whole media. But still there is another debate of freedom of media because changes keep on happening in these principles.

1.5.2 Media Roles within the Scope of Law and Ethics

Many writers lay emphasis on the primary functions of the media while discussing the roles of the media within a society.

The primary functions are as follows:

1. Information
2. Education
3. Entertainment
4. Commercial
5. Cultural integration.

Oloyede goes beyond the five listed above. And this indicates that the media perform numerous roles among which people do not even notice. Here in this unit, we would rather look at the roles of the media in some aspects of human life.

Media roles in government and politics: Mass media today are the tools that the government uses to protect the image of the country home and abroad. This is achieved by using the media to project and sell government policies to the people. Oloyede sees the media as the most indispensable instrument of governance and writes:

"The press also functions as an indispensable instrument of governance. It conducts information flow between the government and the governed and ensures that the citizenry is not kept in the dark about the thinking of government. It reports, explains and meaningfully conveys to the governed the esotericism of the policies and actions of the government."

To reinforce this media role, he quoted Osoba, that: The press is also the feedback mechanism that provides medium for the masses to reach the rulers, to appraise their performance, to assess their policies and proffer alternative paths and goals for the society.

Media roles in health issue: Mass media has a great impact in the health sector. Apart from staging health programmes which help people in health decision making, mass media are the avenues through which government policies on health are explained to people. Media roles in health issue are highlighted below:

1. Staging healthy related programme such as health talk
2. Inform and explain to the populace new government policies on health
3. Collaborate with health organisations (governmental and non- governmental) to assist people in solving health related problems
4. Report epidemics before it spread
5. Report the findings of health researchers to help in health decision making.

Media roles in education: Through mass media, education is made easy to access. Apart from educating the populace through programmes that add value to knowledge, institutions are now making use of the mass media to educate their students at their respective location. This helps a lot in distant learning process which diversifies the rigid student-lecturer relationship in class. Higher institutions of learning particularly universities are now licensed to own broadcast media in addition to various publications from their ends.

Examples are: NOUN FM: own by National Open University of Nigeria and UNILAG FM: own by University of Lagos.

Oloyede writes: "The press also serves as a teacher and educates society. It constantly throws its searchlight on various subjects affecting humanity with a view to generally educating mankind. Apart from promoting general knowledge and know-how through its various educative programmes and features, the press also constantly offers humanity a very wide range of possibilities for making formal and informal education possible."

Media roles in social, religious and cultural matters: Reviving our dying cultures and traditions is another credit to the mass media. Through programmes and features, the media have turn around the cultural heritage of Nigerians within and outside the country. It is believed now that mass media are using entertainment formula to ensure that the media messages achieve the desired goals. The media achieve this through programmes like:

1. Sports and games
2. Arts and decoration
3. Music
4. Comedy and comics
5. Social event programmes
6. Fashion and style
7. Cartoons, jokes and fun-oriented features.

Media roles in legal matters and social justice: Mass media monitor the activities of the national assembly, state assembly as well as courts of law and thereby give progressive reports on the legal matter in Nigeria. Legal issues pose some problems to the media because there are a lot of cautions which make the media conscious of what to cover, what and how to report and what programme to stage whenever the subject matter is a legal issue. Oloyede believes that mass media crusade for social justice. When people are unduly harassed, oppressed or their fundamental rights are trampled upon, the media take it up through their incessant reporting and advocacy.

Media roles in state security and reformation: Mass media foresee and warn against impending dangers. Unlike the notion that accuses the mass media of having much interest in bad news "bad news make good news", mass media work towards preventing bad news from happening. The media ensure that its messages towards societal reformation are reinforced.

1.6. SUMMARY

Law is one of the key elements that shape society. The functions of laws are numerous. Law holds the society firm to save it from falling apart. It therefore implies that if there is any lapses in law, it makes proportional impact in the growth and development of the society.

From the discussion above, you should understand that law protects individuals and the state, it preserves life and property; it promotes the administration of justice, it preserves social welfare; and it brings about change and transformation. All these are tantamount to development in a society.

Roles played by the media within the society affect every aspect of human life. And such roles harmonise various organs of the state as well as the ruled. The roles at the same time encourage all to stand on their toes because the mass media make people accountable.

Mass media check excesses: Mass media correct abnormalities; advise the leaders and the led; educate the youth and the aged; entertain men and women; harmonise the interests of the weak and the strong; reinforce the voice of the voiceless; and support development and transformation. In this unit, you have been taken through the roles of the media in each segment of human

life. It should be noted that there is no aspect of human life where media is not relevant. Media roles are felt in all facets of human life.

1.7. GLOSSARY

Sponsorship: Purchase of all or part of a TV programme or all pages of a magazine

Browser: An application used to view and navigate the World Wide Web and other Internet resources.

Intranet: A private network that uses Internet-related technologies to provide services within an organisation.

Media Laws: Law is very wide and all encompassing and that is why every profession, like every society, has its own law or form of law. The laws that affect businesses are known as business laws or company laws or law of contracts, while those that affect property are known as property laws. It therefore implies that the laws that control, regulate, enforce and punish in the operation of mass media are Media Laws.

Law: Law is the overall guiding principle of human conducts. A law is basically a body of principles or rules which are the basis of a society.

1.8. REVIEW QUESTIONS

1. Law can save any society from falling apart. Do you agree?
2. What do you mean by Law? Discuss media laws.
3. Discuss the salient features of Indian Constitution.
4. What is preamble?
5. Write a short note on the law relating to the Freedom of Press.

1.9. FURTHER READINGS

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UNIT

2

MEDIA LAWS AND RIGHT TO INFORMATION

STRUCTURE

2.1. INTRODUCTION

The relationship between individuals and groups, which results in interdependency between them, always brings about overlapping functions, conflicting rights, competing interests, and neglected duties/expectations. The interrelationships and interdependence between individuals and groups define society. It was as a result that law set in not only to define individuals' rights, interests and obligations but also to set the limit to which a right is exercised in relation to other rights and obligations. Thus, as put by Elias, the law remains an umpire.

2.2. RIGHT TO INFORMATION

The Right to Information is a subject of fundamental importance in any civilised society. It is also a part of the fundamental right to freedom of speech and expression guaranteed under Article 19(1) (a) of the Constitution. Much of the common man's hardship and helplessness could be traced to his lack of access to information and want of knowledge of 'decision making processes'. The Preamble to the Right to Information Act, 2005 seeks to provide for "setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commission and for matters connected therewith or incidental thereto."

Information is a term derived from the Latin words "Formation' and 'Forma' which mean giving shape to something and forming a pattern respectively. Information is about 'democratisation of communication'. However, this is a broad undertaking of the term.

If we look into at the legal terminology, under Section 20 of the Indian Evidence Act, 1872 it implies that wherever there is a dispute and the court requires information about the truth on that point, the statement that a reference makes is information.

Information may be of facts or law. In the case of ITC vs A. Raman, it was clarified that 'information' in the Income Tax means instructions or knowledge derived from an external source concerning facts or particulars or as to law relating to assessment. The word 'information' in Section 34(1) (b) of the Indian Income Tax Act, 1922 includes information as to the true and correct state of law and so would cover information as to relevant judicial decision. In the case of CIT vs Jagan Nath, it was held that the word 'information' is synonymous with knowledge or wareness, in contraction to apprehension, suspicion or misgiving.

Under Section 2(1) (v) of the Information Technology Act, 2000 'information' includes data, text, images, sound, voice, codes, computer programmes, software and database or micro film or computer generated micro fiche.

"Information" means any material in any form, including records, documents, memos, e-mails, opinions, advice, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.

Article 19(1) (a) of the Constitution guarantees the fundamental rights to free speech and expression. The prerequisite for enjoying this right is knowledge and information. The absence of authentic information on matters of public interest will only encourage wild rumours and speculations and avoidable allegations against individuals and institutions. Therefore, the Right to Information becomes a constitutional right, being an aspect of the right to free speech and expression which includes the right to receive and collect information. This will also help the citizens perform their fundamental duties as set

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out in Article 51A of the Constitution. A fully informed citizen will certainly be better equipped for the performance of these duties. Thus, access to information would assist citizens in fulfilling these obligations.

Right to Information (RTI) is closely linked with other basic rights such as freedom of speech and expression and right to education. Citizen's right to information is a necessary condition to achieve accountable, transparent and participatory governance and people-centred development. It empowers citizens in relation to the state and enhances their control over political processes. It acts as a deterrent against arbitrary exercise of official power. It empowers people to hold public authorities accountable for their actions on a regular basis. At the heart of the RTI there are two key concepts:

The right of the public to request access to information, and

The corresponding duty on the government to meet the request, unless specific, defined exemptions apply.

Broadly, this duty entails maintaining records, dissemination of information in the language, people's access to information and creating suitable conditions so that information could be used optimally. The right to information thus imposes duty on both the government and the citizens. For citizens, it entails asking information and using that to participate in decision making process, especially, if a decision is of their concern.

Now a basic question arises, why should citizen access information held by the Government? Government functions because citizens exist. All information that government creates or stores, relates in some way or the other, belongs to citizens. For instance, a policy on food distribution, expenditure to be made on health, regulation of schools, etc., it affects all citizens in the long run. These policies are made by the government for the benefits of public and people's money is used to make and implement the policy. Therefore, people have the right to know why certain policies are made, how they will be implemented, who will implement them and how it will affect them.

However, much of the information is hoarded by the rulers to create a 'poverty of information' because secrecy helps them to continue with their arbitrariness in decision making and to create an environment of unaccountability. Maintaining confidentiality is perhaps seen as a symbol of supremacy and seems to create a distance between the ruler and the ruled. Ruling elites do not want to share information because information is a power and it is an unequal distribution of this power that creates two distinct categories—the rulers and the ruled. Today, colonialism may have ended but the culture of secrecy has not gone. Anti-terrorist legislation, criminal defamation laws, overly indulgent contempt and privilege laws, media and privacy regulations and restrictive civil service rules, all remain intact. The Official Secret Act continues to punish those who are guilty of breaching confidentiality of government's information. Such an environment of secrecy restricts the development of citizens as well as society. It sees a citizen not as an independent entity but as a subject to be governed by the State.

It is heartening to note that the highest Bench of India while recognising the efficacy of the 'right to know' which is a *sine qua non* of a really effective

participatory democracy raised the simple 'right to know' to the status of a fundamental right. In S.P. Gupta vs Union of India, the court held that the 'right to know' is implicit in the right of free speech and expression guaranteed under the Constitution in Article 19(1) (a). The right to know is also implicit in Article 19(1) (a) as a corollary to a free press which is included in free speech and expression as a fundamental right. The Court decided that the right to free speech and expression includes:

1. Right to propagate one's views, ideas and their circulation;
2. Right to seek, receive and impart information and ideas;
3. Right to inform and be informed;
4. Right to know;
5. Right to reply; and
6. Right to commercial speech and commercial information.

Furthermore, by narrowly interpreting the privilege of the Government to withhold documents under Section 123 of the Indian Evidence Act, the court has widened the scope of getting information from Government files. In the same manner by narrowly interpreting the exclusionary rule of Article 72(2) of the Constitution, the Court ruled that the material on which cabinet advice to the President is based can be examined by the Court.

The most important way of testing whether an RTI law is effective to assess the kinds of information that the law specifies can be withheld, for whatever reason. These are known as "exemptions" and all exemptions should be clearly defined in the law. A general rule is that the basis for refusing a request for information should only be one where there is a legitimate public interest in withholding information. Such grounds might be, if the release of information:

- Is detrimental to the pursued of a criminal case or law enforcement;
- Violates personal privacy;
- Constitutes a threat to national security;
- Affects confidentiality;
- Endangers the safety of the public or an individual;
- Undermine the effectiveness and integrity of government decision making processes.

There are a number of relatively standard categories of exemptions, although countries differ in their approach. Any refusal should meet the following test:

- The information being withheld must fall into a category specified;
- Disclosure must threaten to cause substantial harm; and
- The harm must be greater than the public interest in having the information.

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functionaries. In the year the court also held that freedom of speech and expression includes right of the citizens to know about the affairs of the government.

The Supreme Court in another case of Peoples Union for Civil Liberties vs Union of India, held that true democracy cannot exist unless the citizens have a right to participate in the affairs of the policy of the country. This is particularly so in a country like ours where 65% of the population is illiterate.

2.2.2 State Power to Withhold Documents

Restricted Rights

The Right to Information Act is in complete sensation of interest of Government as well as interest of individual in respect of right to privacy. The right to privacy flows from the Article 21 of the Constitution. As held in Neera's case that the demand for personal information violates the provision of right to privacy envisaged in Article 21 of the Constitution. The right to privacy is a part of Article 21. The same view was also held in Peoples Union for Civil Liberties case. The importance of right to privacy has been enshrined in Section 8 sub-section (1) and clause (j) of the Right to Information Act, 2005 that right to privacy cannot be hampered.

In an eye to the governmental restricted rights, the act is a complete code. The provisions of Section 8 of the act provide the information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the state, relation with foreign state, forbidden information, information the disclosure of which would cause a breach of parliament or the state legislature, information relating to commercial confidence, trade secrets or intellectual properties, the disclosure of which would harm the competitive position of a third party, information on fiduciary relationship, confidential information of foreign land, information relating to physical safety of a person, cabinet papers.

The act also clarifies that it shall not apply to the intelligence and security organisations specified above within the list mentioned in the Schedule II being organisation established by the Central Government or any information furnished by such organisation to that government under the provisions of Section 24 of the act.

When is the state not bound to give information to the individual?

Under the law as it existed before the coming of the Right to Information Act, 2005, the State was not liable to give information unless the law or the Constitution expressly required it to do so. Such instances have been mentioned above, although not giving information is the rule, there are some provisions that expressly exempt the state from liability to give information. In recent years, the Supreme Court has narrowed down the scope of such state immunities through strict interpretation of the secrecy provisions.

Where a civil servant is dismissed or removed or reduced in rank, such action cannot be taken unless such civil servant has been informed of the charges against her and is given an opportunity of being heard in respect of

those charges. Such requirement of giving information and holding an inquiry can be dispensed with if:

- A person is distinguished or removed or reduced in rank on the ground of a conduct which has led to her conviction on a criminal charge; or
- When the authority empowered to dismiss or remove or reduce her in rank is satisfied that for some reason, to be recorded in writing, it is not reasonably practicable to hold such inquiry; or
- Where the President or the Governor, as the case may be, is satisfied that in the interest of the state it is not expedient to hold such an inquiry.
- The Supreme Court had held that where a government servant was dismissed or removed from service without holding an inquiry by invoking one of the above exceptions, the decision of the authority not to hold an inquiry could not be assailed.

The Constitution provides that there shall be a Council of Minsters with the Prime Minister as the head to aid and advise the President, who shall act in accordance with such advice. A similar provision exists regarding the Governor of a state and her Council of Ministers, with the exception that the Governor has not been made bound by the advice of the Council of Ministers because she has to act according to her discretion in some matters. The question whether any, and if so what advice was tendered by ministers to the President cannot be inquired into any court. In S. P. Gupta vs India, some lawyers had filed petitions seeking the Court's interpretation of the constitutional provisions regarding the appointment and transfers of judges of the High Courts and the Supreme Court. During the emergency of 1975, the Government had discontinued some judges who had been appointed as additional judge for a period of two years.

When can an individual withhold information from the state?

A person accused of an offence punishable by law can refuse to give information about the offence since the constitution provides that one cannot be compelled to give evidence against oneself. It was held that domiciliary visits to the house of an ex-convict could be allowed only in extremely rare cases.

In Neera Mathur vs LIC, the Supreme Court held that women applicants for jobs could not be asked to give information about their menstrual cycles in response to a questionnaire required to be filled in by such applicants. The right to privacy, however, cannot be raised as a defence by a public servant in respect of one's public functions.

2.2.3 Right to Information Vis-A-Vis Provisions of Indian Evidence Act

The Right to Information is guaranteed to every citizen under the Right to Information Act. Sections 74 to 78 of the Indian Evidence Act, 1872 give right to the person to know about the contents of the public documents and in this connection Section 76 of the Indian Evidence Act provides that the public officials shall provide copies of public documents to any person, who has the right to inspect them. Under the Factories Act, 1948 compulsory disclosure of information has to

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be provided to factory workers regarding dangers including health hazards and the measures to overcome such hazards arising from their exposure to dangerous materials. Under Section 25(6) of the Water (Prevention and Control of Pollution) Act, 1974 every State Board is required to maintain a register of information on water pollution and it is further provided that so much of the register as relates to any outlet or any effluent from any land or premises shall be open to inspection at all reasonable hours by any person interested in or affected by such outlet, land or premises. Under Section 33A of the Representation of the People Act, 1951 a candidate contesting elections is required to furnish in his nomination paper the information in the form of an affidavit concerning:

Accusation of any offence punishable with two or more years of imprisonment in any case including the framing of charges in pending cases; and

Conviction of an offence and sentence of one or more than one year imprisonment.

However, Section 123 of the Indian Evidence Act, 1872 put a restriction on use of unpublished official as an evidence. Section 124 provides that no public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure. Section 162 envisages that a witness summoned to produce a document shall, if it is in his possession or power, bring it to the Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided by the Court. The Court, if it deems fit, may inspect the documents, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

Therefore, it has to be seen whether in the cases where government can claim privilege in the courts of law from disclosure of the information/documents, the information can be supplied on request under the Right to Information Act? For this purpose, proviso to Section 8(1) of the Right to Information Act lays down that information which cannot be denied to the Parliament or State Legislature shall not be denied to any person. Therefore, the interpretation of this proviso to Sub-Section (1) of Section 8 of the Act by the Courts in India would determine whether the information which is privileged under section 123 of the Indian Evidence Act can be disclosed to the citizens of India under the Right to Information Act or not. However, it is certain that information regarding noting portion of the files can be supplied to the persons because there is no bar imposed so far on the supply of the said information under the Right to Information Act, 2005.

In State of Punjab vs Sodhi Sukhdev Singh, the following issues have been discussed regarding interpretation of Sections 123 and 162 of the Indian Evidence Act:-

Reading of Sections 123 and 162 of the Evidence Act, 1872 together, the Court cannot hold an enquiry into the possible injury to public interest which may result from the disclosure of the document in respect of which privilege is claimed under Section 123 of the Evidence Act, 1872.

That in the preliminary inquiry to be held by the Court, the Court has to determine the character or class of the document. If the Court comes to a

conclusion that a document does not relate to the affairs of the State, it should reject the claim for privilege and direct its production.

That when an official of the state claims privilege, all the pros and cons of the problem have to be weighed objectively.

That it is permissible for the Court to determine the collateral facts whether the official claiming privilege is competent to file an affidavit.

The principle behind the exclusionary rule enacted in Section 123 of the Indian Evidence Act is that a document should not be allowed to be produced in court if such production would cause injury to public interest and where a conflict arises between public interest in non-disclosure and private interest in disclosure, the latter must yield to the former. Though Section 123 does not expressly refer to injury to public interest, that principle is obviously implicit in it and indeed it is the sole foundation and proceeded to add that even though administration of justice is a matter of very high public importance, if there is a real "conflict between public interest and the interest of an individual in a pending case, it may reluctantly have to be conceded that the interest of the individual cannot prevail over the public interest." Three views are possible whether a document relates to "affairs of state" within the means of Section 123 of Evidence Act. The first view is that documents relating to affairs of state are broadly divisible into two classes, one the disclosure of which will cause no injury to public interest and which may, therefore, be described as innocuous documents and the other the disclosure of which may cause injury to public interest and may therefore be described as noxious documents; it is the head of the department who decides to which class the document in respect of which the claim for protection against disclosure is made, belongs; if he comes to the conclusion that the document is innocuous, he will give permission for its production, however, if he comes to the conclusion that the document is noxious, he will withhold such permission; in any case the court does not materially come into the picture. The second view is that documents relating to affairs of State should be confined only to the class of noxious documents and when a question arises, it is for the court to determine the character of the document and if necessary, to enquire whether its disclosure would lead to injury to public interest. The third view which does not accept either of the two extreme positions would be that the court can determine the character of the document and if it comes to the conclusion that the document belongs to the class, it may leave it to the head of the department to decide whether its production should be permitted or not, for it is not the policy of Section 123 that in the case of every noxious document, the head of the department must always withhold permission. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security.

The final decision in regard to the validity of an objection against disclosure raised under Section 123 of the Indian Evidence Act would always be with the court by reason of Section 162. The court has thus to perform a balancing exercise and after weighing the one competing aspect of public interest against

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the other, decide where the balance lies. This balancing between two competing aspects of public interest has to be performed by the court even where an objection to the disclosure of the document is taken on the ground that it belongs to a class of documents which are protected, irrespective of their contents, because there is no absolute immunity for documents belonging to such class.

Several decisions establish that the foundation of the law behind Sections 123 and 162 of Indian Evidence Act is the same as in English law. It is that injury to public interest is the reason for the exclusion from disclosure of documents whose contents if disclosed would injure public and national interest. Public interest which demands that evidence be withheld is to be weighed against the public interest in the administration of justice that courts should have the fullest possible access to all relevant materials. When public interest outweighs the latter, the evidence cannot be admitted. The court will proprio motu exclude evidence the production of which is contrary to public interest. It is in public interest that confidentiality be safeguarded. The reason is that such documents become subject to privilege by reason of their contents. Confidentiality is not a head of privilege. It is a consideration to bear in mind. It is not that the contents contain material which it would be damaging to the national interest to divulge but rather that the documents would be of class which demands protection. To conclude it can be said that when any claim or privilege is made by the State in respect of any document, the question whether the document belongs to the privileged class has first to be decided by the court. The court cannot hold an enquiry into the possible injury to public interest which may result from the disclosure of the document in question. The claim of immunity and privilege has to be based on public interest. For determining a question when a claim of privilege is made, the Court is required to pose the following questions:.

Whether the document in respect of which privilege is claimed, is really a document (unpublished) relating to any affairs of State; and whether disclosure of the contents of the document would be against public interest?

Right of Withholding Information by Journalist or Lawyer

A journalist or lawyer does not have a sacrosanct right to withhold information regarding crime under the guise of professional ethics. A lawyer cannot have a right over professional communication beyond what is permitted under Section 126 of the Evidence Act. There is also no law that permits a newspaper or journalist to withhold relevant information from courts though they have been given such power by virtue of Section 15(2) of the Press Council Act, 1978 as Press Council.

Right to Information vis-a-vis Official Secrets Act

"Right to information" guaranteed under the Right to Information Act, is not absolute in view of Section 3 of the Act which provides that "subject to the provisions of this Act all citizens have the right to information." Moreover, Section 8(2) of the Right to Information Act lays down as under:- "Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority

may allow access to information, if public interest in Disclosure outweighs the harm to the protected interests."

The Official Secrets Act, 1923, imposes restrictions on the right to information in India, but, in view of Section 8(2) of the Right to Information Act, a public authority has the right to allow access to information even in respect of the activities covered by the Official Secrets Act; provided public authority is of the opinion that public interest in disclosure of the said information outweighs the harm to the protected interests. Moreover, Section 22 of the Act lays down the provisions of the Right to Information Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 1923) or any other law for the time being in force.

Moreover, the central civil service conduct rules, 1964 bolster the provisions of the official secrets act by prohibiting government servants from communicating any official records without the permission of the head of the relevant department, who is free to grant or withhold such permission.

2.2.4 Landmark Judgements

Dealing directly with 'Right to Know' or Right to Information, the Apex Court or the Supreme Court of India has held on various occasions that it is a fundamental right of the people covered under Articles 19(a), 14 and 21 of the Constitution. Moving forward in the same direction the Court in Union of India vs Association for Democratic Reforms, held that voter's right to know antecedents including criminal past of a candidate to membership of Parliament or Legislative Assembly is also a fundamental right. Court observed that voter's speech and expression in case of election would include casting of vote and for this purpose information about candidate to be selected is a must. In this case the Supreme Court had further directed the Election Commission to acquire information about crime and property and education status of the candidate as a part of nomination paper. Subsequently, Parliament amended the Representation of People (Third Amendment) Act, 2002 by which a candidate was required to supply information about his conviction in a criminal case, however, he was not required to give information about his assets and education. Declaring the amendment as illegal, null and void as violative of voter's fundamental right to know under article 19(1)(a), the Court held in People's Union of civil liberties vs Union of India, held that the information allowed by the Amendment Act, 2002 is deficient in ensuring free and fair elections which is the basic structure of the Constitution. Similarly, Court in the case of Onkar Lal Bajaj vs Union of India, held that people have a right to know the circumstances under which their representatives got allotment of petroleum retail outlets.

Holding that the right to life has reached new dimensions and urgency, the Supreme Court in R.P. Ltd. vs Proprietors Indian Express Newspapers, Bombay Pvt. Ltd., observed that if the democracy had to function effectively, people must have a right to know and to obtain information about the conduct of affairs of the State.

The Apex Court in Essar Oil Ltd. vs Ilalar Utkarsh Samiti, said that there was a strong link between Article 21 and the right to know, particularly

where "secret Government decisions may affect health, life and livelihood." The case related to the grant of permission by the State of Gujarat to the appellant to lay the pipelines carrying oil through the Marine National Park and Sanctuary. The respondents, by way of PIL, had challenged the State decision and contended that the Government before granting permission, should have asked for and obtained an environmental impact report from expert bodies and be satisfied that the damage which might be caused to the environment, was not irreversible and that the applicant should publish its proposal so that public, particularly those who were likely to be affected, be made aware of the proposed action. Reiterating with approval the observations made in Reliance Petrochemicals Ltd. vs Proprietors of Indian Express Newspapers, the Court ruled that the citizens, who had been made responsible to protect the environment, had a right to know the government proposal. In this unit we shall examine the view of the Apex Court in matter of right to information.

2.3. MEDIA LAWS—REQUIREMENT AND IMPLEMENTATION

Media law is an area of the law which covers media communications of all sorts and sizes. Specialists in this field may work for individual companies, handling legal issues which come up in the course of doing business. They can also work for organisations which provide advocacy to people who run afoul of the law, or have private practices with consulting services and other forms of legal assistance available to clients. In order to become a media lawyer, it is necessary to attend law school and complete a concentration in media law, an option which is not offered at all law schools.

There are three general areas of interest within media law. The first is print media, including newspapers, magazines, print advertising and so forth. The second is telecommunications, including radio and television broadcasting. Finally, digital communications and the Internet are a broad field within media law, and as the Internet evolves, this frontier is constantly changing.

Many nations have a number of laws which pertain to media, and these laws are often in flux as nations attempt to deal with changing technology and norms. A career in media law requires keeping abreast of legislative changes as well as tracking court cases related to media law which might set precedents or clarify the law. Even work in traditional fields like newspapers is evolving rapidly, and a good legal department needs to have staff who are familiar with the latest in the field.

2.3.1 The nature and scope of media policy

In recent years, media policy has become an increasingly elusive policy field to demarcate. Accounting for this have mainly been processes of technological convergence, evidenced in the blurring of market boundaries between previously distinct industry sectors due to technological innovation, and consequently between the services these sectors provide and the platforms

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they use to deliver them. Initially, conceived as a process fostering the ability of networks to carry similar kinds of services and the transformation of such different consumer devices as telephone, television and computers into alike products, convergence has proved to be a more complex and sophisticated venture. Its effects have been multi-faceted and multi-dimensional, extending to market convergence and the convergence of platforms, devices and services. This has raised serious questions about the delineation of the domain of contemporary media policy, and in particular the extent to which it can be treated separately from the field of communications more broadly.

For decades, media policy has been mainly conceived as the policy that aims to shape the conduct of the mass media, essentially press and broadcasting, as media of "public communication". Often used interchangeably with the term "mass communication policy", media policy has been dissociated in academic literature and policy practice from telecommunications policy. The latter has been traditionally understood to be concerned with telecommunication networks as carriers of "private communication" between individuals. State intervention in these two policy areas has displayed different characteristics and variation in the degree of intensity. It has been driven by different policy rationales and has sought to attain diverse policy objectives, though in both cases, in the pursuit of the "public interest", a notion subject to varying interpretations.

Technological innovation has brought together previously distinct industry sectors, inducing operators to enter each other's territory. Digitalisation, in particular, has triggered a series of market developments that disrupted the distinction that was commonly drawn between a telecommunications and a mass media policy perspective. Players of the telecommunications industry entered the broadcasting market (for instance through IPTV services or the development of audiovisual services for mobile telephones) while the printed press and traditional broadcasters extended their activities in fixed and mobile networks, enriching them with the provision of additional services. Nowadays, it has become an everyday reality to access audio, data and visual services in an integrated or non-integrated form through a multiplicity of networks and via use of multi-functional devices. In fact, the impact of the operators' revised market strategies has gone beyond the blurring of markets and increased competition. Convergence is delivering a multitude of new innovative services, better service quality, interactivity, and quite importantly, substantial changes in communication styles and models that blend "public" and "private" forms of communication. Consumers are placed at the centre of these changes. Not only are they faced with an array of networks, services and products to choose from; they have also become participants in the process. New technologies have facilitat-ed the proliferation of so-called "user-generated" services, namely "bottom-up" content services with users directly engaging in the production and distribution of content.

In such a context, the technological field within which media policy operates has broadened, if not altered. The classic inclination to restrict media policy to the mass media and the processes through which communication takes place from one point to many points has been put to the test. New technologies

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Independence requires that funding should be adequate and secure, not able to be reduced at industry whim. Lack of resources inevitably results in the cutting of corners. It can lead to a failure to encourage complaints, and to a tendency to deal with those it receives less thoroughly than is desirable. It can mean a failure to undertake other essential functions such as education and reviews. The failure of several press councils internationally is in part explicable by inadequate funding. While the industry should contribute the major part of the funding, we think there is a role for a state contribution as well. The state has an interest in a responsible media. But it is critical that state funding has "no strings attached", and that it does not give the state the power to influence the composition or operation of the regulator.

Access

The regulatory body must be able to be easily accessed by members of the public. Its existence, and the mode of making complaints, should be clearly and regularly publicised both online and in the traditional media outlets. Complaints should be free, or at the very least inexpensive. The authority's processes should be well publicised, efficient and quick. Complaints without obvious merit should be filtered at the outset by a subcommittee or executive. That is currently done by the Press Council; the BSA is handicapped by lack of such a process. The complaints which proceed should be dealt with as efficiently as possible. Ponderous legalistic process is to be avoided.

It is also a good practice for the regulator to act as an appeal's body. Complaints should be directed in the first instance to the media organisation complained against, and should only proceed to the regulator if the media organisation's resolution of the complaint does not satisfy the complainant. This will ensure the number of complaints dealt with by the regulator remains manageable. The public will also have more respect for a media organisation that is seen to deal appropriately with complaints against it.

Transparency

Transparency requires that codes of practice, decisions and the reasons for them should be made available not just to the complainant but also to the public on the regulatory body's website. Every year they should be summarised in tabular or other easy-to-understand form in the annual report.

Effectiveness

The body must be manifestly seen to be effective. Its effectiveness should be demonstrated in the resulting quality of the media. Decisions should be tough enough to give the public confidence, while nevertheless maintaining proper balance and respect for freedom of the media. A regulator which upholds only a minute percentage of complaints does not inspire confidence.

A regulatory body is more effective if its function extends beyond simply hearing complaints. It should proactively monitor the media and take action against conduct which it deems unworthy. Complaints present a partial and fragmented picture. They are dependent on a member of the public having the

energy, time and will to complain. There is no guarantee that there will be enough self-appointed media monitors to ensure that most of the ground is covered. It would be preferable for the regulatory body itself to be able to keep an eye out for undesirable practice, particularly in relation to practices leading up to publication as opposed to the content of publication: investigatory practices are often less visible to the public. Currently, neither the Press Council nor the BSA has a clear monitoring role of this kind: they act on complaints, although the BSA is by its act empowered to issue advisory opinions as well.

We do not see any conflict between these "adjudication" and "policing" roles. Other regulators have them. It is more economical and effective to locate them both in one body.

The Media Standards Trust in the United Kingdom is strongly of the view that an effective regulator should be able to act without receiving a complaint:

- The public expects a press self-regulator to monitor standards within the industry, [and] proactively investigate possible breaches of the code.
- The PCC should have an obligation to investigate possible breaches of the editorial code of practice (the code) regardless of whether or not it has received a complaint.

Appeal

We believe that justice is better done to all those involved if there is a right of appeal, and we therefore support the concept of a media appeals body which would sit above the first instance regulator of which we have been speaking. It would be similarly independent. Currently, decisions of the BSA can be appealed to the High Court; there is no right of appeal from the Press Council. The Advertising Complaints Board is subject to appeal to an appeal's authority.

Best Practice

Those constituting the regulatory body must keep abreast with developments in regulation in other sectors, and internationally. Relationships should be maintained with media regulators in other countries. While local needs may not be identical with those in other jurisdictions, much can be learned from developments, successes and failures elsewhere. The media regulatory body should also maintain relationships with other agencies whose work may impact on or inform its own, such as the Advertising Standards Authority and internet bodies like Internet New Zealand and NetSafe.

Sanctions

It is obvious that decisions of a media regulator must mean something. They must be such that the media are induced to comply with them. The only sanction that the New Zealand Press Council can currently impose is a requirement agreed to by its member media organisations that they will publish decisions against them. That is not a negligible sanction, provided the publication of the decision is prominent and adequate. A requirement to publish

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an adverse decision should remain one of the sanctions of the new regulatory body we envisage. It should be published in all versions of the medium in question: online as well as hard copy or broadcast.

We do not propose that statute should prescribe the sanctions that the regulator can impose. But it is not impossible for agreed sanctions to go well beyond required publication of adverse findings. Media organisations which join the system can be bound by contract and it is not beyond the bounds of contractual undertakings for media organisations to be obliged to take down an offending publication from their website when so directed. This would seem to us to be a necessary sanction. There is not much point in apologising for a publication if the content of it remains readily accessible. No doubt the power to order such a remedy would need to be exercised with care, and in proper balance with the Bill of Rights Act guarantee of freedom of expression. We understand that advertisers whose advertisements are found by the Advertising Standards Authority to be non-compliant invariably take them out of circulation.

We also consider that the power to require publication of an apology, correction or retraction should form part of the armoury of sanctions, as should the granting of a right of reply to an aggrieved citizen.

Whether there should be power to order compensation to an affected person is a more moot point. An agreed settlement involving such a payment is one thing: power to order it is another. The BSA currently has such a power in relation to invasions of privacy but nothing else; the Press Council does not have it at all. Any power to grant compensation should set a relatively modest maximum.

Monetary penalties are even more problematic. Once again the contract entered into by those joining the system could probably provide for such monetary obligations, but unless they were very significant they might have little impact on a large media corporation, and, conversely, have a disproportionately adverse effect on smaller organisations. They might create more ill-will than they are worth. They would raise issues of legal representation, and engender an undesirable adversarial approach. For these reasons we do not currently favour this sanction.

However, it may be worth considering an order to pay costs. This would serve in part as a sanction, but would also contribute to the funding of the regulatory body. The BSA has such a power at the moment. The maximum quantum should not be such as to cause adverse effects similar to those discussed in the context of fines.

It has not been customary in decisions of either the Press Council or the Broadcasting Standards Authority to name the journalist or other media employee who has been guilty of the transgression. That reticence is understandable in most cases but we do believe that in serious cases a decision may acquire added force if the transgressor is named. Even if that is not done, one would expect the media agency to at least inform the responsible employee of the decision and to take steps to ensure the conduct is not repeated. We understand that this does not always happen at the moment.

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Codes

Another essential feature of good media regulation is the existence of a code of practice. Education, both in journalism training schools and on the job, is an essential feature of good regulation, so the code must be well-known by those employed in the industry.

The Broadcasting Standards Authority has, in consultation with broadcasters, formulated a set of codes. The Press Council has a statement of principles which serve the same function as a code but are expressed at a greater level of generality. The journalists union likewise has a code of ethics. As we saw in an earlier unit, certain recurrent features are common to all of these: for example, the emphasis on accuracy, correction of mistakes, fairness, balance, respect for privacy, and concern for the interests of children. There are a number of questions to consider.

How and by whom should the codes be prepared? Independence, the heart of a free press, is best assured if the government plays no part in the formulation of codes. Rather they should be formulated by the regulatory authority itself or an equivalent body composed of industry representatives and members of the public. It is important that industry members who understand the operational requirements of their trade be involved, but members of the public must also be able to communicate and address the concerns which affect them. There should be wide consultation on draft codes, both in industry and the general public.

We believe that surveys of the public should be undertaken to find out what citizens expect of the media in this modern age. Do the current standards still reflect what we expect of our media? Are there different expectations of content accessed on-demand and that which is live streamed, and between free-to-air television and pay television? If so, do those expectations relate to any more than standards of decency? Are there different expectations as to accuracy between a once-a-day print newspaper and its on-line version which can be updated and changed on a constant basis? How important is balance in a single news provider given the range of views available in other media? News media codes should reflect the public sentiment on such matters. Careful consideration should also be given to the implications for a code of the new forms of media. To what extent should the traditional media utilise material from the social media or from "citizen journalists"? Does the rise of blogging affect our traditional view of the line between opinion and fact?

The second issue is where a code should sit on the scale between general principle and more detailed description. Generality allows more discretion and therefore flexibility for both the media and the regulatory body, but provides less certainty and more room for differences in interpretation. On the other hand, detailed codes provide more certain guidance, but do not allow the same flexibility in marginal cases and may not be comprehensive in their coverage: some matters may not be covered at all.

Current models differ very substantially. As noted, the Press Council relies on broad statements of principle. The BSA codes rely on a combination of general principles and guidelines as to their application, but the guidelines

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have in some instances hardened into something more like rules. Some overseas examples are more detailed than either—for example the British Broadcasting Commission's Editorial Guidelines. The right balance may be somewhere in the middle. Currently, we prefer something more detailed than the Press Council's principles. The Review of the Press Council expressed a similar view.

Finally, there is the question of content. The essential elements are the principles of good journalism to which we have already alluded. In our view the bar should be set quite high to maintain public confidence.

Each society has its own particular sensitivities. Codes should recognise these, and not follow international models slavishly. There may need to be distinctions drawn between the treatment of public figures and private persons. Subtle distinctions may also be necessary as to how central concepts are applied to different platforms of delivery. The goal should be convergence, not uniformity. The differing circumstances of the different kinds of media need to be reflected. Both pictures and words can have permanent existence and their combined operation can create effects far beyond what was the case 50 years ago. But the impact of pictures can still be greater than that of words, and extended footage of sensitive material or grieving persons can be more intrusive than written descriptions of the same material.

It will also need to be decided whether pay TV and free-to-air TV need to be differentiated in the codes, the one allowing more freedom of choice than the other. The codes should also regulate not just what is published, but also how information is obtained. Deceptive and unfair information-gathering practices must be controlled. Presently, the BSA can hear complaints about such practices only if there has been a broadcast. We would not wish to see a new regulator's jurisdiction so confined.

Finally, it is important that codes be regularly revised. New issues emerge, technologies change, and expectations can change too, over time.

2.3.3 Media Policy Formulation

Policy-making in the field of the media has progressively become an increasingly complex, multi-layered and multi-spatial process. Not only are the rules being changed due to the blurring of boundaries between distinct policy sectors but the way in which the rules are devised is also being radically transformed. The number of actors that participate in the configuration of media policies and the venues where media policies are formed have increased impressively. Both state and non-state actors contribute different understandings and knowledge, through their interaction, in the framing of the media policy agenda and the shaping of the principles and rules that govern the policy-making process.Next to governmental bodies and state ministries, not only independent regulatory authorities, private corporations, civil society organisations (i.e., working in the field of human rights and media freedom), standard setting entities, media associations, trade unions but also individuals with an interest in the areas and topics dealt with (i.e., media professionals, scholars and researchers) seek to leave their imprint on the policy discourse.

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Competing interests represented by different policy actors and organised interests become subject to negotiation, re-negotiation, conciliation and often conflict at the points of institutional interaction.

Clearly, there is no easy correlation between the number of actors involved in decision-making and the eventual decisions that are taken. The growing variety of participants in the field of media policy does not provide an indication as to the power and influence they actually enjoy. Certain policy participants possess enormous financial and other resources that substantially increase their ability to exercise leverage over policy formation.

Private corporate interests, in particular, can exert an overwhelming influence on policy decisions and direct policy analysis. First of all,they typically dispose of expert resources, which enable them to pursue their interests through government. Scientific evidence has progressively become a prerequisite for media policy development and public officials often rely on the media for the provision of statistics and data, given the lack of resources, time and expertise to produce the information themselves. Major media groups and operators are able to provide such material, either because they have it already or because they can easily call upon it, and formulate policy options and scenarios on its basis. Equally important is the ability of the media to affect the climate of policy debate through their own reporting. The positive or negative coverage of major media policy reforms under way can substantially affect their successful conclusion. Media organisations are often keen to see the enactment of particular laws or the undertaking of particular deregulatory action. The way of reporting on such issues can constrain state authorities to take (or refrain from taking) action. Fear of unfavourable coverage and electoral politics can coerce authorities to go with the media's demands. It seems indeed that media policy initiatives can be pursued or abandoned on account of their attractiveness or aversion in the media.

Conversely, most civil society initiatives do not enjoy the same capacity to influence the government, even if channels to consult and engage citizens are created with a view to enhancing the quality and legitimacy of policies. Civil society movements are often limited by lack of funds and problems of sustainability and representativeness. This does not mean that there cannot be successful interventions but it does mean that substantial and sustained policy influence might be limited to those who can routinely meet its costs. Instances where participatory policy arrangements produced the opposite result of what they purported to achieve are not missing anyway. There are many examples of public consultations that were launched only for the citizens to discover that their efforts to provide feedback and participate in the policy-making process were ignored or had no impact on the decisions reached. In short, institutional arrangements for media policy-making can favour structured and competitive debate but also build on uneven power relations that allow small decision-making elites to determine the course to take, despite the seeming diversity of the actors involved.

In addition to the increase in the number of policy participants and the relative strong or weak power they enjoy, the venues of media policy-making have also significantly grown. State-based institutional arrangements have

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formulation, subsequent choices are needed to attain the desired results. Funding must be allocated, institutional arrangements made, and procedural rules adopted. Policy implementation usually relies on civil servants and administrative officials, who are called upon to implement the policies devised and which may operate at different levels of government (national, regional or local). The usual form chosen for administering policy, irrespective of sector, is through the designation of a specific ministry or department to take the necessary implementing actions. State officials are empowered to do so but they can also be joined by other administering entities. These may include independent bodies assigned with policy administration tasks, commissions and tribunals mandated to perform quasi-judicial functions and semi- or quasi-autonomous non-governmental organisations (quangos), amongst others. Courts ultimately control the administration and enforce the rules, though as mentioned above, they often "make" policy and trigger policy reform through their interpretation of the law.

Whereas until the 1970s, the implementation phase of public policy was deemed to be unproblematic and an essentially bureaucratic process, academic thinking gradually evolved, as studies showed that implementation was not achieving the expected results. First and second-generation theories of policy implementation, founded on a "top-down" and "bottom-up" approach respectively, provided useful insight into the processes considered appropriate to match policy intent with policy practice.Whereas top-down analysis placed emphasis on the original wishes of the policy-makers, bottom-up studies centred on the actions of those involved in implementation, their skills and commitment. The focus of third generation theories moved onto the choice of implementing instruments, pointing to oversight mechanisms (based on persuasion and/or coercion) and the relationship between administrators and policy-makers, where the latter became dependent on the former for the pursuit of their interests. Analysis has stressed the implications of institutional arrangements for the success of policy implementation. It has also highlighted the importance of taking the challenge of implementation into account at earlier stages of the policy process, in order to ensure a better match between policy goals and the mechanisms required for their actual attainment.

Implementation is certainly complex. The actors participating in it carry their own values and interests, which influence the policy outcome. Institutional conflict is not rare. Differences in approach and administrative practice, coupled with the pursuit of different institutional agendas can create friction between various implementing bodies and agencies, hamper collaboration and ultimately undermine implementation. The clarity of the policy decisions reached is also important. Being the result of negotiation and bargaining, policy decisions sometimes lack precision and offer vague guidance for implementation. Policy decisions that break with previous policy and require implementing bodies to change their habits and working practices can also complicate implementation. A new government may also trigger changes in the way state policy is administered, without bringing changes to the policy itself and the goals it seeks to attain. Politicians coming to power regularly

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seek to alter implementation practices, while keeping the same regulations in force.

Administrative discretion is a crucial point to keep in mind. Bureaucrats and civil servants usually enjoy a wide margin of discretion on how to carry out the government's policy. Such discretion may serve to re-open discussion on the policy choices that were made, especially by those unsatisfied with them. Implementation can thus be used to contest what has been agreed upon, and restrict or contain the effects of regulation, if not outright evade them. The choice between different implementing avenues that is often incumbent on public agencies makes them prone to pressure. Scarcity of resources can also hamper implementation, especially when this proves a long-term exercise requiring sustainable resources.

In the field of media policy, institutional arrangements for the conduct of policy vary considerably in European countries. There is indeed a multiplicity of organs and bodies assigned to the task of implementing the policy decisions that are laid down in media laws and regulations or other policy instruments. Regarding regulation, in particular, the multi-faceted process of media policy formulation complicates the picture, as implementation is not only concerned with the application of statutory laws but also with the application of those norms defined through co-regulatory and self-regulatory processes. Media policy generally comes under the competence of national ministries of culture; electronic communications are placed under the purview of other national ministries, such as the Ministry of Transport and Communication in Finland or the Ministry of Infrastructure, Transport and Networks in Greece. There are also "integrated" ministries, bringing media and electronic communications under the same roof, like the Ministry of Economic Development in Italy or the Ministry of Industry in Spain.

Most countries have then one or more media-specific independent regulators (i.e., the State Council on Audiovisual Media in Spain, the Council of Electronic Media in Bulgaria or the Danish Radio and Television Tribunal), which are required to apply the rules and commonly enjoy supervision and monitoring tasks. In Germany, state private broadcasting is under the responsibility of fourteen independent public bodies, the so-called State Media Authorities, which also maintain a joint body, the Association of State Media Authorities. The Regulatory Affairs Commission, in turn, deals with the supervision of national broadcasters. In Belgium, three different organs operate: the Conseil Supérieur de l'Audiovisuel for the French Community, the Vlaamse Regulator voor de Media for the Flemish Community and the Medienrat for the German-speaking Community. "Mixed" bodies or "super regulators", inspired by technological convergence, have also been established, such as the Office for Communications in the UK and the Italian Communications Authority, which deal both with electronic communications and the media. This "integrated" model contrasts with the practice of other countries that keep media and electronic communications under the competence of different bodies and organs.

Institutional arrangements for the application and monitoring of rules concerning public service media also display variation and testify to a complex

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institutional mix of bodies that supervise the application of self-regulatory, co-regulatory and/or statutory rules. Most countries have also a specialised competition commission or tribunal, which may be required to apply specific rules when operating in the media context, as well as bodies dealing with issues concerning data protection and access to public documents and information.

At the same time, there exists a variety of entities, stemming from the media industry itself, that implement codes of conduct and ethical standards on an essentially self-regulatory basis. This is clearly the case for the press, which has been traditionally left to regulate itself, but also for the electronic media. Associations of publishers, journalists and other media professionals also implement voluntary codes regulating the activities of their members by assigning their application and monitoring to specific bodies created for that purpose. In addition, many media operators have developed their own professional guidelines, either because they are mandated to do so or out of their own initiative, and have entrusted their supervision to internal organs.

The complexity of the institutional framework makes the study of implementation of media policy an intriguing and challenging exercise. MEDIADEM shall investigate in detail how these bodies are organised, how they operate and how they apply policy. In addition to mapping the actors involved in media policy implementation in each country covered by the project, the analysis will examine their performance, paying due attention to formal safeguards for their independence (when available), funding arrangements and resources, the powers of action they enjoy, and the problems and pressures their encounter, if any, in their everyday practice. Bearing in mind the distinction previously drawn as regards vertical, "top-down" modes of policy formulation and horizontal regulatory arrangements, the analysis will centre on the implementation of the rules that are embedded in statutory, co-regulatory and self-regulatory instruments, as well as individualised self-regulation, when this stems from public policy-making processes. Individualised self-regulation that derives from the initiative of sole operators will not be dealt with, since this would substantially expand the field of MEDIADEM research.

2.4. CONTEMPT OF COURT AND CONTEMPT OF LEGISLATURE

2.4.1 Contempt of Court

Contempt of court, often referred to simply as "contempt," is the offense of being disobedient to or disrespectful of a court of law and its officers in the form of behaviour that opposes or defies the authority, justice, and dignity of the court. It manifests itself in willful disregard of or disrespect for the authority of a court of law, which is often behaviour that is illegal because it does not obey or respect the rules of a law court.

As explained in the People's Law Dictionary by Gerald and Kathleen Hill, "there are essentially two types of contempt:

- being rude, disrespectful to the judge or other attorneys or causing a disturbance in the courtroom, particularly after being warned by the judge;
- wilful failure to obey an order of the court."

When a court decides that an action constitutes contempt of court, it can issue a court order that in the context of a court trial or hearing declares a person or organization to have disobeyed or been disrespectful of the court's authority, called "found" or "held in contempt," this is the judge's strongest power to impose sanctions for acts that disrupt the court's normal process.

A finding of being in contempt of court may result from a failure to obey a lawful order of a court, showing disrespect for the judge, disruption of the proceedings through poor behaviour, or publication of material deemed likely to jeopardise a fair trial. A judge may impose sanctions such as a fine or jail for someone found guilty of contempt of court. Judges in common law systems usually have more extensive power to declare someone in contempt than judges in civil law systems. The client or person must be proven to be guilty before he/she will be punished.

Law Point

For the concept of Contempt of Court, the Contempt of Court Act, 1971 was passed which dealt with such a concept. Articles 129 and 215 of the Constitution of India empower 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).

Essentials

The elements generally needed to establish contempt are:

- the making of a valid court order,
- knowledge of the order by respondent,
- ability of the respondent to render compliance, and
- wilful disobedience of the order

Types

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

- Scandalising the court itself.
- Abusing parties who are concerned in the cause, in the presence of court.
- Prejudicing the public before the cause is heard.

In India contempt of court is of two types:

The first type is criminal contempt, which may be further divided into direct and indirect contempt. Direct contempt is when a person acts

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disruptively in a court room and the judge uses his authority to summarily declare that person to be in contempt of court. No criminal trial is needed for such a charge. Indirect criminal contempt is a charge brought by a prosecutor against a defendant who has wilfully violated a court order. To convict a defendant of indirect criminal contempt, all criminal procedural protections are attached, including proving the contempt beyond a reasonable doubt.

The second type is **civil contempt**, which may be brought by a plaintiff against a defendant seeking damages due to defendant's violation of a court order that had been previously awarded to the plaintiff. If the plaintiff wins a civil contempt suit, he or she may be entitled to attorney's fees. Examples of violating a court order include failure to pay child support or failure to follow a restraining order.

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, 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 of the judge sitting in that seat.

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 LED Builders Pty Ltd v Eagles Homes Pty Ltd ([1999] FCA1213) Lindgren J stated:

"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."

Limitation

The Limitation period for actions of contempt has been discussed under Section 20 of the Contempt of Courts Act of 1971 and is a period of one year from the date on which the contempt is alleged to have been committed.

2.4.2 Contempt of Legislature

Contempt of legislature refers to the open disrespect for legislature. It is a conduct exhibiting such disrespect for a legislative body as to impair its usefulness or conduct impeding the body or a committee thereof in performing legislative functions.

In some countries, contempt of Parliament is the offence of obstructing the legislature in the carrying out of its functions, or of hindering any legislator in the performance of his or her duties. The offence is known by various other names in jurisdictions in which the legislature is not called "parliament". Actions that may constitute contempt of parliament include:

- deliberately misleading a house of the legislature, or a legislative committee;
- refusing to testify before, or to produce documents to, a house or committee; and
- attempting to influence a member of the legislature by bribery or threats.

In some jurisdictions, a house of the legislature may declare any act to constitute contempt, and this is not subject to judicial review. In others, contempt of parliament is defined by statute; while the legislature makes the initial decision of whether to punish for contempt, the person or organisation in contempt may appeal to the courts. Some jurisdictions consider contempt of parliament to be a criminal offence.

Breach of Privilege and Contempt of Parliament

When any individual or authority disregards or attacks any of the privileges, rights and immunities, either of the Members individually or of the House in its collective capacity, the offence is called a breach of privilege and is punishable by the House. Besides, actions in the nature of offences against the authority or dignity of the House, such as disobedience to its legitimate orders or libels upon itself, its Members, Committees or Officers also constitute breach of privilege.

Contempt of the House may be defined generally as "any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his duty, or which has a tendency directly or indirectly, to produce such results." It may be stated that it is not possible to enumerate exhaustively every act which might be construed by the House as a contempt of the House. Some of the important types of contempt of Parliament are, however, mentioned below:

- Speeches or writings reflecting on the House, its Committees or Members;
- Reflections on the character and impartiality of the Chairman/Speaker in the discharge of his duty;
- Publication of false or distorted report of the Proceedings of the House;
- Publication of oil expunged proceedings of the House;
- Publication of proceedings of secret Sessions of the House;
- Pre-mature publication of proceedings, evidence or report of a Parliamentary Committee;
- Reflections on the report of a Parliamentary Committee;
- Molestation of Members on account of their conduct in the House or obstructing Members while in the performance of their duties as Members or while on their way to or coming after, attending the House or a Committee thereof;
- Offering bribes to Members to influence them in their Parliamentary conduct;

- Intimidation of Members in connection with their Parliamentary conduct;
- Any misconduct or undignified behaviour on the part of a Member, such as, corruption in the execution of his office as Member, disorderly and undignified conduct contrary to the usage or inconsistent with accepted standards of Parliamentary conduct;
- Obstructing or molesting officers of the House in the discharge of their duties;
- Giving false or misleading evidence or information deliberately to the House or a Committee thereof, by a Member or a witness.
- Obstructing or molesting any witness during his evidence before a Committee of the House.

Power of Parliament to Punish for Contempt

Each House of Parliament is the guardian of its own privileges. Courts of law in India have recognised that a House of Parliament (or of a State Legislature) is the sole authority to judge as to whether or not there has been a breach of privilege or contempt of the House in a particular case. The House may punish a person found guilty of breach of privilege of contempt of the House either by reprimand or admonition or by imprisonment for a specified period. In case of its own Members, either of the two other punishments can be awarded by the House, namely, suspension from the service of the House or expulsion.

The penal Jurisdiction of the House is not confined to its own Members, nor to offences committed in its immediate presence, but extends to all contempts of the House, whether committed by members or any persons who are not Members, irrespective of whether the offence is committed within the House or beyond its walls. The power to punish is the most potent weapon in the hands of a House of legislature which gives reality to privileges of Parliament, emphasises its sovereign character and vindicates its own authority and dignity. Therefore, it has aptly been described as the key-stone of Parliamentary privilege. It is also a tradition of the House that unqualified and unconditional regrets sincerely expressed by the persons guilty of breach of privilege and contempt of the House are accepted by the House and the House normally decides in such cases to best check its own dignity by taking no further notice of the matter.

2.5. OFFICIAL SECRETS ACT

Definition

In this Act, unless there is anything repugnant in the subject or context—

1. Any reference to a place belonging to Government includes a place occupied by any department of the Government, whether the place is or is not actually vested in Government;

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2. Expressions referring to communicating or receiving include any communication or receiving, whether in whole or in part, and whether the sketch, plan, model, article, note, document, or information itself or the substance, effect or description thereof only be communicated or received; expressions referring to obtaining or retaining any sketch, plan, model, article, note or document, include the copying or causing to be copied of the whole or any part of any sketch, plan, model, article, note, or document; and expressions referring to the communication of any sketch, plan, model, article, note or document include the transfer or transmission of the sketch, plan, model, article, note or document;
3. "Document" includes part of a document;
4. "Model" includes design, pattern and specimen;
5. "Munitions of war" includes the whole or any part of any ship, submarine, aircraft, tank or similar engine, arms and ammunition, torpedo, or mine intended or adapted for use in war, and any other article, material, or device, whether actual or proposed, intended for such use;
6. "Office under Government" includes any office or employment in or under any department of the Government;
7. "Photograph" includes an undeveloped film or plate;
8. "Prohibited place" means—
   (a) Any work of defense, arsenal, naval, military or air force establishment or station, mine, minefield, camp, ship or aircraft belonging to, or occupied by or on behalf of, Government, any military telegraph or telephone so belonging or occupied, any wireless or signal station or office so belonging or occupied and factory, dockyard or other places so belonging or occupied and used for the purpose of building, repairing, making or storing any munitions of war, or any sketches, plans, models or documents relating thereto, or for the purpose of getting any metals, oil or minerals of use in time of war;
   (b) Any place not belonging to Government where any munitions of war or any sketches, models, plans or documents relating thereto, are being made, repaired, gotten or stored under contract with, or with any person on behalf of, Government, or otherwise on behalf of Government;
   (c) Any place belonging to or used for the purpose of Government which is for the time being declared by the Central Government, by notification in the Official Gazette, to be a prohibited place for the purposes of this Act on the ground that information with respect thereto, or damage thereto, would be useful to an enemy, and to which a copy of the notification in respect thereof has been affixed in English and in the vernacular of the locality;

(d) Any railway, road, way or channel, or other means of communication by land or water (including any works or structures being part thereof or connected therewith) or any place used for gas, water or electricity works or other works for purposes of a public character, or any place where any munitions of war or any sketches, models, plans, or documents relating thereto, are being made, repaired, or stored otherwise than on behalf of Government, which is for the time being declared by the Central Government, by notification in the Official Gazette, to be a prohibited place for the purposes of this Act on the ground that information with respect thereto, or the destruction or obstruction thereof, or interference therewith, would be useful to an enemy, and to which a copy of the notification in respect thereof has been affixed in English and in the vernacular of the locality;

9. "Sketch" includes any photograph or other mode of representing any place or thing; and

10. "Superintendent of Police" includes any police officer of a like or superior rank, and any person upon whom the powers of a Superintendent of Police are for the purposes of this Act conferred by Central Government.

An "Invalid" Act?

Passed in April 1923 by the Legislative Council, the Act was never notified in the Gazette of India. To become law, every Act must be notified in the Gazette of India. The National Archives of India, ministries of Home and Law say they are not in possession of any such notification. None exists in the 1923 Gazette of India either. Legal luminaries say that if an Act is not notified, it is an "invalid" law. The Official Secrets Act (OSA) was amended twice, in 1951 and 1967, and made more stringent. But only the amendments were notified in the 'Extraordinary Gazette of India'.

OSA was designed to protect the British executives in India from accountability. British strategy in India was to deal with matters internally allowing only senior officials to explain government policy. However, once the OSA was enacted in Britain in 1889, it was duplicated in India. The Act was enacted to prevent the disclosure of any information rather than deal with either spying or state security. In 1967, amendments were brought post Indo-Pakistan War but in place of liberating the law it actually increased penalties and facilitated prosecution.

OSA is a major impediment in the way of freedom of the press. This has been misused time and again by the state machinery to shut the mouth of the press. This law was enacted by the colonial regime to protect the executive from public scrutiny and transparency.

OSA defines a number of offences which are a threat to the National Security. Its aim is to prevent any threat to (*i*) National Security (*ii*) Leakage of Secret Information; (*iii*) Sabotage of the System, etc.

OSA roughly has two parts:

1. Spying: The punishment for spying on the country's defence system is a prison term of up to 14 years.

2. Unauthorized communication: of any Secret Official Code / Passwords / Sketch / Plan (Blueprint) / Model / Article / Note / Document / Information.

Supporters of Freedom of the Press consider this act as the most deadly of all laws affecting the Press in India. According to this Act, a person passing Official Secrets clandestinely to the enemies of the State is punishable for 3 to 14 years.

During Mrs. Gandhi's infamous emergency (1975–1977), this Act caused a grave threat to the Freedom of the Press like the black law of censorship.

The basic features

Section 3:

Prohibits approaching, inspecting, passing over or entering in the vicinity of a prohibited place. Under the Act, it is also an offence to obtain, collect, record, publish or communicate to any other person these items or any "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 is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with Foreign States."

The basic premise of the Section is that even if the case against the accused is not proven, "his conduct or his known character as proved" could create a presumption that his action was prejudicial to the safety or interests of the state. As in British courts, "enemy" has been interpreted to include "potential enemy".

Penalty for spying: 14 years of imprisonment.

Section 5:

This section happens to be the catch-all provision of the OSA. It relates to the wilful communication, uses, retention or failure to take reasonable care of all information which has been entrusted in confidence to him by any person holding office, or which he has obtained or which he has had access to owing to his position. The voluntary reception, possession or control of any such information is also an offence.

If there is knowledge or reasonable cause to believe that such information is communicated in contravention of Section 5(2) of the Act shall be punishable for a term which may extend to 3 years, with or without fine.

What is 'Official Secret'?

It includes any kind of information; any official code, password, sketch, plan, model, article, note, document or information. The only qualification is that it should be "secret". The word "secret" or "official secrets" actually remain undefined in the Act.

The only clarity being that the Act applies only to official secrets and not to secrets of a private nature. Hence, the Act extends to ministry or department

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of the government, but not to an incorporated body like a university, government company or public corporation.

Since, there is no definition of "secret" in the Act the Government has the discretion to classify anything and everything as a "secret" as per the Official Secrets Act. The typical practice of the government is to treat any information as secret, merely because it may embarrass the government or the party in power.

The OSA 1923 was enacted with the purpose of protecting the safety and integrity of the State, but unfortunately the wide discretionary powers conferred upon the administrative authorities with a view to facilitating the task of protection of National Security were being exercised indiscriminately. There is no doubt that a statute of the nature of OSA is an indispensable requirement of a sovereign State but at the same time without necessary precaution, it is a grave threat to Freedom of the Press and transparency in governance.

The OSA and Article 19(1) (A)

Article 19(1) (A) of the Constitution guarantees the Right to Freedom of Speech and Expression to every citizen. The Freedom of Speech and Expression does include the right to acquire and disseminate information. The OSA 1923, it is claimed, violates all these rights by virtue of the restrictions it puts on the Freedom of Information. The vague provisions of the OSA 1923 also facilitate attempts on the part of the Government to threaten Media Personnel.

While discussing the conflict between these two Acts, it would be remarkable to quote the Judicial verdict in the famous State of UP vs Raj Narain:

..." In a government of responsibility like ours, where all the agents of the Public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor, which should make one wary, when secrecy is claimed for transactions, which can, at any rate have no repercussions on public security."...

Commission and Committee Reports on the Constitutionality of the OSA:

Several Commissions and Committees have reviewed the OSA; the Press Laws Inquiry Committee (1948), the Press Commission (1954), the Law Commission (1971) and also by a Study Group appointed by the Central Government in 1977.

The First Press Commission, though endorsed the Pro-Secrecy stance of the Press Laws Inquiry Committee, did also make one other important observation:

"We agree with the contention that merely because a circular is marked secret or confidential, it should not attract the provisions of the Act, if the publication thereof is in the interest of the Public and no question of National Emergency and interest of the State as such arises."

The Second Press Commission and the Press Council of India had recommended that Section 5 be scrapped. The commission suggested its replacement by provisions modelled on those of the British Freedom of Information Bill,

1978. The Council asked for the repeal of the OSA and to enact a new legislation, which may be called Freedom of Information Act.

In the era of RTI this British Raj draconian Act is against the very spirit of transparency in governance in a modern democratic state like that of ours. Verappa Moily led 2nd Administrative Reforms Commission recommended this act to be repealed or scrapped. The Moily Commission has suggested that safeguards for State Security should be incorporated into the National Security Act (NSA) instead of the OSA.

2.6. PRESS AND BOOKS REGISTRATION ACT

The publication of newspapers is regulated primarily by the Press and Registration of Books Act, 1867. The Act seeks to regulate the operation of printing presses and newspapers and registration and preservation of copies of such newspapers.

The following are its main features:-

- Section 3 of the Act requires every book or paper printed within India to have the name of the printer and the place of printing, the name of the publisher and the place of publishing printed legibly on it.
- Section 4 of the Act stipulates that the keeper of the printing press (someone who possesses a press that prints newspapers/books) has to make and subscribe a declaration before the district, presidency or subdivisional magistrate within whose local jurisdiction such a press is. A new declaration is to be made when the place where a press is kept is changed.

  No new declaration is necessary when:

  —The change is for a period not exceeding 60 days.

  —The place where the press is kept after change is within the local jurisdiction of the Magistrate.
- Section 6 of the Act requires two originals of the declaration to be authenticated by the Magistrate. Any person who wishes to see the declaration can do so, by obtaining a copy of the declaration (attested by the Seal of Court) from the officer in-charge.

  According to Section 7, in any legal proceeding, civil or criminal, the copy of the above mentioned declaration can be held as sufficient evidence against the person whose name is subscribed to it.
- Section 8 requires a new declaration by persons who have previously signed a declaration and have ceased to printers or publishers. It is also to be authenticated by a magistrate. It must be also kept in mind that the latter declaration shall be held as evidence (as in Section 7) over a former declaration in legal proceedings.

- Under Section 8A of the Act, if a person's name is published incorrectly as the editor he may make a declaration that says so within two weeks of him/her realising that his/her name is published. The person must appear before the district, presidency or sub-divisional magistrate, and if the magistrate is satisfied that the declaration is true on making an enquiry he/she shall certify accordingly.
- Section 8B provides for the cancellation of the declaration if the Magistrate is of the opinion that any declaration made in respect of a newspaper should be cancelled; an opportunity must be given to the concerned person to show cause against the action taken.

  A cancellation is ordered under the following circumstances:

  —the newspaper is published in contravention of the Act

  —the newspaper has the same/ similar title to another newspaper of the same language or in the same state

  —the printer or publisher has ceased to be so

  —the declaration was made on false representation or on the concealment of any material.

  It is possible to appeal against the order of the magistrate. The aggrieved person must appeal to the Press and Registration Appellate Board (which consists of a Chairman and a member appointed by the Press Council of India) within sixty days of the cancellation of the declaration.
- Section 5 lays down the following rules for newspapers published in India:
  (1) Every copy must have the names of the publisher and the editor along with the date of publication printed clearly on it.
  (2) The printer and the publisher of the newspaper must appear in person or by an authorised agent before a District, Presidency or Sub-divisional Magistrate within whose local jurisdiction the newspaper is published to make a declaration.
  (3) The declaration must specify the title, the language and the periodicity of the newspaper.
  (4) If the printer or the publisher is not the owner of the publication, the declaration must specify the name of the owner and an authority in writing from the owner authorising the printer/publisher to make the declaration.
  (5) A new declaration must be made if the title, periodicity or language of the newspaper changes.
  (6) A new declaration is also to be made when the owner of the newspaper or the place of printing/publishing is changed.
  (7) When a printer/publisher concerned with the declaration leaves India or is incapable of rendering his/her duties for more than 90 days, a new declaration is to be made.

(8) A declaration is considered void when the newspaper does not commence publication (*i*) Within 6 weeks of the authentication of the declaration for a weekly (or more often published newspaper) (*ii*) Within 3 months of authentication for any other newspaper.

(9) A declaration ceases to have effect when a daily, tri-weekly, bi-weekly, weekly or fortnightly publishes half the number of issues it is supposed to in a period of 3 months; the same happens for any other newspaper if it has ceased publication for more than 12 months.

- Section 9 of the Act explains rules regarding the delivery of books. Printed copies of the whole book along with the maps, prints and other engravings belonging to the book must be delivered by the printer for free of expense to the Government.

(a) Every book must be delivered to the State Government within one calendar month after the book is delivered out of the press.

(b) The State Government can require from the printer not more than two copies one calendar year after the day in (a) Under Section 11, the State Government shall transmit the copy of the book mentioned in Section 9 Clause (b) to the Central Government. Section 11A requires the publisher of every newspaper in India to deliver one copy of each issue to the Press Registrar as soon as it published.

- Section 18 of the Act calls for the maintaining of a catalogue of all books delivered to the Government called the Memoranda of Books. It is to be maintained by an officer the State Govt. appoints.

The memoranda should contain the following particulars:

- The title of the book, the contents of the title page (with the translation of the title and contents in English if it is any other language)
- The language in which it is written
- Name of the author, translator and editor
- The subject
- Place of printing and place of publishing
- Name of the firm of the printer and publisher
- Date of issue from the press
- Number of sheets/leaves/pages
- The size
- The edition
- The Price
- The number of copies of an edition
- Whether printed/cyclostyled or lithographed.
- The name and residence of the proprietor or the copyright

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Section 19A provides for the appointment of the Press Registrar and other officers (like the Registrar of Newspapers) by the Central Government.

The Press Registrar shall maintain a register of newspapers that will contain the following particulars of all newspapers:

- The title
- The language
- The periodicity of publication
- Names of the editor, publisher and printer
- Average number of pages per week
- Number of days of publication in a year
- Retail selling price per copy
- Average number of copies printed, sold to the public and distributed for free
- The name and address of the owner

The Press Act: Need For A Thorough Overhaul

The Press And Registration of Books Act, 1867 is the oldest of the existing Press Laws in India. It has been amended in the years of Independence but the amendments have been made to meet specific situations. No attempt was made to review the Act in totality and bring it in line with the needs and aspirations of the Press in a vibrant democracy like India. There has been no demand from the Press for a thorough overhaul of the Act possibly because it is merely regulatory in nature, the procedure it lays down may be cumbersome but the penalties are light and in many areas the tasks are mentioned but the responsibility for discrouraging them is not assigned. There are many anomalies in the original Act. These have increased because amendments are being made from time to time with good intentions, no doubt, but these have further complicated matters.

In its report, the Second Press Commission had made detailed recommendations about changes in the Act. In 1988, a Bill amending the Act was introduced in Parliament. There was an outcry because the Bill gave sweeping powers to the district authorities to enter the premises of a newspaper establishment. There was the natural fear that power-drunk magistrates and police might misuse these powers. Before anything could be done to rectify these defects, make the procedure for filing the declaration for a newspaper easier and to remove other anomalies in the Act and the Bill, the Lok Sabha was dissolved and the Bill died a natural death.

Busy as successive governments have been with other pressing issues, there has been no concrete action about a thorough overhaul of the PRB Act and the press continues to be regulated by an archaic piece of legislation which is totally out of tune with prevailing conditions and is full of anomalies.

The anomalies begin with the preamble of the Act itself. It says that the Act is 'for the regulation of printing presses and newspapers, for the

preservation of copies of books and newspapers printed in India and for the registration of such books and newspapers what there may have been little justification for a common legislation for books and newspapers 133 years ago, in today conditions such as clubbing together of newspapers and books is ridiculous because their needs are totally different. As for preservation, in 1954 the National Libraries Act was passed. It was meant specifically for delivery of books and newspapers to the national libraries. One can understand that copies of books should be preserved but is it necessary or possible to preserve each copy of more than 40,000 newspapers of various frequency and in various languages in India. Who is to provide the funds and the space for this exercise? Both will increase every year and no Government will be able to provide these. The Act does not mention as to who is to preserve the copies of newspapers? The framers of the Act possibly saw that the task was impossible and therefore, did not mention the office to perform it. But if the task is impossible of performance who continues to retain it in the Act and thus makes a mockery of it? There is thus an urgent need to remove books from the purview of the Act and also to remove the mention about preservation of copies of newspapers.

The first Press Commission found it difficult to get figures about the Press in India. It, therefore, suggested that there should be a Registrar of Newspapers whose duty should be to submit to the Government a report every year on the press in India. There were to be Deputy Registrars under the Press Registrar in every State. These Deputies were never appointed. The Press Registar submits his report on the basis of returns filed by newspapers. Only a small portion of the newspapers submits the annual report. Since these include all the big newspapers and most of the medium newspapers, the annual report of the Press Registrar may not be hundred per cent correct but is very near the truth.

Amendments to the PRB Act made in 1960 instead of solving problems created new ones. The most important of these was that no officer could authenticate the declaration for printing a newspaper unless the Press Registrar gave the clearance that the title of the proposed newspaper was not the same or similar to that of a newspaper published in the State in any language or in the same language anywhere in India. District authorities all over India from Kashmir in the north to Kerala in the south and Tripura in the east to Rajasthan in the west had to consult the Press Registrar and find out whether the title proposed by the publisher was 'available'.

The PRB Act lays down a time limit within which publication has to start after a declaration has been filed. But there is no time limit within which a declaration has to be filed after a clearance is given by the Press Registrar. Also, very few people file the declaration after publication of a newspaper has ceased. Some publishers want to stick on to the title in the hope that some day they may again resume publication. The heirs hardly ever bother to file a ceasing declaration. If a newspaper is running at a loss, which publisher has the time or money to file a ceasing declaration?

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All these factors combined to create a situation where within 20 years of the amendments made in 1960, the Press Registrar had cleared more than 250,000 titles but the number of newspapers actually being published did not go to more than 45,000. The other titles fell almost equally into three categories, the title had been cleared but no declaration had been filed. A declaration had been filed but publication had not begun and publication had begun but the publication had ceased. The Press Registrar has no machinery under him to find out how many newspapers were actually being published in the country. The district authorities before whom declarations were filed were in no better situation. They had more important things to do than keeping an eye on the publication of newspapers. Efforts made by the Press Registrar to activate them through the Chief Secretaries also did not bring any results.

It is to the credit of the Press Registrar that by giving a public notice, as many as 1,70,000 out of 2,50,000 blocked titles had been unblocked and made available. The unblocking is being carried out on a continuing basis now. It was a regular complaint by prospective publishers that they had to approach the Press Registrar several times before they could get clearance for a title. The prospective publisher was often told that the title he wanted was not available but the Press Registrar was not able to say where if at all a newspaper was being published under the title. The unblocking of titles has removed this irritant.

While the Press Registrar was able to solve the problem of blocked titles by administrative action, another problem is far more fundamental in nature. It is only, if the owner is the same can two newspapers with the same title be published? But the courts have held that the right to publish a newspaper under a title is a right of property. It can therefore be transferred freely. How can anyone then come in the way if a person published a newspaper permits another to bring out an edition from another centre? During the last 40 years such transfers have in fact taken place. The Press Registrar and the district authorities have been forced to accept this violation of the PRB Act. Then again, a person may be bringing out several editions of his newspaper and may say in his will that each of his sons will inherit one or more editions. They will bring out these editions under the same title. The owners would be different and this will be violative of the PRB Act. But can any Act interfere with the basic law of inheritance or transfer of property? It is therefore ridiculous to have such a provision which is violative of basic law but is being infringed with impunity.

These are only some of the glaring anomalies in the Press and Registration of Books Act. One has to take one's mind back to the second half of the 19th century to understand that the foreign government wanted to put a curb on the Press in India. It honestly felt that freedom of the Press would result in weakening the roots of foreign rule. Their fears were not unfounded. Almost all national leaders used their newspapers to arouse a feeling of nationalism in the people and to prepare them for participation in the struggle for freedom. Many

of them suffered imprisonment. The leaders had a comparatively easy time but lesser mortals were sent to the Andamans to serve their sentence. The Press and Registration of Books Act is a relic of that era. What the Press needs is an Act in keeping with the ethics of the 21st century. The task of authentication of declaration should be taken away from the district authorities and entrusted to the Press Registrar and his deputies. The clauses about preservation of copies of newspapers and the confusion about publication of newspapers with the same or similar titles should be removed. And finally, in this age of laptop printing should we still have a law for registering printing process?

2.7. SUMMARY

The Preamble to the Right to Information Act, 2005 seeks to provide for "setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commission and for matters connected therewith or incidental thereto."

Freedom of information has many benefits. It facilitates people's participation in public affairs by providing access to relevant information to the people who are then empowered to make informed choices and better exercise their democratic rights. It enhances the accountability of government, improves decision-making, enhances government credibility, and provides a powerful aid in the fight against corruption. RTI is a key to livelihood and development issue, especially in situations of poverty and powerlessness.

The significance of access to information lies in the fact that in a true democracy no person should feel helpless or powerless because she/he is not able to access to information. It is a right of a common person, whether poor or illiterate, to know whether the Government is fulfilling its responsibility or its policies are pro-people or not or if these policies are being implemented honestly or not. Giving people access to information is like placing power in people's hand. Even the oppressed and the vulnerable can utilise information in a manner to benefit their cause. For instance, information helps a poor person to know about the basic minimum wage she/he is entitled to get after a day of work and can demand for it.

RTI becomes important in the present situation when developing countries like India are adopting new economic policies of liberalisation, privatisation and globalisation. The situation requires that people should be informed about issues democracy can function effectively if people are kept informed about current affairs and broad issues—political, social and economic that directly or indirectly affect them. It is through RTI Act that people can legally claim their right to know as well may realise other rights.

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Media law is an area of the law which covers media communications of all sorts and sizes. Specialists in this field may work for individual companies, handling legal issues which come up in the course of doing business. They can also work for organisations which provide advocacy to people who run afoul of the law, or have private practices with consulting services and other forms of legal assistance available to clients. In order to become a media lawyer, it is necessary to attend law school and complete a concentration in media law, an option which is not offered at all law schools.

A finding of being in contempt of court may result from a failure to obey a lawful order of a court, showing disrespect for the judge, disruption of the proceedings through poor behaviour, or publication of material deemed likely to jeopardise a fair trial. A judge may impose sanctions such as a fine or jail for someone found guilty of contempt of court. Judges in common law systems usually have more extensive power to declare someone in contempt than judges in civil law systems. The client or person must be proven to be guilty before he/she will be punished.

OSA was designed to protect the British executives in India from accountability. British strategy in India was to deal with matters internally allowing only senior officials to explain government policy. However once the OSA was enacted in Britain in 1889, it was duplicated in India. The Act was enacted to prevent the disclosure of any information rather than deal with either spying or state security. In 1967 amendments were brought post Indo-Pakistan War but in place of liberating the law it actually increased penalties and facilitated prosecution.

The Press and Registration of Books Act, 1867 is the oldest of the existing Press Laws in India. It has been amended in the years of Independence but the amendments have been made to meet specific situations. No attempt was made to review the Act in totality and bring it in line with the needs and aspirations of the Press in a vibrant democracy like India. There has been no demand from the Press for a thorough overhaul of the Act possibly because it is merely regulatory in nature, the procedure it lays down may be cumbersome but the penalties are light and in many areas the tasks are mentioned but the responsibility for discrouraging them is not assigned. There are many anomalies in the original Act. These have increased because of amendments made from time to time with good intentions, no doubt, but these have further complicated matters.

Amendments to the PRB Act made in 1960 instead of solving problems created new ones. The most important of these was that no officer could authenticate the declaration for printing a newspaper unless the Press Registrar gave the clearance that the title of the proposed newspaper was not the same or similar to that of a newspaper published in the State in any language or in the same language anywhere in India. District authorities all over India from Kashmir in the north to Kerala in the south and Tripura in the east to Rajasthan in the west had to consult the Press Registrar and find out whether the title proposed by the publisher was 'available'.

While the Press Registrar was able to solve the problem of blocked titles by administrative action, another problem is far more fundamental in nature. It is only if the owner is the same, whether two newspapers with the same title can be published. But the courts have held that the right to publish a newspaper under a title is a right of property. It can therefore be transferred freely. How can anyone then come in the way if a person published a newspaper permits another to bring out an edition from another centre? During the last 40 years such transfers have in fact taken place. The Press Registrar and the district authorities have been forced to accept this violation of the PRB Act. Then again, a person may be bringing out several editions of his newspaper and may say in his will that each of his sons will inherit one or more editions. They will bring out these editions under the same title. The owners would be different and this will be violative of the PRB Act. But can any Act interfere with the basic law of inheritance or transfer of property? It is therefore ridiculous to have such a provision which is violative of basic law but is being infringed with impunity.

The Press and Registration of Books Act is a relic of that era. What the Press needs is an Act in keeping with the ethics of the 21st century. The task of authentication of declaration should be taken away from the district authorities and entrusted to the Press Registrar and his deputies. The clauses about preservation of copies of newspapers and the confusion about publication of newspapers with the same or similar titles should be removed.

2.8. GLOSSARY

Authentic: Conforming to fact and therefore worthy of trust, reliance, or belief.

Contention: An assertion put forward in argument.

Defamation: The act of damaging the good reputation of someone; slander or libel.

Dissemination: The act of spreading something, especially information, widely; circulation.

Infringed: Actively break the terms of (a law, an agreement, etc.).

Liberalisation: Liberalisation (or liberalisation) refers to a relaxation of previous government's restrictions, usually in areas of social or economic policy.

Prerequisite: Required or necessary as a prior condition.

Privilege: The principle of granting and maintaining a special right or immunity.

Repugnant: Extremely distasteful; unacceptable.

Vulnerable: Exposed to the possibility of being attacked or harmed, either physically or emotionally.

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2.9. REVIEW QUESTIONS

1. Discuss the legal background and features of Right to Information.
2. Define Media laws. What is the Requirements of Media Laws?
3. What do you mean by Contempt of Court and Contempt of Legislature?
4. Give a brief introduction to Breach of Privilege and Contempt of Parliament.
5. State the features of the Press and Registration of Books Act.

2.10. FURTHER READINGS

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UNIT

3

MEDIA AND COPYRIGHT ACT

STRUCTURE

3.1. INTRODUCTION

Copyright is a legal concept, enacted by most governments, that grants the creator of an original work exclusive rights to its use and distribution, usually for a limited time, with the intention of enabling the creator of intellectual wealth (e.g., the photographer of a photograph or the author of a book) to receive compensation for their work and be able to financially support themselves.

Copyright is a form of intellectual property (as patents, trademarks and trade secrets are), applicable to any expressible form of an idea or information that is substantive and discrete. It is often shared, therefore percentage holders are commonly called rightsholders: legally, contractually and in associated "rights" business functions.

Generally, rightsholders have not only "the right to copy", but also the right to be credited for the work, to determine who may adapt the work to other forms, who may perform the work, who may financially benefit from it, and other related rights. Copyright initially was conceived as a way for a

government to restrict printing; the contemporary intent of copyright is to promote the creation of new works by giving authors control of and profit from them. Copyrights are said to be territorial, which means that they do not extend beyond the territory of a specific state unless that state is a party to an international agreement.

Today, however, this is less relevant since most countries are parties to at least one such agreement. While many aspects of national copyright laws have been standardized through international copyright agreements, copyright laws of most countries have some unique features. Typically, the duration of copyright is the whole life of the creator plus fifty to hundred years from the creator's death, or a finite period for anonymous or corporate creations. Some jurisdictions have required formalities to establish copyright, but most recognise copyright in any completed work, without formal registration. Generally, copyright is enforced as a civil matter, though some jurisdictions do apply criminal sanctions. In this section, we will discuss media Copyright Act and various committee related to wages of working.

3.2. COPYRIGHT ACT

The Copyright Act, 1957 came into effect from January 1958. This Act has been amended six times since then, i.e., in 1983, 1984, 1992, 1994, 1999 and 2012. The Copyright (Amendment) Act, 2012 is the most substantial. The main reasons for amendments to the Copyright Act, 1957 include to bring the Act in conformity with WCT and WPPT; to protect the Music and Film Industry and address its concerns; to address the concerns of the physically disabled and to protect the interests of the author of any work; incidental changes; to remove operational facilities; and enforcement of rights. Some of the important amendments to the Copyright Act in 2012 are extension of copyright protection in the digital environment such as penalties for circumvention of technological protection measures and rights management information, and liability of internet service provider and introduction of statutory licences for cover versions and broadcasting organisations; ensuring right to receive royalties for authors, and music composers, exclusive economic and moral rights to performers, equal membership rights in copyright societies for authors and other right owners and exception of copyrights for physically disabled to access any work.

Preliminary

1. **Short title, extent and commencement:**

   (1) This Act may be called the Copyright Act, 1957.

   (2) It extends to the whole of India.

   (3) It shall come into force on such date (21st January,1958), vide Notification No.269 dated 21-1-58 Gazette of India, Extraordinary (Part II Section 3 page 167) as the Central Government may, by notification in the Official Gazette, appoint.

2. **Interpretation:** In this Act, unless the context otherwise requires,

(a) "adaptation" means,—

(*i*) in relation to a dramatic work, the conversion of the work into a non-dramatic work;

(*ii*) in relation to a literary work or an artistic work, the conversion of the work into a dramatic work by way of performance in public or otherwise;

(*iii*) in relation to a literary or dramatic work, any abridgement of the work or any version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical; and

(*iv*) in relation to a musical work, any arrangement or transcription of the work;

(b) "architectural work of art" means any building or structure having an artistic character or design, or any model for such building or structure;

(c) "artistic work" means—

(*i*) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;

(*ii*) an architectural work of art; and

(*iii*) any other work of artistic craftsmanship;

(d) "author" means,—

(*i*) in relation to a literary or dramatic work, the author of the work;

(*ii*) in relation to a musical work, the composer;

(*iii*) in relation to an artistic work other than a photograph, the artist;

(*iv*) in relation to a photograph, the person taking the photograph;

(*v*) in relation to a cinematograph film, the owner of the film at the time of its completion; and

(*vi*) in relation to a record, the owner of the original plate from which the record is made, at the time of the making of the plate;

(e) "calendar year" means the year commencing on the 1st day of January;

(f) "cinematograph film" includes the sound track, if any, and "cinematograph" shall be construed as including any work produced by any mechanical instrument or by radio-diffusion;

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(g) "delivery", in relation to a lecture, includes delivery by means of any mechanical instrument or by radio-diffusion;

(h) "dramatic work" includes any piece for recitation, choregraphic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise but does not include a cinematograph film;

(i) "engravings" include etchings, lithographs, wood-cuts, prints and other similar work, not being photographs;

(j) "exclusive licence" means a licence which confers on the licensee or on the licenses and persons authorised by him, to the exclusion of all other persons (including the owner of the copy right), any right comprised in the copyright in a work, and "exclusive licensee" shall be construed accordingly;

(k) "Government work" means a work which is made or published by or under the direction or control of—

  (*i*) the government or any department of the Government;

  (*ii*) any Legislature in India;

  (*iii*) any court, tribunal or other judicial authority in India;

(l) "Indian work" means a literary, dramatic or musical work, the author of which is a citizen of India;

(m) "infringing copy" means,—

  (*i*) in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematograph film;

  (*ii*) in relation to a cinematograph film, a copy of the film or a record embodying the recording in any part of the sound track associated with the film;

  (*iii*) in relation to a record, any such record embodying the same recording; and

  (*iv*) in relation to a programme in which a broadcast reproduction right subsists under section 37, a record recording the programme, if such reproduction, copy or record is made or imported in contravention of the provisions of this Act;

(n) "lecture" includes address, speech and sermon;

(o) "literary work" includes tables and compilations;

(p) "musical work" means any combination of melody and harmony or either of them, printed, reduced to writing or otherwise graphically produced or reproduced;

(q) "performance" includes any mode of visual or acoustic presentation, including any such presentation by the exhibition of a

cinematograph film, or by means of radio-diffusion, or by the use of a record, or by any other means and, in relation to a lecture, includes the delivery of such lecture;

(r) "performing rights society" means a society, association or other body, whether incorporated or not, which carries on business in India of issuing or granting licences for the performance in India of any work in which copyright subsists;

(s) "photograph" includes photo-lithograph and any work produced by any process analogous to photography but does not include any part of a cinematograph film;

(t) "plate" includes any stereotype or other plate, stone, block, mould, matrix, transfer, negative or other devices used or intended to be used for printing or reproducing copies of any work, and any matrix or other appliance by which records for the acoustic presentation of the work are intended to be made;

(u) "prescribed" means prescribed by rules made under this Act;

(v) "radio-diffusion" includes communication to the public by any means of wireless diffusion whether in the form of sounds or visual images or both;

(w) "record" means any disc, tape, perforated roll or other device in which sounds are embodied so as to be capable of being reproduced there from, other than a sound track associated with a cinematograph film;

(x) "recording" means the aggregate of the sounds embodied in and capable of being reproduced by means of a record;

(y) "work" means any of the following works, namely:

(*i*) a literary, dramatic, musical or artistic work;

(*ii*) a cinematograph film;

(*iii*) a record;

(z) "work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors;

(za) "work of sculpture" includes casts and models.

3. **Meaning of publication:** For the purposes of this Act, "publication" means,—

(a) in the case of a literary, dramatic, musical or artistic work, the issue of copies of the work to the public in sufficient quantities;

(b) in the case of a cinematograph film, the sale or hire or offer for sale or hire of the film or copies thereof to the public;

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(c) in the case of a record, the issue of records to the public in sufficient quantities; but does not, except as otherwise expressly provided in this Act, includes,—

(*i*) in the case of a literary, dramatic or musical work, the issue of any recording such work;

(*ii*) in the case of a work of sculpture or an architectural work of art, the issue of photographs and engravings of such work.

4. **When work not deemed to be published or performed in public:** Except in relation to infringement of copyright, a work shall not be deemed to be published or performed in public, if published, or performed in public, without the licence of the owner of the copyright.

5. **When work deemed to be first published in India:** For the purposes of this Act, a work published in India shall be deemed to be first published in India, notwithstanding that it has been published simultaneously in some other country, unless such other country provides a shorter term of copyright for such work; and a work shall be deemed to be published simultaneously in India and in another country if the time between the publication in India and the publication in such other country does not exceed thirty days or such other period as the Central Government may, in relation to any specified country, determine.

6. **Certain disputes to be decided by Copyright Board:** If any question arises,—

(a) Whether for the purposes of Section 3, copies of any literary, dramatic, musical or artistic work, or records are issued to the public in sufficient quantities; or

(b) Whether for the purposes of Section 5, the term of copyright for any work is shorter in any other country than that provided in respect of that work under this Act; it shall be referred to the Copyright Board constituted under Section 11 whose decision thereon shall be final.

7. **Nationality of author where the making of unpublished work is extended over considerable period:** Where, in the case of an unpublished work, the making of the work is extended over a considerable period, the author of the work shall, for the purposes of this Act, be deemed to be a citizen of, or domiciled in, that country of which he was a citizen or wherein he was domiciled during any substantial part of that period.

8. **Domicile of corporations:** For the purposes of this Act, a body corporate shall be deemed to be domiciled in India if it is incorporated under any law in force in India.

9. **Copyright Office:** (1) There shall be established for the purposes of this Act an office to be called the Copyright Office. (2) The Copyright Office shall be under the immediate control of 639 M. of Law—7 the

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Registrar of Copyrights who shall act under the superintendence and direction of the Central Government. (3) There shall be a seal for the Copyright Office.

10. **Registrar and Deputy Registrars of Copyrights:** (1) The Central Government shall appoint a Registrar of Copyrights and may appoint one or more Deputy Registrars of Copyrights. (2) A Deputy Registrar of Copyrights shall discharge under the superintendence and direction of the Registrar of Copyrights such functions of the Registrar under this Act as the Registrar may, from time to time, assign to him; and any reference in this Act to the Registrar of Copyrights shall include a reference to a Deputy Registrar of Copyrights when so discharging any such functions.

11. **Copyright Board:** (1) As soon as may be after the commencement of this Act, the Central Government shall constitute a Board to be called the Copyright Board which shall consist of a Chairman and not less than two nor more than eight other members. (2) The Chairman and other members of the Copyright Board shall hold office for such period and on such terms and conditions as may be prescribed. (3) The Chairman of the Copyright Board shall be a person who is, or has been, a Judge of the Supreme Court or a High Court or is qualified for appointment as a Judge of a High Court. (4) The Registrar of Copyrights shall be the Secretary of the Copyright Board and shall perform such functions as may be prescribed.

12. **Powers and procedure of Copyright Board:** (1) The Copyright Board shall, subject to any rules that may be made under this Act, have power to regulate its own procedure, including the fixing of places and times of its sittings:

Provided that the Copyright Board shall ordinarily hear any proceeding instituted before it under this Act within the zone in which at the time of the institution of the proceeding, the person instituting the proceeding actually and voluntarily resides or carries on business or personally works for gain.

Explanation. (1) In this sub-section "zone" means a zone specified in (37 of 1956) section 15 of the States Reorganisation Act, 1956. (2) The Copyright Board may exercise and discharge its powers and functions through Benches constituted by the Chairman of the Copyright Board from amongst its members, each Bench consisting of not less than three members. (3) If there is a difference of opinion among the members of the Copyright Board or any Bench thereof in respect of any matter coming before it for decision under this Act, the opinion of the majority shall prevail:

Provided that where there is no such majority—

(*i*) If the Chairman was one of the members who heard the matter, the opinion of the Chairman shall prevail;

(*ii*) If the Chairman was not one of the members who heard the matter, the matter shall be referred to him for his opinion and that opinion shall prevail.

(*iii*) The Copyright Board may authorise any of its members to exercise any of the powers conferred on it by Section 74 and any order made or act done in exercise of those powers by the member so authorised shall be deemed to be the order or act, as the case may be, of the Board.

(*iv*) No member of the Copyright Board shall take part in any proceedings before the Board in respect of any matter in which he has a personal interest.

(*v*) No act done or proceeding taken by the Copyright Board under this Act shall be questioned on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Board.

(*vi*) The Copyright Board shall be deemed to be a civil for the purposes of Sections 480 and 482 of the Code of Criminal Procedure, 1898(5 of 1898), and all proceedings before the Board shall deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code(45 of 1860).

13. Works in which copyright subsists

(1) Subject top the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of work, that is to say,—

(a) original literary, dramatic, musical and artistic work;

(b) cinematograph films; and

(c) records.

(2) Copyright shall not subsist in any work specified in subsection (1), other than a work to which the provisions of Section 40 or Section 41 apply, unless,—

(*i*) in the case of a published work, the work is first published in India, or where the work is at the date of such publication, or in a case where the author was dead at that date, was at the time of his death, a citizen of India;

(*ii*) in the case of an unpublished work other than an architectural work of art, the author is at the date of the making of the work a citizen of India or domiciled in India; and

(*iii*) in the case of an architectural work of art, the work is located in India.

Explanation—In the case of a work of joint authorship, the conditions conferring copyright specified in this sub-section shall be satisfied by all the authors of the work.

(3) Copyright shall not subsist—

(a) in any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work;

(b) in any record made in respect of a literary, dramatic or musical work, if in making the record, copyright in such work has been infringed.

(4) The copyright in a cinematorgraph film or a record shall not affect the separate copyright in any work in respect of which or a substantial part of which, the film, or as the case may be, the record is made.

(5) In the case of an architectural work of art, copyright shall subsist only in the artistic character and design and shall not extend to processes or methods of construction.

14. Meaning of copyright

(1) For the purposes of this Act, "copyright" means the exclusive right, by virtue of and subject to the provisions of, this Act,—

(a) In the case of a literary, dramatic or musical work, to do and authorise the doing of any of the following acts, namely:

(*i*) to reproduce the work in any material form;

(*ii*) to publish the work;

(*iii*) to perform the work in public;

(*iv*) to produce, reproduce, perform or publish any translation of the work;

(*v*) to communicate the work by radio-diffusion or to communicate to the public by a loud-speaker or any other similar instrument the radio-diffusion of the work;

(*vi*) to make any adaptation of the work;

(*vii*) to do in relation to a translation or an adaptation of the work any of the acts specified in relation to the work in clauses (*i*) to (*vi*);

(b) In the case of an artistic work, to do or authorise the doing of any of the following acts, namely:

(*i*) to reproduce the work in any material form;

(*ii*) to publish the work;

(*iii*) to include the work in any cinematograph film;

(*iv*) to make any adaptation of the work;

(*v*) to do in relation to an adaptation of the work any of the acts specified in relation to the work in clauses (*i*) to (*iii*).

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(c) In the case of a cinematograph film, to do or authorise the doing of any of the following acts, namely:

(*i*) to make a copy of the film;

(*ii*) to cause the film, insofar as it consists of visual images, to be seen in public and, insofar as it consists of sounds, to be heard in public;

(*iii*) to make any record embodying the recording in any part of the sound track associated with the film by utilising such sound track;

(*iv*) to communicate the film by radio-diffusion;

(d) in the case of a record, to do or authorise the doing of any of the following acts by utilising the record, namely:

(*i*) to make any other record embodying the same recording;

(*ii*) to cause the recording embodied in the record to be heard in public;

(*iii*) to communicate the recording embodied in the record by radio-diffusion.

(2) Any reference in sub-section (1) to the doing of any act in relation to a work or a translation or an adaptation thereof shall include a reference to the doing of that act in relation to a substantial part thereof.

15. Special provision regarding Copyright in designs registered or capable of being registered under the Indian Patents and Designs Act, 1911

(1) Copyright shall not subsist under this Act in any design which is registered under the Indian Patents and Designs Act, 1911 (5 of 1911).

(2) Copyright in any design, which is capable of being registered under the Indian Patents and Designs Act, 1911(2 of 1911), but which has not been so registered, shall cease as soon as any article to which the design has been applied, has been produced more than fifty times by an industrial process by the owner of the copyright or, with his licence, by any other person.

16. No copyright except as provided in this Act: No person shall be entitled to copyright or any similar right in any work,whether published or unpublished, otherwise than under and in accordance with the provisions of this Act or of any other law for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.

17. 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 insofar 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 therein;

(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;

(e) In the case of a work to which the provisions of Section 41 apply, the international organisation concerned shall be the first owner of the copyright therein.

18. Assignment of copyright

(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 take 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.

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(3) In this section, the expression "assignee" as respect to 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.

19. **Mode of assignment:** No assignment of the copyright in any work shall be valid unless it is in writing signed by the assignor or by his duly authorised agent.

20. **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 insofar as the testator was the owner of the copyright immediately before his death.

Explanation: In this section, the expression "manuscript" means the original document embodying the work, whether written by hand or not.

21. **Right of author to relinquish copyright**

(1) The author of a work may relinquish all or any of the rights comprised in the copyright in the work by giving notice in the prescribed form to the Registrar of Copyrights and thereupon such rights shall, subject to the provisions of sub-section (3), cease to exist from the date of the notice.

(2) On receipt of a notice under sub-section (1), the Registrar of Copyrights shall cause it to be published in the Official Gazette and in such other manner as he may deem fit.

(3) The relinquishment of all or any of the rights comprised in the copyright in a work shall not affect any rights subsisting in favour of any person on the date of the notice referred to in sub-section (1).

22. Term of copyright in published literary, dramatic, musical and artistic works: Except as otherwise hereinafter provided, 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.

Explanation: In this section the reference to the author shall, in the case of a work of joint authorship, be construed as a reference to the author who dies last.

23. Term of copyright in anonymous and pseudonymous work:

(1) In the case of a literary, dramatic, musical or artistic work (other than a photograph), which is published anonymously or pseudonymously, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the work is first published:

(2) In sub-section (1), references to 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.

(3) In sub-section (1), references to the author shall, in the case of a pseudonymous work of joint authorship, be construed,—

(a) where the names of one or more (but not all) of the authors are pseudonyms and his or their identity is not disclosed, as references to the author whose name is not a pseudonym, or, if the names of two or more of the authors are not pseudonyms, as references to such of those authors who dies last;

(b) where the names of one or more (but not all) of the authors are pseudonyms and the identity of one or more of them is disclosed, as references to the author who dies last from amongst the authors whose names are not pseudonyms and the authors whose names are pseudonyms and are disclosed; and

(c) where the names of all the authors are pseudonyms and the identity of one of them is disclosed, as references to the author whose identity is disclosed or if the identity of two or more of such authors is disclosed, as references to such of those authors who dies last.

Explanation: For the purposes of this section, the identity of an author shall be deemed to have been disclosed, if either the identity of the author is disclosed publicly by both the author and the publisher or is otherwise established to the satisfaction of the Copyright Board by that author.

24. Term of copyright in posthumous work

(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 purposes of this section a literary, dramatic or musical work or an adaptation of any such work shall be deemed to have

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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.

25. **Term of copyright in photographs:** 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.

26. **Term of copyright in cinematograph films:** 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.

27. **Term of copyright in records:** In the case of a record, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the record is published.

28. **Term of copyright 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 the year in which the work is first published.

29. **Term of copyright in works of international organisation:** In the case of a work of an international organisation 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.

30. **Licences 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 authorised agent:

    Provided that in the case of a license relating to copyright in any future work, the license shall take effect only when the work comes into existence.

    Explanation: Where a person to whom a license relating to copyright in any future work is granted under this section dies before the work comes into existence, his legal representatives shall, in the absence of any provision to the contrary in the license, be entitled to the benefit of the license.

31. **Compulsory license in work withheld from 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; the Copyright Board, after giving to the owner of the copyright in the work a reasonable opportunity of being heard and after holding such inquiry as it may deem necessary, may, if it is satisfied that the grounds for such refusal are not reasonable, direct the Registrar of Copyrights to grant to the complainant a licence to republish the work, perform the work in public or communicate the work to the public by radio-diffusion, as the case may be, subject to payment to the owner of the copyright of such compensation and subject to such other terms and conditions as the Copyright Board may determine; and thereupon the Registrar of Copyright shall grant the lincence to the complainant in accordance with the directions of the Copyright Board, on payment of such fee as may be prescribed.

Explanation: In this sub-section, the expression "Indian work" includes—(*i*) an artistic work, the author of which is a citizen of India; and (*ii*) a cinematograph film or a record made or manufactured in India.

(2) Where two or more persons have made a complaint under sub-section (1), the licence shall be granted to the complainant who in the opinion of the Copyright Board would best serve the interest of the general public.

32. Licence to produce and publish translations

(1) Any person may apply to the Copyright Board for a licence 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 licence 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 licence, not being an exclusive licence, to produce and publish a translation of the work in the language mentioned in the application, on condition that 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:

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Provided that no such licence 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 authorised 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 authorisation 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 authorisation to the publisher whose name appears from the work, not less than two months before the application for the licence;

(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.

33. Performing rights society to file statements of fees, charges and royalties

(1) Every performing rights society shall, within the prescribed time and in the prescribed manner, prepare, publish and file with the Registrar of Copyrights, statements of all fees, charges or royalties which it proposes to collect for the grant of licences for performance in public of works in respect of which it has authority to grant such licences.

(2) If any such society fails to prepare, publish or file with the Registrar of Copyrights the statements referred to in sub-section (1) in relation to any work in accordance with the provisions of that sub-section, no action or other proceeding to enforce any remedy, civil or criminal, for infringement of the performing rights in that work shall be commenced except with the consent of the Registrar of Copyrights.

34. Objections relating to published statements: Any person having any objections to any fees, charges or royalties or other particulars included in any statement referred to in section 33 may at any time lodge such objections in writing at the Copyright Office.

35. Determination of objections

(1) Every objection lodged at the Copyright Office under section 34 shall, as soon as possible, be referred to the Copyright Board and the Copyright Board shall decide objection in the manner hereinafter provided.

(2) The Copyright Board shall, in respect of every such objection, gave notice thereof to the performing rights society concerned.

(3) The Copyright Board shall, after giving such society and the person who lodged the objection a reasonable opportunity of being heard and after making such further inquiry as may be prescribed, make such alterations in the statements as it may think fit, and shall transmit the alterations made by it to the Registrar of Copyrights, who shall thereupon, as soon as practicable after the receipt of such alterations, publish them in the Official Gazette and furnish the performing rights society concerned and the person who lodged the objection with a copy thereof.

(4) The fees, charges or royalties as altered by the Copyright Board shall be the fees, charges or royalties which the performing rights society concerned may respectively lawfully sue for or collect in respect of the grant by it of licences for the performance in public of works to which such fees, charges or royalties relate.

(5) No performing rights society shall have any right of action or any right to enforce any civil or other remedy for infringement of the performing rights in any work against any person who has tendered or paid to such society the fees, charges or royalties specified in respect of that work in a statement published by that society under sub-section (1) of section 33 or where such statement has been altered by the Copyright Board under this section in the statement so altered.

(6) Where any person has lodged an objection at the Copyright Office regarding the fees, charges or royalties in request of any work included in a statement published under Section 33, that the person or any other person, on depositing such fees, charges or royalties at the Copyright Office, may, pending the final decision of such objection by the Copyright Board or the High Court, as the case may be, perform that work without infringing the copyright therein.

(7) The fees, charges or royalties deposited at the Copyright Office under sub-section (6) shall be paid to the performing rights society concerned or to the person who made the deposit, or partly to such society and partly to such person, in accordance with the final decision on the objection as aforesaid.

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36. Existing rights not affected: Nothing in this Chapter shall be deemed to affect—

(a) any rights or liabilities in relation to the performing rights in any work accrued or incurred before the commencement of this Act;

(b) any legal proceedings in respect of such rights or liabilities pending at such commencement.

37. Broadcast reproduction right

(1) Where any programme is broadcast by radio-diffusion by the Government or any other broadcasting authority, a special right to be known as "broadcast reproduction right" shall subsist in such programme.

(2) The Government or other broadcasting authorities, as the case may be, shall be the owner of the broadcast reproduction right and such right shall subsist until twenty-five years from the beginning of the calendar year next following year in which the programme is first broadcast.

(3) During the continuance of a broadcast reproduction right in relation to any programme, any person who,—

(a) without the licence of the owner of the right—

(*i*) rebroadcasts the programme in question or any substantial part thereof; or

(*ii*) causes the programme in question or any substantial part thereof to be heard in public; or

(b) without the licence of the owner of the right to utilise the broadcast for the purpose of making a record recording the programme in question or any substantial part thereof, makes any such record, shall be deemed to infringe that broadcast reproduction right.

38. Other Provisions of this Act to supply to broadcast reproduction rights: Sections 18, 19, 30, 53, 55, 58, 64, 65 and 66 shall, with any necessary adaptations and modifications, apply in relation to the broadcast reproduction right in any programme as they apply in relation of the copyright in a work :

Provided that a license to utilise a broadcast for the purpose of making a record recording a programme in which broadcast reproduction right subsists or any substantial part of such programme, shall not take effect unless the person to whom such license is granted has also obtained a license to make records recording the work embodied in such programme from the owner of the copyright in such work.

39. Other rights not affected: For the removal of doubts, it is hereby declared that the broadcast reproduction right conferred upon a broadcasting authority under this Chapter shall not affect copyright–

(a) in any literary, dramatic or musical work which is broadcast by that authority; or

(b) in any record recording any such work.

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40. Power to extend copyright to foreign work: The Central Government may, by order published in the Official Gazette, direct that all or any provisions of this Act shall apply—

(a) to work first published in any territory outside India to which the order relates in like manner as if they were first published within India;

(b) to unpublished work, or any class thereof, the authors whereof were at the time of the making of the work, subjects or citizens of a foreign country to which the order relates, in like manner as if the authors were citizens of India;

(c) in respect of domicile in any territory outside India to which the order relates in like manner as if such domicile were in India;

(d) to any work of which the author was at the date of the first publication thereof, or, in a case where the author was dead at that date, was at the time of his death, a subject or citizen of a foreign country to which the order relates in like manner as if the author was a citizen of India at that date or time; and thereupon, subject to the provisions of this Chapter and of the order, this Act shall apply accordingly:

Provided that—

(*i*) before making an order under this section in respect of any foreign country (other than a country with which India has entered into a treaty or which is a party to a convention relating to copyright to which India is also a party), the Central Government shall be satisfied that that foreign country has made, or has undertaken to make, such provisions, if any, as it appears to the Central Government expedient to require for the protection in that country of work entitled to copyright under the provisions of this Act;

(*ii*) the order may provide that the provisions of this Act shall apply either generally or in relation to such classes of work or such classes of cases as may be specified in the order;

(*iii*) the order may provide that the term of copyright in India shall not exceed that conferred by the law of the country to which the order relates;

(*iv*) the order may provide that the enjoyment of the rights conferred by this Act shall be subject to the accomplishment of such conditions and formalities, if any, as may be prescribed by the order;

(*v*) in applying the provisions of this Act as to ownership of copyright, the order may make exceptions and modifications as appear necessary, having regard to the law of the foreign country.

(*vi*) the order may provide that this Act or any part thereof shall not apply to work made before the commencement of the order or that this Act or any part thereof shall not apply to work first published before the commencement of the order.

41. Provisions as to work of certain international organisations

(1) Where—

(a) any work is made or first published by or under the direction or control of any organisation to which this section applies, and

(b) there would, apart from this section, be no copyright in the work in India at the time of the making or, as the case may be, of the first publication thereof, and

(c) either—

(*i*) the work is published as aforesaid in pursuance of an agreement in that behalf with the author, being an agreement which does not reserve to the author the copyright, if any, in the work, or

(*ii*) under Section 17 any copyright in the work would belong to the organisation; there shall, by virtue of this section, be copyright in the work throughout India.

(2) Any organisation to which this section applies which at the material time had not the legal capacity of a body corporate shall have and be deemed at all material times to have had the legal capacity of a body corporate for the purpose of holding, dealing with, and enforcing copyright and in connection with all legal proceedings relating to copyright.

(3) The organisation to which this section applies are such organisations as the Central Government may, by order publish in the Official Gazette, declare to be organisations of which one or more sovereign powers or the Government or Governments thereof are members to which it is expedient that this section shall apply.

42. Power to restrict rights in work of foreign authors first published in India: If it appears to the Central Government that a foreign country does not give or has not undertaken to give adequate protection to the works of Indian authors, the Central Government may, by order published in the Official Gazette, direct that such of the provisions of this Act as confer copyright on works first published in India shall not apply to works, published after the date specified in the order, the authors whereof are subjects or citizens of such foreign country and are not domiciled in India, and thereupon those provisions shall not apply to such works.

43. Orders under this Chapter to be laid before Parliament: Every order made by the Central Government under this Chapter shall, as

soon as may be after it is made, be laid before both Houses of Parliament and shall be subject to such modifications as Parliament may make during the session in which it is so laid or the session immediately following.

44. **Register of Copyrights:** There shall be kept at the Copyright Office a register in the prescribed form to be called the Register of Copyrights in which may be entered the names or title of works and the names and addresses of authors, publishers and owners of copyright and such other particulars as may be prescribed.

45. **Entries in Register of Copyrights**

(1) The author or publisher of, or the owner of or the other person interested in the copyright in, any work may make an application in the prescribed form accompanied by the prescribed fee to the Register of Copyrights for entering particulars of the work in the Register of Copyrights.

(2) On receipt of an application in respect of any work under sub-section (1), the Register of Copyrights may, after holding with inquiry as he may deem fit, enter the particulars of the work in the Register of Copyrights.

46. **Indexes:** There shall be also kept at the Copyright Office such indexes of the Register of copyrights as may be prescribed.

47. **Form and inspection of register:** The Register of Copyrights and indexes thereof kept under this Act shall at all reasonable times be open to inspection, and any person shall be entitled to take copies of, or make extracts from, such register or indexes on payment of such fee and subject to such conditions as may be prescribed.

48. **Register of Copyrights to be prima facie evidence of particulars entered therein:** The Register of Copyrights shall be prima facie evidence of the particulars entered therein and documents purporting to be copies of any entries therein, or extracts therefrom certified by the Registrar of Copyrights and sealed with the seal of the Copyright Office shall be admissible in evidence in all courts without further proof or production of the original.

49. **Correction of entries in the Register of Copyrights:** The Registrar of Copyrights may, in the prescribed cases and subject to the prescribed conditions, amend or later the Register of Copyrights by—

(a) correcting any error in any name, address or particulars; or

(b) correcting any other error which may have arisen therein by accidental slip or omission.

50. **Rectification of Register by Copyright Board:** The Copyright Board, on application of the Registrar of Copyrights or of any person aggrieved, shall order the rectification of the Register of Copyrights by—

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(a) the making of any entry wrongly omitted to be made in the register, or

(b) the expunging of any entry wrongly made in, or remaining on, the register, or

(c) the correction of any error or defect in the register.

51. **When copyright infringed:** Copyright in a work shall be deemed to be infringed—

(a) when any person, without a licence granted by the owner of the Copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act—

(*i*) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or

(*ii*) permits for profit any place to be used for the performance of the work in public where such performance constitutes an infringement of the copyright in the work unless he was not aware and had no reasonable ground for believing that such performance would be an infringement of copyright, or

(b) when any person—

(*i*) make for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or

(*ii*) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or

(*iii*) by way of trade exhibits in public, or

(*iv*) imports (except for the private and domestic use of the importer) into India, any infringing copies of the work.

Explanation: For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an "infringing copy".

52. **Certain acts not to infringement of**

(1) The following acts shall not constitute an infringement of copyright, namely:—

(a) a fair dealing with a literary, dramatic, musical or artistic work for the purposes of—

(*i*) research or private study;

(*ii*) criticism or review, whether of that work or of any other work;

(b) a fair dealing with a literary, dramatic, musical or artistic work for the purpose of reporting current events—

(*i*) in a newspaper, magazine or similar periodical, or

(*ii*) by radio-diffusion or in a cinematograph film or by means of photographs;

(c) the reproduction of a literary, dramatic, musical or artistic work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding;

(d) the reproduction or publication of a literary, dramatic, musical or artistic work in any work prepared by the Secretariat of a Legislature or, where the Legislature consists of two Houses, by the Secretariat of either House of the Legislature, exclusively for the use of the members of that Legislature;

(e) the reproduction of any literary, dramatic or musical work in a certified copy made or supplied in accordance with any law for the time being in force;

(f) the reading or recitation in public of any reasonable extract from a published literary or dramatic work;

(g) the publication in a collection, mainly composed of non-copyright matter, bona fide intended for the use of educational institutions, and so described in the title and in any advertisement issued by or on behalf of the publisher, of short passages from published literary or dramatic works, not themselves published for the use of educational institutions, in which copyright subsists:

Provided that not more than two such passages from works by the same author are published by the same publisher during any period of five years.

Explanation: In the case of a work of joint authorship, references in this clause to passages from works shall include references to passages from works by any one or more of the authors of those passages or by any one or more of those authors in collaboration with any other person;

(h) the reproduction of a literary, dramatic, musical or artistic work—

(*i*) by a teacher or a pupil in the course of instruction; or

(*ii*) as part of the questions to be answered in an examination; or

(*iii*) in answers to such questions;

(i) the performance in the course of the activities of an educational institution, of a literary, dramatic or musical work by the staff and students of the institution, or of a cinematograph film or a record, if the audience is limited to such staff

and students, the parents and guardians of the students and persons directly connected with the activities of the institution;

(j) the making of records in respect of any literary dramatic or musical work, if—

(*i*) records recording that work have previously been made by, or with the licence or consent of, the owner of the copyright in the work; and

(*ii*) the person making the records has given the prescribed notice of his intention to make the records, and has paid in the prescribed manner to the owner of the copyright in the work royalties in respect of all such records to be made by him, at the rate fixed by the Copyright Board in this behalf:

Provided that in making the records such person shall not make any alterations in, or omission from, the work, unless records recording the work subject to similar alterations and omissions have been previously made by, or with the licence or consent of, the owner of the copyright or unless such alterations and omissions are reasonably necessary for the adaptation of the work to the records in question;

(k) the causing of a recording embodied in a record to be heard in public by utilising the record,—

(*i*) at any premises where persons reside, as part of the amenities provided exclusively or mainly for residents therein, or

(*ii*) as part of the activities of a club, society or other organisation which is not established or conducted for profit;

(l) the performance of a literary, dramatic or musical work by an amateur club or society, if the performance is given to a non-paying audience, or for the benefit of a religious institution;

(m) the reproduction in a newspaper, magazine or other periodical of an article on current economic, political, social or religious topics, unless the author of such article has expressly reserved to himself the right of such reproduction;

(n) the publication in a newspaper, magazine or other periodical of a report of a lecture delivered in public;

(o) the making of not more than three copies of a book (including a pamphlet, sheet of music, map, chart or plan) by or under the direction of the person in charge of a public library for the use of the library if such books are not available for sale in India;

(p) the reproduction, for the purpose of research or private study or with a view to publication, of an unpublished literary, dramatic

or musical work kept in a library, museum or other institution to which the public has access:

Provided that where the identity of the author of any such work or, in the case of a work of joint authorship, of any of the authors is known to the library, museum or other institution, as the case may be, the provisions of this clause shall apply only if such reproduction is made at a time more than fifty years from the date of the death of the author or, in the case of a work of joint authorship, from the death of the author whose identity is known or, if the identity of more authors than one is known from the death of such of those authors who dies last;

(q) the reproduction or publication of—

(*i*) any matter which has been published in any Official Gazette except an Act of a Legislature;

(*ii*) any Act of a Legislature subject to the condition that such Act is reproduced or published together with any commentary thereon or any other original matter;

(*iii*) the report of any committee, commission, council, board or other like body appointed by the Government if such report has been laid on the Table of the Legislature, unless the reproduction or publication of such report is prohibited by the Government;

(*iv*) any judgement or order of a court, tribunal or other judicial authority, unless the reproduction or publication of such judgement or order is prohibited by the court, the tribunal or other judicial authority, as the case may be;

(r) the production or publication of a translation in any Indian language of an Act of a Legislature and of any rules or orders made thereunder—

(*i*) if no translation of such Act or rules or orders in that language has previously been produced or published by the Government; or

(*ii*) where a translation of such Act or rules or orders in that language has been produced or published by the Government, if the translation is not available for sale to the public:

Provided that such translation contains a statement at a prominent place to the effect that the translation has not been authorised or accepted as authentic by the Government;

(s) the making or publishing of a painting, drawing, engraving or photograph of an architectural work of art;

(t) the making or publishing of a painting, drawing, engraving or photograph of a sculpture, or other artistic work falling under sub-clause

(*iii*) of clause (c) of Section 2, if such work is permanently situated in a public place or any premises to which the public has access;

(u) the inclusion in a cinematograph film of—

(*i*) any artistic work permanently situate in a public place or any premises to which the public has access ; or

(*ii*) any other artistic work, if such inclusion is only by way of background or is otherwise incidental to the principal matters presented in the film.

(*iii*) the use by the author of an artistic work, where the author of such work is not the owner of the copyright therein, of any mould, cast, sketch, plan, model or study made by him for the purpose of the work.

Provided that he does not thereby repeat or imitate the main design of the work;

(v) the making of an object of any description in three dimensions of an artistic work in two dimensions, if the object would not appear, to persons who are not experts in relation to objects of that description, to be a reproduction of the artistic work;

(w) the reconstruction of a building or structure in accordance with the architectural drawings or plans by reference to which the building or structure was originally constructed:

Provided that the original construction was made with the consent or licence of the owner of the copyright in such drawings and plans;

(x) in relation to literary, dramatic, or musical work recorded or reproduced in any cinematograph film, the exhibition of such film after the expiration of the term of copyright therein:

Provided that the provisions of sub-clause (*ii*) of clause (a), sub-clause (*i*) of clause (b) and clauses (d), (f), (g), (m) and (p) shall not apply as respects any act unless that act is accompanied by an acknowledgement—

(*i*) identifying the work by its title or other description; and

(*ii*) unless the work is anonymous or the author of the work has previously agreed or required that no acknowledgement of his name should be made, also identifying the author.

(2) The provisions of sub-section (1) shall apply to the doing of any act in relation to the translation of a literary, dramatic or musical work or the adaptation of a literary, dramatic, musical or artistic work as they apply in relation to the work itself.

53. Importation of infringing copies

(1) The Registrar of Copyrights, on application by the owner of the copyright in any work or by his duty authorised agent and on

payment of the prescribed fee, may, after making such inquiry as he deems fit, order that copies made out of India of the work which if made in India would infringe copyright shall not be imported.

(2) Subject to any rules made under this Act, the Registrar of Copyrights or any person authorised by him in this behalf may enter any ship, dock or premises where any such copies as are referred to in sub-section (1) may be found and may examine such copies.

(3) All copies to which any order made under sub-section (1) applies shall be deemed to be goods of which the import has been prohibited or restricted under section 19 of the Sea Customs Act, 1878, and all the provisions of that Act shall have effect accordingly : (3 of 1878) Provided that such copies confiscated under the provisions of the said Act shall not vest in the Government but shall be delivered to the owner of the copyright in the work.

54. Definition: For the purposes of this Chapter, unless the context otherwise requires, the expression "owner of copyright" shall include—

(a) an exclusive licensee;

(b) in the case of an anonymous or pseudonymous literary, dramatic, musical or artistic work, the publisher of the work, until the identity of the author or, in the case of an anonymous work of joint authorship, or a work of joint authorship published under names all of which are pseudonyms, the identity of any of the authors, is disclosed publicly by the author and the publisher or is otherwise established to the satisfaction of the Copyright Board by that author or his legal representatives.

55. Civil remedies for infringement of copyright

(1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right:

Provided that if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for believing that copyright subsisted in the work, the plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies as the court may in circumstances deem responsible.

(2) Where, in the case of a literary, dramatic, musical or artistic work, a name purporting to be that of the author or the publisher, as the case may be, appears on copies of the work as published or in the case of an artistic work, appeared on the work when it was made, the person whose name so appears or appeared shall, in any

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proceeding in respect of infringement of copyright in such work, be presumed, unless the contrary is proved, to be the author or the publisher of the work, as the case may be.

(3) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the direction of the court.

56. Protection of separate rights: Subject to the provisions of this Act, where the several rights comprising the copyright in any work are owned by different persons, the owner of any such right shall, to the extent of that right, be entitled to the remedies provided by this Act and may individually enforce such right by means of any suit, action or other proceeding without making the owner of any other right a party to such suit, action or proceeding.

57. Authors special rights

(1) Independently of the author's copyright and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right to claim the authorship of the work as well as the right to restrain, or claim damages in respect of,—

(a) any distortion, mutilation or other modification of the said work; or

(b) any other action in relation to the said work which would be prejudicial to his honour or reputation.

(2) The right conferred upon an author of a work by sub-section (1), other than the right to claim authorship of the work, may be exercised by the legal representative of the author.

58. Rights of owner against persons possessing or dealing with infringing copies: All infringing copies of any work in which copyright subsists, and all plates used or intended to be used for the production of such infringing copies, shall be deemed to be the property of the owner of the copyright, who accordingly may take proceedings for the recovery of possession thereof or in respect of the conversion thereof:

Provided that the owner of the copyright shall no be entitled to any remedy in respect of the conversion of any infringing copies, if the opponent proves—

(a) that he was not aware and had no reasonable ground to believe that copyright subsisted in the work of which such copies are alleged to be infringing copies; or

(b) that he had reasonable grounds for believing that such copies or plates do not involve infringement of the copyright in any work.

59. Restriction on remedies in the case of works of architecture

(1) Notwithstanding anything contained in the Specific Relief Act, 1877 (1 of 1877), where the construction of a building or other

structure which infringes or which, if completed, would infringe the copyright in some other work has been commenced, the owner of the copyright shall not be entitled to obtain an injunction to restrain the construction of such building or structure or to order its demolition.

(2) Nothing in Section 58 shall apply in respect of the construction of a building or other structures which infringe or which, if completed, would infringe the copyright in some other work.

60. Remedy in the case of groundless threat of legal proceedings: Where nay person claiming to be the owner of the copyright in any work, by circulars, advertisements or otherwise, threatens any other person with any legal proceedings or liability in respect of an alleged infringement of the copyright, any person aggrieved thereby may, notwithstanding anything contained in Section 42 of the Specific Relief Act, 1877(1 of 1877), institute a declaratory suit that the alleged infringement to which the threats related was not in fact an infringement of any legal rights of the person making such threats and may in any such suit—

(a) obtain an injunction against the continuance of such threats; and

(b) recover such damages, if any, as he has sustained by reason of such threats:

Provided that this section shall not apply if the person making such threats, with due diligence, commences and prosecutes an action for infringement of the copyright claimed by him.

61. Owner of copyright to be party to the proceeding

(1) In every civil suit or other proceeding regarding infringement of copyright instituted by an exclusive licensee, the owner of the copyright shall, unless the court otherwise directs, be made a defendant and where such owner is made a defendant, he shall have the right to dispute the claim of the exclusive licensee.

(2) Where any civil suit or other proceeding regarding infringement of copyright instituted by an exclusive licensee is successful, no fresh suit or other proceeding in respect of the same cause of action shall lie at the instance of the owner of the copyright.

62. Jurisdiction of court over matters arising under this Chapter

(1) Every suit or other civil proceeding arising under this Chapter in respect of the infringement of copyright in any work or the infringement of any other right conferred by this Act shall be instituted in the direct court having jurisdiction.

(2) For the purpose of sub-section (1), a "district court having jurisdiction" shall, notwithstanding anything contained in the Code of Civil

Procedure, 1908(5 of 1908), or any other law for the time being in force include a direct court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceedings, the person instituting the suit or other proceeding or, where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain. (5 of 1908).

63. **Offence of infringement of copyright or other rights conferred by this Act:** Any person who knowingly infringes or abets the infringement of—

(a) the copyright in a work, or

(b) any other right conferred by this Act, shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

Explanation: Construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work shall not be an offence under this section.

64. **Power of police to seize infringed copies**

(1) Where a magistrate has taken cognizance of any offence under Section 63 in respect of the infringement of copyright in any work, it shall be lawful for any police officer, not below the rank of sub-inspector, to seize without any warrant from the magistrate, all copies of the work wherever found, which appear to him to be infringing copies of the work and all copies so seized shall, as soon as practicable, be produced before the magistrate.

(2) Any person having an interest in any copies of a work seized under sub-section (1) may, within fifteen days of such seizure, make an application to the magistrate for such copies being restored to him and the magistrate, after hearing the applicant and the complainant and making such further inquiry as may be necessary, shall make such order on the application as he may deed fit.

65. **Possession of plates for purposes of making infringing copies:** Any person who knowingly makes, or has in his possession, any plate for the purpose of making infringing copies of any work in which copyright subsists shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

66. **Disposal of infringing copies or plates for purpose of making infringing copies:** The court trying any offence under this Act may, whether the alleged offender is convicted or not, order that all copies of the work or all plates in the possession of the alleged offender, which appear to it to be infringing copies, or plates for the purpose of making infringing copies, be delivered up to the owner of the copyright.

67. Penalty for making false entries in register, etc., for production or tendering false entries: Any person who,—

(a) makes or causes to be made a false entry in the Register of Copyrights kept under this Act, or

(b) makes or causes to be made writing falsely purporting to be a copy of any entry in such register, or

(c) produces or tenders or causes to be produced or tendered as evidence any such entry or writing, knowing the same to be false, shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

68. Penalty for making false statements for the purpose of deceiving or influencing any authority or officer: Any person who,—

(a) with a view to deceiving any authority or officer in the execution of the provisions of this Act, or

(b) with a view to procuring or influencing the doing of omission of anything in relation to this Act or any matter thereunder, makes a false statement or representation knowing the same to be false, shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

69. Offences by companies

(1) Where any 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 such offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence was 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.

Explanation: For the purpose of this Section—

(a) "company"means any body corporate and includes a firm or other association of persons; and

(b) "director" in relation to a firm means a partner in the firm.

70. **Cognizance of offences:** No court inferior to that of a presidency magistrate or a magistrate of the first class shall try any offence under this Act.

71. **Appeals against certain orders of magistrate:** Any person aggrieved by an order under sub-section (2) of Section 64 or Section 66 may, within thirty days of the date of such order, appeal to the court to which appeals from the court making the order ordinarily lie, and such appellate court may direct that execution of the order be stayed pending disposal of the appeal.

72. **Appeals against orders of Registrar of Copyrights and Copyright Board**

(1) Any person aggrieved by any final decision or order of the Registrar of Copyrights may, within three months from the date of the order or decision, appeal to the Copyright Board.

(2) Any person aggrieved by any final decision or order of the Copyright Board, not being a decision or order made in an appeal under sub-section (1), may, within three months from the date of such decision or order, appeal to the High Court within whose jurisdiction the appellant actually and voluntarily resides or carries on business or personally works for gain :

Provided that no such appeal shall lie against a decision of the Copyright Board under section 6.

(3) In calculating the period of three months provided for an appeal under this section, the time taken in granting a certified copy of the order or record of the decision appealed against shall be excluded.

73. **Procedure for appeals:** The High Court may make rules consistent with this Act as to the procedure to be followed in respect of appeals made to it under Section 72.

74. **Registrar of Copyrights and Copyright Board to possess certain powers of civil courts:** The Registrar of Copyrights and the Copyright Board shall have the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908(5 of 1908), in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

(e) requisitioning any public record or copy thereof from any court or office;

(f) any other matter which may be prescribed.

Explanation: For the purpose of enforcing the attendance of witnesses, the local limits of the jurisdiction of the Registrar of Copyrights or the Copyright Board, as the case may be, shall be the limits of the territory of India.

75. **Order for payment of money passed by Registrar of Copyrights and Copyright Board not to be executable as a decree:** Every order made by the Registrar of Copyrights or the Copyright Board under this Act for the payment of any money or by the High Court in any appeal against any such order of the Copyright Board shall, on a certificate issued by the Registrar of Copyrights, the Copyright Board or the Registrar of the High Court, as the case may be, be deemed to be a decree of a civil court and shall be executable in the same manner as a decree of such court.

76. **Protection of action taken in good faith:** No suit or other legal proceeding shall lie against any person in respect of anything which is in good faith done or intended to be done in pursuance of this Act.

77. **Certain persons to be public servants:** Every officer appointed under this Act and every member of the Copyright Board shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code(45 of 1860).

78. **Power to make rules**

(1) The Central Government may, by notification in the Official Gazette, make rules{For the Copyright Rules, 1958, see Gazette of India, Extraordinary, Part II, Section 3, Page 167} for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the Central Government may make rules to provide for all or any of the following matters, namely:—

(a) the term of office and conditions of service of the Chairman and other members of the Copyright Board;

(b) the form of complaints and applications to be made, and the licences to be granted, under this Act;

(c) the procedure to be followed in connection with any proceeding before the Registrar of Copyrights;

(d) the manner of determining any royalties payable under this Act, and the security to be taken for the payment of such royalties;

(e) the form of Register of Copyrights to be kept under this Act and the particulars to be entered therein;

(f) the matters in respect of which the Registrar of Copyrights and the Copyright Board shall have powers of a civil court;

(g) the fees which may be payable under this Act;

(h) the regulation of business of the Copyright Office and of all things by this Act placed under the direction or control of the Registrar of Copyrights.

(3) All rules made under this section shall, as soon as may be after they are made, be laid before both Houses or Parliament for not less than thirty days and shall be subject to such modifications as Parliament may make during the session in which they are so laid or the session immediately following.

79. Repeals, savings and transitional provisions

(1) The Indian Copyright Act, 1914 (3 of 1914), and the Copyright Act of 1911 passed by the Parliament of the United Kingdom as modified in its application to India by the Indian Copyright Act, 1914 (3 of 1914), are hereby repealed.

(2) Where any person has, before the commencement of this Act, taken any action whereby he has incurred any expenditure or liabilities in connection with the reproduction or performance of any work in a manner which at the time was lawful or for the purpose of or with a view to the reproduction or performance of a work at a time when such reproduction or performance would, but for the coming into force of this Act, have been lawful, nothing in this section shall diminish or prejudice any rights or interests arising from or in connection with such action which are subsisting and valuable at the said date, unless the person who, by virtue of this Act, becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, falling agreement, may be determined by the Copyright Board.

(3) Copyright shall not subsist by virtue of this Act in any work in which copyright did not subsist immediately before the commencement of this Act under any Act repealed by sub-section (1).

(4) Where copyright subsisted in any work immediately before the commencement of this Act, the rights comprising such copyright shall, as from the date of such commencement, be the rights specified in section 14 in relation to the class of works to which such work belongs, and where any new rights are conferred by that section, the owner of such rights shall be—

(a) in any case where copyright in the work was wholly assigned before the commencement of this Act, the assignee or his successor-in-interest;

(b) in any other case, the person who was the first owner of the copyright in the work under any Act repealed by sub-section (1) or his legal representatives.

(5) Except as otherwise provided in this Act, where any person is entitled immediately before the commencement of this Act to copyright in any work or any right in such copyright or to an interest in any such right, he shall continue to be entitled to such right or interest for the period for which he would have been entitled thereto if this Act had not come into force.

(6) Nothing contained in this Act shall be deemed to render any act done before its commencement in infringement of copyright if that act would not otherwise have constituted such an infringement.

(7) Save as otherwise provided in this section, nothing in this section shall be deemed to affect the application of the General Clauses Act, 1897(10 of 1897), with respect to the effect of repeals.

3.3. PRESS COUNCIL OF INDIA

The Press Council of India is a statutory body in India that governs the conduct of the print 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. However, it is also empowered to hold hearings on receipt of complaints and take suitable action where 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—The Times of India (Delhi and Pune), Punjab Kesari (Delhi) and Mid Day (Mumbai)—for violation of norms of journalistic conduct. The Council's actions may not be questioned unless it is proved to be in violation of the constitution, which makes it an exceedingly powerful a body.

3.3.1 History

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 at once to be free and responsible. If the Press is to function effectively as the watchdog of public interest, it must have a secure freedom of expression, unfettered and unhindered by any authority, organised bodies or individuals. But, this claim to press freedom has legitimacy only if it is exercised with a due sense of responsibility. The Press must, therefore, scrupulously adhere to accepted norms of journalistic ethics and maintian high standards of professional conduct.

Where the norms are breached and the freedom is defiled 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,

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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.

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 Honour 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 self-regulation in which the Press Councils and similar media bodies world over are founded, was articulated by Mahatma Gandhi, who was an eminent journalist in his own right, thus : " The sole aim of journalist should be service. The newspaper 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.

Pandit Jawaharlal Nehru while defending Press freedom and warning of the danger its irresponsible exercise entails stressed : If there is no responsibility and no obligation attached to it, freedom gradually whithers away. This is true of a nation's freedom and it applies as much to the Press as to any other group, organisation or individual.

The First Press Commission (1954) came across in some section of the Press, 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. The Commission, however, pointed out that the well-established newspapers had, on the whole maintained a high standard of journalism. They had avoided cheap senstationalism and unwarranted intrusion into private lives. But it remarked that, "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 was of the view 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 it would be to arbitrate on doubtful points and to censure any one guilty of infraction of the code of journalistic ethics.

The Commission recommended the setting up of a Press Council. Among the objectives visualised 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 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.

The Commission said that the Council should consist of men who would command general confidence and respect of the profession and should have 25 members excluding the Chairman. The Chairman was to be a person who was or had been a Judge of the High Court and was to be nominated by the Chief Justice of India.

The Press Council of India was first constituted on 4th July, 1966 as an autonomous, statutory, quasi-judicial body, with Shri Justice J R Mudholkar, then a Judge of the Supreme Court, as Chairman. The Press Council Act, 1965, listed the following functions of the Council in furtherance of its objects :

- to help newspapers to maintain their independence
- to build up a code of conduct for newspapers and journalists in accordance with high professional standards
- to ensure on the part of newspapers and journalists the maintenance of high standards of public taste and foster a due sense of both rights and responsibilities of citizenship
- to encourage the growth of a sense of responsibility and public service among all those engaged in the profession of journalism.
- to keep under review any development likely to restrict the supply and dissemination of news of public interest and importance.
- to keep under review such cases of assistance received by any newspaper or news agency in India from foreign sources, as are referred to it by the Central Government.

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;

- to promote the establishment of such common service for the supply and dissemination of news to newspapers as may, from time to time, appear to it to be desirable;
- to provide facilities for the proper education and training of persons in the profession of journalism.
- to promote a proper functional relationship among all classes of persons engaged in the production or publication of newspapers.
- to study developments which may tend towards monopoly or concentration of ownership of newspapers, including a study of the ownership or financial structure of newspapers, and if necessary, to suggest remedies therefor.
- to promote technical or other research.
- to do such other acts as may be incidental or conducive to the discharge of the above functions.

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The Act of 1965 provided that the Council shall consist of a Chairman and 25 other members. Of the 25 members, 3 were to represent the two houses of Parliament, 13 were to be from amongst the working journalists, of which not less than 6 were to be editors who did not own or carry on the business of management of newspapers and the rest were to be the persons having special knowledge or practical experience in respect of education and science, law, literature and culture. By an amendment of the Act in 1970, the membership of the Council was raised by one to provide a seat for persons managing the news agencies.

The Chairman under the Act of 1965, was to be nominated by the Chief Justice of India. Of the three Members of Parliament, two representing Lok Sabha were to be nominated by the Speaker of the Lok Sabha and one representing Rajya Sabha, was to be nominated by the Chairman of the Rajya Sabha. The remaining 22 members were to be selected by a three-man Selection Committee comprising the Chief Justice of India, Chairman of the Press Council and a nominee of the President of India. The Chairman and the members were to hold office for a period of three years provided that no member could hold office for a period exceeding six years in the aggregate.

When in the early years of the Council's existence, a grievance was aired about the selection of a category of members, Parliament embarked on a search for a meticulous formula which would ensure uncompromising impartiality and fairness in the selection of Chairman and other members. This led to the amendment of the 1965 Act entrusting this work to a Committee comprising the incumbent of the three highest offices which are considered as an embodiment of these attributes, namely, Chairman of Rajya Sabha, Speaker of Lok Sabha and Chief Justice of India. But, the pursuit for still less subjective scheme continued. Even a statistical formula was evolved for equitable presentation of the various representative organisations of the profession.

As has been referred to earlier, composition of the nominating committee was changed by an amendment of the said Act in 1970, according to which the Chairman and the members from the press were to be nominated by a Nominating Committee consisting of the Chairman of the Rajya Sabha, the Chief Justice of India and the Speaker of the Lok Sabha.

The amending Act of 1970 introduced several other provisions in the Act. The manner of selection of persons of special knowledge or practical experience was specified. It provided that of the three persons to be nominated from among such people, one each shall be nominated by the University Grants Commission, the Bar Council of India and the Sahitya Academy. It also provided for raising the membership of the Council to give one seat to the persons managing the news agencies. Out of the six seats for proprietors and managers of newspapers, two each were earmarked for big, medium and small newspapers. No working journalist who owned or carried on the business of management of newspapers could now be nominated in the category of working journalists. Also, it was specified that not more than one person interested in any newspaper or group

of newspapers under the same control, could be nominated from the categories of editors, other working journalists, proprietors and managers.

The Nominating Committee was empowered to review any nomination on a representation made to it by any notified association or by any person aggrieved by it or otherwise. The amended Act also barred renomination of a retiring member for more than one term. Where any association failed to submit a panel of names when invited to do so, the Nominating Committee could ask for panels from other associations or persons of the category concerned or nominate members after consultation with such other individuals or interests concerned as it thought fit.

Under the original Act, the Chairman was nominated by the Chief Justice of India. But, after this amendment, nomination of the Chairman was also left to the Nominating Committee.

The Council set up under the Act of 1965 functioned till December 1975. During the Internal Emergency, the Act was repealed and the Council abolished w.e.f. 1/1/1976.

Press Council of 1979

A fresh legislation providing for the establishment of the Council was enacted in 1978 and the institution came to be reviewed in the year 1979 with the very same object of preserving the freedom of the press and of maintaining and improving the standards of Press in India. The present Council is a body corporate having perpetual succession. It consists of a Chairman and 28 other members. Of the 28 members, 13 represent the working journalists. Of whom 6 are to be editors of newspapers and remaining 7 are to be working journalists other than editors. 6 are to be from among persons who own or carry on the business of management of newspapers. One is to be from among the persons who manage news agencies. Three are to be persons having special knowledge or practical experience in respect of education and science, law and literature and culture. The remaining five are to Members of Parliament : three from Lok Sabha, and two from Rajya Sabha.

The new Act provides for selection of the Chairman by a Committee consisting of the Chairman of the Rajya Sabha, the Speaker of Lok Sabha and a person elected by the members of the Council from among themselves. The twenty representatives of the Press are nominated by the associations of aforesaid categories of the newspapers and news agencies notified for the purpose by the Council in the each category. One member each is nominated by the University Grants Commission, the Bar Council of India and the Sahitya Academy. Of the five Members of Parliament, three are nominated by the Speaker of the Lok Sabha and two by the Chairman of the Rajya Sabha. The term of the Chairman and the members of the Council is three years. A retiring member is eligible for renomination for not more than one term.

An extremely healthy feature of the Indian Press Council is the scheme and procedure of the nomination of its Chairman and other members, following a long search based on the experience of several years of functioning of the

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Council. Despite being a statutory body, the Government and its authorities have been completely kept out of the nomination process except for publishing the notification in the official gazette of the names of the members nominated. Nor has it been left to any individual to decide, however eminent or highly placed he may be.

A totally non-subjective procedure which leaves no scope for the interference or influence by Government or any other agency was evolved with remarkable ingenuity. The scheme is in force since the enactment of the Press Council Act of 1978 under which the revived Press Council was set up in 1979.

Objects and Functions of the Council

The objects of present Press Council are substantially the same as were laid down under the Act of 1965 and it is not necessary to repeat them here. But the functions have undergone some change in the sense that the three of the functions listed in the earlier Act were not included in the 1978 Act as they were considered to be burdensome for the Council to perform. These related to (a) promoting the establishment of such common services for the supply and dissemination of news to newspapers as may, from time to time, appear to it to be desirable;(b) providing facilities for proper education and training of persons in the profession of journalism; and (c) promoting technical or other research.

In addition, the Act of 1978 lists two new functions of the Council : (*i*) to undertake studies of foreign newspapers, including those brought out by any embassy or any other representative in India of a foreign State, their circulation and impact; and, (*ii*) to undertake such studies as may be entrusted to the Council and to express its opinion in regard to any matter referred to it by the Central Government.

The other functions remain the same as enumerated in the Act of 1965.

Powers of the Council

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

Power to Censure

(Section 14:1) Where, on receipt of a complaint made to it or otherwise, 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 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 cognieance of a complaint if in the opinion of the Chairman, there is no sufficient ground for holding an inquiry.

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 therein 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 of such newspaper, news agency, editor or journalist.

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.

The decision of the Council under sub-section (1), or sub-section (2), as the case may be, shall be final and shall not be questioned in any court of law.

General Powers of the Council

15.(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:

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

(2) Nothing in sub-section (1) 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 Sections 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.

Fundings of the Council

The Act provides that the Council may, for the purpose of performing its functions under the Act, levy fee at the prescribed rates from registered newspapers and news agencies. Apart from this, the Central Government has been enjoined to pay the Council by way of granting such sums of money as the Central Government may consider necessary, for the performance of its functions.

Functioning of the Council

The Council discharges its functions primarily through the medium of its Inquiry Committees, adjudicating on complaint cases received by it against

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the Press for violation of the norms of journalism or by the Press for interference with its freedom by the authorities. There is a set procedure for lodging a complaint with the Council.

A complainant is required essentially to write to the editor of the respondent newspaper, drawing his attention to what the complainant considers to be in 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 make and subscribe to a declaration that to the best of his knowledge and belief he has placed all the relevant facts before the Council and that no proceedings are pending in any court of law in respect of any matter alleged in the complaint; and that he shall inform the Council forthwith if during the pendency of the inquiry before the Council any matter alleged in the complaint becomes the subject matter of any proceedings in a court of law. The reason for this declaration is that in view of Section 14(3) of the Act, the Council cannot deal with any matter which is subjudice.

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. The Inquiry Committee screens and examines the complaint in necessary details. If necessary, it also calls for further particulars or documents from the parties. The parties are given opportunity to adduce evidence before the Inquiry Committee by appearing personally or through their authorised representative including legal practitioners. On the basis of the facts on record and affidavits or the oral evidence adduced 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, it 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 decisions of the Council are final and cannot be questioned in any court of law. It will thus be seen that the Council wields a lot of moral authority although it has no legally enforceable punitive powers.

The Inquiry Regulations framed by the Council empower the Chairman to take suo motu action and issue notices to any party in respect of any matter falling within the scope of Press Council Act. The procedure for holding a suo motu inquiry is substantially the same as in the case of a normal inquiry except that for any normal inquiry a complaint is required to be lodged with the Council by a complainant. For the purpose of performing its functions or holding an inquiry under the Act the Council exercises some of the powers vested in a Civil Court trying a

suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:

- Summoning and enforcing the attendance of persons and examining them on oath.
- requiring the discovery and inspection of documents.
- receiving evidence on affidavits.
- requisitioning any public record or copies thereof from any court or office.
- issuing commissions for the examination of witnesses or documents; and.
- any other matter, which may be prescribed.

The Council expects the parties to cooperate with it in the conduct of its business. At least in two cases where the Council noticed that the parties were literally uncooperative or adamant, it exercised, its authority under Section 15 of the Act to compel them to appear before it and/or to furnish record, etc. In the complaint of some Chandigarh journalists against the Chief Minister and the Government of Haryana, the erstwhile Council had to warn the authorities about the use of Council's coercive powers if they failed to respond to the notices sent by the Council. Similarly, in the famous case of B G Verghese against The Hindustan Times, the Birlas were directed to provide complete correspondence exchanged between Shri Verghese and Shri K K Birla.

The Council, in 1980 had proposed amendment of the Act, for empowering the Council to recommend to the authorities concerned, denial of certain facilities and concessions in the form of accreditation, advertisements, allocation of newsprint or concessional rates of postage for a certain period in the case of a newspaper which was censured thrice by the Council. Acceptance of the Council recommendations on the part of the authorities was sought to be made obligatory. The Council was further of the view that, as in the case of newspapers, the power vested in it under Section 15(4) of the Press Council Act, 1978, to make such observations as it may think fit, in any of its decisions or reports, respecting the conduct of any authority including government, should expressly include the power to warn, admonish or censure such authorities and that the observations of the Council in this behalf should be placed on the Table of both the Houses of Parliament and/or of the Legislature of the State concerned. In the year 1987, the Council reconsidered the matter and after detailed deliberations, decided to withdraw its proposal for penal powers because it was of the reconsidered opinion that in the prevalent conditions these powers could tend to be misused by the authorities to curb the freedom of the Press.

Since then, time and again, suggestions/references have been made to the Council that it should have penal powers to punish the delinquent newspapers/journalists. In response, the Council has consistently taken the view that the moral sanctions provided to it under the existing scheme of the Act are adequate. The suggestion was repeated by the Union Minister for Information

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and Broadcasting in his inaugural address to the International Conference of Press Councils held in New Delhi in October, 1992, but the Council unanimously rejected it with the following reasoning:

Were the Council to be endowed with the power to impose sanctions/ penalties, it would be equitable that the power to impose sanctions applies also when complaints are made by the Press against the Government and its authorities. A power to impose meaningful sanctions raises a number of issues, including, (a) the onus of proof; (b) the standard of proof; (c) the right to and cost of legal representation; and (d) whether review and/or appeal would be available. The effect of any or all of these issues may militate against the basic premise, that the Press Councils provide a democratic and efficient and inexpensive facility for hearing of the complaints, and that the consequent inevitability would, in effect, become courts, exercising judicial power and well known problems of access, cost, formality and delay would equally apply, thus defeating the basic purpose of the Press Council.

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 etc., 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 June1993 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. The Council, however, decided that if the newspaper is censured twice for any type of unethical writings within a period of three years, copies of such decisions should be forwarded to the Cabinet Secretary, to the Government of India and to the Chief Secretary of the concerned State Government for information and such action, as may, in exercise of their discretion, be deemed to be appropriate in the circumstances of the case. The Council decided that the period of three years will be taken as preceeding three years counted backwards from the date of the second censure.

Code of Conduct

Section 13 (2) (b) of the 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. 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 entitled "violation of freedom of the press" relating to adjudications and principles in matters or complaints against the government and its authorities which were of important and far reaching nature and which involved observations respecting the conduct of any authority including government was published.

Since 1986 there has been a continuous increase in the institution of complaints and their disposal by the Press Council with consequent acceleration of the process of building up the code. In 1992, the Council brought out "A Guide to Journalistic Ethics" containing principles of journalistic ethics culled out from the adjudications of the Council and the guidelines issued by it in their wake. As several more decisions of far reaching importance relating to the rights and responsibilities of the press have been rendered since then by the Council, a 162-page elaborate and comprehensive second edition of the guide has been issued. It also deals with the concept of right to privacy and lays down the guidelines to be followed on 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 or 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 for the defendant (member of the press or 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 defence 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, 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 or media. It has also been held that there is no law empowering the State or its officials to prohibit or to impose a prior restraint upon the press/media.

In 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

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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 suggests a way 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 adaptation to varying circumstances of each case, will help the journalists to self-regulate the conduct of their profession along the path of 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.

Broad Principles Evolved

Some of the broad principles evolved by the Council in course of its adjudication on various subjects both in respect of standards of journalism and the freedom of the Press are summarised as under:

A. Journalistic Standards

1. *Communal Writings*

Scurrilous and inflammatory attacks should not be made on communities and individuals. Any news on communal events based on rumours will be violative of the journalistic ethics. Similarly, distorted reporting making important omissions 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 manner, 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.

2. *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 defence, since it is his conduct which is subject of the complaint.

3. *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 good taste. Public taste is to be judged in relation to the environment, milieu and the 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 favoured 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

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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 organisation 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 scrutinise 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. 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 whom 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.

4. *Right of Reply*

The prime principle that emanates from the various adjudications on this subject upholds the editor's 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.

5. *Pre-verification of News*

Verification of news is necessary before publication, especially when the report has slanderous or libellous overtones or could lead to communal tension; nor can the publication of rumours 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.

6. *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 defence in any civil action for damages.

7. *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 level 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 from 'interest to the public') 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 informations 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 surveill 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".

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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 pressurising or intimidating them for the opinion expressed in the paper, constitutes a gross interference with the freedom of the Press.

Tendencies to coerce newspapers to desist from publishing facts or toe a particular line are matters of concern.

The local administration is expected to help a journalist to perform his duties without being under duress or pressure.

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 amount to interference in the freedom of the Press.

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.

Harassment and victimisation of the journalists by police is a direct attack on the freedom of the Press.

Seizure of camera and removal of film by police from a Press Photographer while covering the news would amount to prevent the journalist from performing his duties and is a matter to be viewed seriously.

Filing of motivated frivolous cases against a journalist would amount to interfere with his functions.

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)

Dis-accreditation and withdrawal of housing facilities from a newspaper correspondent because of articles/news items written by him would amount to an attempt to pressurise the correspondent and, therefore, the Press.

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.

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 jeopardises 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 utilise 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 on 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 de hors his paper, he can be proceeded against 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 de hors the paper. (Ibid)

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, since, then the media would become an arm of law enforcement. (Ibid)

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)

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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 related to the acts of the police, as it would be against the fundamental right of the Press. (Case of Vishwa Manav, 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 pressurise 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 despatches 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)

Guidelines and Policy Formulations

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 organised 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 (Annexure B -1).

Again, in the wake of the happenings in Ayodhya in 1990, the Council while reiterating the 1969 guidelines, issued another 12-point guidelines in the light of the new experience. The Council said that the principles outlined in it should be inculcated at every level of the media from training stage upwards and made a standard of external accountability. These principles (Annexure B-2) laid down certain 'dos' and don'ts for both the Press and the State.

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.

As stated earlier, the Council has, following a decision taken in its meeting in October 1982, published two compendiums of its adjudication; one each on violation of journalistic ethics and violation of freedom of the Press, giving at the end of a similar set of cases the principles underlying the adjudications.

Studies

The Press Council Act, 1978, empowers the Council to undertake studies in regard to matters concerning the Press. The Council in collaboration with the Indian Law Institute has conducted various studies, viz., Official Secrets Act 1923, (recommendations since updated in 1990) Contempt of Courts Act, 1971, Parliamentary Privileges and Law of Defamation, etc., insofar as they relate to the Press. This is a major accomplishment. These publications help the mediapersons understand the scope of their rights and the limits of their functioning. (Annexure C1 - C4)

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". (See Contempt of Court and the Press, page 173, prepared by Rajiv Dhawan and published under the joint auspices of Indian Law Institute and the Press Council of India).

In 1983, the Law Commission of India sent a questionnaire soliciting the views of the Press Council, inter alia, regarding disclosure of source of information by a journalist acquired by him in confidence for the purpose of his profession. In response to the Law Commission's question on the subject, the Press Council expressed as follows:

"In the opinion of the Council, the provision contained in Section 15 (2) of the Press Council Act, 1978 incorporates the latest trend and principles on the subject. Although under the above Act it is confined only to the proceedings under the Act it is strongly recommended that it should be made a part of the general law of the land."

"It is equally strongly felt that if any exception is to be made, it should be done in cases of extreme nature where disclosure is altogether unavoidable in the interest of the administration of justice. But the powers to order disclosure should be conferred only on competent court and that also in confidence to the presiding officer in the first instance, who may then, if satisfied that it is germane to the decision of the case, take such steps as may be necessary to make it a part of the evidence on record".

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The Law Commission of India submitted its 93rd Report to the Government of India on 10th August, 1983 recommending for insertion of Section 132A in the Indian Evidence Act, 1872, as under:

"132A - No court shall require a person to disclose the source of information contained in a publication for which he is responsibile, where such information has been obtained by him on the express agreement or implied understanding that the source will be kept confidential".

"Explanation: In this section—

(a) 'publication' means any speech, writing, broadcast or other communication in whatever form, which is addressed to the public at large or any section of the public.

(b) 'source' means the person from whom, or the means through which, the information was obtained".

It seems that the Government of India has not taken any step to get this recommendation of the Law Commission, implemented. The same can be said about the relatively moderate recommendations of the Press Commission/or of the Press Council of India, on this subject.

Lectures by the Chairman of the Council and other activities

The successive Chairman of the Council has been invited to address seminars or deliver lectures arranged by various organisations and institutions where they have stressed the need for ensuring objective and factually correct reportage by the Press, the need to safeguard and strengthen Press freedom and to help in maintaining peace and harmony between different communities.

All earlier Chairmen have also been participating in such activities and spreading awareness about the need to preserve and protect Press freedom and to observe high ethical standards of journalism as also about the role and functioning of the Press Council in this behalf.

Students of journalism from various universities which impart instructions on the subject have been visiting the office of the Press Council and the Chairman have addressed them about the objects, functioning and working of the Council and the rights and responsibilities of the Press. 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 Justice P.B. Sawant is the current President of the body.

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, constituted under sub-section (1) of Section 8C of the Press and Registration of Books Act, 1867, to hear appeals against unlawful cancellation of declarations of newspapers or non-authentication thereof by the District Magistrate. The Board consists of the Chairman and another member to be nominated by the Press Council of

India from amongst its members. The Board has rendered a number of important judgement since it was first constituted in 1979.

3.4. ACTS AND COMMITTEES RELATED TO WAGES OF WORKING JOURNALISTS

The Working Journalists (Fixation Of Rates Of Wages) Act, 1958 ACT NO. 29 OF 1958 1 [16th September, 1958.]

An Act to provide for the fixation of rates of wages in respect of working journalists and for matters connected therewith.

Be it enacted by Parliament in the Ninth Year of the Republic of India as follows:—

1. Short title. This Act may be called the Working Journalists (Fixation of Rates of Wages) Act, 1958.
2. Definitions. In this Act, unless the context otherwise requires,—
   (a) "Committee" means the Committee constituted under Section 3;
   (b) "prescribed" means prescribed by rules made under this Act;
   (c) "Wage Board" means the Wage Board constituted under the working Journalists Act by notification No. S. R. O. 1075 of the Government of India in the Ministry of Labour, dated 2nd May, 1956;
   (d) "Wage Board decision" means the decisions of the Wage Board published in the Gazette of India, Extraordinary, Part II, Section 3, dated 11th May, 1957;
   (e) "Wages" means wages as defined in the Industrial Disputes Act, 1947 (14 of 1947);
   (f) "Working Journalists Act" means the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955);
   (g) Words and expressions used but not defined in this Act, and defined in the Working Journalists Act, shall have the meanings respectively assigned to them in that Act.
3. *Constitution of Committee.*
   (1) For the purpose of enabling the Central Government to fix rates of wages in respect of working journalists in the light of the Judgement of the Supreme Court, dated the 19th of March, 1958 , relating to the Wage Board decision, and in the light of all other relevant circumstances, the Central Government shall, by 1. Extended to the Union territory of Pondicherry by Act 26 of 1968, S. 3 and Schedule.

   Notification in the Official Gazette, constitute a Committee consisting of the following persons, namely:—

(*i*) an officer of the Ministry of Law not below the rank of Joint Secretary, nominated by the Central Government, who shall be the Chairman of the Committee,

(*ii*) three persons nominated by the Central Government from among the officers of each of the Ministries of Home Affairs, Labour and Employment and Information and Broadcasting,

(*iii*) a chartered accountant nominated by the Central Government.

(2) If for any reason a vacancy (other than a vacancy by reason of temporary absence) occurs in the office of the Chairman or any other member of the Committee, the Central Government may appoint another person in accordance with the provisions of sub-section (1) to fill the vacancy, and the inquiry before the Committee may be continued from the stage which had been reached when the vacancy arose.

(3) The Central Government may appoint a Secretary to the Committee, and may also provide the Committee with such other staff as may be necessary.

(4) The Secretary shall perform such functions of a ministerial or other nature as the Committee or the Chairman thereof may assign or delegate to him.

4. Functions of Committee.

(1) The Committee shall, by notice published in such a manner as it thinks fit, call upon newspaper establishments and working journalists and other persons interested in the Wage Board decision to make such representations as they may think fit as respects the Wage Board decision and the rates of wages which may be fixed under this Act in respect of working journalists.

(2) Every such representation shall be in writing and shall be made within such period not exceeding thirty days, as the Committee may specify in the notice, and shall state—

(a) the specific grounds of objection, if any, to the Wage Board decision,

(b) the rates of wages which, in the opinion of the person making the representation, would be reasonable, having regard to the capacity of the employer to pay the same or to any other circumstance, whichever may seem relevant to the person making the representation in relation to his representation,

(c) the alterations or modifications, if any, which, in the opinion of the person making the representation, should be made in the Wage Board decision and the reasons therefor.

(3) The Committee shall take into account the representions aforesaid, if any, and after examining the materials placed before the Wage Board and such further materials as have since been obtained by or made available to it under this Act, make such recommendations, as it thinks fit, to the Central Government for the fixation of rates of wages in respect of working journalists, whether by way of modification or otherwise, of the Wage Board decision; and any such recommendation may specify, whether prospectively or retrospectively, the date from which the rates of wages should take effect.

(4) In making any recommendations to the Central Government, the Committee shall have regard to all the matters set out in sub- section (1) of Section 9 of the Working Journalists Act.

(5) The Committee may, if it thinks fit, take up for consideration separately groups or classes of newspaper establishments, whether on the basis of regional classification or on any other basis, and make recommendations from time to time in regard to each such group or class.

5. Powers of Committee.

(1) Subject to the provisions contained in sub-section (2), the Committee may exercise all or any of the powers which an industrial tribunal, constituted under the Industrial Disputes Act, 1947 (14 of 1947), exercises for the adjudication of an industrial dispute referred to it and shall, subject to the provisions contained in this Act and the rules, if any, made thereunder, have power to regulate its own procedure.

(2) Any representations made to the Committee and any documents furnished to it way of evidence, shall be open to inspection on payment of such fee as may be prescribed, by any person interested in the matter.

(3) If in the course of any inquiry it apperas to the Committee that it is necessary to examine any accounts or documents or obtain any statements from any person, the Committee may authorise any officer of the Central Government (hereinafter referred to as the authorised officer) in that behalf; and the authorised officer shall, subject to the directions of the Committee, if any, examine the accounts or documents or obtain the statements from the person.

(4) The authorised officer may, subject to the directions of the Committee, if any, exercise all or any of the powers which an industrial tribunal may exercise under sub-section (2) or sub-section (3) of Section 11 of the Industrial Disputes Act, 1947 (14 of 1947).

(5) Nothing in sub-section (1) of Section 54 of the Indian Income-tax Act, 1922 (11 of 1922), or in any corresponding provision in any other law for the time being in force relating to the levy of any tax shall apply to the disclosure of any of the particulars referred

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to therein in any report made to the Committee by an authorised officer.

(6) Any information obtained by an authorised officer in the exercise of any of his powers and any report made by him shall, notwithstanding anything contained in this Act, be treated as confidential, but nothing in this sub-section shall apply to the disclosure of any such information or report to the Central Government or to a court in relation to any matter concerning the execution of this Act.

(7) The authorised officer shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

6. Power of Central Government to enforce recommendations of Committee.

(1) As soon as may be, after the receipt of the recommendations of the Committee, the Central Government shall make an order in terms of the recommendations or subject to such modifications, if any, as it thinks fit, being modifications which, in the opinion of the Central Government, do not effect important alterations in the character of the recommendations.

(2) Notwithstanding anything contained in sub-section (1), the Central Government may, if it thinks fit,—

(a) make such modifications in the recommendations, not being modifications of the nature referred to in sub-section (1). as it thinks fit: Provided that before making any such modifications, the Central Government shall cause notice to be given to all persons likely to be affected thereby in such manner as may be prescribed, and shall take into account any representations which they may made in this behalf in writing, or

(b) refer the recommendations or any part thereof to the Committee, in which case the Central Government shall consider its further recommendations and make an order either in terms of the recommendations or with such modifications of the nature referred to in sub-section (1) as it thinks fit.

(3) Every order made by the Central Government shall be published in the Official Gazette together with the recommendations of the Committee relating to the order, and the order shall come into operation on the date of publication or on such date, whether prospectively or retrospectively, as may be specified in the order.

7. Working journalists entitled to wages at rates not less than those specified in the order.

Subject to the provisions contained in Section 11, on the coming into operation of an order of the Central Government, every working journalist shall be entitled to be paid by his employer wages at a rate which shall in no case be less than the rate of wages specified in the order.

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8. [Review of order of Central Government.]—Rep. by the Working Journalists (Amendment) Act, 1962 , s. 10 (w. e. f. 15- 1- 1963 .).

9. Recovery of money due to working journalists.

(1) Where any amount is due under this Act to a working journalist from an employer, 1[the working journalist himself, or any other person authorised by him in writing in this behaf or in the cash of the death of the working journalist, any member of his family may], without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the money due to him, and if the State Government, or such authority as the State Government may specify in this behalf, is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue.

(2) 2 [If any question arises as to the amount due under this Act to a working journalist from his employer, the State Government may, on its own motion or upon application made to it, refer the question to any Labour Court constituted by it under the Industrial Disputes Act, 1947 (14 of 1947) or under any corresponding law relating to investigation and settlement of industrial disputes in force in the State and the said Act or law shall have effect in relation to the Labour Court as if the question so referred were a matter referred to the Labour Court for adjudication under that Act or law.]

(3) The decision of the Labour Court shall be forwarded by it to the State Government which made the reference, and any amount found due by the Labour Court may be recovered in the manner provided in sub- section (1).

10. Authentication of orders, letters, etc., of the Committee.

All notices, letters, authorisations, orders or other documents to be issued or made by the Committee under this Act may be authenticated by the Chairman or the Secretary thereof or any other officer authorised by the Committee in this behalf and any notice, letter, authorisation, order or other documents so authenticated shall be presumed to have been duly issued or made by the Committee. 1. Subs. by Act 65 of 1962, s. 10, for the working journalist may (w. e. f. 15– 1– 1963). 2. Subs. by s. 10, ibid., for sub- section (2) (w. e. f. 15- 1- 1963).

11. Effect of Act on Working Journalists Act, etc.

(1) Sections 8, 10, 11, 12 and 13 of the Working Journalists Act shall have no effect in relation to the Committee.

(2) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith in the terms of any award, agreement or contract of service, whether made before or after the commencement of this Act: Provided that where under any such award,

agreement, contract of service or otherwise, a working journalist is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the working journalist shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act.

(3) Nothing contained in this Act shall be consistrued to preclude any working journalist from entering into any agreement with an employer for granting him rights or privileges in respect of any matter which are more favourable to him than those to which he would be entitled under this Act.

12. Vacancies, etc., not to invalidate proceedings of Committee.

No act or proceeding of the Committee shall be invalid merely by reason of the existence of any vacancy among its members or any defect in the constitution thereof.

12A. 1[Penalty.—

(1) Any employer who contravenes the provisions of section 7 shall be punishable with fine which may extend to rupees two hundred.

(2) Whoever, having been convicted of any offence under sub-section (1), is again convicted of an offence under that sub-section, shall be punishable with fine which may extend to rupees five hundred.

(3) Where an offence 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 provided in this section if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. 1. Ins. by Act 65 of 1962, s. 10 (w. e. f. 15- 1- 1963).

(4) Notwithstanding anything contained in sub-section (3), where an offence under this section has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable, to any gross 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 such offence and shall be liable to be proceeded against and punished accordingly.

(5) For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm.

13. Power to make rules.

(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the manner in which notices under this Act may be published;

(b) the procedure to be followed by the Committee in the exercise of its power under this Act;

(c) the powers and functions of the Committee which may be delegated to any of its members;

(d) the fees to be paid for inspection of documents furnished to the Committee.

(3) 1 [Every rule made under this Act, shall be laid, as soon as may be after it is made, before each 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.]

14. [Repeal and saving.]

Rep. by the Repealing and Amending Act, 1960 (58 of 1960), s. 2 and Sch. I. 1. Ins. by Act 4 of 1986, s. 2 and Sch. (w. e. f. 15- 5- 1986).

3.5. AIR AND DD'S CODE OF BROADCASTING NEWS AND ADVERTISING

3.5.1 AIR CODE (All India Radio Code)

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. Aspersions 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 Centre;
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 as flood, earthquake or cyclone.
11. Direct publicity for or on behalf of an individual or organisation which is likely to benefit only that individual or organisation.
12. Trade names in broadcasts which amount to advertising directly (except in Commercial Services).

Footnote

1. 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.
2. If a Station Director finds that the above Code has not been respected in any particular 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 him accordingly, the Station Director will be justified in refusing his or her broadcast.
3. 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.

Code of Conduct for Television/Radio Broadcasts in Connection with Elections

The Election Commission (EC) recognises the significance of television and radio in the coverage of elections. Their reach is widespread and impact 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 the 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 (as some constituencies may have several candidates), at least the more important candidates should be covered in any reports from a constituency.
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 "balanced and fair" 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 disputes.

The EC shall be the final arbiter in any dispute.

6. The final interpretation of any disputed passage or story should be with The Election Commission. In case of disagreement with the broadcaster, one authority could be nominated by the Election Commission who could take a decision immediately when approached. Advertising Code: Code for commercial advertising on Doordarshan.

General rules for conduct in advertising:

1. Advertising shall be so designed as to conform to the laws of the country and shall not offend the morality, decency and the religious sususceptibilities of the people.
2. No advertisement shall be permitted which:
   (*i*) derides any race, caste, colour, creed and nationality;
   (*ii*) is against any of the directive principles, or any other provision in the Constitution of India;
   (*iii*) tends to incite people to crime or glorifies violence or obscenity in any way;
   (*iv*) adversely affects friendly relations with foreign countries;
   (*v*) exploits the National Emblem or any part of the constitution or the person or personality of a national leader or state dignitary
   (*vi*) relates to or promotes cigarettes and tobacco products, liqour, wine and other intoxicants;
   (*vii*) in its depiction of women violates the Constitutional gaurantees given to all citizens such as equality of status and oppourtunity and dignity of the individual women must not be potrayed in derogatory light and in a manner that emphasises passive, submissive qualities and encourages them to play a subordinate and secondary role in family and in society. The potrayal of the female form shall be aesthetic and within the well established norms of good taste and decency.
3. No advertisement shall in any way be presented as News.
4. Advertisements must not be directed towards any religious or political ends or have any relation to any industrial dispute.
5. Advertisements for services concerned with the following services shall not be accepted:
   (*i*) money lenders
   (*ii*) chit funds

(*iii*) savings schemes and lotteries other than those conducted by the central and state government organisations, nationalised or recognised banks and public sector undertakings;

(*iv*) unlicenced employment services

(*v*) betting tips and guide books relating to horse racing or other games of chance.

6. No advertisement shall make claims to the effect that the product advertised possesses any miraculous or supernatural property or quality which is difficult of being proved, e.g., cure for baldness, skin whitener, etc.

7. Scientific or statistical excerpts from technical literature, etc., may be used only with a proper sense of responsibility to the ordinary viewer.

8. Advertisers or their agents must be ready to furnish evidence to substantiate any claims or illustrations since the Director General of DD has the right to demand the same.

9. Advertisements shall not contain disparaging or derogatory references to another produt or service.

10. Testimonials must be genuine and used in a manner not to mislead viewers.

11. No advertisement shall be accepted which violates AIR and TV Broadcast code which is reproduced below:

(*i*) Criticism of friendly countries;

(*ii*) Attack on religions or communities;

(*iii*) Anything obscene or defamatory;

(*iv*) Incitement to violence or anything against maintainance of law and order;

(*v*) Anything amounting to contempt of court;

(*vi*) Aspersions against the integrity of the President and the Judiciary;

(*vii*) Anything affecting the integrity of the Nation; and

(*viii*) Criticism by name of any person.

12. Information given to consumers in relation to the price, quality and weight of products shall be accurate.

13. Any pretence in advertising copy must be avioded. The simulation of appearance or voice of a personality in connection with the advertisements for commercial products requires a permission from the personality to that effect.

14. Advertisements for a product or a service shall not be accepted if it suggests that if children do not buy it they shall be lacking in thir duty or loyalty to any person. Also if it is suggested in the advertisement

that the children shall not be condemned, ridiculed if they do not buy the product. The advertisements shall also not create in the children an interest to do something which can prove to be dangerous to the children.

15. No advertisement shall try to take advantage of the superstition or ignorance of the public.

16. Advertisements should be truthful, avoid distorting facts and misleading the public by means of implications and omissions.

17. Testimonials of any kind from experts, etc., other than Government recognised standardisation agencies shall not be permitted.

18. Imitations likely to mislead the viewers shall be avoided.

19. Advertisements shall not be obscene, vulgar and offensive in their theme or treatment. This also applies to such advertisements which advertise objectionable books or photographs.

20. For advertising for medicines the general principles have laid down the following guidelines:

    (*i*) No advertisement shall contain a claim to cure any ailment or symptoms of ill health.

    (*ii*) There should be no exaggerated claims regarding the composition, character, action and suitability of the purpose for which it is recommended.

    (*iii*) Appeals to fear shall not be made.

    (*iv*) Advertisements for diagnosis or treatment by correspondence are strictly prohibited.

    (*v*) When words such as college, clinic, institute, laboratory are used in advertisements, such references can be made only when the said establishment does actually exist.

    (*vi*) Advertisements for products specifically offered to women shall not be advertised as products that are effective in inducing miscarriage.

    (*vii*) Advertisements relating to claims about curing of sexual weakness,premature ageing, loss of virility, sexual excesses etc., shall not be accepted.

    (*viii*) No advertisements should offer any medical product that is for the purposes of slimming, weight reduction or figure control.

    (*ix*) No advertsement shall contain any offer to diagnose or treat complaints or conditions by hypnosis

3.6. SUMMARY

The Copyright (Amendment) Act, 2012 is the most substantial. The main reasons for amendments to the Copyright Act, 1957 include to bring the Act in conformity with WCT and WPPT; to protect the Music and Film Industry and address its concerns; to address the concerns of the physically disabled and to protect the interests of the author of any work; incidental changes; to remove operational facilities; and enforcement of rights.

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 insofar 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;

The Copyright Board shall, after giving such society and the person who lodged the objection a reasonable opportunity of being heard and after making such further inquiry as may be prescribed, make such alterations in the statements as it may think fit, and shall transmit the alterations made by it to the Registrar of Copyrights, who shall thereupon, as soon as practicable after the receipt of such alterations, publish them in the Official Gazette and furnish the performing rights society concerned and the person who lodged the objection with a copy thereof.

The Press Council of India is a statutory body in India that governs the conduct of the print 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. However, it is also empowered to hold hearings on receipt of complaints and take suitable action where 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—The Times of India (Delhi and Pune), Punjab Kesari (Delhi) and Mid Day (Mumbai)—for violation of norms of journalistic conduct. The Council's actions may not be questioned unless it is proved to be in violation of the constitution, which makes it an exceedingly powerful a body.

The objects of present Press Council are substantially the same as were laid down under the Act of 1965 and it is not necessary to repeat them here. But the functions have undergone some change in the sense that the three of the functions listed in the earlier Act were not included in the 1978 Act as they were considered to be burdensome for the Council to perform. These related to (a) promoting the establishment of such common services for the supply and dissemination of news to newspapers as may, from time to time, appear to it to be desirable;(b) providing facilities for proper education and

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training of persons in the profession of journalism; and (c) promoting technical or other research.

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 organised 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 (Annexure B -1).

Recovery of Money due to Working Journalists

(1) Where any amount is due under this Act to a working journalist from an employer, 1[the working journalist himself, or any other person authorised by him in writing in this behaf or in the case of the death of the working journalist, any member of his family may], without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the money due to him, and if the State Government, or such authority as the State Government may specify in this behalf, is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue.

(2) 2[If any question arises as to the amount due under this Act to a working journalist from his employer, the State Government may, on its own motion or upon application make to it, refer the question to any Labour Court constituted by it under the Industrial Disputes Act, 1947 (14 of 1947) or under any corresponding law relating to investigation and settlement of industrial disputes in force in the State and the said Act or law shall have effect in relation to the Labour Court as if the question so referred were a matter referred to the Labour Court for adjudication under that Act or law.]

(3) The decision of the Labour Court shall be forwarded by it to the State Government which made the reference, and any amount found due by the Labour Court may be recovered in the manner provided in sub-section (1).

The Election Commission (EC) recognises the significance of television and radio in the coverage of elections. Their reach is widespread and impact 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.

Advertisements for a product or a service shall not be accepted if it suggests that if children do not buy it they shall be lacking in their duty or loyalty

to any person. Also if it is suggested in the advertisement that the children shall not be condemned, ridiculed if they do not buy the product. The advertisements shall also not create in the children an interest to do something which can prove to be dangerous to the children.

3.7. GLOSSARY

Adjudication: The final judgement in a legal proceeding; the act of pronouncing judgement based on the evidence presented.

Amendments: An alteration of or addition to a motion, bill, constitution, etc.

Conformity: Compliance in actions, behaviour, etc., with certain accepted standards or norms.

Copyright: The exclusive and assignable legal right, given to the originator for a fixed number of years, to print, publish, perform, film, or record literary, artistic, or musical material.

Incitement: The action of provoking unlawful behaviour or urging someone to behave unlawfully.

Interpretation: The action of explaining the meaning of something.

Manifestoes: A public declaration of principles, policies, or intentions, especially of a political nature.

Pursuance: The action of trying to achieve something.

Recommendations: A suggestion or proposal as to the best course of action, especially one put forward by an authoritative body.

Respondent: A person who replies to something, especially one supplying information for a questionnaire or responding to an advertisement.

3.8. REVIEW QUESTIONS

1. Write the Meaning and Interpretation of Copyright Act.
2. Discuss the Objects and Functions of the Press Council of India.
3. Write a short note on Freedom of the Press.
4. Explain the Working Journalists (Fixation of Rates of Wages) Act, 1958.
5. Describe the Code for commercial advertising on Doordarshan

3.9. FURTHER READINGS

1. *The Copyright Act, 1957*, Universal Law Publishing.
2. Hena Naqvi (2007). *Journalism And Mass Communication*, Upkar Prakashan.
3. Arun Kumar. *Industrial Law 2 Vols*, Atlantic Publishers & Dist.
4. M. Neelamalar. *Media Law And Ethics*, PHI Learning Pvt. Ltd.

NOTES

UNIT

4

MEDIA LAWS AND PRASAR BHARATI ACT

STRUCTURE

4.1. INTRODUCTION

Prasar Bharati is India's largest public broadcaster. It is an autonomous body set up by an Act of Parliament and comprises Doordarshan television network and All India Radio which were earlier media units of the Ministry of Information and Broadcasting. It was established following a demand that 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. Prasar Bharati Act stipulates general superintendence, direction and management of affairs of the Corporation vests in 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. The primary duty of the Corporation is to organise and

conduct public broadcasting services to inform, educate and entertain the public and to ensure a balanced development of broadcasting on radio and television.

4.2. PRASAR BHARATI ACT, CINEMATOGRAPH ACT AND FILM CENSORSHIP

The Ministry of Information and Broadcasting, Government of India has issued a notification indicating that the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 shall come into force from 15th of September, 1997. The Prasar Bharati Act provides for establishment of a Broadcasting Corporation of India, to be known as Prasar Bharati to define its composition, functions and powers and related matters.

Preliminary

1. Short title, extent and commencement.
   (1) This Act may be called the Prasar Bharati (Broadcasting Corporation of India) Act, 1990
   (2) It extends to the whole of India.
   (3) It shall come into force on such date as the Central Government may, by notification, appoint.
2. Definitions. In this Act, unless the context otherwise requires,—
   (a) "Akashvani" means the offices, stations and other establishments, by whatever name called, which, immediately before the appointed day, formed part of or were under the Director-General, All India Radio of the Union Ministry of Information and Broadcasting;
   (b) "Appointed day" means the date appointed under section 3;
   (c) "Broadcasting" means the dissemination of any form of communication like signs, signals, writing, pictures, images and sounds of all kinds by transmission of electro-magnetic waves through space or through cables intended to be received by the general public either directly or indirectly through the medium of relay stations and all its grammatical variations and cognate expression shall be construed accordingly;
   (d) "Board" means the Prasar Bharati Board;
   (e) "Broadcasting Council" means the Council established under Section 14;
   (f) "Chairman" means the Chairman of the Corporation appointed under Section 4;
   (g) "Corporation" means the Prasar Bharati (Broadcasting Corporation of India) established under Section 3;

(h) "Doordarshan" means the offices, kendras and other establishments, by whatever name called, which, immediately before the appointed day, formed part of or were under the Directorate-General, Doordarshan of the Union Ministry of Information and Broadcasting;

(i) "Elected Member" means a Member elected under Section 3;

(j) "Executive Member" means the Executive Member appointed under Section 4;

(k) "Kendra" means any telecasting centre with studios or transmitters or both and includes a relay station;

(l) "Member" means a Member of the Board;

(m) "Member (Finance)" means the Member (Finance) appointed under Section 4;

(n) "Member (Personnel)" means the Member (Personnel) appointed under Section 4;

(o) "Nominated Member" means the Member nominated by the Union Ministry of Information and Broadcasting under Section 3;

(p) "Non-lapsable Fund" means the Fund created from the commercial revenues of Akashvani and Doordarshan to meet expenditure on certain schemes;

(q) "Notification" means a notificaion published in the official Gazette;

(r) "Part-time Member" means a Part-time Member of the Board appointed under Section 4, but does not include an ex-officio Member, the Nominated Member or an elected Member;

(s) "Prescribed" means prescribed by rules made under this Act;

(t) "Recruitment Board" means a board established under sub-section (I) of Section 10;

(u) "Regulations" means regulations made by the Corporation under this Act;

(v) "Station" means any broadcasting station with studios or transmitters or both and includes a relay station;

(w) "Whole-time Member" means the Executive Member, Member (Finance) or Member (Personnel);

(x) "Year" means the financial year.

Prasar Bharati (Broadcasting Corporation of India)

3. Establishment and composition of Corporation.

(1) With effect from such date as the Central Government may by notification appoint in this behalf, there shall be established for the purposes of this Act a Corporation, to be known as the Prasar Bharati (Broadcasting Corporation of India).

(2) The Corporation shall be a body corporate by the name aforesaid, having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall by the said name sue and be sued.

(3) The headquarters of the Corporation shall be at New Delhi and the Corporation may establish offices, kendras or stations at other places in India and, with the previous approval of the Central Government, outside India.

(4) The general superintendence, direction and management of the affairs of the Corporation shall vest 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.

(5) The Board shall consist of:

(a) a Chairman;

(b) one Executive Member;

(c) one Member (Finance);

(d) one Member (Personnel);

(e) six Part-time Members;

(f) Director-General (Akashvani), ex-officio;

(g) Director-General (Doordarshan), ex-officio;

(h) One representative of the Union Ministry of Information and Broadcasting, to be nominated by that Ministry; and

(i) 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.

(6) The Corporation may appoint such committees as may be necessary for the efficient performance, exercise and discharge of its functions, powers and duties:

Provided that all or a majority of the members of each committee shall be Members and a member of any such committee who is not a Member shall have only the right to attend meetings of the committee and take part in the proceedings thereof, but shall not have the right to vote.

(7) The Corporation may associate with itself, in such manner and for such purposes as may be provided by regulations, any person whose assistance or advice it may need in complying with any of the provisions of this Act and a 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.

(8) No act or proceeding of the Board or any committee appointed by it under sub-section (6) shall be invalidated merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Board or such committee; or

(b) any defect in the appointment of a person acting as a Member or a member of such committee; or

(c) any irregularity in the procedure of the Board or such committee not affecting the merits of the case.

4. Appointment of Chairman and other Members.

(1) 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 established under Section 4 of the Press Council Act, 1978; and

(c) one nominee of the President of India.

(2) No appointment of a Member shall be invalidated merely by reason of any vacancy in, or any defect in the constitution of, the committee appointed under sub-section (1).

(3) 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 respect of such matters as administration, management, broadcasting, education, literature, culture, arts, music, dramatics or journalism; the Member (Finance) shall be 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.

(4) The recommendations made by the committee constituted under sub-section (1) shall be binding for the purposes of appointments under this section.

5. Powers and functions of Executive Member. (1) 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.

6. Term of office, conditions of service, etc., of Chairman and other Members.

(1) The Chairman shall be a Part-time Member and shall hold office for a term of six years from the date on which he enters upon his office.

(2) The Executive Member, the Member (Finance) and Member (Personnel) shall be Whole-time Members and every such the 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.

(3) 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.

(4) The term of office of an elected Member shall be two years or till he ceases to be an employee of the Corporation, whichever is earlier.

(5) As soon as may be after the establishment of the Corporation, the President 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.

(6) Where before the expiry of the term of office of a person holding the office of Chairman, or any other Member, a vacancy arises, for any reason whatsoever, such vacancy shall be deemed to be a casual vacancy and the person appointed or elected to fill such vacancy shall hold office for the unexpired period of the term for which his predecessor in office would have held office if such vacancy had not arisen.

(7) The Whole-time Members shall be the employees of the Corporation and as such shall be entitled to such salaries and allowances and shall be subject to such conditions of service in respect of leave, pension (if any), provident fund and other matters as may be prescribed:

Provided that the salaries and allowances and the conditions of service shall not be varied to their disadvantage after their appointment.

(8) The Chairman and Part-time Members shall be entitled to such allowances as may be prescribed.

7. Removal and Suspension of Chairman and Members.

(1) Subject to the provisions of sub-section (3), 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 misbehaviour after the Supreme Court, on a reference being made to it by the President, has, on inquiry held in accordance with such procedure as the Supreme Court may by rules provide, reported that the Chairman or such other member, as the case may be, ought, on such ground, be removed.

(2) The President may suspend from office 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 under sub-section (1) until the president has passed orders on receipt of the report of the Superme Court on such reference.

(3) Notwithstanding anything contained in sub-section (1), 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 during his term of office in any paid employment outside the duties of his office; 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:

Provided that 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, or becomes in any way concerned or 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 profit thereof, or in any benefit or emolument arising therefrom than as a member, and in common with other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.

(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, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.

(6) The Chairman or any other Member may resign his office by giving notice thereof in writing to the President of India and on such resignation being accepted, the Chairman or other Member shall be deemed to have vacated his office.

8. Meetings of Board.

(1) The Board shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at

its meetings (including the quorum at meetings) as may be provided by regulations:

Provided that there shall not be less than six meetings every year but three months shall not intervene between one meeting and the next meeting.

(2) 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.

(3) The Chairman shall preside at the meetings of the Board and if for any reason he is unable to attend any meeting, the Executive Member and in the absence of both, any other Member elected by the Members present at such meeting, shall preside at the meeting.

(4) 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.

9. Officers and other employees of Corporation.

(1) Subject to such control, restrictions and conditions as may be prescribed, the Corporation may appoint, after consultation with the Recruitment Board, the Director-General (Akashvani), the Director-General (Doordarshan) and such other officers and other employees as may be necessary.

(2) The method of recruitment of such officers and employees and all other matters connected therewith and the conditions of service of such officers and other employees shall be such as may be provided by regulations.

10. Establishment of Recruitment Boards.

(1) The Corporation shall, as soon as may be, after the appointed day and in such manner and subject to such conditions and restrictions as may be prescribed, establish for the purposes of section 9, one or more Recruitment Boards consisting wholly of persons other than the Members, officers and other employees of the Corporation:

Provided that for the purposes of Appointment to the posts carrying scales of pay which are not less than that of a Joint Secretary to the Central Government, the Recruitment Board shall consist of the Chairman, other Members, the ex-officio Members, the Nominated member and the elected Members.

(2) The qualifications and other conditions of service of the members constituting the Recruitment Board and the period for which such members shall hold office, shall be such as may be prescribed.

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11. Transfer of service of existing employees to Corporation.

(1) Where the Central Government has ceased to perform any functions which under Section 12 are the functions of the Corporation, it shall be lawful for the Central Government to transfer, by order and with effect from such date or dates as may be specified in the order, to the Corporation any of the officers or other employees serving in the Akashvani or Doordarshan and engaged in the performance of those functions:

Provided that no order under this sub-section shall be made in relation to any officer or other employes in the Akashvani or Doordarshan who has, in respect of the proposal of the Central Government to transfer such officer or other employee to the Corporation, intimated within such time as may be specified in this behalf by the Central Government, his intention of not becoming an employee of the Corporation.

(2) The provision of sub-section (1) shall also apply to the members of the Indian Information Service, the Central Secretariat Service or any other service or to persons borne on cadres outside Akashvani and Doordarshan who have been working in Akashvani or Doordarshan immediately before the appointed day:

Provided that where any such member intimates, within the time specified in sub-section (1), his intention of not becoming an employee of the Corporation but to continue on deputation, he may be allowed to continue on deputation in accordance with such terms and conditions as may be prescribed.

(3) In making an order under sub-section (1), the Central Government shall, as far as may be, take into consideration the functions which the Akashvani or, as the case may be, Doordarshan has ceased or ceases to perform and the area in which such functions have been or are performed.

(4) An officer or the other employee transferred by an order under sub-section (1) shall, on and from the date of transfer, cease to be an employee of the Central Government and become an employee of the Corporation with such designation as the Corporation may determine and shall, subject to the provisions of sub-sections (5) and (6), be governed by such regulations as may be made as respects remuneration and other conditions of service including pension, leave and provident fund and shall continue to be an officer or other employee of the Corporation unless and until his employment is terminated by the Corporation.

(5) Every officer or other employee transferred by an order made under sub-section (1) 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 him 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) by the leave, provident fund, retirement of 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, or the leave, provident fund or other terminal benefits admissible to the employees of the Corporation under the regulations, and such option once exercised under this Act shall be final:

Provided that the option exercised under clause (a) by an officer or other employee shall be applicable only in respect of the post under the Corporation to which such officer or other employee is transferred and on appointment to a higher post under the Corporation he shall be eligible only for the scale of pay applicable to such higher post:

Provided further that if immediately before the date of his transfer any such officer or other 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 and thereafter he shall be entitled to the scale of pay applicable to the post under the Government to which he would have reverted or to the scale of pay applicable to the post under the Corporation to which he is transferred, whichever he may opt:

Provided also that when an officer or other employee serving in the Union Ministry of Information and Broadcasting or in any of its attached or subordinate offices is promoted to officiate in a higher post in the Ministry or office subsequent to the transfer to the Corporation of any other officer or employee senior to him in that Ministry or office before such transfer, the officer or other employee who is promoted to officiate in such higher post shall, on transfer to the Corporation, be entitled only to the scale of pay applicable to the post he would have held but for such promotion or the scale of pay applicable to the post under the Corporation to which he is transferred, whichever he may opt.

(6) No officer or other employee transferred by an order made under sub-section (1) or sub-section (2), --

(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:

Provided that where it is proposed after such inquiry to impose upon him any such penalty, such penalty may be imposed on the basis of evidence adduced during such inquiry and it shall not be necessary to give such person an opportunity of making representation on the proposed penalty:

Provided further that clause (b) shall not apply where an officer or other employee is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge.

12. Functions and Powers of Corporation.

(1) Subject to the provisions of this Act, it shall be the primary duty of the Corporation to organise and conduct public broadcasting services to inform, educate and entertain the public and to ensure a balanced development of broadcasting on radio and television.

Explanation—For the removal of doubts, it is hereby declared that the provisions of this section shall be in addition to, and not in derogation, of the provisions of the Indian Telegraph Act, 1885.

(2) The Corporation shall, in the discharge of its functions, be guided by the following objectives, namely:

(a) upholding the unity and integrity of the country and the values enshrined in the Constitution;

(b) 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;

(c) paying special attention to the fields of education and spread of literacy, agriculture, rural development, environment, health and family welfare and science and technology;

(d) providing adequate coverage to the diverse cultures and languages of the various regions of the country by broadcasting appropriate programmes;

(e) providing adequate coverage to sports and games so as to encourage healthy competition and the spirit of sportsmanship;

(f) providing appropriate programmes keeping in view the special needs of the youth;

(g) informing and stimulating the national consciousness in regard to the status and problems of women and paying special attention to the upliftment of women;

(h) promoting social justice and combating exploitation, inequality and such evils as untouchability and advancing the welfare of the weaker sections of the society;

(i) safeguarding the rights of the working classes and advancing their welfare;

(j) serving the rural and weaker sections of the people and those residing in border regions, backward or remote areas;

(k) providing suitable programmes keeping in view the special needs of the minorities and tribal communities;

(l) taking special steps to protect the interests of children, the blind, the aged, the handicapped and other vulnerable sections of the people;

(m) 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;

(n) providing comprehensive broadcast coverage through the choice of appropriate technology and the best utilisation of the broadcast frequencies available and ensuring high quality reception;

(o) promoting research and development activities in order to ensure that radio and television broadcast technology are constantly updated; and

(p) 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 Corporation may take such steps as it thinks fit—

(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 of, or otherwise acquire, programmes and rights or privileges in respect of sports and other events, films, serials, occasions, meetings, functions or incidents of public interest, for broadcasting and to establish procedures for the allocation of such programmes, 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, programmes, audience research, market or technical service, which may be

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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) Nothing in sub-sections (2) and (3) shall prevent the Corporation from managing on behalf of the Central Government and in accordance with such terms and conditions as may be specified by that Government the broadcasting of External Services and monitoring of broadcasts made by organisations 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 be subject to no civil liability on the ground merely that it failed to comply with any of the provisions of this section.

(7) The Corporation shall have power to determine and levy fees and other service charges for or in respect of the advertisements and such programmes as may be specified by regulations:

Provided that the fees and other service charges levied and collected under this sub-section shall not exceed such limits as may be determined by the Central Government, from time to time

13. Parliamentary Committee.

(1) There shall be constituted a Committee consisting of twenty-two Members of Parliament, of whom fifteen from the House of the People to be elected by the Members thereof and seven from the Council of States to be elected by the Members thereof in accordance with the system of proportional representation by means of the single transferable vote, to oversee that the Corporation discharges its functions in accordance with the provision of this Act and, in particular, the objectives set out in Section 12 and submit a report thereon to Parliament.

(2) The committee shall function in accordance with such rules as may be made by the Speaker of the House of the People.

14. Establishment of Broadcasting Council, term of office and removal, etc., of members thereof.

(1) There shall be established, by notification, as soon as may be after the appointed day, a Council, to be known as the Broadcasting Council, to receive and consider complaints referred to in Section 15 and to advise the Corporation in the discharge of its functions in accordance with the objectives set out in Section 12.

(2) The Broadcasting Council shall consist of—

(*i*) A President and ten other members to be appointed by the President of India from amongst 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 of the Broadcasting Council 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 upon 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 subject to such conditions of service in respect of leave, pension (if any), provident fund and other matters as may be prescribed.

Provided that the salary and allowances and the conditions of service shall not be varied to the disadvantage of the President of the Broadcasting Council after his appointment.

(6) The other members of the Broadcasting Council and the members of the Regional Councils constituted under sub-section (4) shall be entitled to such allowances as may be prescribed.

15. Jurisdiction of, and the procedure to be followed by, Broadcasting Council.

(1) The Broadcasting Council shall receive and consider complaints from—

(*i*) any person or group of persons alleging that a certain programme 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;

(*ii*) any person (other than officer or employee of the Corporation) claiming himself to have been treated unjustly or unfairly in any manner (including unwarranted invasion of privacy, misrepresentation, distortion or lack of objectivity) in connection with any programme broadcast by the Corporation.

(2) A complaint under sub-section (1) shall be made in such manner and within such period as may be specified by regulations.

(3) The Broadcasting Council shall follow such procedure as it thinks fit for he disposal of complaints received by it.

(4) 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.

(5) 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.

(6) If the Board is also unable to accept the recommendation of the Broadcasting Council, it shall record its reasons therefor and inform the Broadcasting Council accordingly.

(7) Notwithstanding anything contained in sub-sections (5) and (6), where 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 may deem fit.

Assets, Finances and Accounts

16. Transfer of certain assets, liabilities, etc., of Central Government to Corporation. As from the appointed day,—

(a) all property and assets (including the Non-lapsable Fund) which immediately before that day vested in the Central Government for the purpose of Akashvani or Doordarshan or both shall stand transferred to the Corporation on such terms and conditions as may be determined by the Central Government and the book value of all such property and assets shall be treated as the capital provided by the Central Government to the Corporation;

(b) all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the Central Government immediately before such day for or in connection with the purposes of Akashvani or Doordarshan or both shall be deemed to have been incurred, entered into and engaged to be done by, with or for the Corporation;

(c) all sums of money due to the Central Government in relation to the Akashvani or Doordarshan or both immediately before such day shall be deemed to be due to the Corporation;

(d) all suits and other legal proceedings instituted or which could have been instituted by or against Central Government immediately before such day for any matter in relation to the Akashvani or Doordarshan or both may be continued or instituted by or against the Corporation.

17. Grants, etc., by Central Government. For the purposes of enabling the Corporation to discharge its functions efficiently under this Act, the Central Government may, after due appropriation made by Parliament by law in this behalf, pay to the Corporation in each financial year—

(*i*) the proceeds of the broadcast receiver licence fees, if any, as reduced by the collection charges; and

(*ii*) such other sums of money as that Government considers necessary, by way of equity, grant-in-aid or loan.

18. 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 under section 16) shall be credited to the Fund and all payments by the Corporation shall be made therefrom.

(2) All moneys belonging to the Fund shall be deposited in one or more nationalised 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, "nationalised bank" means a corresponding new bank specified in the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or a corresponding new bank specified in the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980.

19. Investment of Moneys. The Corporation may invest its moneys in the securities of the Central Government or any State Government or in such other manner as may be prescribed.

20. Annual Financial Statement of the Corporation.

(1) The Corporation shall prepare, in each financial year, an Annual Financial Statement for the next financial year showing separately—

(a) the expenditure which is proposed to be met from the internal resources of the Corporation; and

(b) the sums required from the Central Government to meet other expenses, and distinguishing—

(i) revenue expenditure from other expenditure; and

(ii) non-plan expenditure from plan expenditure.

(2) The Annual Financial Statement shall be prepared in such form and forwarded at such time to the Central Government for its approval as may be agreed to by that Government and the Corporation.

21. Accounts and Audit of Corporation.

(1) The Corporation shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form and in such manner as may be prescribed.

(2) The accounts of the Corporation shall be audited by the Comptroller and Audio-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Corporation to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Corporation shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Corporation.

(4) The accounts of the Corporation as certified by the comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

22. Corporation not Liable to be Taxed. Notwithstanding anything contained in the Income-tax Act, 1961, or any other enactment for the time being in force relating to income-tax or any other tax on income, profits or gains, the Corporation shall not be liable to pay any income-tax or any other tax in respect of—

(a) any income, profit or gains, accruing or arising out of the Fund of the Corporation or any amount received in that Fund; and

(b) any income, profits or gains, derived or any amount received, by the Corporation.

Miscellaneous

23. Power of Central Government to give directions.

(1) The Central Government may, from time to time as and when occasion arises, issue to the Corporation 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. (1) The Central Government may, from time to time as and when occasion arises, issue to the Corporation 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.

(2) Where the corporation makes a broadcast in pursuance of the direction issued under sub-section (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.

(3) A copy of every direction issued under sub-section (1) shall be laid before each House of Parliament.

24. Power of Central Government to Obtain Information. The Central Government may require the Corporation to furnish such information as that Government may consider necessary.

25. Report to Parliament in certain matters and recommendations as to action against the Board.

(1) 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 supersession of the Board) which may be taken against the Board.

(2) On the recommendation of the Parliament, the President may by notification supersede the Board for such period not exceeding six months, as may be specified in the notification:

Provided that before issuing the notification under this sub-section, 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.

(3) Upon the publication of the notification under sub-section (2),—

(a) all the Members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provision 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.

(4) On the expiration of the period of supersession specified in the notification issued under sub-section (2), 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 (3) shall not be disqualified for appointment:

Provided that the President may, at any time before the expiration of the period of supersession, take action under this sub-section.

(5) 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.

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26. Office of member not to Disqualify a Member of Parliament. It is hereby declared that the office of the member of the Broadcasting Council or of the Committee constituted under Section 13 shall not disqualify its holder for being chosen as or for being a Member of either House of Parliament.

27. Chairman, Members, etc., to be public servants. The chairman and every other Member, every officer or other employee of the Corporation and every member of a Committee thereof, 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 within the meaning of Section 21 of the Indian Penal Code.

28. Protection of action taken in good faith. 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 done or intended to be done in pursuance of this Act or of any rules or regulations made there under.

29. Authentication of Orders and other Instruments of Corporation. All orders and decisions of the Corporation shall be authenticated by the signature of the Chairman or any other Member authorised by the Corporation in this behalf and all other instruments executed by the corporation shall be authenticated by the signature of the Executive Member or by any officer of the Corporation authorised by him in this behalf.

30. Delegation of Powers. The Corporation may, by general or special order, delegate to the Chairman or any other Member or to any officer of the Corporation, subject to such conditions and limitations, if any, as may be specified therein, such of its powers and duties under this Act as it may deem fit.

31. Annual Report.

(1) The Corporation shall prepare once in every calendar year, in such form and within such times as may be prescribed, an annual report giving a full account of its activities (including the recommendations and suggestions made by the Broadcasting Council and the action taken thereon) 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.

(2) The Broadcasting Council shall prepare once in every calendar year, in such form and within such time as may be prescribed, an annual report 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.

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32. Power to make rules.

(1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the salaries and allowances and conditions of service in respect of leave, pension (if any), provident fund and other matters in relation to the Whole-time Members under sub-section (7) of Section 6;

(b) the allowances payable to the Chairman and Part-time Members under sub-section (8) of Section 6;

(c) the control, restrictions and conditions subject to which the Corporation may appoint officers and other employees under subsection (1) of Section 9;

(d) the manner in which and the conditions and restrictions subject to which a Recruitment Board may be established under sub-section (1) of Section 10;

(e) the qualification and other conditions of service of the members of a Recruitment Board and their period of office under sub-section (2) of Section 10;

(f) the terms and conditions in accordance with which the deputation may be regulated under sub-section (2) of Section 11;

(g) the salary and allowances and conditions of service in respect of leave, pension (if any), provident fund and other matters in relation to the President of the Broadcasting Council under sub-section (5) of Section14;

(h) the allowances payable to other members of the Broadcasting Council and the members of the Regional Councils, under sub-section (6) of Section 14;

(i) the manner in which the Corporation may invest its moneys under Section 19;

(j) the form and the manner in which the annual statement of accounts shall be prepared under sub-section (1) of Section 21;

(k) the form in which, and the time within which the Corporation and the Broadcasting Council shall prepare their annual report under Section 31;

(l) any other matter which is required to be, or may be, prescribed.

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33. Power to make regulations.

(1) The Corporation may, by notification, make regulations not inconsistent with this Act and the rules made thereunder for enabling it to perform its functions under this Act.

(2) Without prejudice to the generality of the foregoing power such regulations may provide for all or any of the following matters, namely—

(a) the manner in which and the purposes for which the Corporation may associate with itself any person under sub-section (7) of Section 3;

(b) the times and places at which meetings of Board shall be held and, the procedure to be followed thereat, and the quorum necessary for the transaction of the business at a meeting of the Board under sub-section (1) of Section 8;

(c) the methods of recruitment and conditions of service of officers and other employees of the Corporation under sub-section (2) of Section 9;

(d) the remuneration and other conditions of service, including pension, leave and provided fund in relation to an officer or other employee of the Corporation under sub-section (4) of Section 11;

(e) The authority competent to make certain appointments referred to in clause (a) of sub-section (6) of Section 11;

(f) the services which may be provided by the Corporation under clause (f) of sub-section (3) of Section 12;

(g) the determination and levy of fees and other service charges in respect of advertisements and other programmes under sub-section (7) of Section 12;

(h) the manner in which and the period within which complaints may be made under sub-section (2) of Section 15;

(i) any other matter in respect of which provision is, in the opinion of the Corporation, necessary for the performance of its functions under this Act:

Provided that the regulations under clause (c) or clause (d) shall be made only with the prior approval of the Central Government.

34. Rules and regulations to be laid before Parliament. Every rule and regulation made under this Act shall be laid as soon as may be after it is made, before each 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 session aforesaid,

both Houses agree in making any modification in the rule or regulation, or both Houses agree that the rule or regulation should not be made, the rule or regulation 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 or regulation.

35. Power to remove difficulties. If any difficulty arises in giving effect to provisions of this Act, the Central Government may, by order, published in the official Gazette, make such provisions, not inconsistent with the provisions of this Act, as it may deem necessary, for the removal of the difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the appointed day.

4.2.1 Cinematograph Act (1952)

The act came into force all over India except in the State of Jammu and Kashmir. In Sikkim it came into effect in 1983.

Note: (2-A) Any reference in this Act to any law which is not in force, or any functionary not in existence, in the state of Jammu and Kashmir, shall, in relation to that State, be construed as a reference to the corresponding law in force, or to the corresponding functionary in existence, in that State.

Note: As far as the issue of granting license to exhibit cinema shows is concerned, the provisions of the Cinematograph Act, 1918 (Act 2 of 1918) are still in force in Part A and Part B States[1]. The other provisions apply to the whole of India.

Under this Act "Adult" means a person who has completed his eighteenth year, "Cinematograph" includes any apparatus for the representation of moving pictures or series of pictures, "film" means a cinematograph film, "regional officer" means a regional officer appointed by the Central Government and "Tribunal" means the Appellate Tribunal.

For the purpose of sanctioning films for public exhibition, the Board of Film Certification formed by the Central Government shall consist of a Chairman and 12-25 other members. The Chairman shall receive salary and allowance and the other members shall receive such allowances or fees for attending the meetings of the Board.

Examination (4) and certification (5A) of films: Any person desiring to exhibit any film shall make an application to the Board for a certificate and after examining the film the Board may: (*i*) Sanction the film for unrestricted public exhibition and grant "U" certificate. [Regarding any material in the film, if it is necessary to caution that any child below the age of twelve years may be allowed to see such a film should be considered by the parents or guardian of such child, the Board may sanction the film for unrestricted public exhibition and grant a "UA" certificate.] (*ii*) Sanction the film for public exhibition restricted to adults and issue "A" certificate, or (*ii*) (A) sanction the film for public exhibition restricted to members of any profession or any class of

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persons, having regard to the nature, content and theme of the film and issue "S" certificate; or

Note: A certificate granted by the Board under this Section shall be valid throughout India for a period of ten years. (*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 under any of the foregoing clauses; or (*iv*) Refuse to sanction the film for public exhibition.

The Board shall take any decision only after giving an opportunity to the applicant for representing his views in the matter.

Advisory panels (5): For helping the Board efficiently discharge its functions the Central Government may establish at such regional centres advisory panels. The advisory panel when asked by the Board has to examine the film and make recommendations it thinks fit. The number of members is to be decided by the government.

Principles for guidance in certifying films (5-B): The film or any part of it should not be against the interests of [(Ins. by Act 49 of 1981] the security of the State, friendly relations with foreign States, public order, decency or morality, or involve defamation or contempt of court or incite any offence.

Notes: Censorship in India has full justification in the field of the exhibition of cinema films in the interest of society. It is justified under the Constitution.

Finally, it is not elements of rape, leprosy, sexual immorality which should attract the censor's scissors but how the theme is handled by the producer.

Appeals (5C): Any Person applying for a certificate, if not satisfied by the order of the Board, may, within thirty days from the date of such order, appeal by a petition in writing (mentioning the reasons for the order along with the prescribed fees) to the Tribunal:

Note: If the Tribunal is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the aforesaid period of thirty days, it may allow appeal within a further period of thirty days.

Constitution of Appellate Tribunal (5-D): For hearing such an appeal, the Central Government shall, by notification in the Official Gazette, constitute an Appellate Tribunal consisting of a chairman and not more than four other members.

The Chairman of the Tribunal should be a retired Judge of a High Court, or one qualified to be a Judge of a High Court.

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.

The head office of the Tribunal shall be at New Delhi or where the Central Government may specify.

The Tribunal, after making inquiry into the matter, and after giving the appellant and the Board an opportunity of being heard, make order, it

thinks fit and the Board shall dispose of the matter in conformity with such order.

Suspension and revocation of certificate (5-E): Notwithstanding anything contained in sub section (2) of Section 6, the Central Government may, by notification in the Official Gazette, suspend a certificate granted for a period or may revoke altogether if it is satisfied that-

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.

Note: No action under this section shall be taken except after giving an opportunity to the person concerned for representing his views in the matter.

Review of orders by Central Government (5-F): If an applicant is aggrieved by any order of the Central Government under Section 5-E, 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.

Note: If Central Government is satisfied that the applicant was prevented by sufficient cause from filing an application for review within the aforesaid period of sixty days, it may allow such application to be filed within a further period of sixty days.

The Central Government, may, after making 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.

Revisional powers of the Central Government (6) (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 has been decided by the Board or decided by the Tribunal (but not any matter which is pending before the Tribunal) and after making inquiry, make order and the Board shall dispose of the matter accordingly.

Note: No such order shall be made, except after giving the concerned an opportunity for representing his views in the matter. Until the government decides the film will be considered uncertified.

Information and documents to be given to distributors and exhibitors with respect to certified films (6-A): The title, the length of the film, the number and the nature of the certificate granted in and the conditions, if any, subject to which it has been so granted, and any other particulars respecting the film which may be prescribed.

Penalties for contraventions of this (7): If any person exhibits or permits to be exhibited, in any place, any film not conforming to the conditions as in section 6(a) or alters or tampers or fails to comply with any order, he shall be punishable with imprisonment for a term of up to three years, or with fine up to rupees one lakh, or with both. In the case of a continuing offence, a further fine up to rupees twenty thousand for each day during which the offence continues might be imposed.

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Power of seizure (7-A): If a film for which no certificate has been granted under this Act is exhibited, or if a film is exhibited in contravention of any of the other provisions of this Act or of any order made by the Central Government, the Tribunal or the Board, then any public officer may, enter any place and search it and seize the film.

Power to exempt (9): The Central Government may, by order in writing exempt the exhibition of any film or class of films from any of the provisions of this Part or of any rules made there under.

Note: For exemption, see note in the appendix.

Cinematograph exhibitions to be licensed (10): No person shall give an exhibition elsewhere other than in a place licensed under this Part or otherwise than in compliance with any conditions and restrictions imposed by such license. The Central Government may, form time to time 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. Such directions shall be deemed to be additional conditions and restrictions.

Power of Central Government or local authority to suspend exhibition of films in certain cases:

(1) The Lieutenant Governor or, as the case may be, the Chief Commissioner, in respect of the [(Note:Subs. by Act 58 of 1960, S.3 and Sch. II, for "whole Part C State or any part thereof) whole or any part of a Union territory], and the district magistrate in respect of the district within his jurisdiction, any, if he is of opinion that any film which is being publicly exhibited is likely to cause a breach of 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 under sub section (91) 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 tore 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.

Notes: Sections 13 to 17 do not envisage giving an opportunity to the applicant for licence to explain his stand in respect of the grounds on which the licensing authority has made up his m14. Penalties for contravention of this part if the owner or the 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 provision of this Part or of the rules made

there under, or of the condition and restrictions upon or subject to which any licence has been granted under this Part, he shall be punishable with fine which may extend to rupees one thousand and, in the case of a continuing offence, with a further fine which may extend to rupees one hundred for each day during which the offence continues and to reject the application.

Power to revoke licence. Where the holder of a licence has been convicted of an offence under Section 7 or Section 14, the licence may be revoked by the licensing authority.

Power to make rules (1) (Note:Renumbered as subsection (1) by Act 49 of 1981 (w.e.f. 161983)] The Central Government may, by notification in the Official Gazette, make rules (a) Prescribing the terms, conditions and restrictions, if any, subject to which licences 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 under sub section (3) of Section 12 may be preferred.

(2) [(Note:Ins. by Act 49 of 1981 (w.e.f. 161983)' 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, 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 session aforesaid, both Houses agree that the rule should be me made, the rule shall thereafter have effect only in such modified form or be of no effect, the case maybe, so, however, that any such modification or annulment shall be without prejudice the validity of anything previously done under that rule.

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 or cinematograph exhibitions from any of the provisions of this part or of any rules made there under.

Notes: As the expression Central Government in relation to anything done before the constitution means the GovernorGeneral or GovernorGeneral in Council, it is obvious that the Notification of 1942 issued by the Chief Commissioner of Delhi under Section 9 of Cinematograph Act, 1918 must be deemed to have been issued by the Central Government. It cannot be said to be inconsistent with the Act of 1952.

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.

Note: The wording of section 18 shows that the repeal of the Cinematograph Act, 1918 is confined to that portion of the old Act which is covered by Part II of the new Act. Section 6 is one of the repealed sections, but the issuing of the licences and the procedure provided therefore cannot be said to come within the wording of the repealing section. Bharat Bhushan v.p. C. Saxena, AIR 1955 All 82.

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4.2.2 Film Censorship

Film censorship can be generally defined as the control of information or thoughts. Censorship is used by government or relevant organisations to put a stop to the distribution of material that is not fit for public consumption. In wartime, information about troop actions, impending battle plans, etc., would be suppressed.

Why Film Censorship is Necessary

While the media in our country are free, it is considered necessary in the general interest to examine the product it goes out for public consumption. While there is no censorship published material, need was felt to have censorship for films because of the effect that the audio-visual medium can have on the people which can be far stronger than the influence of the printed word.

Film censorship or certification is thus the end product of the process of previewing of film and it includes a decision either not to allow a particular film or public viewing or to allow it for public viewing with certain deletions and / or modifications. Furthermore, it is to ensure that the people do not get exposed to psychologically damaging matter.

The Supreme Court in a judgement three years ago said that film censorship becomes necessary because a film motivates through an action and assures a high degree of attention and retention as compared to the printed word. The combination of act and speech, sight and sound in semi-darkness of the theatre with elimination of all distracting ideas will have a strong impact on the minds of the viewers and can affect emotions. Therefore, it has as much potential for evil as it has for good and has an equal potential to instill or cultivate violent or good behaviour. It cannot be equated with other modes of communication. Censorship by prior restraint is, therefore, not only desirable but also necessary.

Trajectory of Film Censorship

India inherited the film censorship machinery imposed by the British in 1920. But, the *raison d'etre* of the censorship machinery was thoroughly overhauled to suit the new rulers. And it speaks volumes of their manoeuvrability.

In 1950, the Right to Freedom of Speech and Expression (i e, Art 19(1) (a)) was enshrined in the new Constitution of India as one of several Fundamental Rights available to the Indian citizens.

Exceptions were however granted under Art 19(2), which read:

Nothing in sub-clause (a) of clause (1) shall effect the operation of any existing law insofar as it relates to, or prevents the state from making any law relating to, libel, slander, defamation, contempt of court or any matter which offends the decency or morality or which undermines the security of, or tends to overthrow, the state.

Thus enactment of legislation with executive powers to regulate the media was permissible, provided it itself restricted the exercise of those powers to grounds specified in Art 19(2).

Against this background, there was a series of litigation, especially involving press (both books and newspapers) and dramatic performances, throughout the 1950s. The Indian judiciary, in the immediate aftermath of independence, was inclined to the view that any statute or provision not compatible with the express purposes or directives of the Constitution would be void and struck down. It stuck to its mandate not only where the offending statute expressly authorised restrictions outside Art 19(2), but also where it was silent but on a literal construction would be interpreted as doing so (Amar Nath Bali vs State, Romesh Thapar vs Madras, Brij Bhusan vs Delhi).

Perceiving this to be a threat against future machinations, the state promptly circumvented the original Art 19(2) by enacting the Constitution (First Amendment) Act 1951. It authorised the passage of 'censorship' statutes which conferred powers on the executives to impose 'restrictions' on the press (and other media of expression) "in the interests of security of state, friendly relations with foreign states, public order, decency, morality or in relation to contempt of court, defamation or incitement to an offence". In 1963, the 14th Constitutional Amendment added a further ground for imposing 'reasonable restrictions' on the freedom of speech and expression in the form of sovereignty and integrity of India. Thus the grounds of exception were widened both in the wording and in the scope of the enumerated fields of exception. And to counter-balance this extension of the restrictive powers, the amendments added that the restrictions should be 'reasonable' both 'substantively and procedurally'. The basic requirement of reasonableness was the express purposes or directives of the Constitution. The judiciary stuck to two other major implications of the requirement of reasonableness:

- To strike down statutes which, otherwise within Art 19(2), did not provide for appeal against executive orders. (Madan Lal Kapur vs Rajasthan).
- To set aside executive orders that did not mention the grounds for prohibition (The State vs Baboo Lal).

As against this, there were certain conservative rulings also:

- Incitement or encouragement to the commission of violent crimes such as murder were held to be undermining the security of the state and coming within the ambit of a law sanctioned by Art 19(2) (State of Bihar vs Shailabala Devi).
- The courts generally refused to gauge the seriousness of any disputed situation. The determination of the time when and the extent to which restrictions should be imposed was left to the judgement and discretion of the government (Virendra vs State of Punjab).

As a result of these litigations and thanks to its growing political clout, the press managed to extricate itself from the clutches of censorship. The stage, although not having similar political appeal,also wrested freedom from censorship provisions, mainly because the Dramatic Performances Act 1876

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contained too many loopholes to be 'constitutionally' tenable: e.g., the lack of clarity regarding directives and insufficient provision for appeal against censorship decisions. But cinema, being the worst off in terms of its prestige and weight, remained vulnerable. The new-found rhetoric about freedom, modernism, development, etc., flaunted by our national(ist) leaders with gay abandon, were not applicable to the film censorship machinery. Cinema remained equally susceptible to the politicians malice and administrative pressures in the new era.

First, a coup de main was provided in 1951 - the regional Censor Boards of the pre-independence days were dismantled in favour of a Central Board of Film Censors. Centralisation of film censorship was a direct affront to the spirit of federalism enshrined in Indian Constitution. But the captains of independent India were in no mood to be lenient towards the medium—were they feeling uneasy with the appearance of a series of Indian films delving into social criticism? In any case, they were choreographing a second phase of manipulation in the name of what B R Diwakar, the then minister of information and broadcasting, termed it as a "dignified effort to model an effective medium of healthy entertainment, national culture and mass education".

This promise of a 'dignified effort' turned out to be the Indian Cinematograph Act 1952, providing a comprehensive statute for pre-censorship of films in post-colonial India. The constitutional provision of Art 19(2), together with power granted under the 7th Schedule, provided the base for Section 5B of the Indian Cinematograph Act 1952:

Principles for Guidance in Certifying Films

(*i*) A film shall not be certified for public exhibition if, in the opinion of the authority competent to grant the certificate, the film or any part of it is against the interest of the 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 commission of any offence.

(*ii*) Subject to the provisions contained in sub-section (*i*), the central government may issue such directives as it may think fit setting out the principles which shall guide the authority competent to grant certificates under this Act in sanctioning films for public exhibition.

In pursuance of the power given to the central government by subsection (*ii*), directions have been issued for the guidance of the Board of Film Censors. These directions are in two parts: (1) General Principles—outlining certain norms to ensure that films did not lower moral standards of the audience, portray standards of life so as to deprave the morality of the audience and ridicule the prevailing laws, and (2) Application of General Principles. The latter included elaborate and often very cumbrous lists of film themes and subjects which might be objectionable in a context in which either they amount to indecency, immorality, illegality or incitement to commit a breach of the law.

These have been formulated in order to achieve, as far as possible, a uniform standard for determining whether a film is suitable or not for public exhibition. It was a calculated risk. Under this act, if a film is banned, it imposes restrictions on the film itself, and not simply on the exhibitor who under conditions of his licence is forbidden to show the film. In the final analysis, it is a direct restriction on the very expression of the film's idea, and as such must come within the scope of Art 19(1)(a). Ordinary jurisprudence has it that, the powers granted under the 7th Schedule of the Constitution must be subordinate to Art 13 that establishes the absolute pre-eminence of the Fundamental Rights as enunciated in Art 19. So, prima facie, films should not be censored. But, the fact that the 1952 Act interalia provided for an elaborate system of appeals and contained cleardirectives regarding imposition of restrictions apparently saved it from judicial criticism/condemnation.

However, censorship decisions in independent India were drawing serious protests from the Indian filmmakers. In order to pacify them, the government of India constituted an Enquiry Committee on Film Censorship. Examining the legal aspects of film censorship in India, the committee did not mince words about these provisions. It clearly opined that the Cinematograph Act 1952 only accentuated the legal contradiction involving film censorship, by going beyond the parameters of 'reasonable restrictions' outlined in Art 19(2).

Citing many instances of clearly indefensible clogs on the right to freedom of expression outlined in the Censorship Rules, the Report of the Enquiry Committee (1969) concluded:

It is clear that many of the rules which are at present in force have no legal sanction behind them, nor can they be said to be reasonable or rational.

The crucial issue of the constitutional validity of film censorship came up before the judiciary in 1970. It became necessary when the filmmaker Khwaza Ahmed Abbas faced difficulty in connection with his short film 'A Tale of Four Cities' (1969). The film reportedly portrayed the contrasting lifestyles of the rich and the poor in four big cities, viz., Bombay, Calcutta, Delhi and Madras. The Censor Board refused to grant certificate to the film and Abbas went to the Supreme Court raising four important points for the Bench to ponder: (a) that pre-censorship cannot be tolerated under the freedom of speech and expression, (b) that even if it were a legitimate restraint on the freedom, it must be exercised on very definite principles without any room for arbitrary action, (c) that there must be reasonable time limit fixed for the decision of the censoring authorities, and (d) that the appeal should lie with a court or an independent tribunal and not the government. Points (c) and (d) were readily conceded by the government counsel even before they were taken up for consideration. He produced an undertaking from the government for making film-censorship a time-bound and, more important, a justiciable matter. With reference to (a) and (b), the Supreme Court upheld the constitutional validity of censorship on grounds of reasonableness and full justification. On an earlier occasion (Madras vs Row), the judiciary had pointed out that, "the test

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of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases".

And the Supreme Court now stated categorically: Censorship in India (and pre-censorship is not different in quality) has full justification in the field of exhibition of cinema films. We need not generalise about other forms of speech and expression here for each such fundamental right has a different content and importance.

The verdict ends with the reiteration that "censorship imposed on the making and exhibition of films is in the interest of the society". These words provided the coup de grace. The British administrators, being over-cautious, kept the subject totally out of the judiciary's purview. In the post-colonial era, the judiciary completely threw its weight behind the executive. This development was instrumental in not only perpetuating the stigma attached to the medium, but it also set the tone for any prospective verdict in film censorship litigation in India. More importantly, it proved that even the apparently solid juridical principles like reasonableness and justification could be put to use in validating a dichotomy.

Despite the fair amount of heat it generated and the reputation it has earned since, the 'A Tale of Four Cities' litigation was at best a half-hearted challenge to the system of film-censorship in post-colonial India. One will never know why it also did not strike at the untenable provisions of censorship rules to which the Report of the Enquiry Committee on Film Censorship (1969) had alluded and then concluded, "the General Principles and, more importantly the Application of General Principles, must be done away with."

This conclusion was however premised with the following observation:

The most sensible and the most rational way of dealing with the question is to declare that no film must transgress the reasonable restriction clause of the Constitution and that the film must be judged as a whole: with this exception that a certain sequence in it, if it is not relevant to the story and is found to have been introduced for the sole purpose of selling indecency and making a film commercially successful, or if there is anything in the film which clearly transgresses the provisions of penal law or falls within the ambit of the various subjects enumerated in Article 19(2) of the Constitution, may be judged by itself and deleted from the film.

In other words, the Indian polity has chosen to overlook the incompatibility of the film censorship regime with the implications of Fundamental Rights enshrined in the Indian Constitution. After the 'A Tale of Four Cities' litigation, the government has undertaken occasional re-examination and 'rationalisation' of the General Principles and their Application. However, irrespective of the garbs put on, these still extended far beyond the list of matters set out in Art 19(2) and only reinforced the contradictions embedded in the censorship system. The height of hypocrisy was reached when the nomenclature, Central Board of Film Censorship, was replaced by a new one, viz., Central Board of Film Certification in 1982. This was a typical administrative eyewash

and done without enunciating any major alteration in the role and functions of the Board.

A further appendage to the censorship machinery was provided in the form of a Film Certification Appellate Tribunal or FCAT in 1991. FCAT was set up to act as an arbiter in disputes between film-makers and the CBFC. But in a series of articles published in The Statesman (December 18, 19 and 20, 1998), A G Noorani has shown that even the FCAT has not radically altered the censorship regime in India. Indeed it all depends upon who is wielding the baton, and who is facing the music.

What the Government is doing to Ensure Cleaner Films

India today has more than 13,000 cinema halls spread over the length and breadth of her territory. Furthermore, there are lakhs of video libraries and video parlours in the country. Obviously, it is a very difficult task for the official machinery to check any violations of the film censorship provisions. The citizen will have to step in more actively if he has to ensure that he gets wholesome and clean entertainment that does not violate his norms of decency.

On its own, the Government has from time to time been alerting the State Governments and Union Territory Administration about the problem and urging them to take action. They have been asked to give greater priority to incidents of interpolations and exhibition of uncertified films.

The law has laid down clear rules for dealing with this problem and has also strengthened the penal provisions.

Under Section 5E of the 1952 Act, the Central Government can suspend a certificate granted to any film for a fixed period or even revoke it if the film is being shown in a form other than the one in which it was certified. The applicant of the certificate will have a right to appeal / review of the order under Section 5F.

Under Section 6 of the 1952 Act, the Government has also revisional powers to deal with errant cases. According to this, the Government on its own can call for the record of proceeding of the CBFC with regard to any film and pass such orders as deemed fit which include suspension of the certificate granted to the film or its revocation or alteration of certificate with or without further deletions or ordering further deletions.

Film Censorship by Country

Australia: Australia's Australian Classification Board (ACB), formerly known as the Office of Film and Literature Classification (OFLC), uses the Commonwealth Classification Act 1995 as a guide for the majority of the censorship within the country; however, each state and territory is free to make additional legislation (see Censorship in Australia). Australia is regarded by many to be the most restrictive on film ratings of all Western democratic countries, considering its history and prolific "refusal of classification" (tantamount to banning in other countries) to certain films.

In practice, films still get a short cinematic run before they are reviewed and prevented from being shown at cinemas or released on DVD. This is not a

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comprehensive list; many films that have been previously banned are not mentioned here (however, some have since been released uncut on DVD). Also not included are the numerous pornographic films deemed too excessive to release under an X18+ category, which are refused classification by the ACB.

Brazil During dictatorship (1964–1988): During the dictatorship in Brazil, that last from 1964 to 1988, several films were banned under the Federal Law from Brazil 5536 from 1968. During several years a project was being developed to find and publish every document on censorship in films during the dictatorship. The project "Memory of Censorship in Brazilian Cinema" released in 2005 six thousand documents about 175 banned films during the dictatorship. And, finally, in 2007 they released documents for the last 269 films banned at that time.

After democratisation (1988–)

1993: Beyond Citizen Kane: "On August 20, 2009, the newspaper Folha de S. Paulo reported that Rede Record bought the broadcasting rights of the documentary from Ellis for less than US$ 20,000."

"On February 14, 2011, the newspaper Jornal do Brasil (quoting the network's spokesperson) reported that Rede Record would be broadcasting the documentary in 2011, on a date yet to be specified."

1976: Di Cavalcanti: This film (short) about Di Cavalcanti was banned due to a lawsuit open by Di Cavalcanti's daughter, Elizabeth, in 1979. The film documented the wake and funeral of the Brazilian painter Di Cavalcanti. Since 1979 it cannot be shown, at the request of his daughter Elizabeth through preliminary injunction granted by Justice, confirmed in 1983, for sentimental reasons tied with religious ideas. In 1985, the lawyer Felipe Falcon moved an action to reform the judgement, by proposing the dispossession of the film by the state on cultural grounds, to the detriment of the heirs to Di and Glauber. Yet with no solution in sight, Di Glauber must stay contained in a sealed box. 2004: In spite of everything, João Rocha (director of Thuth Profane), nephew of the Glauber Rocha, has placed a copy on video on providers outside of Brazil: the Internet users can make free downloads of the movie, proving that censor the cinema in digital age is useless.

2011: A Serbian Film: A Serbian Film had its release in Brazil liberated on August 5, 2011. The exception is Rio de Janeiro estate, where the film was forbidden due a lawsuit filed by the Democrats political party, who claim that the pedophilia scenes infringe the part of the Brazilian Constitution that protects children (Estatuto da Criança e do Adolescente). The case is still pending in court.

2011: Truth Profane (Profana) is an indie digital low-budget film, based on an ancient theory called 'Profane' which was banned by many film festivals in Brazil, because of its violent content and scenes of domestic violence are intercepted with ambiguous distortion, perhaps to reflect the mind's reaction to such events. The film asks lots of time the audience one question: How much truth can you take? Set over six years, the film explores the relationships between truth, religion and the context of human existence on this planet. The

narrative constantly changes between past, present and future; that line often becoming blurred as if to show the irrelevance of time. The film,which was the first from director, João Rocha, aims to explore the complexity of the human mind and, as such, darts between scenes of the 'real' and the 'imaginary'.

Canada: At present, only films containing prohibited material (such as child pornography) or under court order (such as libel or copyright infringement) are banned in Canadian provinces.[citation needed]

Ireland: Due to the small size of Ireland, films banned by the British Board of Film Classification (BBFC) were rarely even submitted for release in Ireland, due to the high costs of promotion and distribution for such a small audience. Similarly, BBFC cuts are often left in DVD releases, due to the difficulties in separating the two film supplies.

This changed in 2000; many of these films have since been unbanned and rated anywhere from PG to 18. During the review process it was decided that no more films would be banned for either theatre or video release, but some bans are still in place. Banned films can still be viewed at private members' clubs with 18+ age limits.

Japan: Despite Japan's strict censorship policy on nudity, very few films are banned there. Those that are banned are usually put under self-imposed studio bans by the companies that produced them.

Malaysia: Film censorship imposed in Malaysia and the Film Censorship Board of Malaysia is the government ministry that vets films. It is under the control of the Home Ministry.

The two main cinema operators in Malaysia, Golden Screen Cinemas and Tanjung Golden Village, are known to be strict in ensuring that only patrons aged 18 and above are allowed to view films rated 18SG, 18PL, 18PA or 18SX. Although movies shown in Malaysian cinemas are given a rating such as 18SG or 18PL, most of the time profanity and nudity in films which have an 18+ rating are censored, which renders the 18+ rating meaningless and strict entry by the cinema operators pointless. On the other hand, there have been many 18+ films filled with profanity that were hardly censored or uncensored. This shows a pattern of irregularity and inconsistency with the movie censorship in Malaysia.

Censorship guidelines for locally produced films were loosened in March 2010, the first revision since 1994, allowing movies with graphic violence and profanity to be screened in local cinemas, some without cuts, such as Sex and the City, Milk, Let the Right One In and I Love You Phillip Morris. Minimal cuts are applied to some films; such cases can be seen in movies such as Zack and Miri Make a Porno, Saw VI, Chloe, Antichrist and Piranha 3D. Blu-ray releases of films with cut scenes are not sold in Malaysia.

South Africa: During the Apartheid regime, films depicting interracial couples were banned and/or censored for content - the James Bond films Live and Let Die and A View To A Kill had love scenes which were censored by the South African government.

South Korea: According to the Internet Movie Database, there are no currently-banned films in South Korea.

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In recent years, sexual scenes have been a major issue that pit filmmakers against the Media Rating Board. Pubic hair and male or female genitalia are disallowed on the screen, unless they are digitally blurred. In rare cases extreme violence, obscene language, or certain portrayals of drug use may also be an issue. Korea has a five level rating systems; G, PG-12, PG-15, PG-18 and Restricted.

United Kingdom: The infamous video nasty list was created in 1982 to protect against obscenity. Films on this list were banned and distributors of the said films were liable to be prosecuted (some of the films were banned before the list was made). This list banned 74 films at one point in the mid-1980s; the list was eventually trimmed down, and only 39 films were successfully prosecuted. Most of the films (even of the 39 successfully prosecuted) have now been approved by the BBFC, cut or uncut (see Video Recordings Act 1984).

United States: The United States has no federal agency charged with either permitting or restricting the exhibition of motion pictures. Most instances of films being banned are via ordinances or proclamations by city or state governments. Some are instances of films being judicially found to be of an obscene nature and subject to specific laws against such material (i.e., child pornography). Such findings are usually only legally binding in the jurisdiction of the court making such a ruling.

The established film industry in the United States began a form of self-censorship in the late 1920s called the Motion Picture Production Code to forestall any possible formation of a federal censoring agency. In 1968, the Production Code was superseded by the MPAA film rating system.

4.3. ETHICS AND CONTROVERSIES IN ADVERTISING

There is no doubt that advertising attracts all of us in a number of ways, but there are also number of controversies associated with advertising. Generally, these controversies are concerned about the impact of advertising on economy, society and ethics.

4.3.1 Role of Advertising in Modern Business World

Advertising is primarily a means by which sellers communicate to prospective buyers. What they communicate? " The worth of their goods and services."

- Economic function
- Social function
- Psychological function

Economic Function

- Advertising communicates the message in persuasive language
- It creates wide markets as the information is delivered to people far and wide
- It inclines people favourably to the products and affects our attitudes.
- Therefore, advertising performs an economic function by being an art of persuasion.
- Advertising is also an economic process—it helps the product to become known and it facilitates exchange between those who need the product and those who can satisfy the need.
- Provides employment opportunities (in advertising industry)

Social Function

- Advertising affects the core cultural values and subsidiary cultural values.
- Advertising is a mirror to the society in which it operates...it reflects the cultural values of that society.
- Advertising can also transfer some cultural values of one society to other.

Advertising has improved our standard of living, e.g., we buy TV, AC, Computers, Cars, etc., after getting interested in these products through advertising. We have accepted new ideas such as microwave, electric shaving, detergents, etc., through advertising.

Advertising protects the consumer by educating them and by forcing the manufacturers to maintain quality and to be fair. Therefore..... Advertising brings about consumer welfare in two ways: By improving standard of living and by improving product quality.

Psychological Function

- Advertising is closely linked to consumer behaviour, therefore, it affects personality of consumer, his concept of self, his attitudes, beliefs, opinions, his life-style, etc.
- Advertising appeals to our physiological and psychological motives.
- Advertisements are not just the sellers. They reflect the society. Whatever is used in society is reflected in advertising, e.g., Indian society is highly family oriented (example ads: savings for children, daughter's marriage), Indian society is people-oriented, and not self-oriented. For the sake of our family and others, we Indians can postpone our own gratification; We are also fun loving (example ads: Lux, Coke, Denim Jeans, etc.)

4.3.2 Ethics in Advertising

- Should not mislead the consumer
- What it promises must be there in the performance of products

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- Ad should not be indecent and obscene
- As advertising is also a social process, it must honour the norms of social behaviour, and should not offend our moral sense
- ASCI (Advertising Standards Council of India) regulates the advertising in India and has the set guidelines

ASCI Guidelines

- To ensure the truthfulness and honesty of representations and claims made by advertisements and to safeguard against misleading advertising.
- To ensure that advertisements are not offensive to generally accepted standards of public decency.
- To safeguard against indiscriminate use of advertising for promotion of products which are regarded as hazardous to society or to individuals to a degree or of a type which is unacceptable to society in large.
- To ensure that advertisements observe fairness in competition so that consumers need to be informed on choices in the market place and the canons of generally accepted competitive behaviour in business are both served.

4.3.3 Ethical Issues in Advertising

Advertising is a highly visible business activity and any lapse in ethical standards can often be risky for the company. Some of the common examples of ethical issues in advertising are given below:

- Vulgarity/Obscenity used to gain consumers' attention
- Misleading information and deception
- Puffery
- Stereotypes
- Racial issues
- Controversial products (e.g., alcohol, gambling, tobacco, etc.)

4.3.4 The Ethics of Controversial Online Advertising

Over the past twenty years much research has been carried out in the field of consumer and marketing ethics (Hunt and Vitell, 2006; Nwachukwu et al., 1997; Vitell, 2001; Vitell, 2003; Vitell and Muncy, 2005; Vitell, Singhapakdi and Thomas, 2001; Vitell et al., 2009; Vitell, Paolillo and Singh, 2006; Vitell, Singh and Paolillo, 2007). However, few journals have devoted specific attention to controversial advertising.

Controversial advertising can be defined as advertising that may be considered offensive and unethical due to the use of shock, fear or sexual appeals, for example, in order to cut through the media clutter, and gain consumer attention and awareness. Although research has been done on the ethical issues linked to controversial advertising offline (Drumwright and Murphy,

2009; Fam and Waller, 2003), little is known about the use and role of controversial advertising on the Internet, and what consumers think, feel and how they respond to such types of online ads.

While digital advertising spend has continued to rise (eMarketer, 2013) and social media such as Facebook and YouTube have been used extensively by companies to promote brands (Mangold and **Faulds, 2009)**, there has been a decline in click-through rates, an increase in consumer complaints about online advertising (Plunkett, 2010), and recent research showing advertising avoidance on Facebook (Michaelidou and Moraes, 2011) which may well be linked to negative consumer attitudes towards the shocking ad appeals used by digital marketers. Therefore, a deeper understanding of the ethical issues linked to controversial advertising online is needed.

The aim of this Journal of Business Ethics special thematic symposium is to fill this knowledge gap and to advance our understanding of the interconnections between advertising ethics, online marketing communications, and consumer attitudes and responses towards digital advertising (e.g., online and social media advertising). Therefore, the guest editors encourage submissions offering new studies and original insights into the links between these research areas. All rigorous conceptual and empirical work using qualitative and/or quantitative methodologies are welcome. Suggested topics include, but are not limited to:

- Consumer attitudes towards controversial advertising online;
- Consumer complaints regarding controversial advertising online;
- Comparisons of consumers' and practitioners' views on the morality of controversial advertising online;
- Differences in attitudes towards controversial ad appeals depending on the type of online media (e.g., social networking websites versus video-sharing websites);
- Measurement issues related to assessing the perceived degree of controversy of advertising appeals online;
- Modelling of controversial advertising avoidance online;
- Normative assessments of the ethical issues linked to controversial online advertising;
- Consumer resistance to controversial advertising online;
- Subversion of controversial online ads due to moral beliefs;
- The link between advertising avoidance and controversial advertising appeals online, if any;
- The tactics and strategies used by consumers to avoid controversial advertising online, if any.

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4.4. CODE OF ETHICS FOR ADVERTISING BY ADVERTISING COUNCIL OF INDIA

Advertising Standards Council of India (ASCI) is a voluntary self-regulatory council, registered as a not-for-profit Company under Section 25 of the Indian Cos. Act. The sponsors of the ASCI, who are its principal members, are firms of considerable repute within Industry in India, and comprise Advertisers, Media, Ad. Agencies and other Professional/Ancillary services connected with advertising practice.

The Role and Functioning of the ASCI and its Consumer Complaints Council (CCC) in dealing with Complaints received from Consumers and Industry, against Ads which are considered as False, Misleading, Indecent, Illegal, leading to Unsafe practices, or Unfair to competition, and consequently in contravention of the ASCI Code for Self-Regulation in Advertising.

ASCI propagates its Code and a sense of responsibility for its observance among advertisers, advertising agencies and others connected with the creation of advertisements, and the media.

ASCI encourages the public to COMPLAIN against advertisements with which they may be unhappy for any reason and ensures that each complaint receives a prompt and objective consideration by an impartial committee Consumer Complaints Council (CCC) which takes into account the view point of the advertiser, and an appropriate decision is communicated to all concerned.

ASCI endeavours to achieve compliance with its decisions through reasoned persuasion and the power of public opinion.

Chapter I (A)

To ensure the Truthfulness and Honesty of Representations and Claims made by Advertisements and to Safeguard against misleading Advertisements.

I. Advertisements must be truthful. All descriptions, claims and comparisons which relate to matters of objectively ascertainable fact should be capable of substantiation. Advertisers and advertising agencies are required to produce such substantiation as and when called upon to do so by The Advertising Standards Council of India.

II. Where advertising claims are expressly stated to be based on or supported by independent research or assessment, the source and date of this should be indicated in the advertisement.

III. Advertisements shall not, without permission from the person, firm or institution under reference, contain any reference to such person, firm or institution which confers an unjustified advantage on the product advertised or tends to bring the person, firm or institution into ridicule or disrepute. If and when required to do so by the Advertising Standards Council of India, the advertiser and the advertising agency shall produce explicit permission from the person, firm or institution to which reference is made in the advertisement.

IV. Advertisements shall neither distort facts nor mislead the consumer by means of implications or omissions. Advertisements shall not contain statements or visual presentation which directly or by implication or by omission or by ambiguity or by exaggeration are likely to mislead the consumer about the product advertised or the advertiser or about any other product or advertiser.

V. Advertisements shall not be so framed as to abuse the trust of consumers or exploit their lack of experience or knowledge. No advertisement shall be permitted to contain any claim so exaggerated as to lead to grave or widespread disappointment in the minds of consumers.

Examples: Products shall not be described as 'free' where there is any direct cost to the consumer other than the actual cost of any delivery, freight, or postage. Where such costs are payable by the consumer, a clear statement that this is the case shall be made in the advertisement. Claims which use expressions such as "Upto five years' guarantee" or "Prices from as low as Rs. Y" are not acceptable if there is a likelihood of the consumer being misled either as to the extent of the availability or as to the applicability of the benefits offered.

Where a claim is made that if one product is purchased another product will be provided 'free', the advertiser is required to show, as and when called upon by the ASCI, that the price paid by the consumer for the product which is offered for purchase with the advertised incentive is no more than the prevalent price of the product without the advertised incentive.

Advertisements inviting the public to take part in lotteries or prize competitions permitted under law or which hold out the prospect of gifts shall state clearly all material conditions and advertisers shall make adequate provisions for the judging of such competitions, announcement of the results and the fair distribution of prizes or gifts according to the advertised terms and conditions within a reasonable period of time. Obvious untruths or exaggerations intended to amuse or to catch the eye of the consumer are permissible provided that they are clearly to be seen as humorous or hyperbolic and not likely to be understood as making literal or misleading claims for the advertised product.

Chapter II (B)

To ensure that Advertisements are not offensive to generally accepted standards of Public Decency. Advertisements should contain nothing indecent, vulgar or repulsive which is likely, in the light of generally prevailing standards of decency and propriety, to cause grave or widespread offence.

Chapter III (C)

To safeguard against the indiscriminate use of Advertising in situations or of the Promotion of Products which are regarded as Hazardous or Harmful to society or to individuals, particularly minors, to a degree or of a type which is Unacceptable to Society at Large.

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1. No advertisement shall be permitted which:
   (a) Tends to incite people to crime or to promote disorder and violence or intolerance.
   (b) Derides any race, caste, colour, creed or nationality.
   (c) Presents criminality as desirable or directly or indirectly encourages people—particularly minors—to emulate it or conveys the modus operandi of any crime.
   (d) Adversely affects friendly relations with a foreign State.
2. Advertisements addressed to minors shall not contain anything, whether in illustration or otherwise, which might result in their physical, mental or moral harm or which exploits their vulnerability. For example,

Advertisements:

- Should not encourage minors to enter strange places or to converse with strangers in an effort to collect coupons, wrappers, labels.
- Should not feature hazardous acts which are likely to encourage minors to emulate such acts in a manner which could cause harm or injury.
- Should not show minors using explosive substance; or playing with or using sharp knives, guns or mechanical or electrical appliances, the careless use of which could lead to their suffering burns, shocks or other injury.
- Should not feature minors for tobacco or alcohol-based products.
- Should not feature personalities from the field of sports, music and cinema for products which, by law, either require a health warning in their advertising or cannot be purchased by minors.

3. Advertisements shall not, without justifiable reason, show or refer to dangerous practices or manifest a disregard for safety or encourage negligence.
4. Advertisements shall not propagate products, the use of which is banned under the law.
5. Advertisements should contain nothing which is in breach of the law nor omit anything which the law requires.

Chapter IV (D)

To ensure that Advertisements observe fairness in competition such that the Consumer's need to be informed on choice in the Market-Place and the Canons of generally accepted competitive behaviour in Business are both served.

1. Advertisements containing comparisons with other manufacturers or suppliers or with other products including those where a competitor is named, are permissible in the interests of vigorous competition and public enlightenment, provided:

It is clear what aspects of the advertiser's product are being compared with what aspects of the competitor's product.

The advertisement does not unfairly denigrate, attack or discredit other products, advertisers or advertisements directly or by implication.

The comparisons are factual, accurate and capable of substantiation.

2. Advertisements shall not make unjustifiable use of the name or initials of any other firm, company or institution, nor take unfair advantage of the goodwill attached to the trademark or symbol of another firm or its product or the goodwill acquired by its advertising campaign.
3. Advertisements shall not be similar to any other advertiser's earlier run advertisements in general layout, copy, slogans, visual presentations, music or sound effects, so as to suggest plagiarism.
4. As regards matters covered by Sections 2 and 3 above, complaints of plagiarism of advertisements released earlier abroad will lie outside the scope of this Code except in the under-mentioned circumstances: - The complaint is lodged within 12 months of the first general circulation of the advertisements/campaign complained against - The complainant provides substantiation regarding the claim of prior invention/usage abroad.

4.5. DAVP'S CODE OF ADVERTISING

New Advertisement Policy
[With Effect From 2nd October, 2007] Clause 1

The Directorate of Advertising and Visual Publicity (DAVP) is the nodal agency of the Government of India for advertising by various Ministries and organisations of Government of India including public sector undertakings and autonomous bodies. The primary objective of the Government in advertising is to secure the widest possible coverage of the intended content or message through newspapers and journals of current affairs as well as Science, Art, Literature, Sports, Films, Cultural Affairs, etc. In releasing advertisements to newspapers /journals the DAVP does not take into account the political affiliation or editorial policies of newspapers/journals. However, DAVP would avoid releasing advertisements to newspapers /journals, which incite or tend to incite communal passion, preach violence, offend the sovereignty and integrity of India or socially accepted norms of public decency and behaviour.

In supercession of all earlier orders, the Government hereby lays down the New Advertisement policy with effect from 2nd **October**, 2007.

Note: House Journals, Souvenirs and Annual Periodicals, will not be empanelled.

Clause 2

Government advertisements are not intended to be financial assistance to newspapers/journals. DAVP maintains a list of newspapers/journals approved for release of advertisements by empanelling acceptable newspapers/ journals. DAVP will empanel only such newspapers/journals as are required for issuing advertisements of the Government of India. Care is taken to empanel newspapers/journals having readership from different sections of the society in different parts of the country.

Clause 3

All Central Govt. Ministries/Departments/Attached and Subordinate Offices/ Field Offices shall route their advertisements, including display advertisements,through DAVP. However, they may issue tender notices directly to empanelled newspapers only at DAVP rates. PSUs, Autonomous Bodies and Societies of Govt. of India may issue all advertisements, directly at DAVP rates to empanelled newspapers, provided all classified and display advertisements are released in the following manner :

	(in rupee terms)
Small	15% (minimum)
Medium	35% (minimum)
Big	50% (maximum)
English languages	0% (approx.)
Hindi languages	35% (approx.)
Regional and other languages*	35%(approx.)

*like Bodo, Dogri, Garhwali, Kashmiri, Khasi, Konkani, Maithili, Manipuri, Mizo, Nepali, Rajasthani, Sanskrit, Santhali, Sindhi, Urdu and Tribal languages as certified by State Governments.

Clause 4

All Ministries/ Departments/Autonomous Bodies/ Public Sector Undertakings/ Attached and Subordinate Offices will have to issue Letter Of Authority (LOA) upto 80% of the actual expenditure in the previous year within the first month of the new financial year and clear all the remaining payments before 28th of February, of the financial year.

Clause 5
Panel Advisory Committee

There shall be a Panel Advisory Committee (PAC) for considering applications of newspapers/journals for being empanelled for receiving Government advertisements. This Committee shall be headed by Director General, DAVP and shall include Addl. Director General (Media and Communication)/Deputy Director General (Media and Communication) in the Press Information Bureau (PIB), Press Registrar/Deputy Press Registrar and Director/Deputy Secretary/ Under Secretary in the Ministry of Information and Broadcasting dealing with Print Media. The Committee will also have one representative each from the Association of big, medium and small newspapers.The recommendations of the

PAC as accepted by the DG, DAVP regarding empanelment of a newspaper shall be final.

Clause 6

In pursuance of broad social objectives of the Government and for ensuring fairness among various categories of newspapers/journals, the PAC considers empanelment of newspapers/journals belonging to the following categories on priority :

(a) Small and medium newspapers/journals

(b) Language newspapers such as Bodo, Dogri, Garhwali, Kashmiri, Khasi, Konkani, Maithili, Manipuri, Mizo, Nepali, Rajasthani, Sanskrit, Santhali, Sindhi, Urdu and Tribal languages as certified by State Governments.

(c) Newspapers/journals published in backward, remote, hilly and border areas and those published in J&K, Andaman and Nicobar Islands and North Eastern States.

Clause 7

Newspapers/journals are classified into three categories, namely

(i) Small, with a circulation of up to 25,000 copies per publishing day.

(ii) Medium, between 25,001 and 75,000 copies per publishing day, and

(iii) Big, with a circulation of above 75,000 copies per publishing day.

Clause 8

All newspapers/ journals seeking empanelment should comply with the following:

1. It must have been uninterruptedly and regularly under publication for a period of not less than 36 months save as under:

   (a) To provide special encouragement for newspapers in languages like Bodo, Garhwali, Dogri, Kashmiri, Khasi, Konkani, Maithili, Manipuri, Mizo, Nepali, Rajasthani, Sanskrit, Santhali, Sindhi, Urdu and tribal languages/dialects as certified by State Government OR newspapers published in J&K, Andaman and Nicobar Islands and North Eastern States can be considered for empanelment after 6 months of regular and uninterrupted publication. In the case of all regional and other language small and medium newspapers, the qualifying period shall be 18 months.

   (b) In order to tap the readership potential of mass circulated newspapers, with a circulation of one lakh and above, such newspapers be made eligible for empanelment after a period of 1 year of regular and uninterrupted publication. The circulation claim of such newspapers will be considered only if certified by RNI or ABC.

2. It should comply with the provisions of the Press and Registration of Books Act, 1867.
3. It should not have been disqualified by DAVP in the last six years and should not be a defaulter of DAVP.
4. The period of disqualification should not exceed six years.
5. It should not have been Unestablished by RNI at the time of applying.
6. The applicant should also furnish a copy of the Certificate of Registration issued by the RNI in the name of the publisher.
7. The details of the paper like size, language, periodicity, print area and details of printing press, etc., as asked for in empanelment form may be given.
8. Further, it must be substantiated that the paper is being published at a reasonable standard.

Reasonable standard, inter alia, means that

(a) The print matter and photographs should be legible, neat, clear and without smudges, overwriting, and tampering.

(b) There should be no repetition of news items or articles from other issues.

(c) There should be no reproduction of news items or articles from other newspapers/journals and the source of news/articles should be mentioned.

(d) Masthead on its front page should carry the title of the newspaper, place, date and day of publication; it should also carry RNI Registration Number, volume and issue number, number of pages and price of newspapers/journals;

(e) The newspaper should carry imprint line as required under PRB Act; and

(f) Inner pages must carry page number, title of the paper and date of publication. For multi-editions place of publication must be mentioned in inner pages also.

(g) All the publications must carry editorial.

NOTE: The publisher must ensure that his/her publication fulfils all the norms laid down in the Policy before applying for empanelment/ rate renewal. The application form must be complete in all respects with supporting documents. Incomplete applications will not be considered.

Fresh applications for empanelment may be made twice a year, i.e., first at the end of February and secondly by the end of August. The Applications made before February end will be considered in the month of May of the same year and their contract will start w.e.f. 1 July of the same year and applications made before August end will be considered in November and their contract will start w.e.f 1st January of the next year.

Clause 9

Notwithstanding any of the provisions mentioned above, DG, DAVP, as Chairperson of the Panel Advisory Committee, will have discretion to grant provisional empanelment to a newspaper, subject to approval of the PAC, for a period of six months or till the next meeting of the PAC if the newspaper completes all the formalities required for empanelment and otherwise is found suitable for issue of Government advertisements. All such cases of provisional empanelment will be placed before the PAC in its next meeting.

Clause 10
Rate Contract

All empanelled newspapers/ publications will be asked to enter into a rate contract, which will be valid for a period of 3 years. However, a change in circulation can be accepted only once, after completion of one year from the date of rate contract, during the validity period of the rate contract, on the basis of CA/RNI/ABC certificates, as applicable, duly supported with the proof of submission of Annual Return for the previous year to RNI. However, in case of information regarding decrease in circulation from ABC/RNI, the decision of DG,DAVP will be final.

NOTE 1: Application for renewal of rate Contract can be downloaded from DAVP website.

NOTE 2: All empanelled publications must submit a copy of annual return submitted to RNI with receiving proof from RNI for the previous year , by 30th Septmeber every year ,failing which the newspaper can be deempanelled by DG,DAVP.

Clause 11
Regularity

The applicant should have published the newspaper on at least 25 days in each month during preceding 12 months. Weeklies should have published 46 issues during the preceding year, fortnightlies 23 issues and monthlies 11 issues during the preceding year to be considered being brought out regularly.

Clause 12

Newspapers/journals having established circulation of more than 75,000 copies per publishing day, as certified by Audit Bureau of Circulation (ABC) can seek empanelment of their fresh edition from a new place after having regular publication for preceding 4 months with same title, but in such cases empanelment of fresh edition will be only in the lowest slab of the category of circulation.

In case of small and medium papers (dailies), new editions can also be empanelled after 4 months of regular publication as per circulation certified by CA in the prescribed format subject to other conditions of Advertisement Policy.

Clause 13

A newspaper/journal should have a minimum paid circulation of not less than 2000 copies for being considered eligible for empanelment.

However, newspapers/journals in Bodo, Dogri, Garhwali, Kashmiri, Khasi, Konkani, Maithili, Manipuri, Mizo, Nepali, Rajasthani, Sanskrit, Santhali, Sindhi, Urdu and Tribal languages as certified by State Governments, published all over the country and newspapers/journals published in backward, border, hilly areas OR remote areas OR tribal languages OR those published in J&K, Andaman and Nicobar Islands and North- Eastern States need to have substantiated minimum paid circulation of only 500 copies per publishing day.

Clause 14

A newspaper/journal should have the following minimum print area:

Periodicity Print Area Not Less Than

Dailies 1520 Std.Col.Cms./7600 Sq. Cms. Weeklies/ 700 Std.Col. Cms./3500 Sq.Cms. Fortnightlies

Monthlies 960 Std. Col. Cms./ 4800 Sq.Cms.

Exceptions may, however, be made by PAC in the case of newspapers/ journals falling in the categories mentioned in Clause 13.

Clause 15

The empanelment already granted by the DG, DAVP earlier will remain valid for the duration for which empanelment has been made.

Clause 16

The applicant newspaper/journal should furnish authenticated figures of circulation of ABC, Cost Accountant/Statutory Auditor/Chartered Accountant as per the criteria below:

- Up to 25000 Cost/Chartered Accountant/ Statutory Auditor Certificate in prescribed proforma/ABC Certificate. 25001–75000.
- Companies: Statutory Auditor certificate in prescribed proforma/ABC certificate.
- Individuals: Chartered Accountant certificate in prescribed proforma/ ABC certificate. Above 75000–ABC /RNI certificate.

DAVP will take average circulation for the preceding one year as certified by RNI/ABC/Statutory Auditor/CA certificate, whichever is less.

NOTE 1: The copies sold at more than 40% commission over the cover price of newspapers will not be taken into account for calculating DAVP rate.

NOTE 2: RNI circulation certificate will be valid up to 4 years from the date of issue for the purpose.

NOTE 3: A publication with circulation upto 25000 need not submit RNI/ ABC certificate.

Clause17

DG, DAVP reserves the right to have figures of circulation checked through its representatives or through RNI. However, there will be no circulation check for newspapers/journals with circulation upto 25,000.

Clause 18

Suspension and Recoveries: A newspaper may be suspended from empanelment by DG, DAVP with immediate effect if

(a) Found to have deliberately submitted false information regarding circulation or otherwise; or

(b) Found to have discontinued its publication, changed its periodicity or its title or have become irregular or changed its premises/ press without due intimation; or

(c) It has failed to submit its Annual Return to the RNI or its Annual Circulation Certificate from the prescribed agencies or) Big, with a circulation of above 75,000 copies per publishing day.

(d) Indulged in unethical practices or anti-national activities as found by the Press Council of India. However, DAVP shall refer the case to the Ministry for appropriate decision in the matter.

(e) Convicted by Court of Law for such activities

(f) It refuses to accept and carry an advertisement issued by DAVP on behalf of the Ministries/Departments of Government of India, public sector undertakings and autonomous bodies on more than two occasions.

Provided that DG, DAVP shall not issue any order of suspension without giving a reasonable opportunity to the concerned newspaper in cases covered by (a), (b), (c) and (f) above.

In such cases the paper will remain suspended for a period upto 12 months. DAVP will affect recovery of any payments made in the past from the publisher in the case of (a), (b) and (c) above. The publisher should deposit within 60 days from the date of issue of Demand Letter for recovery by DAVP failing which empanelment of the paper will be discontinued with immediate effect without any further notice and recovery will be realised from the bills/payments pending with DAVP, if any. Till the recovery is made,no advertisement will be issued.

Clause19
Advertising Rate

The rate structure for payment against advertisements released by DAVP will be worked out as per recommendations of the Rate Structure Committee. The rates will be related to certified circulation of a newspaper. All empanelled newspapers will have to enter into rate contract with DAVP on the basis of rate offered and other terms and conditions as laid down from time to time to ensure proper publication of DAVP advertisements as and when issued to such newspapers.

Clause 20
Payment and Adjustment Bills

DAVP will release payment of advertisement bills in the name of the payee and at the address given by the newspaper in the application form for

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renewal of rate contract or fresh application for empanelment, as the case may be. No change in the payee's name or address will be entertained during the year of empanelment unless it is justified and found unavoidable or compelling.

Clause 21

Every newspaper shall send one copy of the newspaper at their cost carrying DAVP advertisements, to the client at the address mentioned in the Release Order, failing which payment for the advertisement may not be considered. In addition, DAVP may ask for regular supply of specimen copies of any empanelled publication for a period considered necessary. Newspapers may inform DAVP within 48 hours, if they have not been able to publish the advertisement on the due date.

Clause 22

Every newspaper shall submit advertisement bills, complete in all respect, and supported with relevant documents, within 60 days of the publication of the advertisement. DAVP will make every effort to pay the advertisement bill within 60 days of receipt of bill.

Clause 23

No newspaper will publish DAVP advertisement without receipt of the relevant Release Order. The DAVP issues Electronic Release Order through its website : www.davp.nic.in. No newspaper will publish DAVP advertisements without valid Release Order issued in its name. Request for a duplicate Release Order by publications will be entertained on merits and on case to case basis.

Clause 24

The newspaper will have to strictly adhere to the date of publication of DAVP advertisements as given in the Release Order. Publication of advertisement on dates other than that given in the Release Order, will not be accepted for payment.

Clause 25

Release of Advertisements

As soon as requisitions for release of advertisements are received from various Ministries and Departments, DAVP will prepare a suitable media list keeping in view the objectives of the client Ministries/Departments, the contents, target audience for the advertisement and availability of funds in consultation with the client Ministries/Departments.

Clause 26

DAVP will make efforts to release more advertisements to periodicals especially social messages and advertisements which are not date specific. Efforts will also be made to release more advertisements to newspapers with special emphasis on North East, J&K and other remote areas. While releasing display advertisements, DAVP will ensure that a balance is maintained between various categories of newspapers taking into account circulation,

language, coverage area, etc. For this purpose, the distribution of advertisements, Rupee terms, will be as under:

Category	Ceiling (in rupee terms)
Small	15% (minimum)
Medium	35% (minimum)
Big	50% (maximum)
English languages	30% (approx.)
Hindi languages	35% (approx.)
Regional and other languages*	35% (approx.)

The above norms are indicative and should be adhered to in the overall media strategy of the Ministries' /Departments to ensure maximum coverage at optimum cost. However, in specific cases where a Ministry/Department wishes to make a deviation from these norms, full and detailed justification should be given while placing the order.

DAVP shall bring all such deviations to the notice of the Ministry of Information and Broadcasting for information and necessary action.

Clause 27

The powers to review vest with the Ministry of Information and Broadcasting, in cases where DG:DAVP is the final authority.

4.6. VARIOUS LAWS OF ADVERTISING IN INDIA AND CODES AND ETHICS AND PUBLIC RELATIONS

4.6.1 Advertising Laws in India: An Overview

"We, therefore, hold that "commercial speech" is a part of the freedom of speech and expression guaranteed under Article 19(1) (a) of the constitution" – The Supreme Court of India

H.G. Wells once famously said that advertising was a legalised lying. This reflects the dilemma on advertising and its effect on consumers. In an environment of zealous competition in the foreground of a market economy, advertisements often tend to exaggerate and misrepresent facts which ultimately affect impressionable minds. That is precisely what all legal systems must seek to address. Several countries have enacted comprehensive laws that govern and control advertising. Many countries in Europe restrict domestic advertising that target children below a certain age. In the UK, the Advertising Standards Authority lays down the standards for advertising in all kinds of media while all outdoor advertising is done with permission from the local town planning authorities. As for the US, the Federal Trade Commission is the relevant and the ultimate authority on the subject although local governments are allowed to enact their own regulations in this regard.

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In India, the field of advertising is subject to a multiplicity of laws in the absence of a comprehensive statutory mechanism that would lay down ground rules in clear terms for advertising in the country.

Issues in Advertising

Deceptive Advertising As advertisements aim to influence or persuade customers into buying products that they promote, many a time advertisements illegally use false statements and misrepresentations about their products in violation of customers' right to know exactly what they are purchasing.

Misleading Prices Companies often hide or fudge prices of products/ services advertised in order to attract a larger customer base. The prices they advertise often do not disclose additional charges and the overall cost to the customer. Such advertisements are commonly found in the airlines, mobile telephony industry and memberships for clubs. A common case of such misleading pricing is the 'end-of-season sales' when the prices of products are often knocked down and advertised in the media in order to push up sales. But what such advertisements don't disclose is, such knocked down/ discounted prices are actually pushed up before providing the discount so that the profit margin of the seller on such products remains intact.

Failure to maintain standards At times companies/ sellers/ service providers cleverly bypass established standards applicable to the products by adopting a different standard which provides a sense of enhanced efficacy of the goods/ services in the mind of the customer. This also provides unfair advantages to the seller over its competitors. Such advertisements are often seen in advertisements that compare the products advertised against the products of other leading brands.

Labelling issues Labelling on products can also be misleading. They may, at times, misrepresent or obfuscate the actual weight of the packets or adopt a different standard of measurement contrary to the generally accepted standards. The packaging of products may also use exotic high sounding words such as "organic", "eco-friendly", "natural", "mild", etc., without a proper explanation of the terms and such terms may even be used for products that have nothing to do with such concepts.

Surrogate Advertisements Whenever the advertisements for certain products like tobacco or liquor which have adverse effect on health and are restricted or banned, the manufacturers tend to launch new products with similar brand names. A blitzkrieg of advertisements is launched in the media for such new products with an aim to reinforce or sustain the banned products/ advertisements.

Legal scenario in India

There are several laws in India that relate to advertising. A snapshot of some of these enactments is provided hereunder-

Consumer Protection Act, 1986—Section 6 of the Act grants consumers the right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be so as to protect the consumer

against unfair trade practices. Section 2(r) of the Act, under the definition of the term "unfair trade practice", covers the gamut of false advertisements including misrepresentations or false allurements. Redress against such unfair trade practices pertaining to false advertisements may be sought under the Act;

Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 Section 5 of this Act, inter alia, prohibits both direct and indirect advertisement of tobacco products in all forms of audio, visual and print media;

Cable Television Networks (Regulations) Act, 1995 and Cable Television Networks (Amendment) Rules, 2006 Section 6 of the Cable Television Networks (Regulations) Act, 1995 provides that no person shall transmit or re-transmit through a cable service any advertisement unless such advertisement is in conformity with the advertisement code prescribed under the Cable Television Networks (Amendment) Rules, 2006. However, the aforesaid provision does not apply to programmes of foreign satellite channels which can be received without the use of any specialised gadgets or decoder. Rule 7 of the Cable Television Networks (Amendment) Rules, 2006 lays down the "Advertising Code" for cable services which are formulated to conform to the laws of the country and to ensure that advertisements do not offend morality, decency and religious susceptibilities of the subscribers;

Doordarshan/ All India Radio (AIR) Advertisement Code Doordarshan and AIR, both under the control of Prasar Bharati (a statutory autonomous body established under the Prasar Bharati Act), follow a comprehensive code for commercial advertisements which control the content and nature of advertisements that can be relayed over the agencies;

Drug and Magic Remedies (Objectionable Advertisement) Act, 1954 This Act purports to regulate the advertisements of drugs in certain cases and to prohibit the advertising for certain purposes of remedies alleged to possess magic qualities and to provide for matters connected therewith.

Drugs and Cosmetics Act, 1940 Section 29 of the Act imposes penalty upon whoever uses any report of a test or analysis made by the Central Drugs Laboratory or by a Government Analyst, or any extract from such report, for the purpose of advertising any drug. The punishment prescribed for such an offence is a fine which may extend up to rupees five hundred and/ or imprisonment up to ten years upon subsequent conviction;

Emblems and Names (Prevention of improper use) Act, 1950 This piece of legislation prohibits the use of any trademark or design, any name or emblem specified in the Schedule of the Act or any colourable imitation thereof for the purpose of any trade, business, calling or profession without the previous permission of the Central Government;

Food Safety and Standards Act, 2006 Section 53 of this Act provides a penalty of up to ₹ 10 lakh for false and misleading advertisements relating to the description, nature, substance or quality of any food;

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Indecent Representation of Women (Prohibition) Act, 1986 This Act is aimed at prohibiting indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner and for matters connected therewith or incidental thereto (Sections 3 and 4 of the Act).

Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 Advertisement in any manner regarding facilities of pre-natal determination of sex available at any genetic counselling centre, laboratory, clinic or any other place is prohibited under this Act and has been made a punishable offence under the Act (Section 22);

Young Persons (Harmful Publications) Act, 1956 Section 3 of the Act, inter alia, imposes penalty for advertising or making known by any means whatsoever that any harmful publication (as defined in the Act) can be procured from or through any person.

The Representation of People Act, 1951 The display to the public of any election matter by means of cinematograph, television or other similar apparatus in any polling area during the period of forty-eight hours ending with the time fixed for the conclusion of the poll for any election in the polling area is prohibited under the Act (Section 126).

Indian Penal Code, 1806 The IPC, vide an array of provisions, prohibits obscene, defamatory publication, publication of a lottery and/ or statements creating or promoting disharmony/ enmity in a society.

Needless to say, the foregoing laws are in addition to applicable IPR laws and other relevant laws in general.

Regulatory Authorities

Advertising Standards Council of India (ASCI) is a self regulatory voluntary organization of the advertising industry. The ASCI has drawn up a code for self regulation in the advertising industry with a purported view to achieve the acceptance of fair advertising practices in the best interests of the ultimate consumer. The ASCI also lays down similar codes for advertisements in specific sectors/industries from time to time. However, the codes are self-imposed discipline to be followed by those involved in the industry and in no way are the codes mandatory. As such, compliance with the code is rare and very few complaints are actually received by the ASCI on account of non-compliance. Nevertheless, the Cable Television Networks (Amendment) Rules, 2006, under Rule 7(9) makes it mandatory for all advertisements carried by cable services to be compliant with the ASCI code. According to the ASCI code, complaints against deviant advertisements can be made by any person who considers them to be false, misleading, offensive, or unfair. The Consumer Complaints Council (CCC) considers and decides on the complaints received from the general public including government officials, consumer groups, complaints from one advertiser against another and even suo moto complaints from the member of the ASCI Board or CCC.

The Reserve Bank of India, SEBI and the IRDA are some of the other regulatory authorities that regulate advertisements in their respective fields.

Comparative Advertising

A popular method of advertisement is comparative advertising where one product/ service is advertised by comparing them with the goods or services of another party. Such other party is usually a competitor or the market leader of that goods or services. The comparison is made on the basis of quality, price, availability, performance, etc., with a view towards increasing the sales of the advertiser, either by suggesting that the advertiser's product is of the same or of a superior quality. However, such advertisements often lead to infringement of trademarks of the competitors (as per the Trademarks Act, 1999) and promote unfair competition. Such comparative advertisements also cause disparagement of the product/ service of the competitor although the term 'disparagement' is not defined under any of the existing Indian laws.

The Delhi High Court in Reckitt and Colman vs Kiwi TTK clarified the position of law in this regard as follows:

"The settled law on the subject appears to be that a manufacturer is entitled to make a statement that his goods are the best and also make some statements for puffing his goods and the same will not give a cause of action to other traders or manufacturers of similar goods to institute proceedings as there is no disparagement or defamation to the goods of the manufacturer so doing. However, a manufacturer is not entitled to say that his competitor's goods are bad so as to puff and promote his goods. It, therefore, appears that if an action lies for defamation an injunction may be granted."

An action against such advertisements may lie at the instance of the manufacturer or marketer before the civil court and at the instance of the consumer, provided it contains a false representation, before the consumer forum under the Consumer Protection Act, 1986.

4.6.2 Codes and Ethics and Public Relations

Every profession demands sincerity and devotion following certain written and unwritten rules of conduct. A sense of belongingness to the cause that instills a sense of morality. In the professional world—whether it is medical, engineering or law the respective graduates take the oath to abide by the professional ethics before embarking on their duties and responsibilities. PR is an area, which has earned an image of a lobbyist, publicist or propagandist—terms which bear negative connotations. Worst even, PR is considered by many as a "wine and dine" affair. There cannot be smoke without fire and PR professionals' conduct is primarily responsible for this state of affairs.

Image of PR

Following the growing decline in the professional standard and regular complains from media and other quarters, the issue of ethics was brought to the fore in late 50s. Since PR is the visible face of an organization, its own image remains a core concern for the public and the management. Hence, the PR practitioners world over, after series of deliberations, realised the need for certain principles of practice. It becomes the moral responsibility of a PR

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professional to imbibe those qualities suggested in these guidelines and know those principles, upon which the edifice of PR rests on.

Principles of Public Relations Practice

The modern PR concept embraces PR activity integral to the management philosophy rather than readymade formulae to sail through the troubled water. With the emergence of democracy as a sacred political ideology, the demand from the public to be informed about the public affairs had grown manifold. Public criticism also became a balancing factor for the democratic voices. To tackle this criticism the governments used PR and herefrom the PR assumed the role of a publicist and a propagandist.

PR practitioner's conduct is a reflection of the organization he/she represents; therefore his/her behaviour must go far beyond ignoring the legal ramifications. It should be fair, honest and governed by the law of the land. The public would not take long to realise whether the PR messages are flattery and non-truths or carry conviction for being logical and ethical. Ethical rules are the governing principles of conduct and behaviour. Ethical conducts demand that the principle we act or follow should be one, which we can recommend everyone else to act upon. PR people should be aware of these rules which guide the profession and behave with discretion and extend their role to the society and catch up the idea of corporate social responsibility. PR practitioner's scrupulous dealing both with employees, clients and belongingness for the organisation would go a long way in keeping the profession beyond criticism. PR's importance, misdemeanor, selfprojection and publicity stunts cause unwarranted damage to the business. PR persons must realise that bridging the communication gap by increasing the flow of information and projecting the human face of his/her organization results in positive image. Hence, the responsibility to employ fair means to achieve the objectives and motivation of the organization for high-performance would finally earn the practitioners and the profession a good reputation.

The demand for a common code of conduct for the PR practitioners was realised as far back as 1965 when the international PR organisations gave the issue of ethics a serious thought. The societies of PR practitioners have prescribed code of ethics in an endeavour to build and maintain good reputation and inculcate values. The PRSI, RRSA and IPRA and others as representative bodies of the PR fraternity, have adopted the code of conduct underlining the do's and dont's of the profession.

International Public Relations Association[IPRA] CODE OF CONDUCT

The following code of conduct was adopted by International Public Relations Association in its general assembly in Venice, May 1961 and is binding on all members of the association. Personal and Professional Integrity.

It is understood that by personal integrity is meant the maintenance of both high moral standards and a sound reputation. By professional integrity is meant observance of the constitution, rules and, particularly, the code as adopted by IPRA.

Conduct towards Clients and Employers

1. A member has a general duty of fair dealing towards his clients and employers, past and present.
2. A member shall not represent conflicting or competing interest without the express consent of those concerned.
3. A member shall safeguard the confidences of both present and former clients and employers.
4. In performing services for a client or employer a member shall not accept fees, commissions or any other valuable considerations in connection with those services from anyone other than his client or employer without the express consent of his client or employer, given after a full discloser of facts.
5. A member shall not propose to a prospective client or employer that his fee or other compensation be contingent on the achievement of certain results; nor shall he enter into any fee agreement to the same effect.

Conduct towards the Public and the Media

1. A member shall conduct his professional activities in accordance with the public interest, and full respect for the dignity of the individual.
2. A member shall not engage in any practice which tends to corrupt the integrity of channels of public communication.
3. A member shall not intentionally disseminate false or misleading information.
4. A member shall at all times seek to give a balanced and faithful representation of the organization he serves.
5. A member shall not create any organisation to serve some announced cause but actually to serve an undisclosed special or private interest of a member or his client or his employer, nor shall he make use of it or any such existing organisation.

Conduct towards Colleagues

1. A member shall not intentionally injure the professional reputation or practice of another member. However, a member has evidence that another member has been guilty of unethical, illegal or unfair practices violation of this code; he should present the information to the Council of IPRA.
2. A member shall not seek to supplant another member with his employer or client.
3. A member shall cooperate with fellow members in upholding and enforcing this code.

Public Relations Society of America [PRSA] CODE OF CONDUCT

Members of the Public Relations Society of America base their professional principles on the fundamental value and dignity of the individual,

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holding that the free exercise of human rights, especially freedom of speech, freedom of assembly and freedom of the press, is essential to the practice of public relations. The code of conduct adopted by the society is as follows:

1. A member shall deal fairly with clients or employers. Past and present, with fellow practitioners and the general public.
2. A member shall conduct his or her professional life in accordance with the public interest.
3. A member shall adhere to truth and accuracy and to generally accepted standards of good taste.
4. A member shall not represent conflicting or competing interests without the express consent of those involved, given after a full disclosure of the facts; nor place himself or herself in a position where the member's interest is to many be in conflict with a duty to a client, or others ,without a full disclosure of such interests to all involved.
5. A member shall safeguard the confidence of present and former clients as well as of those persons or entitles who have disclosed confidences to a member in the context of communication relating to an anticipated professional relationship with the member and shall not accept retainers or employers.
6. A member shall not engage in any practice which tends to corrupt the integrity or channels of communications or the process of government.
7. A member shall not intentionally communicate false or misleading information and is obligated to use care to avoid communication of false or misleading information.
8. A member shall be prepared to identify publicly the name of the client or employer on whose behalf any public communication is made.
9. A member shall not make use of any individual or organisation purporting to serve or represent an announced cause, or purporting to be independent or unbiased, but actually serving an undisclosed special or private interest of a member, client or employer.
10. A member shall not intentionally injure the professional reputation or practice of another practitioner.
11. If a member has evidence that another member is guilty of unethical illegal or unfair practices, including those in violation of this code, the member shall present the information promptly to the proper authorities of the society for action in accordance with the procedure set forth in article xii of the bylaws.
12. A member called as a witness in proceeding for the enforcement of this code shall bound to appear, unless excused for sufficient reason by the judicial panel.
13. A member, in performing services for a client or employer, shall not accept fees, commissions or any other valuable consideration from

anyone other than the client or employer, given after a full disclosure of the facts.

14. A member shall not guarantee the achievement of specified results beyond the member's direct control.

15. A member shall, as soon as possible, sever relations with any organisation or individual if such relationship requires conduct contrary to the articles of this code.

4.7. PRSI CODE OF ETHICS

International Code of Ethics for Public Relations as adopted by the Public Relations Society of India at the 1st All India Public Relations Conference, New Delhi, April 21, 1968.

Considering that all Member countries of the United Nations Organisation have agreed to abide by its Charter which reaffirms "its faith in fundamental human rights, in the dignity and worth of the human person" and that having regard to the very nature of their profession, Public Relations practitioners in these countries should undertake to ascertain and observe the principles set out in this Chapter.

Considering that, apart from "rights", human beings have not only physical or material needs but also intellectual, moral and social needs, and that their rights are of real benefits to them only insofar as needs are essentially met.

Considering that, in the course of their professional duties and depending on how these duties are performed, Public Relations practitioners can substantially help to meet these intellectual, moral and social needs,

And lastly, **Considering** that the use of techniques enabling them to come simultaneously into contact with millions of people gives Public Relations practitioners a power that has to be restrained by the observance of a strict moral code,

On all these grounds the Public Relations Society of India hereby declares that it accepts, as its moral charter the principles of the following Code of Ethics, and that if, in the light of evidence submitted to the Society, a member of this Society is found to have infringed this Code in the course of his professional duties, he will be deemed to be guilty of serious misconduct calling for an appropriate penalty.

Accordingly, each Member of this Society

Shall endeavour:

1. To contribute to the achievement of the moral and cultural conditions enabling human beings to reach their full stature and enjoy the indefeasible rights to which they are entitled under "Universal Declaration of Human Rights";

2. To establish communication patterns and channels which, by fostering the free flow of essential information, will make each member of the group feel that he is being kept informed, and also give him an

awareness of his own personal involvement and responsibility and of his solidarity with other members;

3. To conduct himself always and in all circumstances in such a manner as to deserve and secure the confidence of those with whom he comes into contact;
4. To bear in mind that because of the relationship between his profession and the public, his conduct - even in private - will have an impact on the way in which the profession as a whole is appraised.

Shall undertake:

5. To observe, in the course of his professional duties, the moral principles and rules of the "Universal Declaration of Human Rights";
6. To pay due regard to, and uphold, human dignity, and to recognize the right of each individual to judge for himself;
7. To establish the moral, psychological and intellectual conditions for dialogue in its true sense, and to recognise the right of the parties involved to state their case and express their views;
8. To act, in all circumstances in such a manner as to take account of the respective interests of the parties involved: both the interests of the organisation which he serves and the interests of the publics concerned;
9. To carry out his undertakings and commitments which shall always be so worded as to avoid any misunderstanding, and to show loyalty and integrity in all circumstances so as to keep the confidence of his clients or employees, past or present and of all the publics that are affected by his actions.

Shall refrain from:

10. Subordinating the truth to other requirements;
11. Circulating information which is not based on established and ascertainable facts;
12. Taking part in any venture or undertaking which is unethical or dishonest or capable of impairing human dignity and integrity;
13. Using any "manipulative" methods or techniques designed to create subconscious motivations which the individual cannot control of his own free will and so cannot be held accountable for the action taken on them.

4.8. IPRA CODE OF ETHICS AND EDITORIAL ETHICS

4.8.1 IPRA's Code of Ethics

IPRA (International Public Relations Association) is an organisation established in 1955 in London. The idea emerged of organising public relations

professionals into a transnational society with the objective of raising standards of public relations practice in the various countries and improving the quality and efficiency of practitioners.

Today, IPRA is a very active community of Public Relations practitioners from all over the world with constant activities conducted in partnership with different academic institutions including several conferences, workshops and world congresses.

IPRA currently has 700 members from 80 countries around the world. A key part of IPRA has been the development of a number of Codes and Charters seeking to provide an ethical framework for the activities of the profession. Upon joining IPRA all members undertake to uphold these Codes and in doing so benefit from the ethical climate that they create.

The "IPRA Code of Conduct"

Adopted in 2011 the IPRA Code of Conduct is an affirmation of professional and ethical conduct by members of the International Public Relations Association and recommended to public relations practitioners worldwide.

In the conduct of public relations practitioners shall:

1. *Observance:* Observe the principles of the UN Charter and the Universal Declaration of Human Rights;
2. *Integrity:* Act with honesty and integrity at all times so as to secure and retain the confidence (důvěra) of those with whom the practitioner comes into contact;
3. *Dialogue:* Seek to establish the moral, cultural and intellectual conditions for dialogue, and recognise the rights of all parties involved to state their case and express their views;
4. *Transparency:* Be open and transparent in declaring their name, organisation and the interest they represent;
5. *Conflict:* Avoid any professional conflicts of interest and to disclose such conflicts to affected parties when they occur;
6. *Confidentiality:* Honour confidential information provided to them;
7. *Accuracy:* Take all reasonable steps to ensure the truth and accuracy of all information provided;
8. *Falsehood:* Make every effort to not intentionally disseminate false or misleading information, exercise proper care to avoid doing so unintentionally and correct any such act promptly;
9. *Deception:* Not obtain information by deceptive or dishonest means;
10. *Disclosure:* Not create or use any organisation to serve an announced cause but which actually serves an undisclosed interest;
11. *Profit:* Not sell for profit to third parties copies of documents obtained from public authorities;

12. *Remuneration:* While providing professional services, not accept any form of payment in connection with those services from anyone other than the principal;
13. *Inducement:* Neither directly nor indirectly offer nor give any financial or other inducement to public representatives or the media, or other stakeholders;
14. *Influence:* Neither propose nor undertake any action which would constitute an improper influence on public representatives, the media, or other stakeholders;
15. *Competitors:* Not intentionally injure the professional reputation of another practitioner;
16. *Poaching:* Not seek to secure another practitioner's client by deceptive means;
17. *Employment:* While employing personnel from public authorities or competitors take care to follow the rules and confidentiality requirements of those organisations;
18. *Colleagues*: Observe this Code with respect to fellow IPRA members and public relations practitioners worldwide.

IPRA members shall, in upholding this Code, agree to abide by and help enforce the disciplinary procedures of the International Public Relations Association in regard to any breach of this Code.

4.8.2 Editorial Ethics

The IPRA Charter on Media Transparency

IPRA members observe three codes—the IPRA code of professional conduct, the international code of ethics, and the charter on environmental communications. IPRA members expect editorial providers to observe the following:

Editorial: Editorial appears as a result of the editorial judgement of the journalists involved, and not as a result of any payment in cash or in kind, or barter by a third party.

Identification: Editorial which appears as a result of a payment in cash or in kind, or barter by a third party will be clearly identified as advertising or a paid promotion.

Solicitation: There should be no suggestion by any journalist or members of staff of an editorial provider, that editorial can be obtained in any way other than through editorial merit.

Sampling: Third parties may provide samples or loans of products or services to journalists where it is necessary for such journalists to test, use, taste or sample the product or service in order to articulate an objective opinion about the product or service. The length of time required for sampling should be agreed in advance and all loaned products or services should be returned after sampling.

Policy statement: Editorial providers should prepare a policy statement regarding the receipt of gifts or discounted products and services from third parties by their journalists and other staff members. Journalists and other staff members should be required to read and sign acceptance of the policy. The policy should be available for public inspection.

Editorial Code of Ethics (American Business Media)

Business-to-business editors have earned the highest level of trust among their readers. Many surveys have shown that executives and managers believe business-to-business publications provide the most accurate and credible information available. That trust is both a high compliment and a challenge for those who plan, write and edit publications. It sets a high standard they must maintain. American Business Media has always held its editors to such high standards. Indeed, the annual Jesse H. Neal Awards, named for the Association's first president, were established in the mid-1950s to encourage editorial excellence and have become the highest honours granted for business-to-business journalism. ABM's Code of Publishing Practice, a part of ABM's Constitution And By-Laws, has been in place for more than 33 years, and requires that ABM member companies maintain strict standards of journalistic ethics.

The Editorial Committee works with its members to maintain editorial quality at member publications. As part of that mission, the Editorial Committee regularly reviews and updates this Editorial Code of Ethics and Guide to Preferred Practices, which has been approved by the American Business Media Executive Committee. This revision has two parts. The first part is a code of ethics primarily for print editions of publications, and the second covers online versions.

I. General editorial code of ethics

Editors, reporters and writers employed by American Business Media publications adhere to the highest standards of journalistic practice. In doing so, they pledge to:

(a) Maintain honesty, integrity, accuracy, thoroughness and fairness in the reporting and editing of articles, headlines, and graphics.

(b) Avoid all conflicts of interest as well as any appearances of such conflicts.

(c) Maintain an appropriate professional distance from the direct preparation of special advertising sections or other advertisements.

(d) Show the distinction between news stories and editorials, columns and other opinion pieces.

(e) Accept as their primary responsibility the selection of editorial content based on readers' needs and interests.

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II. American Business Media Guide to Preferred Practices

II-1 Conflicts of Interest

(a) Editors should not invest in companies and/or industries they personally cover (this does not preclude investments in mutual funds, pensions or 401(k) plans that hold shares in a manner not directly controlled by the editor). Their spouses and other immediate family members should also avoid personal investments that might reflect unfavourably upon the editor. Investing on the basis of "insider information" is, of course, a violation of securities laws.

(b) If a conflict arises in an investment held by an editor before his/her employment, or because of a merger oracquisition, he/she should immediately bring the conflict to the attention of his/her editorial management.

II-2 Gifts

(a) Editors should not accept any gifts or favours, except those of nominal value, from companies or associations they cover, their public relations representatives or any other person or organization related to companies they cover. The editor's supervisor should determine what is of "nominal value."

(b) Editors may accept occasional meals and refreshments in the course of business dealings.

II-3 Outside Activities

(a) Editors should not accept freelance work from companies, associations or any other entity they cover.

(b) Because editors are expected to speak as authorities within their markets, they may accept invitations to appear on television, radio and other electronic media and may accept payment upon approval of editorial management.

(c) Editors should not accept payment of any kind for making speeches, judging contests or making appearances at functions held by companies or associations they cover.

(d) Reimbursement of reasonable expenses incurred in connection with such speeches may be accepted.

(e) Editors may also accept speaker gifts of nominal value for participating in such events.

II-4 Travel

(a) Editors should not accept payment of travel and hotel expenses incurred in the course of performing editorial duties from any source other than their employers.

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(b) In case of group press affairs, presentations and other events involving representatives from several publications, editors should reimburse information sources for these expenses.

II-5. Relationship with Advertisers

(a) Selection of editorial topics, treatment of issues, interpretation and other editorial decisions must not be determined by advertisers, advertising agencies or the advertising departments of publications.

(b) Editors must never permit advertisers to review articles prior to publication.

(c) Advertisers and potential advertisers must never receive favourable editorial treatment because of their economic value to the publication. Similarly, non-advertisers should not receive unfavourable editorial treatment or be excluded from articles because they do not advertise. This provision applies not only to stories and articles but to all products of the editorial group, including lists, rankings, product or company of the year awards and other such special features and events.

(d) Editors must have the right to review, prior to publication, all sponsored content and other advertiser-supplied content.

II-6 Separation of Advertising and Editorial

(a) Editors must make a clear distinction between editorial and advertising. Editors have an obligation to readers to make clear which content has been paid for, which is sponsored and which is independent editorial material. All paid content that may be confused with independent editorial material must be labeled as advertiser-sponsored.

(b) With respect to special advertising supplements or advertorials: The words advertising, advertisement, special advertising supplement or similar labelling must appear horizontally at or near the centre of the top of every page of such sections containing text, in type at least equal in size and weight to the publication's standard body typeface.

(c) The layout, design, typeface and style of special advertising sections or custom publishing products must be distinctly different from those of the publication.

(d) Special advertising sections must not be slugged in the publication's cover (including stickers) nor included in the table of contents. In general, the publication's name or logo may not appear as any part of the headlines or text of such sections, except in connection with the magazine's own products or services.

(e) Editorial staff members and freelancers used by editorial should not participate in the preparation of custom publishing or advertising sections, except that the chief editor may review contents of such sections before they appear.

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III. Editorial Code of Ethics and Guide to Preferred Practices for Electronic Media

Credibility is the key to the success of digital media offerings, just as it is for print publications; users must trust the advice and information presented. In order to build and maintain that trust, the distinction between independent editorial content and paid promotional information must remain clear. American Business Media believes it is possible to keep that clear distinction while still taking a disadvantage of linking and other technologies that make digital media the unique and robust experience it has come to be for the user.

With that goal in mind, ABM recommends the following standards, adapted from those of the American Society of Magazine Editors for the express needs of business media:

(a) The publication's website should display the publication's name and logo prominently, in order to clarify who controls the content of the site. All editorial content must be under the sole control of the editorial staff.

(b) All online pages must clearly distinguish between editorial and advertising or sponsored content. Non-editorial must be clearly labelled. The publication's name or logo should not be used in any way that suggests editorial endorsement of an advertiser. The site's sponsorship policies must be clearly noted, either in text accompanying the article or on a disclosure page to clarify that the sponsor had no input regarding the content.

(c) Hypertext links that appear within the editorial content of a site, including those within graphics, must be solely at the discretion of the editors. Links within editorial should never be paid for by advertisers.

(d) Special advertising or "advertorial" features should conform to the same guidelines in section II that apply to print.

(e) Special advertising sections or features must be displayed in such a way that users will not confuse them with editorial content.

(f) To protect the brand, editors/producers should not permit their content to be used on an advertiser's site without an explanation of the relationship (e.g., "Reprinted with permission").

(g) Advertisers or e-commerce partners must not receive preferential treatment in search engines, price comparisons, and other applications presented under the content provider's brand unless this is clearly disclosed. An editorial site should not vouch for others' tools that it may offer.

(h) A website should respect the privacy of its users. If a site intends to collect information about its visitors - whether the data will be disseminated to third parties or not - it must offer users a chance to decline if they choose, through an "opt-out" option. As part of its privacy policy,

the site should explain its use of cookies and other data collection methods and tell what it intends to do with the information it gleans. Potential benefits to the user - broader site access, better personalization features, etc. - should be presented as well.

(i) Advertisements should not be intentionally placed next to editorial coverage of the specific product advertised. This does not preclude ads on search results pages, topic index pages, channel pages and the like, as long as selection criteria for those pages are not weighted in favour of advertisers and are free of other commercial consideration.

4.9. SUMMARY

"Akashvani" means the offices, stations and other establishments, by whatever name called, which, immediately before the appointed day, formed part of or were under the Director-General, All India Rádio of the Union Ministry of Information and Broadcasting.

"Broadcasting" means the dissemination of any form of communication like signs, signals, writing, pictures, images and sounds of all kinds by transmission of electro-magnetic waves through space or through cables intended to be received by the general public either directly or indirectly through the medium of relay stations and all its grammatical variations and cognate expression shall be construed accordingly;

Power of Central Government to give directions. (1) The Central Government may, from time to time as and when occasion arises, issue to the Corporation 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. (1) The Central Government may, from time to time as and when occasion arises, issue to the Corporation 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.

(2) Where the corporation makes a broadcast in pursuance of the direction issued under sub-section (1), the fact that such broadcast has been made in pursuance of such direction may also be announce along with such broadcast, if the Corporation so desires.

(3) A copy of every direction issued under sub-section (1) shall be laid before each House of Parliament.

Rules and regulations to be laid before Parliament. Every rule and every regulation made under this Act shall be laid as soon as may be after it is made, before each House of Parliament, while it is in session for a total

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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 session aforesaid, both Houses agree in making any modification in the rule or regulation, or both Houses agree that the rule or regulation should not be made, the rule or regulation 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 or regulation.

Film censorship can be generally defined as the control of information or thoughts. Censorship is used by government or relevant organisations to put a stop to the distribution of material that is not fit for public consumption. In wartime, information about troop actions, impending battle plans etc would be suppressed.

The Supreme Court in a judgement three years ago said film censorship becomes necessary because a film motivates though and action and assures a high degree of attention and retention as compared to the printed word. The combination of act and speech, sight and sound in semi-darkness of the theatre with elimination of all distracting ideas will have a strong impact on the minds of the viewers and can affect emotions. Therefore, it has as much potential for evil as it has for good and has an equal potential to instill or cultivate violent or good behaviour. It cannot be equated with other modes of communication. Censorship by prior restraint is, therefore, not only desirable but also necessary.

Perceiving this to be a threat against future machinations, the state promptly circumvented the original Art 19(2) by enacting the Constitution (First Amendment) Act 1951. It authorised the passage of 'censorship' statutes which conferred powers on the executives to impose 'restrictions' on the press (and other media of expression) "in the interests of security of state, friendly relations with foreign states, public order, decency, morality or in relation to contempt of court, defamation or incitement to an offence". In 1963, the 14th Constitutional Amendment added a further ground for imposing 'reasonable restrictions' on the freedom of speech and expression in the form of sovereignty and integrity of India.

Under this act, if a film is banned, it imposes restrictions on the film itself, and not simply on the exhibitor who under conditions of his licence is forbidden to show the film. In the final analysis, it is a direct restriction on the very expression of the film's idea, and as such must come within the scope of Art 19(1)(a). Ordinary jurisprudence has it that, the powers granted under the 7th Schedule of the Constitution must be subordinate to Art 13 that establishes the absolute pre-eminence of the Fundamental Rights as enunciated in Art 19. So, prima facie, films should not be censored. But, the fact that the 1952 Act interalia provided for an elaborate system of appeals and contained clear directives regarding imposition of restrictions apparently saved it from judicial criticism/condemnation.

The crucial issue of the constitutional validity of film censorship came up before the judiciary in 1970. It became necessary when the filmmaker Khwaza