**Media Laws**

Table of Content

[Module 1- Media and Ownership Patterns of Mass Media (Media Law) 5](#_Toc13662328)

[1.1Ownership Patterns 5](#_Toc13662329)

[1.2Difference between Visual and Non-Visual Media and its impact on people’s mind 8](#_Toc13662330)

[1.2.1Difference Between Visual and Non Visual Media 8](#_Toc13662331)

[1.2.2Impact on the People 9](#_Toc13662332)

[Module 2- Press freedom of Speech and Expression- Article 19(1) (a) 10](#_Toc13662333)

[2.1. Includes freedom of press 10](#_Toc13662334)

[2.1.1Article 19 of Constitution of India 11](#_Toc13662335)

[2.1.2 Reasonable Restriction 13](#_Toc13662336)

[2.2 Laws of Defamation, Obscenity, Blasphemy and Sedition 17](#_Toc13662337)

[2.2.1Defamation 17](#_Toc13662338)

[2.2.2Obscenity and Media 21](#_Toc13662339)

[2.2.3Blasphemy and Media 23](#_Toc13662340)

[2.2.4Media Law and Sedition 26](#_Toc13662341)

[2.3Law Relating to employee’s wages and service condition of media 32](#_Toc13662342)

[2.3.1The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 32](#_Toc13662343)

[2.3.2The Cine-workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981 34](#_Toc13662344)

[2.4Price and Pages Schedule Regulation 36](#_Toc13662345)

[2.4.1The Newspaper (Prices and Pages) Act, 1956 36](#_Toc13662346)

[2.5 Newspaper Control Order 36](#_Toc13662347)

[2.5.1Press & Registration of Books Act, 1867 & The Registration of Newspapers (Central) Rules 1956 36](#_Toc13662348)

[2.6Advertisement – It is included within freedom of speech and expression 44](#_Toc13662349)

[2.6.1 Introduction 44](#_Toc13662350)

[2.6.2 Puffery in Advertising: 44](#_Toc13662351)

[2.6.3Comparative Advertising: 45](#_Toc13662352)

[2.6.4 Negative Advertising: 47](#_Toc13662353)

[2.6.5 Advertising For Children: 47](#_Toc13662354)

[2.6.7Advertorials: 48](#_Toc13662355)

[2.6.8Good taste in advertising: 48](#_Toc13662356)

[2.6.9Stereotypes In Advertising: 48](#_Toc13662357)

[2.6.10 Issues regarding criticism of advertising: 50](#_Toc13662358)

[2.6.11Code Of Ethics By Advertising Council Of India: 51](#_Toc13662359)

[2.7Press and the monopoles and restrictive trade practices act 53](#_Toc13662360)

[2.8. The working journalist (Fixation of Rates of Wages Act), 1958 57](#_Toc13662361)

[Module 3- Films- It included in Freedom of Speech and Expression 60](#_Toc13662362)

[3.1Censorship of films – Constitutionality 60](#_Toc13662363)

[3.2The Abbas Case (K.A.Abbas v. Union of India) 61](#_Toc13662364)

[3.3Differences between films and press – why Pre Censorship valid for films but not for the press 63](#_Toc13662365)

[3.4Censorship under the Cinematograph Act 65](#_Toc13662366)

[Module 4- Radio and Television Government Policy 69](#_Toc13662367)

[4.1Press Council Act 1978 69](#_Toc13662368)

[4.2 Regulatory Code of Conduct 73](#_Toc13662369)

[4.3 Report of the Chanda committee 80](#_Toc13662370)

[4.4Government Policy 80](#_Toc13662371)

[Regulation of media in India - A brief overview 80](#_Toc13662372)

[4.5Commercial Advertisement 87](#_Toc13662373)

[4.6Internal Security of Serials 87](#_Toc13662374)

[Module 5- Constitutional Restrictions 91](#_Toc13662375)

[5.1Radio and Television subject to law of defamation and obscenity 91](#_Toc13662376)

[5.2Power of legislate- Article 246 read with the seventh schedule 92](#_Toc13662377)

[5.4Power of impose tax – licensing and license fee 93](#_Toc13662378)

[5.5Contempt of court 100](#_Toc13662379)

List of Cases

Associated Press v. U.S (326 U.S. 1 (1945). 64

Aveek Sarkar & another Vs. State of West Bengal(2014) 4 SCC 257 22

Balwant Singh and Anr v. State of Punjab(AIR 1985 SC 1785) 31

Baragur Ramachandrappa vs State of Karnataka(1999 (1) ALD Cri 209) 25

Bennett and Coleman co. v Union of India(1972) 2 SCC 788, 65

Brij Bhusan v State of Delhi1950 SCR 605 65

Express Newspapers (Bombay) (P) Ltd. v. Union of India1985 SCR (2) 287 12

Fatehagarh vs Ram Manohar Lohia AIR 1955 All 193, 26

Indramani Singh v. State of Manipur AIR 1955 Manipur 28

K. A. Abbas V. Union of India 1971 SCR (2) 446 20

Kedarnath Singh v. State of Bihar AIR 1962 SC 955 30

Khushboo v. Kannaiammal  (2010) 5 SCC 600 14

Maneka Gandhi v. Union of India 1978 SCR (2) 621 64

Niharendu Dutt’s Majumdar & Ors v. EmperorAIR 1939 Cal 703 27

Ramji Lal Modi vs State of UP 1957 AIR 620 24

Ranjit D. Udeshi v State of Maharashtra1965 SCR (1) 65 23

RomeshThapar v. State of Madras 1950 AIR 124 12

S. Rangarajan v. P. JagjivanRam 1989 SCC (2) 574 63

Sakal Papers ltd. V. Union of India[1962] 3 SCR 842 19

Shreya Singhal vs Union of India(2013) 12 S.C.C. 73, 26

Subramanian Swamy v. Union of India [W.P. (Crl) 184 of 2014] 18

Tara Singh v. State1951 AIR 441 27

# Module 1- Media and Ownership Patterns of Mass Media (Media Law)

Media

Media is medium to communicate to masses. It includes: newspaper, radio, television, films, internet, books, magazines, and everything that provides the information.

Media can be divided into Print Media (E.g.: Newspapers, Magazines, etc.) Electronic Media (E.g.: television, radio, internet, social media, etc.)

Need of Media

Media is considered as fourth pillar of democracy because it provides information, source of entertainment, debates and discussions, virtual classes, platform to express views and opinions and to raise voice against unfavorable schemes of government. • It helps in building qualities of leadership, self- confidence, truth, non-violence and trustworthy.

## 1.1Ownership Patterns

Ownership Patterns of Mass Media India follows socialism and has mixed economy. Therefore, public as well as private sector both plays an important role in the growth of nation. Likely in the case of media, public authorities as well as private individuals both own the media in one or the other way. The ownership pattern changes from private to third party or public to autonomous body.

1. Newspapers & Magazines (Ownership pattern)

Private Ownership: It can be owned by:-

•Individual (Businessman/Industrialist)

• Partnership

• Association/Trust

• Joint Stock Company – Joint Stock company is created by law having a separate legal entity with a perpetual succession and a common seal is called as joint stock company. In India, mostly around 70% of newspapers are owned by private individuals.

Public Ownership/ Governmental Organisations:

Generally, the government does not own any newspaper and magazine. There are certain governmental media related organisations that releases information of various ministries in public domain.

They are as:-

• Press Information Bureau(PIB)

• Publication Division

• Research & Reference Division

• Photo Division • Press Council of India

2. Films (Ownership pattern)

Private Ownership Pattern:

As soon as film is completed in its shoot, the producer contacts distributors of one territory or more distributors of different areas so as to sell its film in the cinema halls. All rights of a film are sold to distributors. The distributor then negotiates with the exhibitors who own chain of theatres. Hence, private ownership of the films gets transferred to distributors.

Media-related Governmental Organisations

There are certain media-related governmental organisations:-

• Film Division

• Central Board of Film Certification (CBFC)

• National Film Archive of India

• National Film Development Corporation (NFDC)

3. Radio (Ownership pattern) Media (Radio) -related

Governmental Organisations:

Indian Broadcasting Company came under the control of government after its liquidation. It became Indian Broadcasting Service. It was later renamed to ‘All India Radio’ in 1936 and came to be known as ‘Akashvani’ from 1957.

Radio-related governmental organisations are:

• News Service Division

• External Services Division

• Commercial Broadcasting Service

Radio (OWNERSHIP pattern) Private Ownership:

There are wide number of FM channels of various companies/industrialists/businessman to earn profit. Mostly, the license is granted to them by government on periodic basis.

• Examples of FM Channels: Radio Mirchi Channel, Channel by Surya Network

## 1.2Difference between Visual and Non-Visual Media and its impact on people’s mind

### 1.2.1Difference Between Visual and Non Visual Media

|  |  |
| --- | --- |
| Visual Media | Non Visual Media |
| Types -visual media are films, televisions and new-age digital media | Non-visual media includes books, magazine, newspapers, radio, audio-recording, and reproduction. |
| Reachable- T.V. takes time to reach the spot of occurrence with its heavy equipment and camera crew, | radio broadcast information with speed as it is broad casted instantaneously, in crises, during war, violence or accident, radio has a clear advantage over T.V. |
| Accessibility Visual media is within the reach of all people including uneducated to receive information only at the time of its transmission  In visual media time factor plays a prominent role and the information telecasted at a particular time has to be visualized at the same time, otherwise no use However, today they can be recorded and seen later at their leisure. | Whereas Newspaper can be read at any time and also it can be preserved for any length of time. |
| Equipment of visual aid are costly and have to be invested heavily and they are not within the reach of the poor, | Equipment’s or subscription for non-visual instruments is cheap and they are affordable even to the poor people. |
| Visual media provides the viewer an opportunity to witness the incidents and the happening along with report through commentary. | Non visual provides for the commentary. |
| Visual media transmit both voice and pictures; | whereas non-visual media transmit only voice. |
| the viewer of visual media does not get any boredom but feels interested as it is eye-witness by observing programs, | the listener of non-visual media feels bored hearing the comments and feels no interest. |

### 1.2.2Impact on the People

Mass media create immense impact on all the aspects of the society including political, economic, and ideological aspect. Mass media influences the way we vote, we buy the way we act and the way we perceive reality. The media is very helpful to the people in developing in their field of science, medicine, nature, history, the art and also improve thinking ability. Mass media has definitely helped the people in developing their thoughts but at the same it has its own draw backs.

The prolonged use of the visual media affects the persons mental condition as continues exposure to these types of visuals affects the brain making it addicted to the media. Television and media affects the family communication as well as the physical activity and other aspects. The worst affected are the kids who through continuous exposure lose their activity to focus on the subjects thus affecting their ability to develop in educational field. Some kids also tend to develop attention deficit disorder ADD, a modern condition in which they are unable to pay attention, listen well, follow instructions, or remember everyday things.

Another disadvantage of the media is the amount of violence or horror on the screen thus making them violent in their behavior and thus not only affecting them but also their families. Because of the visual media people lose the originality of their life and get dissatisfied with what they have achieved, the idea of the reality of life becomes blurring. The idea of non-visual idea was developed before the visual media.

The non-visual art is an attempt to present conceptual art, art about ideas instead of a preoccupation with the visual elements. Example of non-visual media is radio. This medium is sometime also called sightless or viewless medium. Radio medium is also called blind medium. Since its non-visual medium it helps to develop its creativity by imagining the performer whom he cannot see. Thus as soon as voice comes out of the loudspeaker, the listener attempts to visualize what he hears and to create in the mind’s eye the owner of the voice. The artistically integrated creation supported by appropriate sound effect and right music virtually brought any situation to listeners.

# Module 2- Press freedom of Speech and Expression- Article 19(1) (a)

## 2.1. Includes freedom of press

Freedom of expression has always been emphasized as an essential basis for the democratic functioning of a society. Freedom of press has remained an issue that has led to endless number of debates across the democratic world in the past few decades. The democratic credentials of a state are judged today by the extent of the freedom press enjoys in that state. The press provides comprehensive and objective information of all aspects of the country’s social, political, economic and cultural life.

The Indian Constitution does not provide freedom for media separately. But there is an indirect provision for media freedom. It gets derived from Article 19(1) (a). This Article guarantees freedom of speech and expression. The freedom of mass media is derived indirectly from this Article. Our Constitution also lays down some restrictions in the form of Article 19(2). Regarding the issue of freedom of speech,

**Dr. B. R. Ambedkar** explained the position as follows: "The press (or the mass media) has no special right which are not to be given to or which are not to be exercised by the citizen in his individual capacity. The editor of a Press or the manager are all citizens and, therefore, when they choose to represent any newspapers, they are merely exercising their right of expression and in my judgement no special mention is necessary of the freedom of Press at all."

On the matter of the freedom of speech and expression, the first Press Commission in its report said, "This freedom is stated in wide terms and includes not only freedom of speech which manifests itself by oral utterances, but freedom of expression, whether such expression is communicated by written word or printed matter. Thus, freedom of the press particularly of newspapers and periodicals is a species of which the freedom of expression is a genus. There can, therefore, be no doubt that freedom of the press is included in the fundamental right of the freedom of expression guaranteed to the citizens under Article 19(1) (a) of the Indian Constitution."

**Justice Mudholkar**, a Supreme Court Judge said during Emergency (1975-77), "Pre-censorship, prohibition on import of printed and published material, placing a ban on printing and publishing material of a specified nature, demanding security from the press or placing any restriction which would amount to an indirect curb on free circulation of a newspaper or class of newspaper should confine itself have all been held to be bad in law.

### 2.1.1Article 19 of Constitution of India

"Article 19 of the Indian constitution lays down, "All citizens shall have the right to freedom of speech and expression, to assemble peaceably, and without arms, to form associations or unions, to move freely throughout the territory of India, to reside in any part of the territory of India, to acquire hold and dispose of property and to practice any profession or to carry on any occupation, trade or business.

However the right to freedom of speech and expression shall not affect the operation of any existing law or prevent the state from making any law insofar as such law imposes reasonable restrictions on the exercise of that right in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public decency or morality or In relation to contempt of court, defamation or incitement to offence”. Thus the type of freedom of expression guaranteed to the American Citizen does not exist in India but that he is liable to "reasonable restrictions”

In the famous case ***Express Newspapers (Bombay) (P) Ltd. v. Union of India***, court observed the importance of press very aptly. Court held in this case that “In today’s free world freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible in a large scale particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of society.

The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate (Government) cannot make responsible judgments. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities.” The Freedom of Press and the Freedom of Expression can be regarded as the very basis of a democratic form of government.

Every business enterprise is involved in the laws of the nation, the state and the community in which it operates. Whereas in ***RomeshThapar v. State of Madras***, entry and circulation of the English journal “Cross Road”, printed and published in Bombay, was banned by the Government of Madras. The same was held to be violative of the freedom of speech and expression, as “without liberty of circulation, publication would be of little value”.

Freedom of Speech and expression means the right to express one’s own convictions and opinions freely by words of mouth, writing, printing, pictures or any other mode. It thus includes the expression of one’s idea through any communicable medium or visible representation, such as gesture, signs, and the like. This expression connotes also publication and thus the freedom of press is included in this category. Free propagation of ideas is the necessary objective and this may be done on the platform or through the press.

This propagation of ideas is secured by freedom of circulation. Liberty of circulation is essential to that freedom as the liberty of publication. Indeed, without circulation the publication 36 (1950) S.C.R. 594 86 would be of little value. The freedom of speech and expression includes liberty to propagate not one’s views only. It also includes the right to propagate or publish the views of other people; otherwise this freedom would not include the freedom of press. The media derives its rights from the Fundamental Right to free speech and expression guaranteed to every citizen under Article 19(1) (a) of the Constitution.

There are two facets to the legal rights involved. One is media’s own rights under Article 19 (1) (a) which it enjoys like any other citizen. The Supreme Court has held in successive judgments on press freedom that the media has no special rights, no higher than that of any citizen. If it enjoys any special position, it is in the nature of a public trustee, entrusted with the duty of facilitating the right to information guaranteed to the citizens. The second facet of media rights is, therefore, the right to collect and transmit to the citizen information of public importance.

### 2.1.2 Reasonable Restriction

It is strange, unique and paradoxical that what is provided as a right by our Constitution on the one hand is taken away by some sub-clause in the same situation. Mr. M. C. Chagla has given a general reply to this paradox, which may be put in the following ways: It has been said that our Constitution gives fundamental rights with one hand, and with other hand takes them away. It is also said that, our Constitution circumscribes the given rights by numerable exceptions and provisions. This is a very wrong criticism. Article 19 of our Constitution deals with the right to freedom and it enumerates certain rights regarding individual freedom of speech and expression etc. These provisions are important and vital, which lie at the very root of liberty.

It is true that in the sub-clauses that follow, certain limitations are placed upon these freedoms with regard to freedom of speech and expression. In addition, there are many laws that relate to libel, slander, defamation, contempt of court, or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow the State. It can be seen that these limitations are related to the objective standards laid down by the Constitution. Similarly, the legislature is given the right to impose reasonable restrictions in the interest of public order on the right to assemble peaceably and without arms.

Whether a restriction is reasonable or not is not left to the determination of the legislature, and of the executive. But it is again an objective consideration, which has got to be determined by the Court of law. Only such a restriction would be reasonable as the Court thinks as reasonable. It is clear therefore that the Constitution has not left the laws to the mercy of the party in power or to the whims of the executive. No one is allowed to limit, control or impair our fundamental rights by changing, amending, or introducing new laws that easily. Any limitation of a fundamental right has to before a Court of law. Legislatures, indeed, have been empowered to impose reasonable restrictions on freedom of speech and expressions on the following grounds:

***Khushboo v. Kannaiammal*** upholds the right to freedom of speech and expression. Khushboo’s right to freedom of speech was violated by the institution of multiple criminal cases against her in various courts across the country and consequent harassment that she suffered.

Under**Article 19(2)** of the Constitution of India, the State may make a law imposing “reasonable restrictions” on the exercise of the right to freedom of speech and expression “in the interest of” the public on the following grounds: Clause (2) of **Article 19** of the Indian constitution contains the grounds on which restrictions on the freedom of speech and expression can be imposed:-

**1)  Security of State:** Security of state is of vital importance and a government must have the power to impose a restriction on the activity affecting it. Under Article 19(2) reasonable restrictions can be imposed on freedom of speech and expression in the interest of the security of State. However, the term “security” is a very crucial one. The term “security of the state” refers only to serious and aggravated forms of public order e.g. rebellion, waging war against the State, insurrection and not ordinary breaches of public order and public safety, e.g. unlawful assembly, riot, affray. Thus speeches or expression on the part of an individual, which incite to or encourage the commission of violent crimes, such as, murder are matters, which would undermine the security of State.

**2) Friendly relations with foreign states:** In the present global world, a country has to maintain a good and friendly relationship with other countries. Something which has the potential to affect such relationship should be checked by the government. Keeping this thing in mind, this ground was added by the constitution (First Amendment) Act, 1951. The object behind the provision is to prohibit unrestrained malicious propaganda against a foreign friendly state, which may jeopardize the maintenance of good relations between India and that state.

**3) No similar provision is present in any other Constitution of the world:** In India, the Foreign Relations Act, (XII of 1932) provides punishment for libel by Indian citizens against foreign dignitaries. Interest of friendly relations with foreign States, would not justify the suppression of fair criticism of foreign policy of the Government. However, it is interesting to note that member of the commonwealth including Pakistan is not a “foreign state” for the purposes of this Constitution. The result is that freedom of speech and expression cannot be restricted on the ground that the matter is adverse to Pakistan.

**4) Public Order: Next restriction prescribed by constitution is to maintain public order:** This ground was added by the Constitution (First Amendment) Act. ‘Public order’ is an expression of wide connotation and signifies “that state of tranquility which prevails among the members of political society as a result of internal regulations enforced by the Government which they have established.”

Here it is pertinent to look into meaning of the word “Public order. Public order is something more than ordinary maintenance of law and order. ‘Public order’ is synonymous with public peace, safety and tranquility. Anything that disturbs public tranquility or public peace disturbs public order. Thus communal disturbances and strikes promoted with the sole object of accusing unrest among workmen are offences against public order. Public order thus implies absence of violence and an orderly state of affairs in which citizens can peacefully pursue their normal avocation of life. Public order also includes public safety. Thus creating internal disorder or rebellion would affect public order and public safety. But mere criticism of government does not necessarily disturb public order.

The words ‘in the interest of public order’ includes not only such utterances as are directly intended to lead to disorder but also those that have the tendency to lead to disorder. Thus a law punishing utterances made with the deliberate intention to hurt the religious feelings of any class of persons is valid because it imposes a restriction on the right of free speech in the interest of public order since such speech or writing has the tendency to create public disorder even if in some case those activities may not actually lead to a breach of peace. But there must be reasonable and proper nexus or relationship between the restrictions and the achievements of public order.

**5)      Decency or morality:** The way to express something or to say something should be a decent one. It should not affect the morality of society adversely. Our constitution has taken care of this view and inserted decency and morality as a ground. The words ‘morality or decency’ are words of wide meaning. **Sections 292** to **294** of the **Indian Penal Code** provide instances of restrictions on the freedom of speech and expression in the interest of decency or morality. These sections prohibit the sale or distribution or exhibition of obscene words, etc. in public places. No fix standard is laid down till now as to what is moral and indecent. The standard of morality varies from time to time and from place to place.

**6)      Contempt of Court:** In a democratic country Judiciary plays a very important role. In such situation, it becomes essential to respect such an institution and its order. Thus, restriction on the freedom of speech and expression can be imposed if it exceeds the reasonable and fair limit and amounts to contempt of court. According to **Section 2** ‘Contempt of court’ may be either ‘civil contempt’ or ‘criminal contempt.’ But now, Indian contempt law was amended in 2006 to make “truth” a defense.

However, even after such amendment, a person can be punished for the statement unless they were made in public interest. Again in Indirect Tax Practitioners Assn. vs R.K.Jain, it was held by court that, “Truth based on the facts should be allowed as a valid defense if courts are asked to decide contempt proceedings relating to contempt proceeding relating to a speech or an editorial or article”. The qualification is that such defense should not cover-up to escape from the consequences of a deliberate effort to scandalize the court.

**7)      Defamation:** Ones’ freedom, be it of any type, must not affect the reputation or status of another person. A person is known by his reputation more than his wealth or anything else. Constitution considers it as ground to put restriction on freedom of speech. Basically, a statement, which injures a man’s reputation, amounts to defamation. Defamation consists in exposing a man to hatred, ridicule, or contempt. The civil law relating to defamation is still uncodified in India and subject to certain exceptions.

**8)      Incitement to an offense:** This ground was also added by the **Constitution (First Amendment) Act,** 1951. Obviously, freedom of speech and expression cannot confer a right to incite people to commit offense. The word ‘offense’ is defined as any act or omission made punishable by law for the time being in force.

**9)      Sovereignty and integrity of India:** To maintain the sovereignty and integrity of a state is the prime duty of government. Taking into it into account, freedom of speech and expression can be restricted so as not to permit anyone to challenge sovereignty or to permit anyone to preach something which will result in threat to integrity of the country.

From above analysis, it is evident that Grounds contained in **Article 19(2)** show that they are all concerned with the national interest or in the interest of the society. The first set of grounds i.e. the sovereignty and integrity of India, the security of the State, friendly relations with foreign States and public order are all grounds referable to national interest, whereas, the second set of grounds i.e. decency, morality, contempt of court, defamation and incitement to an offence are all concerned with the interest of the society.

By and large the necessity for imposing "reasonable restrictions" by the legislature has not been seriously challenged by the newspaper world (and media world) where matters of state security or the integrity of India are concerned. And where the superior judiciary is concerned, Justice Mudholkar has remarked, there has been a long tradition of non-interference with the freedom of the press (and other mass media) except where newspaper was found guilty of contempt of court. Thus, it is evident that the freedom conferred by Article 19 (1) (a) in fairly general terms. It does not for example, even refer specifically to the freedom of the Press (or mass media) as is envisaged in the corresponding provision in the American Constitution. Judicial decisions have, however, affirmed that Article 19 (1) is sufficiently wide to include the freedom of the Press and implicitly, the freedom of other mass media.

## 2.2 Laws of Defamation, Obscenity, Blasphemy and Sedition

### 2.2.1Defamation

In India, Defamation can be viewed as a civil offence as well as criminal offence and may be defined as the writing, publication and speaking of a false statement which causes injury to reputation and good name for private interest. The remedy for a civil defamation is covered under Law of Torts. In civil defamation, a victim can move high court or subordinate courts for seeking damages in the form of monetary compensation from accused.

Section 499 and 500 of the Indian Penal Code provides an opportunity to the victim to file a criminal case for defamation against the accused. Punishment for the guilty person for criminal defamation is simple imprisonment which may extend to two years or fine or both. Under the criminal law, it is bailable, non-cognizable and compoundable offence. Further, Sec 499 which states the defamation' compiled with sections 500,501,502 of IPC issuing to the punishment of the level of the offence committed.

The statutory provisions are framed for the legal regulations to curb the regulating of the fake information to the mass. The Information Technology Act also regulates the online platform of media by framing the regulations based on the offences that are committed online. It is very important that when people at large are dependent on a social platform and is also a great source of communication then right information is released.

The Information Technology Act also regulates the offences pertaining to any of the misuse of the technology which also give a hand to the use of social media. Along with the other statutory laws, the IT act should also be amended with the day by day upcoming misuse of the media. Lastly it is in the hands of media to disseminate information and in what manner such information should reach the public. The information should be open ended and not a conclusive statement that leaves any of the impression on the minds of the users.

**Constitutional validity of Section 499 & 500 of Indian Penal Code**

In some countries, defamation laws are not criminal laws. Therefore, whether section 499 & 500 of IPC is constitutionally valid? Recently, the Supreme Court in ***Subramanian Swamy v. Union of India*** upheld constitutional validity of defamation laws and ruling that they are not in conflict with the right of speech. Apex court also said that one is bound to tolerate criticism, dissent and discordance but not expected to tolerate defamatory attack.

**Elements of Defamation and its exception**

Defamation statement must be in a spoken or written or published or visible manner and must be false and injured directly or indirectly to the reputation of an individual or his family members or caste and lowers the moral of the victim and statement is unprivileged statements. Following Statements can’t be considered as defamation

* Any truth statement made in public interest;
* Any opinion given by the public in respect of conduct of a public servant in discharge of his functions, his character appears;
* Conduct of any person touching any public question;
* Publication of any proceedings of courts of justice including any trial of court and judgment.

It is very important that any of the published news is within the purview of the ethics of the media person or the journalists. One should see that the information communicated leads to truthfulness and leads the mass in a proper direction and doesn't create a negative impact. In a society the law endows every person with a right to maintain and preserve his reputation. The right of reputation is acknowledged as an inherent personal right of every person residing in the country.  
  
In the Bhagwad Gita, For a man of honour a defamation is worse than death. It is considered as great evil. Reputation is a important and integral part of the dignity of individual and right to reputation is an inherent right guaranteed under article 21 and it is also called natural rights. Defamation is injury to the reputation of a person. The essence of defamation lies in the fact that it is an injury to the esteem or regard in which one is held by others. The legal system of India constitutes defamatory statement as a offence.

In ***Sakal Papers ltd. V. Union of India***, in this case, the Daily Newspapers Order, 1960, which fixed a minimum price and number of pages, which a newspaper is entitled to publish, was challenged as unconstitutional. The state justified the law as a reasonable restriction on a business activity of a citizen. The Supreme Court struck down the order rejecting the state's argument. The court opined that, the right of freedom of speech and expression couldn't be taken away with the object of placing restrictions on the business activity of the citizens. Freedom of speech can be restricted only on the grounds mentioned in clause (2) of Article 19 of the Constitution.  
***In K. A. Abbas V. Union of India***, the petitioner for the first time challenged the validity of censorship as violative of his fundamental right of speech and expression. The supreme court however observed that, pre- censorship of films under the Cinematography Act was justified under Article 19(2) on the grounds that films has to be treated separately from other forms of art and expression because a motion picture was able to stir up emotions more deeply and thus, classification of films between two categories A'(for adults only) and U’(for all) was brought about.

**Media Responsibility**

Media has always been a leader in communicating to the people, irrespective to any forms of media. The news which is communicated by the media is at a very great influential level. Therefore any news which leads to a doubt can create a chaos worldwide. Any form of media before publishing it at public platform should properly be analysed and should not leave any doubt of conflict regarding its truthfulness. It is the moral duty of the media to serve the nation with a clear cut surety of news. Media should show the picture of the actual problem to the citizens and let them decide whether the successive step is correct or not rather than stating the conclusive statement.

It is not the duty of the media to give a conclusive statement of any of the issue and make people dominate towards that statement through the circulation. Specifically in a democratic nation environment, the citizens are the main pillar of the nation. Therefore any wrong impact or any influential information in a negative manner creates a great problem towards the future of the nation. Before any of the statutory rights, it a moral duty of the media to safeguard the power of media by accessing it within its ambit of jurisdiction and not creating an evil impact on the nation.  
Further looking at the other laws which restricts the powers of the freedom of speech and expression is under IPC; sec 499 which states the defamation' compiled with sections 500,501,502 of IPC issuing to the punishment of the level of the offence committed. The statutory provisions are framed for the legal regulations to curb the regulating of the fake information to the mass. The Information Technology Act also regulates the online platform of media by framing the regulations based on the offences that are committed online.

It is very important that when people at large are dependent on a social platform and is also a great source of communication then right information is released. The Information Technology Act also regulates the offences pertaining to any of the misuse of the technology which also give a hand to the use of social media. Along with the other statutory laws, the IT act should also be amended with the day by day upcoming misuse of the media. Lastly it is in the hands of media to disseminate information and in what manner such information should reach the public. The information should be open ended and not a conclusive statement that leaves any impression on people.   
Drawing up the conclusion, if self-regulation is done by media, the responsibilities are carried as it should be then the question of legal regulations would not arise. If the situation is not within the ambit of the self-regulation then the chapter of legal regulations has to be looked upon for the justification. Therefore, it is the moral as well as legal responsibility of the media to act as per the code of ethics of media in functioning of their role.

### 2.2.2Obscenity and Media

Media brings the world on our doorstep by keeping us updated over current affairs, history, and science and about each and everything that adds to our knowledge but however the limitation is that we cannot differentiate information from misinformation and disinformation. Due to cut throat competition between every branch of media and to get the most viewers, readers, TRP'S, etc, there is a need for speed for getting stories, lucrative and captivating stories for which there is often a dereliction of duty at the end of media people.

Our Indian Constitution has guaranteed a fundamental right to freedom of speech and expression under Article.19 (1)(a), which is repeatedly exploited by these men to justify obscene or indecent news published or broadcasted by them. It is undeniable that freedom of expression needs adequate "breathing space" but having space by compromising morality and justifying obscenity on grounds of contemporary social norms and values is indefensible. Accompanying the provision of Article 19 (1) (a) of the Constitution has also made provision imposing reasonable restrictions in the interest of the sovereignty, integrity, public decency, morality, etc under Article 19 (2), which is comfortably overlooked by media people before publication of any such salacious content.

Sec.292 of the Indian Penal Code, 1860 has made a general provision in respect to obscenity and has not defined the word "obscenity" anywhere. Sub- sec. (1) of sec.292 generally speaks about sale, hire, distribution, public exhibition or circulation of any book, pamphlet, paper, drawing, painting, etc having any lascivious content, effect of which it tends to deprave and corrupt people who read, see or hear the matter contained in it to be an offence. Further clause (a) of sub- sec. (2) of sec.292 brings under its purview even those who are under possession of such material. But the lacuna in this section or any other sections of IPC is that it has nowhere defined the term "obscenity", providing this to be the lope hole for such publications to escape in the name of changing modern lifestyle or elevation from conservative social thinking.

The term "obscenity" for a layman means something which is indecent, lewd, and offensive in behavior, expression or appearance and which creates a situation of sudden shock for the recipient and having this in mind, the publications should be scaled to the majority of recipients' comprehension. Obscenity is a subjective term, which might differ from individual to individual for their personal feelings and opinions concerning indecency related to a particular thing. What might be indecent for one, might not be for the other but considering this fact, it is incumbent on the legislature to interpret the term "obscenity", to avoid further assassination of morality. There needs to be a yardstick indicating a line of demarcation adequate enough to distinguish between that which is obscene and that which is not.

In a case of ***Aveek Sarkar & another Vs. State of West Bengal***, Supreme Court recently passed a judgment stating, "Nude picture of women is not obscene if it carries social message", that is a picture of a nude/semi-nude women, as such, cannot per se be called obscene unless it has the tendency to arouse feeling or revealing an overt sexual desire. The judgment passed is indisputable but many advertisements published in newspapers, magazine related to contraceptives involve picture of semi-nude women models posing in seductive gestures, soliciting and luring people to try their products.

The pictures depicted in such advertisements are undeniably vulgar and designed to excite sexual passion in persons who are likely to see it and the defense taken by the media for publishing such contents is that it's an effort to spread social awareness. Such advertisements are meant only for a particular group of audience and certainly not meant for children and adolescent and by publishing such content in newspapers or magazines it is bound to create a sudden shock or feeling of lustful thoughts in the audience's mind. Particularly for newspapers which are pursued by almost every age group, there has to be certain restrictions on publication of such content to maintain public decency.

In a case of 2004, a complaint was filed by a retired BSF officer against the editor of a leading newspaper publishing house in India before the Inquiry committee at New Delhi for publication of allegedly obscene material six times in one of its magazine supplement edition. The counsel for the respondent defended the respondent in the written statement filled by him stating, "That these articles/pictures are life stones of new styles of life challenging traditional social norms and values. What they have stated has to be tested by the current standards of ordinary decent people, the newspaper being in English and likely to be read only by well-educated persons".

Neither of the publication houses asks for anyone's qualification nor tests their intellectual maturity before granting subscriptions for their editions or issues, rather they are in constant need to covet the audience preferring other publication house editions. If we consider the defense of the editor, then there arises a situation where there is a need of a statutory warning, to be printed on each of its edition demanding only for such audience which is well- qualified to perceive the printed content according to the editor's understanding.

In ***Ranjit D. Udeshi v State of Maharashtra,***, the test of obscenity & community standards was considered and was stated that the concept of obscenity would change with passage of time but if we evaluate this fact then sooner we will be in such an age, where watching pornography or filthy images, videos, etc in public would not be considered a matter of concern as our righteousness would be buried deep. As of today, majorities forming our society have yet not progressed or are incapacitated to draw the exact interpretation of what they are presented with so a need for check over "obscenity" and laws attached to it needs a through scan.

### 2.2.3Blasphemy and Media

Blasphemy" is a term unfamiliar to the Indian legal and constitutional landscape, perhaps because the Indian judiciary has long emphasized the inclusive and plural nature of Hinduism, which makes a concept such as blasphemy incoherent.

The Indian Penal Code (IPC) does have a provision, however, that can be reasonably approximated to an anti-blasphemy law: Section 295A of the IPC penalizes insulting the religion or religious beliefs of any class of citizens, if such insult is offered with the deliberate and malicious intention of outraging the religious feelings of that class. Like many of the other speech-based offences in the IPC (some of which we have considered in previous essays in this series), the origins of Section 295A lie in the colonial period, and were driven by colonial logic.

At the risk of oversimplification, for many years, it was the express aim of the British to consolidate their rule by creating divisions between the religious communities of the subcontinent. Matters came to a head in north India in the 1920s, which saw sustained violence between Hindus and Muslims, ostensibly occasioned by the publication of tracts such as Rangeela Rasool, which mocked the Prophet Mohammed.

The existing penal laws did not cover tracts that insulted or mocked religious figureheads, and this was perceived to be a serious lacuna. As scholar Neeti Nair records, it was with a view to control such religiously triggered violence, while assuring religious communities that their “sentiments" were going to be protected, that Section 295A was drafted.

***Ramji Lal Modi vs State of UP***, decided in 1957, the editor of a cow-protection magazine had been booked under Section 295A, and he took his case all the way up to the Supreme Court, while challenging the constitutionality of the section itself.

Arguments- Article 19(2) of the Constitution only allowed for reasonable restrictions upon the freedom of speech in the interests of public order. Section 295A, however, cast its net much wider, by criminalizing all speech that was intended to outrage religious feelings.

While, admittedly, there could be times when outraged religious freedom could cause public disorder, this was not necessarily true of every instance. In technical terms, this is called “over-breadth": Section 295A was so broad that it covered speech that the state could legitimately regulate under the Constitution (i.e., speech causing public disorder) and speech that it couldn’t (i.e., mere religious insult with no public disorder). The court got around this argument by engaging in a few linguistic contortions. It noted that the term “in the interests of" was of very wide import (wider, for instance, than the phrase “for the maintenance of"). This allowed the state wide leeway to gauge what kind of speech might threaten public order, and make laws regulating it accordingly.

Any speech that might have a “tendency" to lead to public disorder could be proscribed and penalized. The court then held that Section 295A did not cover all forms of religious insult, but only intentional insults. And it was the “calculated tendency" of intentional insults to lead to public disorder. Therefore, the section was constitutional. In technical terms, this is known as a “legal fiction"—that is, the court assumes that a certain state of affairs exists for legal purposes, whether or not it actually does. The legal fiction in ***Ramji Lal Modi’s case*** was that an intentional insult offered up to religion would necessarily “tend" to cause public disorder. Whether the constitutional right to free speech can be restricted on the basis of unproven assumptions, of course, is a different question altogether.

Over the years, however, the link between Section 295A and public order has been gradually eroded. For instance, in a 2007 Judgment called ***Baragur Ramachandrappa vs State of Karnataka***, the Supreme Court upheld a ban on a historical-fictional retelling of the life of Basaveshwara, noting that “no person has a right to impinge on the feelings of others on the premise that his right to freedom of speech remains unrestricted and unfettered. It cannot be ignored that India is a country with vast disparities in language, culture and religion and unwarranted and malicious criticism or interference in the faith of others cannot be accepted".

If the original logic of 295A and the basis on which the Supreme Court in the Ramji Lal Modi case upheld its constitutionality was public order, then in the Baragur Ramachandrappa verdict, it did a sharp volte-face, and more or less echoed the language of an unvarnished blasphemy law: what was being punished was not the effect of speech upon public order, but its allegedly anti-religious content.

At this point, therefore, there is considerable conclusion about what Section 295A is really about. The controversy over Wendy Doniger, for instance, which involved 295A, was framed entirely in terms of causing religious offence, and not in the language of public order. Furthermore, the Supreme Court’s jurisprudence on public order has also undergone widespread changes since the time of Ramji Lal Modi.

In fact, merely three years after Modi, in Superintendent, Central Prison***, Fatehagarh vs Ram Manohar Lohia***, the Supreme Court emphasized that the state would have to show a close degree of proximity between the speech and public disorder, if it wanted to regulate it. In the Lohia case, a law criminalizing the act of asking people not to pay taxes was struck down, and the state’s argument that instigating people against paying taxes might prove to be a “spark" that could one day cause a revolution was dismissed by the court for being a “far-fetched" or “hypothetical" consideration.

Most recently, in ***Shreya Singhal vs Union of India***, the Supreme Court held that only “incitement" to violence could be prohibited under the public order ground, and even advocacy (of revolution, etc.) was permitted. Under a standard as strict as that of “incitement", it is difficult to see how the language of Section 295A, which was upheld in the Modi case on the basis of a broad and vague “tendency" test, remains within the scope of Article 19(2). In the present climate, however, it is as difficult to imagine the court reconsidering the constitutionality of the “blasphemy" law, as it is to imagine it rethinking obscenity or sedition.

### 2.2.4Media Law and Sedition

“Sedition” has been described as disloyalty in action. The object of sedition law is to induce discontent and insurrection, and stir up opposition to the Government and bring the administration of justice into contempt. Sedition is a crime against the society as it involves all those practices that result in conduct disturbance in the state or to lead to civil war which contempt the sovereign and promotes public disorder.

To get the exemption from Criminal Liability, the following are the defences:

1. That he did not make the sign or representation or not speak or write the words, or not do any act in question.
2. He did not attempt into the contempt or attempt disaffection.
3. Such disaffection should not be towards the Government.

**Sedition and Article 19(1)(a) of the Indian Constitution**

The Concept of Free Speech has attained global importance and all have supported it as a basic fundamental right of a human being. In India, such rights are provided under Part-III and Article 19 of the Indian Constitution. The said right has no geographical indication because it is the right of the citizen to gather information with others and to exchange thoughts and views within or outside India.

Courts have been given the power to act as guarantors and protectors of the rights of the citizen. Article 19(1)(a) secures the ‘freedom of speech and expression’ but it has been bound by the limitation which has been given under Article 19(2) which states the permissible legislative abridgement of the right of free speech and expression.

In ***Niharendu Dutt’s Majumdar & Ors v. Emperor***, for sedition, the Federal Court had taken chance to interpret the Section 124A of the IPC in alignment with British Law. It had ruled that tendency to disturb public order was an essential element under Section 124A. The Privy Council held that the incitement to violence or a tendency to disturb public order was not necessary under section 124A.

In ***Tara Singh v. State***, the validity of Section 124A of the IPC was directly in issue. In this case, it curtailed the freedom of speech and expression, so the East Punjab High Court declared this section void.

By the Constitution (First Amendment) Act, 1951, two changes were introduced relating to freedom of speech and expression, are:

1. It considerably widened the latitude for restrictions on free speech by adding further grounds;
2. The restriction imposed on Article 19(1)(a) must be reasonable.

Therefore, the question now arises of whether Section 124A of IPC is in conflict with Article 19(1)(a) or not. It has been reflected by the following points:

1. Section 124A of the IPC is *ultra vires*the constitution in as much as it infringes the fundamental right of freedom of speech in Article 19(1)(a) and is not saved by the expression “in the interest of public order”.
2. As the expression “in the interests of public order” has a wider connotation and should not be confined to only one aspect of public order, then the Section 124A is not void.
3. Section 124A IPC is partly void and partly valid. In ***Indramani Singh v. State of Manipur***, it was held that Section 124A which seeks to impose restrictions on exciting mere disaffection is *ultra vires*, but the restriction imposed on freedom of speech and expression covered under Article 19(2) can be held *intra vires.*

In 1959, Allahabad High Court declared that Section 124A was *ultra vires* to Article 19(1)(a) of the Constitution.

Indian Freedom Fighters who were charged with Sedition during the Freedom Struggle

Mahatma Gandhi was charged with sedition. Gandhiji had written three ‘politically sensitive’ articles in his weekly journal Young India, which was published from 1919 to 1932 so that he was jailed on the charges of sedition. He was sentenced to a six-year jail term.

Three charges were imposed on him:

1. Tampering with loyalty;
2. Shaking the manes and
3. Attempt to excite disaffection towards the British Government.

He wrote the first part of his autobiography during his imprisonment- *The Story of my Experiments with Truth-*and about the Satyagraha movement in South Africa. He was released after two years as he was suffering from appendicitis.

Bal Gangadhar Tilak was charged with sedition on two occasions, are:

1. Firstly, his speeches that allegedly incited violence and resulted in the killings of two British Officers for which he was charged with Sedition in 1897. He was convicted but got bail in 1898.
2. Secondly, he was defending the Indian revolutionaries and called for immediate Swaraj or self-rule in his newspaper ‘Kesari’ for which he was convicted under sedition and sent to Mandalay, Burma from 1908 to 1914.

**Disaffection and the State**

* A seminar titled with *‘Azadi, the Only Way’* was organized by the Committee for the release of a Political prisoner in Srinagar.
* The controversy arises when Sedition was charged against Arundhati Roy, Syed Ali Shah Geelani, Varavara Rao and others who spoke at the said Seminar.
* Media reported that the Central Government was not in favour of initiating proceedings in this case.
* There are reports though of cases having been filed in New Delhi.
* Intimidation of cases being filed in other parts of the country against Roy, Geelani and other who spoke at the seminar.

**Famous Trials of Sedition**

***Jogendra Chunder Bose***

Jogendra Chunder Bose was an editor of *Bangobasi.*He was charged with Sedition for voicing against Age of Consent Bill, 189

***Cartoonist Aseem Trivedi***

During a rally of Anti-Corruption crusader Anna Hazare in Mumbai, he had been accused of putting up banners mocking the constitution and posting the same on his website. He was charged under Section 124A of IPC, Section 66A of Information Technology Act and Section 2 of Prevention of Insults to National Honour Act.

***Kashmiri Students***

60 Kashmiri Students were cheering for Pakistan in a Cricket Match against India. So they were charged with Sedition in March 2014.

***Folk Singer S Kovan***

He was charged with sedition for two songs criticising the state government for allegedly profiting from state-owned liquor shops at the expense of the poor.

***Akbaruddin Owaisi***

On December 22, 2012, he purported hate speech at Nirmal. He was slapped with the charge of sedition by the District Police of Karimnagar.

***Kanhaiya Kumar, Student of JNU***

JNU Student Leader, Kanhaiya Kumar was arrested in February 2016 on the charge of sedition. He was arrested for inciting violence through unlawful speech, allegedly spread not all over India but also across the world. This arrest has raised political turmoil in the country by which academicians and activists protesting against this move by the Government. On March 2, 2016, the videos purporting to show this activity were found to be fake and he was released after three weeks in jail.

**Constitutionality of Law of Sedition in India**

***Kedarnath Singh v. State of Bihar***

* It was held that the law is constitutional and covered written or spoken words that had the implicit idea of subverting the Government by violent means.
* With an intention to create public disorder, Citizens can criticize the Government as long as they are not inciting people to violence against the Government.
* Supreme Court upheld the validity of Section 124A, it limited its application to acts involving intention or tendency to create disorder, or a disturbance of law and order, or incitement to violence.

***Balwant Singh and Anr v. State of Punjab***

* After the assassination of Prime Minister Indira Gandhi, the accused had raised the slogan “Khalistan Zindabad” outside a cinema hall.
* It was held that two individuals casually raising slogans could not be said to be exciting disaffection towards the Government. Section 124A would not apply to the circumstances of this case.

***Romesh Thapar v. State of Madras***

* The petitioner contended before the Supreme Court that the said order of banning his paper ‘Cross Roads’ by the Madras State.
* It has contravened his Fundamental Right of freedom of speech and expression conferred on him by Article 19(1) of the Constitution.
* The Supreme Court held that the Article 19(2) where the restriction has been imposed only in the cases where problem to public security is involved. Cases where no such problem could arise, it cannot be held to be constitutional and valid to any extent.
* Supreme Court quashed the order of Madras State and allowed the application of the petitioner under Article 32 of the Constitution.

The following acts are not considered seditious

* Improvement or alteration by lawful means with the disapproval of the measures of government.
* The strong words which are expressing disapprobation of actions of the Government and not encouraging those feelings which generate public disorder by acts of violence.
* To improve the condition of the people or to secure the alteration of those acts by lawful means without the feelings of enmity and disloyalty which involve excitement to public disorder or the use of violence.

**National Crime Records Bureau Statistics on Sedition**

When all the crimes are committed against the state or government, it disturbs public order. According to the data from 2014-2016 of NCRB, 165 people were arrested on the charge of sedition. During 2014, 47 cases were reported under sedition. Of the total sedition cases, Jharkhand and Bihar have reported 18 cases and 16 cases respectively. Besides, 5 cases in Kerala, 2 cases each in Andhra Pradesh, Assam, Chhattisgarh and Himachal Pradesh were also reported during 2014.

According to the NCRB, the latest crime data shows the cases of sedition fell from 2014 to 2015. A total of 30 sedition cases were registered in 2015, less than in 2014. Tamil Nadu topped the list for committing the crime against state including sedition. Of the 6,986 cases were registered in 2016, 1,827 cases were reported from Tamil Nadu, followed by U.P. 1,414, Haryana 1,286 and Assam 343 cases. In the last three years across the country, 165 people were arrested on the charge of sedition. According to the reports of NCRB, 111 people were arrested in four state i.e., 68 in Bihar, 15 in Haryana, 18 in Jharkhand and 10 in Punjab.

The same law applies to the media which also includes social media, if the information which is disseminated within the barrier of 124A of Indian Penal Code then it will be considered to be legal or else it can result in the violation of the same.

## 2.3Law Relating to employee’s wages and service condition of media

Generally all labour related legislations are applicable for people working in the media sector. But there are certain specific labour legislations that regulate the conditions of employment in this sector. A few of them have been discussed hereunder – The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 & The Working Journalists (Conditions of Service) and Miscellaneous Provisions Rules, 1957.

### 2.3.1The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955

The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 provides for regulation of certain conditions of service of working journalists and other persons employed in newspaper establishments. The Act provides that for the purpose of fixing or revising rates of wages in respect of working journalists, the Central Government shall constitute Wage Board as and when necessary.

The Central Government has set up a central level monitoring committee in the Ministry of Labour to oversee the implementation of wage board's recommendations. After receipt of the recommendations of the Board, the Central Government is required to make an order in terms of recommendations and this order becomes applicable on the class of newspaper establishments for which the Board has recommended.

All the Assistant Labour Commissioners of the Labour Department have been appointed Inspectors for carrying out the enforcement work under the Act for their respective districts. Deputy Labour Commissioners have been authorized for the recovery of the amount due to the newspaper employees under the provisions of the Act. The amount can be recovered by issue of a certificate for the amount to the Collector, for recovery of the amount as arrears of land revenue.

The penalty provided for violation of any of the provisions of the Act or any rule made there under is punishment with a fine which may extend to Rs. 200/- and Rs. 500/- for subsequent violation. Working Journalist is a person whose principal avocation is that of a journalist and who is employed either whole-time in one or more newspaper establishments and includes an editor, a leader-writer, news-editor, sub-editor, feature writer, copy tester, reporter, correspondent, cartoonist, news photographer, and proof reader, but does not include any such person who –

* + 1. is employed mainly in a managerial or administrative capacity; or
    2. being employed in a supervisory capacity, performs, either by the nature of the duties attached to his office or by reason of the powers vested in him, function mainly of a managerial nature. (Section 2 (f)) Newspaper means any printed periodical work containing public news or comments on public news and includes such other class of printed periodical work as may, from time to time, be notified in this behalf by the Central Government in the Official Gazette. (Section 2(b)) Newspaper establishment means an establishment under the control of any person or body of persons, whether incorporated or not, for the production or publication of one or more newspaper or for conducting any news agency or syndicate; and includes newspaper establishments specified as one establishment under the Schedule.

Explanation: - For the purposes of this clause- (a) different departments, branches and centres of newspaper establishments shall be treated as parts thereof, (b) a printing press shall be deemed to be a newspaper establishment if the principal business thereof is to print newspaper. (Section 2(d))

Important provisions of the Act

The provisions of the Industrial Disputes Act will apply to the working journalist with some modifications. The period of notice referred in the ID Act in relation to the retrenchment has been enhanced to six months in the case of editor and three months in the case of other working journalists. (Section 3)

The Industrial Employment (Standing Orders) Act, 1946 is made applicable to every newspaper establishment wherein twenty or more newspaper employees are employed. (Section 14) Gratuity is payable to working journalists who has put in a minimum service of three years. (Section 5)

The Employees’ Provident Fund Act 1952 is applicable to every newspaper establishment in which twenty or more persons are employed on any day. (Section 15) No working journalist will be required or allowed to work more than 144 hours in four consecutive weeks. The total working hours in a day should not exceed six hours and in the case of night shift shall be 5½ hours only. They shall be given one day off in a week.

These provisions will not be applicable to editors, or to correspondents, reporters or news photographers. (Section 6 & Rule 7) A working journalist is entitled to 10 holidays in a year and is also entitled to for a compensatory holiday within a period of 30 days in lieu of attending on a holiday. A working journalist is entitled to 15 days casual leave and one month earned leave. The earned leave can be accumulated upto 90 days in every year.

A female working journalist is entitled to three months maternity leave on full wages on production of medical certificate. The leave and other service conditions in respect of non-journalists are regulated as per the provisions of the Factories Act, 1948.

The following registers and records are liable to maintain by the employer in respect of the working journalists –

• Register of employees in Form-D

• Service register of all working journalists, in Form-E

• Leave register of working journalist in Form-F

• Muster roll in form-G

### 2.3.2The Cine-workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981

The Cine-workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981 & the Cine-workers and Cinema Theatre Workers (Regulation of Employment) Rules, 1984 The Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981 provides for the regulation of the conditions of employment of certain cine-workers and cinema theatre workers and related matters thereto. ‘Cinema theatre’ means a place which is licensed under Part III of the Cinematograph Act, 1952, or under any other law for the time being in force in a State for the exhibition of a cinematograph film.

A cine-worker is an individual who is employed, directly or through any contractor or other person, in or in connection with the production of a feature film to work as an artiste (including actor, musician or dancer) or to do any work, skilled, unskilled, manual, supervisory, technical, artistic or otherwise and whose remuneration with respect to such employment in or in connection with the production of such feature film does not exceed, where such remuneration is by way of monthly wages, a sum of one thousand six hundred rupees per month, and where such remuneration is by way of a lump sum, a sum of fifteen thousand rupees.

Producer, in relation to a feature film, means the person by whom the arrangements necessary for the making of such film (including the raising of finances and engaging cine-workers for the making of such film) are undertaken. The Act prohibits the employment of any cine-worker without an agreement in writing with the producer of the film or where any cine-worker is employed through a contractor or other person, with the producer of such film and such contractor or other person.

Such agreement should be registered with the competent authority notified under the law by the producer of the film. The Agreement should be in Form A as given under the Rules. Whoever contravenes this provision will be punishable with fine not less than Rs.10,000 but which may extend to Rs.50,000. The Act provides safeguards to low paid artistes and technicians engaged in the production of feature films with regard to their terms and conditions of employment, payment of wages and provision of other amenities.

The provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 will apply to every cinema theatre in which five or more workers are employed on any day. The provisions of the Payment of Gratuity Act, 1972 will apply to every worker employed in a cinema theatre in which five or more workers are employed or were employed on any day of the preceding twelve months.

In case of any dispute regarding breach of the terms and conditions of the agreement, a cine-worker may approach the Conciliation Officer for mediation. The Conciliation Officer will investigate the dispute and all matters affecting the merits and the right settlement and induce the parties to come to a fair and amicable settlement. It lays down the minimum standards of service conditions for newspaper employees and journalists

## 2.4Price and Pages Schedule Regulation

### 2.4.1The Newspaper (Prices and Pages) Act, 1956

The Newspaper (Prices and Pages) Act, 1956 has been enacted to provide for the regulation of the prices charged for newspapers in relation to their pages and of matters connected therewith for the purpose of preventing unfair competition among newspapers so that newspapers can have fuller opportunities of freedom of expression.

The Act empowers the central government to make orders providing for the regulation of the prices charged for newspapers in relation to their maximum or minimum number of pages, sizes or areas and for the space to be allotted for advertising and other related matters for the purpose of preventing unfair competition among newspapers so that newspapers generally and in particular, newspapers with smaller resources and those published in Indian languages can have fuller opportunities of freedom of expression. The Act also provides that the Central Government should before making any order, consult associations of publishers and 33 such publishers likely to be affected by the order. The Act prohibits publication and sale of newspapers in contravention of any order made under the provisions of this Act.

## 2.5 Newspaper Control Order

### 2.5.1Press & Registration of Books Act, 1867 & The Registration of Newspapers (Central) Rules 1956

The earliest surviving enactment specifically directed towards the press was passed in 1867, the Press and Registration of Books Act (PRB Act) (XXV of 1867). The objective was however not to establish governmental control over the freedom of the Press. It was a regulatory law which enabled Government to regulate printing presses and newspapers by a system of registration and to preserve copies of books and other matter printed in India. A number of minor amendments were made in the Act from time to time to make the Sections/Clauses compatible with the changing situation, more particularly after Independence.

But major amendments were carried out in 22 1955 following the recommendations of the First Press Commission in 1953, consequent upon which the Office of the Registrar of Newspapers of India (RNI) was created and started functioning in 1956. Printing and publishing of newspapers and periodicals within India are governed by the Press and Registration of Books Act, 1867 and the Registration of Newspapers (Central) Rules, 1956.

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 sub-divisional Magistrate within whose local jurisdiction the press is situated. A new declaration is to be made when the place where a press is kept is changed. The Declaration is to be made in Form I as given in the Schedule to the Registration of Newspapers (Central) Rules, 1956.

Before making the declaration, Title Verification Letter should be obtained from the Press Registrar. No new declaration is necessary when:

1) The change is for a period not exceeding 60 days

2) The place where the press is kept after change is within the local jurisdiction of the Magistrate.

Section 5 lays down the following rules for newspapers published in India:-

1) Every copy must have thSe 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 then 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 – a. Within 6 weeks of the authentication of the declaration for a weekly (or more often published newspaper) b. 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 24 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.

One of the said originals should be deposited among the records of the office of the Magistrate, and the other deposited among the records of the High Court of Judicature, or other principal Civil Court of original jurisdiction for the place where the said declaration should have been made. 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. The latter declaration will 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 realizing 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:

1) The newspaper is published in contravention of the Act.

2) The newspaper has the same/ similar title to another newspaper of the same language or in the same state.

3) The printer or publisher has ceased to be so.

4) 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 within sixty days of the cancellation of the declaration. Section 9 of the Act is about 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. Under Section 11, the State Government should 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 every issue to the Press Registrar as soon as it published. Section 18 of the Act requires the maintenance 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 Government appoints. The memoranda should contain the following particulars:-

1) 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).

2) The language in which it is written.

3) Name of the author, translator and editor.

4) The subject.

5) Place of printing and place of publishing

6) Name of the firm of the printer and publisher.

7) Date of issue from the press.

8) Number of sheets/leaves/pages.

9) The size.

10) The edition.

11) The Price.

12) The number of copies of an edition.

13) Whether printed/cyclostyled or lithographed.

14) The name and residence of the proprietor of the copyright or of any portion of such copyright. Section 19A provides for the appointment of the Registrar of Newspapers i.e. the Press Registrar and other officers by the Central Government.

The Press Registrar should maintain a register of newspapers that will contain the following particulars of all newspapers:- 1) The title 2) The language 3) The periodicity of publication 4) Names of the editors, publisher and printer 5) Average number of pages per week 6) Number of days of publication in a year 27 7) Retail selling price per copy 8) Average number of copies printed, sold to the public and distributed for free 9) Name and address of the owner Section 19D prescribes the duty of the publisher of every newspaper to furnish to the Press Registrar, an annual statement in Form II containing the above mentioned particulars in respect of the newspaper.

Penalty for failure to furnish annual statement is fine upto five hundred rupees. Section 14 of the Act also provides that any publisher making false statement on conviction before a Magistrate, may be punished by fine up to Rs. 2000/- and imprisonment for a term, which may extend to six months. The Press Registrar should prepare an Annual Report containing a summary of the information obtained by him during the previous year in respect of the newspapers in India and give an account of the working of such newspapers and a copy of the report should be forwarded to the Central Government.

Procedure for registration of newspaper After publication of the first issue of the newspaper as provided under Section 5(5) of the Press and Registration of Books Act, the Registrar of Newspapers (RNI) must be requested to issue a certificate of registration to the newspaper. The check list/guidelines for registration of newspapers/periodicals are as under:-

1. Documents required: a. Photocopy of title verification letter issued by RNI. b. Attested copy of Declaration authenticated by the DM/ADM/DCP /CMM/SDM as prescribed in form-I. c. First issue indicating Volume - I and Issue-I. 28 d. An affidavit from the publisher for "No Foreign Tie-up" in the prescribed form

2. Separate declaration should be filed in case the printer and publisher are different or the place of publication and place of printing come under the jurisdiction of two different magistrates.

3. The first issue should indicate Volume-I and Issue-I, date line, page number and the title in full prominently on the cover.

4. The publication should be brought out within six weeks (in case of daily/weekly) and three months (in case of other periodicity) from the date of authentication of Declaration. 5. The imprint line should contain the name of the Publisher, Printer, Owner, Printing press with complete address, Place of publication with complete address and the name of the editor. If the documents are found to be complete in all respects and the publication is in order, the Press Registrar will enter the particulars of the newspaper in the register maintained by him and issue a Certificate of Registration to the publisher.

RNI does not accept incomplete applications for registration or issuing of revised registration certificate. All pending applications for registration or revised registration will be processed only when all the complete and correct documents are submitted. Check List for the required documents:- For the Certificate of Registration: a) Copy of title verification letter 29 b) Attested copy of the declaration duly filled in and authenticated by the District Magistrate /Addl. District Magistrate etc. c) Affidavit for 'No foreign tie up' duly filled in and notarized. d) First Issue of publication brought out within 42 days in case of dailies and weeklies and 90 days for fortnightly and above. e) Copy of the latest issue of the publication.

For Revised certificate of registration: Following documents are required on the basis of which Revised Registration Certificate is issued: a) Original Certificate of Registration issued by the O/o Registrar of Newspapers for India and in case it is lost, he/she is required to submit the affidavit for loss of certificate duly filled in and notarized along with the IPO of Rs.5/-. b) Attested copy of the latest declaration, duly filled in and authenticated by DM/ADM concerned. c) Affidavit for No foreign tie up, duly filled in and notarized. d) Latest issue of the publication. Fresh/Revised Certificates –

A fresh declaration is to be made in the case of any change in (a) title (b) language (c) periodicity (d) ownership (e) place of publication (f) place of printing (g) publisher and (h) printer. It will be necessary to apply to the Press Registrar for a revised certificate of registration. A revised certificate will not be necessary if the fresh declaration has been made under other circumstances.

The documents required are given below: (a) An attested photocopy of the fresh declaration duly authenticated by the magistrate concerned etc. indicating the change(s). (b) A copy of the latest issue of the publication with correct imprint line, title and date line printed on each page of the publication. (c) Original Certificate of registration issued by the office of RNI. (d) If Original Certificate of Registration is lost, damaged, stolen etc., an affidavit duty signed by a magistrate, with a five rupee Indian Postal Order in favour of RNI has to be furnished. (e) In case of change of ownership, attested photocopy of the transfer deed in respect of ownership, duly authenticated by the magistrate concerned, is also to be submitted. (f) In case of change of title/language, a copy of the title verification letter is to be submitted. (g) An affidavit for no foreign tie-up. Duplicate Certificates

When the original certificate of registration is lost, damaged, or stolen, and if none of the circumstances requiring a fresh declaration as noted above exist, an application may be submitted to the Press Registrar for issue of a duplicate certificate of registration with full details given on a separate sheet of paper. Please note that if the certificate has been lost or stolen, adequate documentary proof of having reported the matter to the concerned police authorities, such as a copy of the FIR or a copy of the complaint bearing their stamp/seal, would be necessary.

The documents required are as under: 31 (a) An affidavit to this effect duly authenticated by Notary or the Magistrate concerned under his signature and office seal. (b) Attested photocopy of the latest declaration authenticated by the magistrate concerned. (c) A copy of the latest issue of the publication with correct imprint line. (d) An Indian Postal Order of Rs.5/- in favour of RNI. (e) An affidavit for "No Foreign Tie Up" Duties of a Publisher a) According to the Registration of Newspaper (central) Rules, 1956, within 48 hours of the publication of a newspaper, one copy of the issue is to be sent to the Press Registrar, either by post or by a messenger. In the case of multi-edition newspapers published under the same declaration, one copy of each edition is required to be sent if the retail selling price or the number of pages in an edition is different from another edition. b) Every publisher should furnish to the Press Registrar an annual statement regarding the newspaper.

The statement is to be in the format given as in Form II in the Schedule to the Registration of Newspapers (Central) Rules, 1956. The statement will be on financial year basis, and it should reach the Press Registrar on or before the last day of May of the following year. Where the circulation of newspaper exceeds 2000 copies per publishing day, a certificate from a chartered accountant or a qualified auditor as given below Part B of the prescribed format is to be furnished along with the annual statement. c) Every year, in the first issue after the last day of February, a statement regarding the ownership and other details of the newspaper should be 32 published, in the format given as Form IV in the Schedule to the Registration of Newspapers (Central) Rules, 1956. d) In the event a person ceases to be the printer or a publisher of the newspaper, he/she should appear before any Magistrate (District, Presidency, or SubDivisional) and make a declaration.

The Magistrate will authenticate the declaration and an attested copy of the same is to be forwarded to Press Registrar by the printer/publisher. e) The publisher/owner of a newspaper should submit half-yearly returns for the period ending 30th September by 31st October of the same year and annual returns for the period ending 31st March by 30th April, indicating the quantity of imported newsprint purchased and consumed during the relevant periods.

The half-yearly return is to be certified by the publisher/owner and the annual return is to be certified by a Chartered Accountant. Failure to submit the returns in time or submission of false information will disqualify the newspaper for authentication of Certificate of Registration for import of newsprint.

## 2.6Advertisement – It is included within freedom of speech and expression

### 2.6.1 Introduction

Advertising is omnipresent, it is alluring, it is inviting and it involves people. Advertising creates images or personalities for the products advertised. To create images advertising uses a variety of things like drama, action, romance, emotions, music, a lot of characters etc. It also uses what is called the 'metaphor of ideas'. In simple terms 'metaphor of ideas' is nothing but puffery or exaggeration.

Advertising also uses many other means that are controversial. Many of these practices are considered unethical. These include: Comparative Advertising, Negative Advertising, Advertising for Children, Advertorials and Infomercials etc.

### 2.6.2 Puffery in Advertising:

Critics claim that puffery forms the main element of most advertisements. Products are shown to have a lot of qualities, which they do not possess in reality. On the other hand advertisers and advertising personnel defend the use of puffery. The defenders of puffery opine that it helps in differentiating products from their competitors.

They say that people are not expected to believe puffery literally. Like no one believes that they can 'walk on air’ when they listen to the 'Force 10' shoes model saying I am walking on air. This line is a metaphor used to talk about the lightness of the shoes. Also puffery is being increasingly used, as there is no legal ban on it. Puffery is considered to be 'opinion' and not 'factual information'. And people (advertisers) are free to give their opinions. However, many times it becomes difficult to distinguish between truth and puffery.

Advertising people claim that customers are reasonable and thinking persons, and thus do not believe everything that is being said in the ads. But research has been consistently revealing that many people do believe the tall and exaggerated claims made in the ads and fall prey to them. Some advertisers also try to venture into the gray area between truth and deception.

For example food and toy advertisers often use special effects to exaggerate the quality and other features of their products. Similarly many advertisers dramatize their brands to such an extent that reality takes a back seat. Like if you are not wearing ’VIP Frenchie' underwear, you would not get a girlfriend. Chewing 'Chick lets' attracts girls to you. If you drink 'Fanta' then anything is possible. Suzuki Shogun motorcycle, when riding past, lights up houses and leaves many to wonder.

One major controversy in the international advertising field was created by one ad of Volvo cars. This car is considered to be safe and durable. To highlight these qualities of the car, the advertisement showed only Volvo survives a crash. Subsequent inquiries showed that the car used in the ad had additional reinforcement and support. Also they had removed the support structures from other cars shown in the ad.

We have many cases of deception in India also. Both Wheel (washing bar) and Vim (utensil washing bar) show lemons prominently on the package. The ads of these two products also claim their products contain the power of lemon. However, it has been found that these products only use lemon flavour. Such cases, where fraud and deception are exposed, make advertisers more cautious about crossing the line between puffery and deception. Puffery, to the extent it is not harmful, is okay. But deception and dishonesty are unethical practices.

### 2.6.3Comparative Advertising:

Puffery, deception and fraud are, however, a small part of unethical practices in the field of advertising. One major area of concern is comparative advertising. One classic example of this is the Captain Cook salt ad. Tata salt was the undisputed leader in the salt market when Captain Cook entered the field. The new comer dared to compare its features with the established market leader. The comparison was done in an imaginative and humorous way.

The model in the ad (Sushmita Mukherji) made fun of all the good features of Captain Cook salt. Its whiteness, no moisture content and free flowing nature were mocked. However, the ad was actually making fun of the lack of these characteristics in Tata salt. And the audience got the message. This ad led to an ad-war between Tata and Captain Cook.

While many ads claim that the brands advertised are superior to their competitors, some others try to make the packaging look like major brands. Some other people use similar sounding brand name like GOLOFLAKE for GOLD FLAKE or LIFEBUY for LIFEBUOY. Advertisers use comparative advertising even at the risk of getting exposed.

And in today's highly competitive market, comparative advertising has become a major weapon. Also people do not mind doctoring or manufacturing data. False and misguiding information are fed through advertising.

One example is the Pepsodent ad that was banned. This ad claimed that Pepsodent was 102% better than its competitor. (Yeh Toothpaste hai ya Tendulkar). The competitor was Colgate and it complained to the MRTP Commission. An inquiry followed and the Pepsodent ad was banned. Many newspapers and magazines use the circulation figures and the readership figures to claim they are the number one. In addition to playing with numbers and information (facts), advertisers also play with subjective material. Someone calls on the customers to Believe in the Best. Someone else comes and claims to be better than the best. One television company claims to have the flattest screen. Another TV manufacturer claims to have a screen, which is flatter than the flattest.

These kind of comparative claims are difficult to either prove or disprove. Advertising practitioners feel that there is no stopping comparative advertising as long as there is competition. However, on the plus side for the consumers, competition not only leads to comparative advertising, it also leads to better and much improved products. Sometimes advertisers try to copy other's advertisements. Plagiarism or imitation is on the rise even in the field of advertising. Competing advertising often prepare strikingly similar advertisements. Some say that this is mere coincidence. Some say it is plagiarism.

In the 1980's a television ad of American Honda Company showed a Honda car blasting off sideways like a spaceship. About five years later another car company Oldsmobile showed a similar ad comparing the car with a spaceship using visuals similar to the old Honda ad. This ad created a lot of controversies. One recent example from India is about the some model (Ruby Bhatia) being used by these competing toothpastes - Colgate and Closeup. Opinions are divided about this particular case.

Some people say imitating ads remind consumers about the original product. Some others feel that the copied ad does lot of damage to the original product. Also copying a lifting of ideas is practiced a lot in the advertising world. Creative Black Books, which feature award winning ads from all over the world, have become the sources of ideas instead of the copywriter's own imagination. Copywriters and visualizers refer these Black

Books and shamelessly lift ideas. Some call it inspiration. Some say that they change the context and are not exactly copying. Some others call it creative adoption. However, to many lifting ideas is plain plagiarism or copying. We have already discussed how established brand names are copied.

### 2.6.4 Negative Advertising:

While most ads try to highlight the best features of the brands advertised and use a positive approach, many ads try to show their competitors in a bad light using a negative approach. This kind of approach is mostly used for political advertising and especially in the USA. The ads created for US Presidential campaigns are mostly negative where opposing candidates are ruthlessly dissected. In the brutal and highly competitive atmosphere of US politics, Presidential candidates hurl defamatory accusations at one another. Research has shown that negative approach (which often amounts to character assassination) works well in case of political advertising. It destroys the opponents. However, negative approach does not work in case of general commercial advertising.

### 2.6.5 Advertising For Children:

Advertising directed at children is another problem area. Children are a very important part of most markets. Children spend a lot of money on their own doing their own shopping. Children also initiate and influence purchase decisions of many products to a great extent. This is the reason why children are targeted not only in case of children's products but also for a wide range of other products.

Children are an impressionable age. The critical faculties of thinking are not developed in children. Thus they are vulnerable to advertising - particularly TV advertisements. The glamour and hype on TV attracts the immature minds and children cannot make rational buying decisions as they cannot distinguish between the boundaries of reality and fantasy in the make believe world of television advertising. Children are mesmerized by the attractive moving images and buy (or force their parents to buy) the products advertised on TV.

### 2.6.7Advertorials:

Another type of advertising that often comes under criticism is the use of advertorials. An advertorial is half advertisement and half editorial. It is advertisement written in the form of a news story or an article - using the format and language of newspapers. These are mostly placed as part of the editorial content of a newspaper or magazine. Although the word advertorial is used, it is usually put in an obscure corner and set in very small type size making it almost invisible. Advertorials are used to promote goods, services and also institutions. Advortorials are highly controversial. These aim to win public opinion rather than sell products. Another form of advertorials is the infomercial. It is the audio-visual media counterpart of advertorials. When an advertisement is disguised as a piece of information on radio or television, it is called an infomercial. An infomercial is half information and half commercial or advertisement.

### 2.6.8Good taste in advertising:

Different people have different opinion about what constitutes good taste. What is good taste to some people is objectionable to others. Different things offend different people. For example, some people like the Kamasutra ads and consider these to be sensual. Many others find these ads obscene. Even the ads of Deluxe Nirodh that shows a couple under an umbrella (Pyar hua ekraar hua) are considered to be obscene. Many people object to social ads promoting use of condoms and other contraceptives being shown during prime time on Doordarshan. Also many people object to advertisements of products like sanitary napkins. And the excessive use of sex, nudity and violence is considered to be not in good taste.

Maintaining good taste in advertisements in a country like India is very difficult. Advertisers have to keep in mind the different religious, regional, and linguistic variations as also the different cultural & societal practices.

### 2.6.9Stereotypes In Advertising:

Stereotyping involves presenting a group of people in a pattern or manner that lacks individuality. This involves generalization. We have many stereotypes in our society like people consider that Punjabis are boisterous, Bengalis and Keralites are intellectuals etc. Also all South Indians eat only *dosa, idli* and *sambar*. Mothers in law and daughters in law always fight. Fathers never take any interest in house management.

Advertising uses many stereotypes as in case of the 'Papa to Buddhu hai' ad; Chipkti rahti hai, meri saas jaisi. The most controversial of the stereotypes portrayed in advertisements is that of women. Women are usually shown as preoccupied with beauty, household chores and mother hood. Earlier housewives were portrayed as being too much concerned about the cleanliness of their homes, health of family members etc. She was portrayed as the 'super women’ as in the ads of Trupti atta.

Also young girls are shown as too much occupied with beauty and winning boys. Not many advertisements recognize the diversity of women's roles. Also sometimes ads show such qualities of women that it becomes difficult to identify with them. While there is not much of change in the portrayal of women in ads, some changes are taking place as far as men are concerned. The Ariel washing powder ad shows the husband washing clothes at home. Even Kapil Dev is shown washing clothes in one ad. In another ad a child claims 'my daddy strongest'. While these changes are highly welcome, the challenge before advertisers is to portray the different segments of people realistically, in diverse roles and without hurting any segments.

**Advertising of controversial products:**

Three main products, which fall under this category, are condoms, alcohol, and tobacco products. Alcohol and tobacco advertising have been banned in many countries including India (on DD and AIR) and the USA television networks. While alcohol and tobacco product manufacturers say that truthful and non-deceptive advertising of legal products is constitutional.

Supporters of the ban say that advertising of such products might result in sickness, or even death of users. However, alcohol advertisers try and convey messages about moderate drinking like Baccardi ad 'Baccardi mixes with everything but it does not mix with driving'. But where there is a ban on advertising of such products, advertisers use surrogate advertising like promoting other products of the same name. So we have matchboxes, playing cards, cut glasses, pet bottles, diaries and annual planners being advertised which clearly promote alcohol or tobacco products.

Many media do not accept condoms ads, although there is no ban on it. Newspapers rarely accept condom ads. Television has only recently started telecasting condom ads. Only magazines publish condom ads regularly. However, many people feel with the menace of AIDS and the increased cases of sexually transmitted diseases, all media should accept condom ads.

**Advertising and sex:**

This is perhaps the most controversial aspect of advertising. It is not much of an ethical issue. It is more of a social issue. Earlier we discussed about the portrayal of woman as stereotypes. Scantily clad women might be okay for an ad for a condom. But such a lady featured in ads for tyres, pens or suitcases or shoes and coffee does not make any sense. Like the now banned Tuff shoe ad featured two models (Madhu Sapre and Millind Soman) almost nude. They were wearing only Tuff shoes and had a huge python draped around their bodies.

The ad for MR Coffee showed a couple in an intimate position and the head line read 'real pleasure does not come in an instant'. This particular coffee is the filter variety and was trying to secure its position against the instant coffees. Another recent ad of Smirnoff showed the map of India. The southern tip was represented as the private parts of a lady. Also a lot of ads show bare male bodies. The VIP Frenchie ad featuring a male model in a bathing robe is considered to be highly obscene by many. Also many ads show men in bathing trunks.

### 2.6.10 Issues regarding criticism of advertising:

Here one is reminded of what historian Stephen Fox had to say about advertising, "False in tone, tense in pace, vacant and self-hating, overheated and oversexed". Vance Packard, long time back, had called it the hidden persuader. In 1976, eminent economist Robert Heilbroner called advertising "the single most value destroying activity of business civilization". American advertising historian Richard Pollay once said, "Advertising reinforces materialism, cynicism, irrationality, selfishness, anxiety, social competitiveness, powerlessness and loss of self-respect".

Too strong criticisms, you would say. And as if all these were not enough came a Gallop

Poll in the mid-eighties. This opinion poll listed advertisers at third position from the bottom in a list of honesty among 25 occupations or professions. Only car salesmen and insurance salesman were considered more dishonest than advertising people.

Advertising is more criticized than other professions because of its high volume and high visibility. Advertising is criticized as a one-sided communication, with the inherent potential of deception, as self-interested persuasion as opposed to objective product information, a means to cause people to think or act in accordance with advertisers interest. Advertising as a deceptive persuader is also criticized on three issues of ethical concern

* *Advocacy*
* *Accuracy,*
* *Acquisitiveness.*

**Advocacy:** Critics often say that advertisements should give only information. Ads should be objective and neutral. But the goal of advertising is to persuade people by creating a distinct image for the brand advertised. For this advocacy or taking sides is a must.

**Accuracy:** Does buying a particular TV set (ONIDA) make you proud and makes you

neighbours envious? Does drinking a cold drink make anything possible? Are the products of particular home appliance company the best (Believe in the Best, BPL). This kind of subjective treatment and also inaccurate, deceptive and misleading claims are a matter of big concern for critics. However, as the saying goes "you can fool all the people some time, you can fool some people all the time, but you cannot fool all the people all the time". In fact, it is difficult to fool some people all the time. People are smart enough to recognize exaggeration, big and false claims etc. And in this time when marketers are trying to build consumer loyalty, advertisers can try to fool or mislead people only at great risks.

**Acquisitiveness:** This issue is about advertising's power of creating and fostering materialism. Critics say that advertising leads us to accumulate material objects and that we are 'corrupted', coerced' or influenced to buy many things that we do not need. However, what advertising does is to give us 'options' and help us make "informed buying decisions ". Still somehow, ethical problems have become part and parcel of advertising. To avoid this advertisers should weight the pros and cons, the good and the bad, the healthy and harmful effects or advertisements before they are released through the media. Advertisers should consider a number of other issues like the Company's position and reputation, its objectives, the social and legal environment, the market situation etc. before finalizing ads so as to avoid controversies

### 2.6.11Code Of Ethics By Advertising Council Of India:

The following are excerpts from the Code of Ethics for Advertising issued by the Advertising Council of India:

* Advertising should be so designed as to confirm not only to the laws but also the moral, aesthetic and religious sentiments of the country.
* No advertisement likely to bring advertising into contempt or disrepute should be permitted. Advertising should not take advantage of the superstition or ignorance of the general public.
* No advertisements of talismans, charms and character reading from photographs or such other matter as will trade on the superstition of general public shall be permitted.
* Advertising should be truthful avoid distorting facts and misleading the public by means of implications and omissions. For instance, it should not mislead the consumer by false

statements as to:

1. The character of the merchandise, i.e., its utility, materials, ingredients, origin, etc.
2. The price of the merchandise, its value, its suitability of terms of purchase;
3. The services accompanying purchase, including delivery, exchange, return, repair, upkeep, etc.
4. Personal recommendations of the article of service. Testimonials which are fictitious and /or fraudulent or the originals of which cannot be produced must not be used. Anyone using testimonials in advertisements is as responsible for the statements made in them, as he would be if he had made them himself;
5. The quality of the value of competing goods or the trustworthiness of statements made by others.

* No advertisement should be permitted to contain any claim so exaggerated as to lead inevitably to disappointment in the mind of the public. Special care is called for in the following cases:

1. Advertisements addressed to those suffering from illness. (In this respect the Code of Standards of Advertising in relation to medicine must be adhered to);
2. Advertisements inviting the public to invest money. Such advertisements should not contain statements, which may mislead the public in respect of the security offered, rates of return etc;
3. Advertisements inviting the public to take part in lotteries or competitions such as are permitted by law or which hold out the prospects of gifts. Such advertisements should state clearly all the conditions for the lotteries or competition or the conditions for the distribution of the gifts;
4. The publication of employment notices requiring fees for application forms, prospects, etc., and security deposits should be forbidden except when such advertisement emanate from governmental or quasi-governmental sources.

* Methods of advertising designed to create confusion of the mind of the consumer as between goods by one maker and another maker are unfair and should not be used.

Such methods may consist in:

1. The imitation of the trade mark or name of competitor or the packaging or labeling of goods; or
2. The imitation of advertising devices, copy, layouts or slogans.

* Advertising should endeavour to gain the goodwill of the public on the basis of the merits of the goods or services advertised. Direct comparison with competing goods or firms and disparaging references are in no circumstances permitted.
* Vulgar, suggestive, repulsive or offensive themes or treatments should be avoided in all advertisements. This also applies to such advertisements, which in themselves are not objectionable as defined above, but which advertise objectionable books, photographs or other matter and thereby lead to their sale and circulation.
* No advertisement should offer to refund money paid.
* The use of National Emblems is prohibited by law in advertisements, trademarks, etc., except by Governmental agencies. Also the use of the pictures of Mahatma Gandhi, the

President, the Vice-President and the Prime Minister of India is forbidden in such advertisements, trademarks, etc., except by previous permission. This rule does not apply to advertising of books, films or other items in which these personages form the chief subject.

## 2.7Press and the monopoles and restrictive trade practices act

In many countries and in particular developing countries like India, a large number of consumers are illiterate and ill-informed and possess limited purchasing power in an environment, where there is shortage of goods. Very often, one witnesses the spectacle of a large number of non-essential, sub-standard, adulterated, unsafe and less useful products being pushed through by unscrupulous traders by means of Unfair Trade Practices and deceptive methods.

Subtle deception, half truths and misleading omissions inundate the advertisement media and instead of the consumer being provided with correct, meaningful and useful information on the products, they often get exposed to fictitious information which tends to their making wrong buying decisions. Transparent information is missing and needs to be a goal to be chased.

The regulatory provisions in the MRTP Act apply to almost every area of business – production, distribution, pricing, investment, purchasing, packaging, advertising, sales promotion, mergers, amalgamations and take over of undertakings (provisions relating to mergers, amalgamations and take-overs were deleted in the MRTP Act by the 1991 amendments to it). They seek to afford protection and support to consuming public by reducing if not eliminating from the market Monopolistic, Restrictive and Unfair Trade Practices. One of the main goals of the MRTP Act is to encourage fair play and fair deal in the market besides promoting healthy competition. Under the MRTP Act, a Regulatory Authority called the MRTP Commission (briefly, Commission) has been set up to deal with offences falling under the statute.

As stated earlier, the Mahalanobis Committee in 1964 and the Monopolies Enquiry Commission in 1965 revealed' the tendencies of increasing concentration in the industrial sector of the economy. To curb these tendencies and control the monopolistic and restrictive trade practices of the large business houses, the Government of India adopted the Monopolies and Restrictive Trade Practices (MRTP) Act in 1969 and the MRTP Commission was set up in 1970.

The preamble to the Act described it thus: ―An Act to provide that the operation of the economic system does not result in the concentration of economic power to the common detriment for the control of monopolies, for the prohibition of monopolistic and restrictive trade practices: and matters connected therewith or incidental thereto.‖ Inter-Connected and Dominant Undertakings. The MRTP Act covered two types of undertakings viz., national: monopolies and product monopolies.

National monopolies were covered by Section 20(a) of the Act and were either, ‗single large undertakings‘ or groups of inter-connected undertakings‘ (i.e., large houses) which had assets of a: least Rs. 100 crore (prior to 1985, this limit was Rs. 20 crore). Product monopolies covered under Section 20(b) and called dominant‘ undertakings' were those which; controlled at least onefourth of production or market of a product and had assets of at least Rs. 3 crore (earlier on; this limit was Rs. 1 crore).

By the end of March 1990; 1,854 undertakings were registered under the MRTP Act. Of these 1,787 belonged to large industrial houses and the remaining 67 were dominant undertakings. The New Industrial Policy, 1991, scrapped the assets limit for MRTP companies. Monopolistic, Restrictive and Unfair Trade Practices. According to the MRTP Act, a restrictive trade practice (RTP) means a trade practice which has, or may have, the effect of, preventing, distorting or restricting competition in any manner.

A monopolistic trade practice (MTP) is a trade practice which has, or is likely to have, the effect of (i) maintaining prices at an unreasonable 60 level, or (ii) unreasonably preventing or lessening competition, or (iii) limiting technical development or capital investment to the common deteriment, or (iv) allowing the quality to deteriorate. Prior to 1984, the MRTP Act was restricted to monopolistic and restrictive trade practices only. In 1984 the Act was extended to unfair trade practices also.

Purview of the MRTP Act. A large number of types of agreements were specified in the MRTP Act which fell under its purview. Each one of these was required to be duly registered with the Registrar of Restrictive Trade Practices including the names of parties to the agreement. Registered undertakings were subject to the following control on their industrial activities:

(a) if it was proposed to expand substantially the activities of the undertaking by issuing fresh capital or by installation of new machinery or in any manner, notice to the Central Government was required to be given and approval taken (Section 21);

(b) if it was proposed to establish a new undertaking the prior permission of the Central Government was required to be obtained (Section 22);

(c) if it was proposed to acquire or merge or amalgamate with another undertaking the sanction of the Central Government was required to be taken (Section 23).

The responsibility to see that there was no concentration of economic power to the common detriment was that of the government. With a view to expanding industrial production, the government considerably liberalised the Operations of the MRTP Act from time to time.

The result was that the large business houses were given the green signal to enter a number of industrial fields which were formerly closed for them. Even the illegally set Up industrial capacity was regularised. Some of the important liberalisation measures announced over time were as follows:

1. The 1973 industrial policy statement opened up a large number of industries to the large houses. These included not only the core industries but also industries having direct linkages with such core industries and industries with a long-term export potential. Initially there were 19 such industries (listed in Appendix I) and gradually their number rose to 35.

2. With a view to providing fillip to production in industries of high national priority and/or those meant exclusively for export, the government introduced Section 22-A in the MRTP Act whereby it could notify industries or services to which Section 21 and 22 of the Act would not apply,

(a) In October 1982 all 100 per cent export-oriented industries established in the Free Trade Zone were exempted from Sections. 21 and 22 of the Act.

(b) In May 1983 the government notified that companies registered under the MRTP Act was eligible to set up, without the approval of the government, new capacities in industries of high national priority or industries with import substitution potential or those using sophisticated technology. However, the companies were required to fulfil certain conditions to avail the exemptions.

3. The government identified some industries which were specially important from export angle. These industries were allowed 5 per cent automatic growth per annum, up to a limit of 25 per cent in a plan period over and above the normal permissible limit for 25 per cent excess production over the authorised capacity. Large houses did not require separate approval under the MRTP Act for such automatic growth.

4. In a major liberalisation of the industrial licensing policy announced on December 24, 1985, the government permitted the unrestricted entry of large industrial houses and companies governed by the Foreign Exchange Regulation Act (FERA) into another 21 high-technology items of manufacture. With this permission, the large industrial houses falling within the purview of the MRTP Act and FERA companies were allowed to freely take up the manufacture of 83 items (previously the number of items was 60).

5. Under the provisions of the Sick Industrial Companies (Special Provisions) Bill 1985, the government removed sick industrial companies from the purview of the MRTP Act for purposes of modernisation, expansion, amalgamation or merger.

6. For promoting, the development of backward areas, the government extended the scheme of delicensing in March 1986 to MRTP/FERA companies in respect of 20 industries in Appendix-I for location in centrally 62 declared backward areas. The scheme was later extended to 49 industries for location in any centrally declared backward area and to 23 non-Appendix-I industries for location in category 'A' backward districts. The conditions permitting MRTP and FERA companies to establish non-Appendix-I industries were also liberalised.

7. The government announced a new scheme on April 7, 1988. Effective from April 1, 1988, as per this scheme, the industrial licences/registrations with technical authorities were to be automatically re-endorsed at the highest level of production actually achieved by the industrial undertaking in any of the financial years between April 1, 1988, and March 31, 1990. This was a major concession as it implied automatic re-endorsement of capacity at the highest level of production achieved during 1988 and 1990.

8.An important relaxation came in 1985 when the government raised the limit of assets for the purpose of MRTP Act from Rs. 20 crore to Rs. 100 crore. After the Government of India decided to liberalise economic policy in 1991, provisions in respect of concentration of economic power were deleted by omitting Part A of Chapter III of MRTP Act with effect from September 27, 1991. After omission of these powers, MRTP Commission became a toothless tiger as it was now required to look after cases relating to unfair trade practices and restrictive trade practices only

## 2.8. The working journalist (Fixation of Rates of Wages Act), 1958

An act to regulate certain services of working journalist and other persons employed in newspaper establishment. The first press commission found the emoluments received by journalist were on the whole unsatisfactory. It recognized the necessity of fixing a minimum wages to be paid to them. The provision applicable to workmen under the Industrial Disputes Act, 1947 shall apply to working journalists. An ordinance entitled the Working Journalist (Fixation of rates of wages) ordinance was promulgated on 14th June 1958. This ordinance was later replaced by an act of the parliament.

The act has been passed to regulate certain conditions of service of the working journalists and other persons employed in the newspaper establishment.

Section 3-

1. Owner of a newspaper can retrench

a) an editor with months’ notice

b) any other journalist with three months’ notice. This is accordance with Sec 25F of the Industrial Disputes Act, 1947.

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 Judgment of the Supreme Court, dated the 19th day of March, 1958, relating to the Wage Board decision, and in the light of all other relevant circumstances, the Central Government shall, by 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.

Section 4

Function of Committees- The Committee shall, by notice published in such 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.

Section 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 isn this Act and the rules, if any, made thereunder, have power to regulate its own procedure.

Section 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.

Section 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.

Section 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.

# Module 3- Films- It included in Freedom of Speech and Expression

## 3.1Censorship of films – Constitutionality

**Censorship**

The term censorship comes from the latin censere meaning to give one’s opinion or to access. In ancient Rome the censors, two Roman magistrates, conducted the census and regulated the manners and morals of the citizens. Censorship’s may be applied to both written and oral communications. Its span encompasses books, magazines, newspaper , radio, TV, movies, dramas, painting, plays, speeches, dance, music, emails, websites etc deemed to be offensive, indecent, obscene and sexually explicit etc.

Films are considered as a great medium of communication with the people. With the development and progress of the society and also with the progress in the field of science and technology the films have undergone a sea change and by adopting all the available technologies have been able to reach the masses and also significantly contributed to the social and cultural development of the country. In this way the films are equated with the Press as Press is also considered as a great medium of communication.

Both the films and the Press enjoy the same status and right so far as constitutional freedom relating to expression of ideas and spreading of ideas and messages are concerned. As is known Article 19(1) (a) of the Constitution guarantees freedom of speech and expression which is extended to the Press also. Therefore, both these mediums are regulated under this provision of the Constitution. Simultaneously as these freedoms are not absolute and subject to constitutional restrictions, both these mediums are also to adhere to this.

As mentioned above, we have the **Cinematograph Act, 1952** to see the films fulfill the norms prescribed by the law. The Act provides for the establishment of a 'Central Board of Film Certification', the regulatory body for films in India to issue the certificate to the makers of the film for public exhibition. As per the provision of the law, the Board after examining the film or having it examined could:  
(a)Sanction the film for unrestricted public exhibition;  
(b) Sanction the film for public exhibition restricted to adults;  
(c) Direct such excisions and modifications in the film before sanctioning the film to any unrestricted public exhibition or for public exhibition restricted to adults; and  
(d) Refuse to sanction the film for public exhibition.

## 3.2The Abbas Case (K.A.Abbas v. Union of India)

In this case, the Supreme Court considered important question relating to pre-censorship of cinematograph films in relation to the fundamental right of freedom of speech and expression conferred by Article 19(1)(a) of the Constitution. The petitioner in this case challenged the decision of the Board of Film Censors in refusing a 'U' certificate for him film "A Tale of Four Cities". While the case was pending in the Supreme Court (apex court), the Central Government to grant the 'U' certificate provided certain cuts were made in the film according to the procedure  
  
As the petitioner's grievance was completely redressed, the petitioner applied for an amendment enabling him to raise the question of pre-censorship in general, in order that persons who invested money in making films may have guidance on this important constitutional question. The amendment sought by the petition was allowed for consideration by the apex court. The following two issues were before the court for the consideration of the matter in hand :  
(a) That pre-censorship itself cannot be tolerated under the freedom of speech and expression;   
(b) even if it were a legitimate restraint on the freedom, it must be exercised on very definite principles which leave no room for the arbitrary action by the parties involved in the subject matter.  
Taking into consideration all these, Hidayatullah, C.J. made it clear that censorship of films including pre-censorship was constitutionally valid in India as it was a reasonable restriction within the ambit of fundamental rights specifically under the Article 19(2) of the Constitution of India.   
It was also observed that pre-censorship was but an aspect of censorship and bore the same relationship in quality to the material as censorship after the motion picture has had a run. However, censorship should not be exercised as to cause unreasonable restrictions on the freedom of expression. Holding the view that "pre-censorship was only an aspect of censorship and censorship of cinematograph film was 'universal',

Hidayatullah, C.J. went on to observe that "it had been almost universally recognized that motion pictures must be treated differently from other forms of art and expression, because a motion picture's instant appeal both to the sight and to hearing, and because a motion picture had become more true to life than even the theatre or any other form of artistic representation. Its effect, particularly on children and immature adolescents was to a larger extent and is different in nature."  
The court upheld the general principles which had been laid down for the guidance of the censors and said that the test of obscenity and principles laid down in Udeshi's case applied mutatis mutandis to an obscene cinematograph film.

Supreme Court upheld the censor of films on the ground that films have to be treated separately from other forms of art and expression because a motion picture is able to stir up emotions more deeply than any other product of art. A film can therefore, be censored on the grounds mentioned in Article 19(2) of the Constitution of India. This was one of the most important finding in the case.  
Further, Honorable Supreme Court held the view that "censorship of films, their classification according to the age groups and their suitability for unrestricted exhibition with or without excisions is regarded as a valid exercise of power in the interest of public morality, decency etc. This is not to be construed as necessarily offending the freedom of speech and expression as mentioned."  
Further Supreme Court held that "Censorship in India (and pre-censorship is not different in quality) has full justification in the field of the exhibition in 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 censorship imposed on the making and exhibition of films is in the interest of society. If the regulations venture into something which goes beyond this legitimate opening the restrictions, they can be questioned on the ground that a legitimate power is being abused. We hold, therefore, that censorship of films including prior restraint is justified.   
  
Constitutionality of censorship was also held in ***S. Rangarajan v. P. JagjivanRam***. The case came to the Supreme Court in an appeal relating to the revocation of `U' certificate to a Tamil film. Reversing the judgment of the Madras High Court, the Supreme Court opined that:  
"Though movie enjoys the guarantee under Article 19(1)(a) but there is one significant difference between the movies and the other modes of communication.

Movie motivates thought and action and assures a high degree of attention and retention. In view of the scientific improvements in photography and production the present movie is a powerful means of communication. It has a unique capacity to disturb and arouse feelings. It has as much potential for evil as it has for good. It has an equal potential to instill or cultivate violent or good behavior.  
With these qualities and since it caters for mass audience who are generally not selective about what they watch, the movie cannot be equated with other modes of communication. It cannot be allowed to function in a free market place just as does the newspapers and magazines. Censorship by prior restraint is, therefore, not only desirable but also necessary."

## 3.3Differences between films and press – why Pre Censorship valid for films but not for the press

This question was dominating the Indian scenario for quite a long period. To find a clear cut answer we have to take in to consideration several other factors and aspects along with some of the important decisions of the Supreme Court which paved the way for the clarity in this aspect.  
The freedom of speech and expression guaranteed under our Constitution most probably draws its inspiration from the First Amendment of the American Constitution. The First Amendment of the American Constitution which deals specifically with freedom of the press. The provision is "Congress shall make no law respecting an established religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the Press; or the right of the people peaceably to assemble and to petition the Government for a redress of the particular grievances."

**The American Supreme Court in Associated Press v. U.S**.

This case referring to the First Amendment which pertains to the freedom of press observed that:  
"It is the purpose of the First Amendment to preserve an uninhibited market place of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market whether it be by the Government itself or a private licensee." There was no discrimination as such.  
If we analyse the American First Amendment it is clear that in the first place it advocates for the freedom of the press, and secondly no restrictions are imposed on the freedom of the press. But on the other hand Article 19 (1) (a) of the Indian Constitution guarantees to all the citizens the right to 'freedom of speech and expression' and this freedom includes the right to express one's own views and opinions at any issue through any medium he likes.

This right also includes the freedom of the press or the freedom of the communication and the right to propagate or publish opinion. But unlike American Constitution, this freedom is not absolute, and is subject to restrictions imposed by Article 19 (2) of the Constitution.  
Despite the restrictions, in our country the citizens and the press in real practice enjoy this freedom to a large extent because in a democratic set up, such freedoms are necessary and quite helpful for the proper functioning of the democratic process. It has been rightly remarked by Supreme Court in Justice Bhagawati in[***Maneka Gandhi v. Union of India***](http://www.legalservicesindia.com/article/717/Maneka-Gandhi.html)in the following words:  
"Democracy is based essentially on free debate and open discussion, for that it is the only corrective of Government action in a democratic set up. If democracy means Government of the people, by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making choice, free and general discussion of public matters is absolutely essential". This helped the issue.  
It is clear now that the freedom of press certainly enjoys importance in our democratic process as it seeks to advance public opinion and matters of public interest by publishing it which enables them to form a responsible judgment. Our Supreme Court through various judgments also upheld the dignity of the press and freedom it enjoys by nullifying the attempts to put a curb on it. Accordingly imposition of pre-censorship on a newspaper as held in ***Brij Bhusan v State of Delhi***, or prohibiting the newspaper from publishing its own views as in Virendra, or imposing a ban on the entry of newspapers and its circulation as in Sakal Papers case, and in **Romesh Thapper case**, or trying to put restrictions in some way or other in Express News paper case and the ***Bennett and Coleman co. v Union of India***, were held by the Supreme Court as encroachment in the freedom of speech and expression and opposed to Article 19 (1) (a) of the Constitution of India.  
In all the above mentioned cases the Supreme Court has maintained that the freedom of the press cannot be taken away and it would not be legitimate to subject the press to the laws which take away or abridge the freedom of speech and expression as mentioned in the Constitution of India.   
So far as censorship of films are considered, censorship is required because of its mass appeal, the way the presentation and above all, the impact it leaves in the minds of the persons both young and adult. Expression of one's own idea, through the medium he likes is permissible under Article 19 (1) (a) of our Constitution. The medium is vast. But using the films as a medium of expression should be treated differently because this medium is not the same as reading a book or reading a newspaper or magazine. So in the larger interest of the community and the country restrictions as envisaged in Article 19(2) can be imposed. The framers of our Constitution deemed it essential to permit such reasonable restriction as they intended to strike a proper balance between the liberty guaranteed and the social interests specified in Article 19 (2).[26]

## 3.4Censorship under the Cinematograph Act

The Cinematograph Act of 1952 has been passed to make provisions for certification of cinematographed films for exhibition by means of Cinematograph. Under this Act, the Board of Film Censor (i.e. Central Board of Film Certification) with advisory panels at regional centres is empowered to examine every film and sanction it whether for unrestricted exhibition or for exhibition restricted to adults.

The Board is also empowered to refuse to sanction a film for public exhibition. The Certification process is in accordance with The Cinematograph Act, 1952, The Cinematograph (certification) Rules, 1983, and the guidelines issued by the Central government u/s 5 (B). At present films are certified under 4 categories – 51 • U - Unrestricted Public Exhibition • UA - Unrestricted Public Exhibition - but with a word of caution that Parental discretion required for children below 12 years • A - Restricted to adults • S - Restricted to any special class of persons.

The Cinematograph Act lays down that a film should not be certified if any part of it is against the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or involves defamation or contempt of court or is likely to incite commission of any offence. Under section 5B(2) the Central Government has issued the following guidelines. A film is judged in its entirety from the point of view of its overall impact and is examined in the light of the period depicted in the film and the contemporary standards of the country and the people to whom the film relates, provided that the film does not deprave the morality of the audience. Guidelines are applied to the titles of the films also.

1. Objectives of Film Certification

i) The medium of film remains responsible and sensitive to the values and standards of society;

ii) artistic expression and creative freedom are not unduly curbed;

iii) certification is responsible to social changes;

iv) the medium of film provides clean and healthy entertainment; and

v) as far as possible, the film is of aesthetic value and cinematically of a good standard.

2. In pursuance of the above objectives, the CBFC shall ensure that

i) anti social activities such as violence are not glorified or justified

ii) the modus operandi of criminals, other visuals or words likely to incite the commission of any offence are not depicted;

iii) scenes - a. showing involvement of children in violence as victims or perpetrators or as forced witnesses to violence, or showing children as being subjected to any form of child abuse. b. showing abuse or ridicule of physically and mentally handicapped persons; and c. showing cruelty to, or abuse of animals, are not presented needlessly

iv) pointless or avoidable scenes of violence, cruelty and horror, scenes of violence primarily intended to provide entertainment and such scenes as may have the effect of de-sensitising or de-humanising people are not shown;

v) scenes which have the effect of justifying or glorifying drinking are not shown;

vi) scenes tending to encourage, justify or glamorise drug addiction are not shown; a. scenes tending to encourage, justify or glamorise consumption of tobacco or smoking are not shown; vii) human sensibilities are not offended by vulgarity, obscenity or depravity;

viii) such dual meaning words as obviously cater to baser instincts are not allowed;

ix) scenes degrading or denigrating women in any manner are not presented;

x) scenes involving sexual violence against women like attempt to rape, rape or any form of molestation or scenes of a similar nature are avoided, and if any such incidence is germane to the theme, they shall be reduced to the minimum and no details are shown

xi) scenes showing sexual perversions shall be avoided and if such matters are germane to the theme they shall be reduced to the minimum and no details are shown 53

xii) visuals or words contemptuous of racial, religious or other groups are not presented

xiii) visuals or words which promote communal, obscurantist, anti-scientific and anti-national attitude are not presented

xiv) the sovereignty and integrity of India is not called in question;

xv) the security of the State is not jeopardized or endangered

xvi) friendly relations with foreign States are not strained;

xvii) public order is not endangered

xviii) visuals or words involving defamation of an individual or a body of individuals, or contempt of court are not presented

EXPLANATION: Scenes that tend to create scorn, disgrace or disregard of rules or undermine the dignity of court will come under the term ''Contempt of Court'' : and

xix) national symbols and emblems are not shown except in accordance with the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950 (12 of 1950)

3. The Board of Film Certification shall also ensure that the film

i) Is judged in its entirety from the point of view of its overall impact; and

ii) Is examined in the light of the period depicted in the films and the contemporary standards of the country and the people to which the film relates provided that the film does not deprave the morality of the audience.

4. Films that meet the above – mentioned criteria but are considered unsuitable for exhibition to non-adults shall be certified for exhibition to adult audiences only.

5. i) While certifying films for unrestricted public exhibition, the Board shall ensure that the film is suitable for family viewing, that is to say, the film 54 shall be such that all the members of the family including children can view it together.

ii) If the Board, having regard to the nature, content and theme of the film is of the opinion that it is necessary to caution the parents / guardian to consider as to whether any child below the age of twelve years maybe allowed to see such a film, the film shall be certified for unrestricted public exhibition with an endorsement to that effect.

iii) If the Board having regard to the nature, content and theme of the film, is of the opinion that the exhibition of the film should be restricted to members of any profession or any class of persons, the film shall be certified for public exhibition restricted to the specialized audiences to be specified by the Board in this behalf.

1. The Board shall scrutinize the titles of the films carefully and ensure that they are not provocative, vulgar, offensive or violative of any of the abovementioned guidelines. The Central Board of Film Certification is responsible for certifying films. The enforcement of compliance to the provisions of the Cinematograph Act, 1952 is entrusted to the State Governments /Union Territory Administrations, since exhibition of films is a State subject.

The following are the major violations that agitate the minds of the public:

• exhibition of an ''''A'''' certified film to a non-adult;

• exhibition of an ''''S'''' certified film to persons other than those for whom it is meant;

• exhibition of a film in a form other than the one in which it was certified. Such violations are known as interpolations.

# Module 4- Radio and Television Government Policy

## 4.1Press Council Act 1978

The Press Council Act, 1978 was enacted to establish a Press council for the purpose of preserving the freedom of the Press and for maintaining the standards of newspaper and news agencies in India. The Act established the Press Council of India which is a body corporate having perpetual succession, with effect from 1st March 1979. The Press Council of India is empowered to make observations in respect of conduct of any authority including Government, if considered necessary for performance of its functions under the Act.

The Council can warn, admonish or censure the newspaper, the news agency, the editor or the journalist or disapprove the conduct of the editor or the journalist if it finds that a newspaper or a news agency has not complied with the standards of journalistic ethics or public taste or that an editor or a working journalist has committed any professional misconduct.

A complaint against the Press- It is open to any person to lodge a complaint with the Press Council against a newspaper for a breach of the recognized ethical canons of journalistic propriety and taste. The complainant need not necessarily be the person aggrieved or directly involved. The alleged breach may be in the publication or non-publication of a newsitem or statement, or other material, like cartoons, pictures, photographs, strips or advertisement which are published in a newspaper.

Cases can also be initiated by any member of the public against any professional misconduct by an editor, working journalist, staff of a newspaper or engaged in freelance work. There can also be a complaint against any matter transmitted by a news agency by any means whatsoever. By virtue of the Press Council (Procedure for Inquiry) Regulations, 1979, complaint shall be lodged with the Council within the following periods:

* + 1. Dailies, News agencies and Weeklies - within 2 months 34
    2. (ii) In all other cases - within 4 months Provided that a relevant publication of an earlier date may be referred to in the complaint Write to the editor first It is a requirement of the Inquiry Regulations that the complainant should initially write to the editor of the newspaper drawing his attention to what the complainant considers being a breach of journalistic ethics or an offence against public taste.

Such prior reference to the editor affords him an opportunity to deal with the matter in the first instance and thus allows the respondent to take such remedial action as he might consider appropriate before the complaint is lodged with the Council. This rule is necessary because it acquaints the editor with the identity of his accuser and the details of the complaint. It is conceivable that in some instance the complainant has been wrongly informed or has misinterpreted the facts. In others, it may be a case of inadvertent error which the editor is only too ready to admit and correct.

If the would- be complainant is satisfied, that would be the end of the matter. Where, after reference to the newspaper, the person desires to proceed with the complaint, he should enclose with his complaint copies of correspondence with the editor, if no reply has been received from the editor, the fact should be mentioned in the complaint. The complainant has, in his complaint, to give the name and address of the newspaper, editor or journalist against whom the complaint is directed. A clipping of the matter or news-items complained of, in original or self-attested copy (English translation, if the news item(s) is in vernacular) should accompany the complaint.

The complainant has to state in what manner the passage or news-items or the material complained of is objectionable. He should also supply other relevant particulars, if any. In case of a complaint against non-publication of material the complainant will, of course, say how that constitutes a breach of journalistic ethics.

The Council cannot deal with any matter which is sub-judice in the court of law. The complainant has to declare that “to the best of his knowledge and belief he has placed all the relevant facts before the Council and that no proceedings are pending in any court of law in respect of any matter alleged in the complaint.”

A declaration that “ he shall notify the Council forthwith if during the pendency of the inquiry before the Council any matter alleged in the complaint becomes the subject matter of any proceedings in a court of law" is also necessary. Complaints regarding oppression to Press freedom A newspaper, a journalist or any institution or individual can complain against Central or State Government or any organization or person for interference with free functioning of the press or encroachment on the freedom of the press.

Such complaints should contain full particulars of the alleged infringement whereupon the Council shall follow the procedure of inquiry set out herein above so far as may be. The opinion expressed by the Council serves two useful purposes, namely (i) that any abuse of press freedom does not pass without anybody noticing it or raising a finger of protest, and (ii) that the press should not in its own interest indulge in scurrilous or other objectionable writings-writings such as have been considered below the level of recognized standards of journalistic ethics by a fair minded jury like the Council constituted of the press itself, for it would lead to the very loss of the much prized freedom of the press.

Address of the respondent It is a requirement of the Inquiry Regulations that the complainant should draw the attention of the respondent(s)/authorities towards the grievances, state how the action/inaction of the respondent authorities amounts to curtailment of the freedom of the press, mention the possible reason for the action/inaction of the respondent(s)/authorities duly supported by documentary evidence and furnish a copy of the letter written to the respondent(s)/authorities.

In case the action of the respondent(s)/authorities is a reprisal measure for writings in the newspaper, critical of the respondent(s), the cuttings of such reports be furnished in original or as self attested copies (English translation, if the news item(s) is in vernacular. Furnish a copy of the reply, if any received from the respondent(s)/authorities, provided that the Chairman may waive this requirement in his discretion.

By virtue of the Press Council(Procedure for Inquiry) Regulations, 1979, limitation of time is four months from the date of cause of action, provided that the Chairman may condone the delay if he is satisfied that there exist sufficient reasons for such condonation. The Council cannot deal with any matter which is sub-judice in the court of law.

The complainant has to declare that “to the best of his knowledge and belief he has placed all the relevant facts before the Council and that no proceedings are pending in any court of law in respect of any matter alleged in the complaint.” A declaration that “ he shall notify the Council forthwith if during the pendency of the inquiry before the Council any matter alleged in the complaint becomes the subject matter of any proceedings in a court of law" is also necessary.

## 4.2 Regulatory Code of Conduct

Authorities Regulating the Media

Industry

* 1. Ministry of Information and Broadcasting - Government Of India http://www.mib.nic.in/default.aspx

The Ministry of Information & Broadcasting, through the mass communication media consisting of radio, television, films, the press, publications, advertising and traditional mode of dance and drama plays a significant part in helping the people to have access to free flow of information. It also caters to the dissemination of knowledge and entertainment to all sections of society, striking a careful balance between public interest and commercial needs, in its delivery of services.

Ministry of Information & Broadcasting is the apex body for formulation and administration of the rules and regulations and laws relating to information, broadcasting, the press and films. This Ministry is responsible for international co-operation in the field of mass media, films and broadcasting and interacts with its foreign counterparts on behalf of Government of India. The mandate of the Ministry of Information & Broadcasting is:

• News Services through All India Radio (AIR) and Doordarshan (DD) for the people

• Development of broadcasting and television.

• Import and export of films.

• Development and promotion of film industry.

• Organisation of film festivals and cultural exchanges for the purpose.

• Advertisement and visual publicity on behalf of the Government of India.

• Handling of press relations to present the policies of Government of India and to get feed-back on the Govt. policies.

• Administration of the Press and Registration of Books Act, 1867 in respect of newspapers.

• Dissemination of information about India within and outside the country through publications on matters of national importance.

• Research, Reference and Training to assist the media units of the Ministry to meet their responsibilities.

• Use of interpersonal communication and traditional folk art forms for information/ publicity campaigns on public interest issues.

• International co-operation in the field of information & mass media. The following comes under the purview of the Ministry of Information and Broadcasting –

1) Broadcasting policy and administration

2) Cable television policy

3) Radio

4) Doordarshan

5) Films

6) Advertising and visual publicity

7) Press

8) Publications

9) Research and reference

10)Various subordinate, autonomous organisations, public sector undertakings

ii) Press Information Bureau

The Press Information Bureau (PIB) is the nodal agency of the Government to disseminate information to the print and electronic media on government policies, programmes, initiatives and achievements. It functions as an interface between the Government and the media and also provides feedback to the Government on people's reaction as reflected in the media. PIB has its Headquarters in New Delhi.

It is headed by the Principal Director General (Media & Communication) who is assisted by a Director General and eight Additional Director Generals. Besides, the Bureau has Officers in the ranks of Director, Joint Director, Dy. Director, Assistant Director and Media & Communication Officer who are attached with different Ministries in order of their rank and Ministry's size, importance and sensitivity. PIB has a dedicated unit for the publicity and media support to the Prime Minister's Office (PMO).

The unit functions on 24X7 basis and compiles media reports on all days including holidays for PMO and Cabinet Secretariat.

iii) Directorate of Advertising & Visual Publicity

The Directorate of Advertising and Visual Publicity (DAVP), established in 1955, is the nodal multi-media advertising agency of the Government of India. Over the past 56 years, it has been catering to the communication needs of almost all central Ministries/Departments, autonomous bodies and PSUs by providing them single window which makes it cost-effective service.

It informs and educates the people, both rural and urban, about the government's policies and programmes and motivates them to participate in developmental activities, through its various vehicles of communication, viz, Print media advertising, Audio Visual advertising, printed publicity, exhibitions, outdoor publicity and mass mailing. The DAVP is headed by Director General who is assisted by 2 Additional Director Generals and other officials. At it’s headquarter it consists of a Campaign Wing. Advertising Wing, Printed Publicity Wing, Exhibition Wing, Electronic Data Processing Center, Mass Mailing Unit, Audio-Visual Cell, a Design Studio and Administration and Accounts Wings.

iv) Registrar of Newspapers for India The Office of the Registrar of Newspapers for India, more popularly known as RNI came into being on 1st July, 1956, on the recommendation of the First Press Commission in 1953 and by amending the Press and Registration of Books Act 1867. The Press and Registration of Books Act contain the duties and functions of the RNI. On account of some more responsibilities entrusted upon RNI during all these years, the office is performing both statutory as well as some non-statutory functions. Some of the functions are –

• Compilation and maintenance of a Register of Newspapers containing particulars about all the newspapers published.

• Issue of Certificate of Registration to the newspapers published under valid declaration;

• Scrutiny and analysis of annual statements sent by the publishers of newspapers every year under Section 19-D of the Press and Registration of Books Act containing information on circulation, ownership etc;

• Informing the District Magistrates about availability of titles, to intending publishers for filing declaration;

• Ensuring that newspapers are published in accordance with the provisions of the Press and Registration of Books Act 1867 and the Rules made there under.

• Verification under Section 19-F of the PRB Act, of circulation claims furnished by the publishers in their Annual Statements; and

• Preparation and submission to the Government on or before 31st December each year, a report containing all available information and statistics about the press in India with particular reference to the emerging trends in circulation and in the direction of common ownership units etc.

• Formulation of Newsprint Allocation Policy - Guidelines and issue of Eligibility Certificate to the newspapers to enable them to import newsprint and to procure indigenous newsprint.

• Assessing and certifying the essential need and requirement of newspaper establishments to import printing and composing machinery and allied materials.

v) Directorate of Field Publicity Directorate of Field Publicity with its headquarters in New Delhi is the largest rural oriented interpersonal communication medium in the country. It operates as a two-way channel for dissemination of information among masses and gathering feed back for the Government. It acts as a bridge between the people and the Government. Established in 1953 as ‘Five Year Plan Publicity Organization’ with the sole objective of publicity of Five Year Plans, the Directorate assumed its present format and role in 1959 with its publicity scope widened and made all inclusive. Over the years, its areas of operation as also its aims and objectives have been diversified. Briefly they are:-

(a) to inform, educate, motivate and involve the people, especially at the grass root level, in the process of development so that the vision of the framers of the Constitution as outlined in its preamble is realized.

(b) to generate public opinion for the implementation of developmental programmes and mobilize popular participation in the process of nation building.

(c) to keep the public, especially the weaker, the marginalized and the remotely placed people informed about the policies and the programme of the Government and generate awareness on several national and social issues of relevance.

(d) to keep the Government informed of the people’s reactions to its programmes and policies and their implementation at the field level thereby facilitating corrective measures as and when required.

vi) Press Council of India Press Council is a statutory quasi-judicial authority mandated by the Parliament to preserve the freedom of the press and maintain and improve the standards of newspapers and the news agencies in India. It is an autonomous body with equal quasi judicial authority over the authorities and the press persons. The Council discharges its functions primarily through adjudications on complaint cases received by it, either against the Press for violation of journalistic ethics or by the Press for interference with its freedom.

Where the Council is satisfied, after inquiry, that a newspaper or a news agency has offended against the standards of journalistic ethics or public taste or that an editor or working journalist has committed any professional misconduct, the Council may warn, admonish or censure them or disapprove of their conduct. The Council is also empowered to make such observations as it may think in respect of the conduct of any authority, including Government, for interfering with the freedom of the press.

The decisions of the Council are final and cannot be questioned in any court of law. The Press Council of India has been entrusted by the Parliament with the additional responsibility of functioning as an Appellate Authority under Section 8 (c) under the PRB Act 1867 and the Appellate Board comprising of the Chairman of the Council and another member meet regularly to hear the Appeals before it.

vii)Film Certification Appellate Tribunal The Film Certification Appellate Tribunal (FCAT) is a statutory body, constituted vide Section 5D of the Cinematograph Act, 1952 under the Ministry of Information and Broadcasting, Government of India. The Tribunal hears the appeals filed under Section 5C of the Act under which any applicant for a Certificate in respect of a film who is aggrieved by an order of the Central Board of Film Certification (CBFC), can 79 file an Appeal before the Tribunal. The Tribunal has its headquarters in New Delhi. The Tribunal has a Secretary to look after its day to day affairs.

viii) Central Board of Film certification Central Board of Film certification (CBFC) with its headquarters at Mumbai is responsible for certifying the films produced in India as well as outside the country suitable for public exhibition. The Board gives four categories of certificates "U" for unrestricted public exhibition, "A" for public exhibition restricted to adults only, "UA" for unrestricted public exhibition with parental guidance for children below the age of 12 and "S" for exhibition to restricted audience such as doctors etc.

These certificates are issued through the Regional Offices of the Board located at Bangalore, Calcutta, Chennai, Cuttack, Guwahati, Hyderabad, Mumbai, New Delhi and Thiruvananthapuram. Appeal against the decision of the Board lies with the Film Certification Appellate Tribunal. The enforcement of the penal provisions of the Cinematograph Act, 1952 is with the State Governments/Union Territory Administrations, since exhibition of films is a State subject.

ix) The Advertising Standards Council of India

The Advertising Standards Council of India (ASCI) is a self regulatory voluntary organization of the advertising industry. It was set up in October 1985. The ASCI and its Consumer Complaints Council deals 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.

The representatives of Indian Society of Advertisers, the Advertising Agencies Association of India and the Indian Newspapers Society have set up the Council to self-regulate the content of advertisements. The Code of the Council for Self-Regulation in Advertising specifies that all advertising should be truthful, honest, decent, legal and safe for consumers particularly minors, and fair to the competition.

x) Copyright Board

The Copyright Board, a quasi-judicial body, was constituted in September 1958. The jurisdiction of the Copyright Board extends to the whole of India. The Board is entrusted with the task of adjudication of disputes pertaining to copyright registration, assignment of copyright, grant of Licenses in respect of works withheld from public, unpublished Indian works, production and publication of translations and works for certain specified purposes. It also hears cases in other miscellaneous matters instituted before it under the Copyright Act, 1957. The meetings of the Board are held in five different zones of the country.

This facilitates administration of justice to authors, creators and owners of intellectual property including IP attorney’s near their place of location or occupation.

xi) Telecom Regulatory Authority of India The entry of private service providers brought with it the inevitable need for independent regulation. The Telecom Regulatory Authority of India (TRAI) was, thus, established with effect from 20th February 1997 by an Act of Parliament, called the Telecom Regulatory Authority of India Act, 1997, to regulate telecom services, including fixation/revision of tariffs for telecom services which were earlier vested in the Central Government. TRAI's mission is to create and nurture conditions for growth of telecommunications in the country in a manner and at a pace which will enable India to play a leading role in emerging global information society. One of the main objectives of TRAI is to provide a fair and transparent policy environment which promotes a level playing field and facilitates fair competition.

## 4.3 Report of the Chanda committee

There is an oft-repeated charge that the government, For reasons best known to itself, is not interested in framing a communication policy. Though policies have been announced in other sectors like agriculture, industry, education, health and even tourism, the same has not been done in the case of the mass media. This position can be summarised in what Mrs. Indira Gandhi said on returning to power in 1980, "it was necessary to keep control over AIR and TV, to correct the imbalance created by the 'free press'.

During Mrs. Indira Gandhi's tenure as the Union Minister for Information and Broadcasting, the A.K. Chanda Committee was appointed in 1964 which submitted its report in 1966, which was tabled in Parliament only in 1970. It recommended the liberation of Radio and from rigid government control by converting them into separate corporations. It took another six years to separate 'Doordarshan' from 'Akashwani' to create Akashwani and Doordarshan in 1976. though both function under the same administrative and financial procedures with controlled engineering and programmer staff cadres.

The Chanda Committee recommended freeing of the broadcast media from government control and the separation of Doordarshan from AIR The Verghese Committee suggested the setting up of Akash Bharati. an autonomous corporation, to oversee the functioning of both AIR and Doordarshan. The Working Group on Software for Doordarshan recommended reorganizing the Ministry of Information and Broadcasting after the pattern of the Ministry of Railways.

## 4.4Government Policy

## [Regulation of media in India - A brief overview](https://www.prsindia.org/theprsblog/regulation-media-india-brief-overview)

Media in India is mostly self-regulated.  The existing bodies for regulation of media such as the Press Council of India which is a statutory body and the News Broadcasting Standards Authority, a self-regulatory organization, issue standards which are more in the nature of guidelines.  Recently, the Chairman of the Press Council of India, former Justice of the Supreme Court, Mr. M. Katju, has [argued](http://ibnlive.in.com/news/media-deliberately-dividing-people-pci-chief/197593-3.html)that television and radio need to be brought within the scope of the Press Council of India or a similar regulatory body.  We discuss the present model of regulation of different forms of media. This note was first published at [Rediff](http://www.rediff.com/news/slide-show/slide-show-1-faq-how-media-in-india-is-regulated/20111110.htm).

**1. What is the Press Council of India (PCI)?** The PCI was established under the PCI Act of 1978 for the purpose of preserving the freedom of the press and of maintaining and improving the standards of newspapers and news agencies in India.

**2. What is the composition of the PCI and who appoints the members?** The PCI consists of a chairman and 28 other members.  The Chairman is selected by the Speaker of the Lok Sabha, the Chairman of the Rajya Sabha and a member elected by the PCI. The members consist of members of the three Lok Sabha members, two members of the Rajya Sabha , six editors of newspapers, seven working journalists other than editors of newspapers,  six persons in the business of managing newspapers, one person who is engaged in the business of managing news agencies, and three persons with special knowledge of public life.

**3. What are its functions?** The functions of the PCI include among others (i) helping newspapers maintain their independence; (ii) build a code of conduct for journalists and news agencies; (iii) help maintain “high standards of public taste” and foster responsibility among citizens; and (iv) review developments likely to restrict flow of news.

**4. What are its powers?** The PCI has the power to receive complaints of violation of the journalistic ethics, or professional misconduct by an editor or journalist.  The PCI is responsible for enquiring in to complaints received.  It may summon witnesses and take evidence under oath, demand copies of public records to be submitted, even issue warnings and admonish the newspaper, news agency, editor or journalist.  It can even require any newspaper to publish details of the inquiry.  Decisions of the PCI are final and cannot be appealed before a court of law.

**5. What are the limitations on the powers of the PCI?** The powers of the PCI are restricted in two ways. (1) The PCI has limited powers of enforcing the guidelines issued.  It cannot penalize newspapers, news agencies, editors and journalists for violation of the guidelines.  (2) The PCI only overviews the functioning of press media.  That is, it can enforce standards upon newspapers, journals, magazines and other forms of print media.  It does not have the power to review the functioning of the electronic media like radio, television and internet media.

**6. Are there other bodies that review television or radio?** For screening films including short films, documentaries, television shows and advertisements in theaters or broadcasting via television the Central Board of Film Certification (CBFC) sanction is required.  The role of the CBFC is limited to controlling content of movies and television shows, etc.  Unlike the PCI, it does not have the power to issue guidelines in relation to standards of news and journalistic conduct. Program and Advertisement Codes for regulating content broadcast on the television, are issued under the [Cable Television Networks (Regulation) Act, 1995](http://www.google.co.in/url?sa=t&rct=j&q=cable%20television%20networks%20(regulation)%20act1995&source=web&cd=1&ved=0CB4QFjAA&url=http%3A%2F%2Ftdsat.nic.in%2Fbooks%2FTHE%2520CABLE%2520TELEVISION%2520NETWORKS%2520(Regulation)%2520Act.doc&ei=40e6TrTFB4HSrQeD).

The District magistrate can seize the equipment of the cable operator in case he broadcasts programs that violate these Codes. Certain standards have been prescribed for content accessible over the internet under the IT Rules 2011.  However, a regulatory body such as the PCI or the CBFC does not exist. Complaints are addressed to the internet service provider or the host. Radio Channels have to follow the same Programme and Advertisement Code as followed by All India Radio.  Private television and radio channels have to conform to conditions which are part of license agreements.  These include standards for broadcast of content.  Non-compliance may lead to suspension or revocation of license.

**7. Is there a process of self regulation by television channels?**

Today news channels are governed by mechanisms of self-regulation.  One such mechanism has been created by the News Broadcasters Association.  The NBA has devised a [Code of Ethics](http://www.nbanewdelhi.com/pdf/final/NBA_code-of-ethics_english.pdf) to regulate television content.  The News Broadcasting Standards Authority (NBSA), of the NBA, is empowered to warn, admonish, censure, express disapproval and fine the broadcaster a sum upto Rs. 1 lakh for violation of the Code.  Another such organization is the Broadcast Editors’ Association. The Advertising Standards Council of India has also drawn up guidelines on content of advertisements. These groups govern through agreements and do not have any statutory powers.

**8. Is the government proposing to create a regulatory agency for television broadcasters?**

In 2006 the government had prepared a [Draft Broadcasting Services Regulation Bill, 2006](https://www.prsindia.org/uploads/media/vikas_doc/docs/1241499767~~A_DRAFT_OF_THE_PROPOSED_BROADCASTING_SERVICES_REGULATION_BILL2006.pdf).  The Bill made it mandatory to seek license for broadcasting any television or radio channel or program.  It also provides standards for regulation of content.  It is the duty of the body to ensure compliance with guidelines issued under the Bill.

Other Acts which help in the governance of Media are-

1. The Press and Registration of Books Act, 1867

2. Registration of Newspapers (Central) Rules, 1956

3. The Press and Registration Appellate Board (Practice and Procedure) Order, 1961

4. The Press Council Act, 1978

5. The Press Council Rules, 1979

6. The Press Council (Procedure for Nomination of Members) Rules, 1978

7. The Press Council (Procedure for Inquiry) (Amendment) Regulations, 2006

8. The Press Council (Procedure for Conduct of Meetings and Business) Regulations, 1979

9. The Press Council of India (Grant of Certified Copies) Regulations, 1999

10.The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955

11.The Working Journalists (Conditions of Service) and Miscellaneous Provisions Rules, 1957 12.The Working Journalists and other Newspaper Employees Tribunal Rules, 1979

13.The Working Journalists (Fixation of Rates of Wages) Act, 1958

14.The Newspaper (Prices and Pages) Act, 1956

15.The Delivery of Books and Newspapers (Public Libraries) Act, 1954

16.The Right to Information Act, 2005

17.The Right to Information (Regulation of Fee and Cost) Rules, 2005

18.The Central Information Commission (Appeal Procedure) Rules, 2005

19.The Central Information Commission (Management) Regulations, 2007

20.The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954

21.The Drugs and Magic Remedies (Objectionable Advertisements) Rules, 1955

22.The Emblems and Names (Prevention of Improper Use) Act, 1950

23.The Emblems and Names (Prevention of Improper Use) Rules, 1982

24.State Emblem of India (Prohibition of Improper Use) Act, 2005

25.State Emblem of India (Regulation of Use) Rules, 2007

26.The Parliamentary Proceedings (Protection of Publication) Act, 1977

27.The Young Persons (Harmful Publications) Act, 1956

28.The Punjab Special Powers (Press) Act, 1956 (Relevant Provisions)

29.Copyright Act, 1957

30.The Dramatic Performances Act, 1876 (Relevant Provisions)

31.The Cinematograph Act, 1952

32.The Cinematograph (Certification) Rules, 1983

33.The Cine-workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981 34.The Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Rules, 1984 35.The Cine-Workers Welfare Cess Act, 1981

36.The Cine-workers Welfare Cess Rules, 1984

37.The Cine-Workers Welfare Fund Act, 1981

38.The Cine-Workers Welfare Fund Rules, 1984

39.The Prasar Bharati (Broadcasting Corporation of India ) Act, 1990

40.The Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007

41.The Sports Broadcast Signals (Mandatory Sharing with Prasar Bharati) Rules, 2007

42.The Cable Television Networks (Regulation) Act, 1995

43.The Cable Television Networks Rules, 1994

44.The Radio, Television and Video Cassette Recorder Sets (Exemption from Licensing Requirements) Rules, 1997

45.The Standards of Quality of Service (Broadcasting and Cable services) (Cable Television – CAS Areas) Regulation, 2006

46.The Indian Telegraph Act, 1885 (Relevant Provisions)

47.The Telecom Regulatory Authority of India Act, 1997

48.The Telecom Regulatory Authority of India (Miscellaneous) Rules, 1999

49.The Telecom Regulatory Authority of India (Period for Filing of Application to Authority) Rules, 1999

50.The Telecommunication Interconnection (Port Charges) Regulation, 2001

51.The TRAI (Levy of Fees and Other Charges for Tariff Plans) Regulations, 2002

52.The Telecom Disputes Settlement and Appellate Tribunal (Form, Verification and the Fee for Filing an Appeal) Rules, 2003

53.The Telecommunication Interconnection (Charges and Revenue Sharing) Regulation, 2001 54.The Telecommunication Interconnection Usage Charges Regulation, 2003

55.The Telecom Regulatory Authority of India (Salaries, Allowances and Other Conditions of Service of Chairperson and Whole-time Members) Rules, 2000

56.The Telecom Regulatory Authority of India (Procedure for Conducting Inquiry Against a Member) Rules, 1999

57.The Telecom Regulatory Authority of India (Annual Report and Returns) Rules, 1999

58.The Telecom Regulatory Authority of India (Form of Annual Statement of Accounts and Records) Rules, 1999

59.The Telecommunication (Broadcasting and Cable Services) Interconnection Regulations, 2004

60.The Telecom Regulatory Authority of India (Access to Information) Regulations, 2005 19 61.The Common Charter of Telecom Services, 2005

62.The Regulation on Quality of Service of Basic and Cellular Mobile Telephone Services, 2005 63.Quality of Service (Code of Practice for Metering and Billing Accuracy) Regulation, 2006 64.The Standards of Quality of Service (Broadcasting and Cable Services) (Cable Television – CAS Areas) Regulation, 2006

65.The Quality of Service of Broadband Service Regulations, 2006

66.The Telecom Consumers Protection and Redressal of Grievances Regulations, 2007

67.The Telecom Unsolicited Commercial Communications Regulations, 2007

68.The International Telecommunication Access to Essential Facilities at Cable Landing Stations Regulations, 2007

69.The Telecommunication Consumers Education and Protection Fund Regulations, 2007 70.The Direct to Home Broadcasting Services (Standards of Quality of Service and Redressal of Grievances) Regulations, 2007

71.Domestic Leased Circuits Regulations, 2007

72.The Register of Interconnect Agreements Regulations, 1999

73.The Indian Post Office Act, 1898 (Relevant Provisions)

74.The Information Technology Act, 2000 (Relevant Provisions)

75.The Information Technology (Certifying Authorities) Rules, 2000

## 4.5Commercial Advertisement

Dealt in previous modules

## 4.6Internal Security of Serials

The content on television is regulated in multiple ways which range from statutory regulation to self-regulation. However, in India, there are on an average two new channels launched every month and a new show is launched every third day. Also, there are about 800 channels in India across more than 20 languages. A single monolithic regulatory mechanism is impossible to supervise and regulate the content of this magnitude. Hence, the content is classified to facilitate better regulation.

* Non News and Current affairs (Entertainment)
* News and Current affairs
* Advertisements
* Films on Television
* Non News and Current affairs (Entertainment)

Non News and Current affairs (Entertainment)

The content or “programs” on these channels are regulated by the Cable Television Networks (Regulation) Act, 1995 which consists of a program code and the advertising code which all content transmitted or retransmitted on television must adhere to. The Program and the advertising codes are collectively called “codes” and are mentioned in the Cable Television Networks (Rules), 1994.

The Program code largely regulates the content that should be shown on TV which includes content that may violate various statutes. For example, the program code prohibits airing any content that may not be suitable for public viewing which may be otherwise prohibited under the Cinematograph Act, 1952.

This code also prevents the airing of content that may be in contravention of prevalent the public policy such as obscenity, communal disharmony etc.   
  
The Advertising code, on the other hand, regulates the content that can be advertised and prohibits advertising of those content that is in violation of public morality and decency and any other content that can create social disharmony etc.  
  
The above codes are enforced by the following bodies-**The Inter-Ministerial Committee(IMC)**

This is a committee constituted by the Ministry of Information & Broadcasting (MIB) and looks into violations of any of the above codes and reports it to the MIB accordingly for various actions. A case in point was about NDTV India which was taken off-air by the MIB for a day due to violations of code that was not followed while reporting the terrorist encounter in Kashmir.

**Electronic Media Monitoring Centre(EMMC)**This is another body established by the MIB to monitor the content of various TV channels for any violations of the above codes or statutes such as the Cable Act etc. The EMMC after finding any violations reports it to the Inter-ministerial committee for further action.

**State-level and District-Level Monitoring Committees**

There are monitoring centres established at the district and the state levels. The District level monitoring committees are authorized to decide on any local content violating the code. In case of National level content violations, the district level committees may forward the complaints to the IMC through the state level committees.  
  
All of the above-mentioned bodies are bodies of the state that have been constituted under certain statutory provisions. However, to ensure the independence of the media, a self-regulating provision has also been acknowledged by the state. To that end, an Indian Broadcasting Foundation (IBF) has been formed to form guidelines for regulating all content on TV across all forms of transmission viz cable, terrestrial, DTH, IPTV etc.

The IBF has adopted Self-Regulation Guidelines and Content Code and Certification Rules, 2011, which are applicable to all non-news broadcast programs on TV. The IBF has also established a Broadcast Content Complaints Council (BCCC), which receives complaints on any particular content broadcast on television. The complaint has to be filed with the BCCC within 14 days of the first broadcast. Apart from this, the BCCC can also initiate suo-moto proceedings against any particular content broadcast on television.

**Self-Regulatory Bodies for Regulation of Programmes - Indian Broadcasting Foundation**

Indian Broadcasting Foundation ("IBF") adopted the Self-Regulation Guidelines for General Entertainment and Non-News and Current Affairs TV channels ("Self-Regulation Guidelines") and the Content Code and Certification Rules 2011 ("Content Code") for the broadcasting sector. The guidelines are applicable to all non-news broadcast programmes on TV, regardless of the media of transmission, which could be cable, terrestrial, satellite, Direct to Home (DTH), Internet Protocol Television (IPTV), Mobile or Headend in the Sky (HITS) operators. The guidelines, however do not cover films or any other production, which requires a certificate under the Cinematograph Act, 1952.

The Self-Regulation Guidelines and Content Code set out principles, guidelines and ethical practices to guide the service providers to conform to the Programme Code. The Self-Regulation Guidelines provide that care and sensitivity should be observed to avoid offending the audience and reasonable steps are to protect minors.

The Self-Regulation Guidelines provide for setting up a 'Standards and Practices Department' at the individual TV channel level to deal with the complaints received for content aired on its channels. Further, the Broadcasting Content Complaints Council ("BCCC") has been established at the industry level. A complaint may be filed against any programme broadcast on any TV channel within 14 days from the first broadcast. The BCCC may also initiate *suo moto* proceedings against any programme broadcast on a non-news and current affairs TV channel. **News and Current Affairs TV channels**

These are the most sensitive regulatory topics on TV. Unlike the Press Club of India, which is a statutory body for regulating newsprint content, there is no statutory regulatory body to regulate content for the News channels in India. This has been a point of much debate as the news broadcasters invoke the freedom of fair and free media in a democracy is essential whereas the people on the other side advocate for some form of regulation as no institution is above law. For the moment, there is no statutory regulatory mechanism and the News and the Current Affairs TV channels in India are regulated by a self-regulatory body known as the News Broadcasters Association (NBA) which has formulated a standards code known as the NBA Code.

The NBA has also laid down news broadcasting standards regulation as an industry standard and also constituted under it News Broadcasting Standards Authority (NBSA) for disputes adjudication and to enforce the NBA code.

**Advertisements**

With increasing TV viewership by the day, the Advertisement(Ad) revenue has become a very lucrative option for all the channels. However, the content of these advertisements has to be monitored. There is no statutory provision or body to regulate the ad content in India. Hence, a self-governing body called the Advertising standards council of India (ASCI) has been formed to regulate the ad content in India. The Asci has prescribed an ASCI code to which all the Ad content in India has to adhere to.

**Films on Television**

The Cinematograph Act,1952 provides for the establishment of a central Board for Film Certification (CBFC) which has to certify films for public exhibition. Exhibition of any film without the certificate of the CBFC is illegal. Based on the content of the films, the CBFC awards a certificate to the films which range from unrestricted public viewing(“U”) to restricted to adult viewing (“A”).  Hence, any film, song or promo of a film can be aired on TV only after it has been certified by the CBFC for unrestricted public viewing. Any content awarded an “A” certificate cannot be aired on TV.

**State Broadcasting Network- Doordarshan**

After the advent of the cable TV and the deluge of the private channels and broadcasters, there is still a state broadcaster known as the Broadcasting Corporation of India popularly known as the Prashar Bharathi established under the Prashar Bharthi (PB) Act, 1990. The primary aim of the Prashar Bharthi is to conduct public broadcasting services to inform, educate and entertain the public and to ensure a balanced development of broadcasting on TV.   The PB Act also provides for the establishment of a Broadcasting Council to receive any complaints with respect to content aired on these channels.

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# Module 5- Constitutional Restrictions

## 5.1Radio and Television subject to law of defamation and obscenity

**DOORDARSHAN**

**Prasar Bharati (Broadcasting Corporation of India) Act, 1990**

The Prasar Bharati, a Government of India undertaking has been established under the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 ("**PB Act**"). The Prasar Bharati operates a number of channels under the umbrella of 'Doordarshan'. The PB Act prescribes that it shall be the primary duty of Prasar Bharati to conduct public broadcasting services to inform, educate and entertain the public and to ensure a balanced development of broadcasting on TV.

**Broadcasting Council**

The PB Act also provides for establishment of Broadcasting Council, to receive and adjudicate complaints regarding a programme for contravention of any of the objectives for which the Prasar Bharati has been established. The Broadcasting Council is also to advise the Prasar Bharati in the discharge of its functions. However, the Broadcasting Council has not been constituted till date.

**Code of Conduct**

Doordarshan has its own code of conduct relating to broadcasting, social objectives and advertisements for production, transmission and telecast of programmes on Doordarshan.

The All India Radio and Doordarshan Broadcasting Code is applicable on the programmes transmitted on Doordarshan and prohibits criticism of friendly countries; attack on religions or communities; obscenity; defamation; incitement to violence; anything against maintenance of law and order; anything amounting to contempt of court; and anything affecting the integrity of the nation etc.

Further, general rules for commercial advertising on Doordarshan have been set-forth in its own code of conduct for advertising, which provides that no advertisement shall be accepted in case it violates the All India Radio and Doordarshan Broadcasting Code.

Rest of the aspects are dealt in previous modules.

## 5.2Power of legislate- Article 246 read with the seventh schedule

246. Subject matter of laws made by Parliament and by the Legislatures of States

1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the Union List)

2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the Concurrent List)

4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included (in a State) notwithstanding that such matter is a matter enumerated in the State List

Union list contains 97 items and comprises of the subjects which are of national importance and admit of uniform laws for the whole of the country. And the legislative powers to legislate these matters are solely vested in the union parliament. The integral subjects which falls within the ambit of Union List are: Defense, Foreign Affairs, Currency and Coinage, War and Peace, Atomic Energy, National Resources, Railways, Post and Telegraph, Citizenship, Navigation and Shipping, Foreign Trade, Inter-State Trade and Commerce, Banking, Insurance, National Highways, Census, Election, Institutions of higher education and others.

As far as media laws are concerned some specific provisions are Entry 31 of the list is about Posts and Telegraph, Telephones, Wireless, Broadcasting and other like form of communication and Entry 55 discuss about the Taxes on advertisement other than advertisements published in the newspaper and advertisements broadcast and radio and television.

## 5.4Power of impose tax – licensing and license fee

The landscape of the media and entertainment sector has undergone a sea change in the last one decade, and the mounting changes have drawn the attention of policymakers and tax regulators.

IPR The IPR issues relating to content for all media segments are very vast and cover a wide range from the rights of content creators to the issue of difficulty of licensing of content. The main Intellectual Property Rights legislation related to media sector is the Copyright Act of 1957 and Copyright Rules, 1958 and the International Copyright Order, 1999. Copyright is the set of exclusive rights granted to the author or creator of an original work, including the right to copy, distribute and adapt the work.

Copyright ensures certain minimum safeguards of the rights of authors over their creations, thereby protecting and rewarding creativity. What is Copyright? According to Section 14 of the Act, “copyright” means “the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:-

(a) in the case of a literary, dramatic or musical work, not being a computer programme, -

(i) to reproduce the work in any material form including the storing of it in any medium by electronic means;

(ii) to issue copies of the work to the public not being copies already in circulation;

(iii) to perform the work in public, or communicate it to the public;

(iv) to make any cinematograph film or sound recording in respect of the work;

(v) to make any translation 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 sub-clauses (i) to (vi);

(b) in the case of a computer programme,-

(i) to do any of the acts specified in clause (a); (ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme: Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.

(c) in the case of an artistic work,- (i) to reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work; (ii) to communicate the work to the public; (iii) to issue copies of the work to the public not being copies already in circulation; (iv) to include the work in any cinematograph film; (v) to make any adaptation of the work; (vi) to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);

(d) In the case of cinematograph film, - (i) to make a copy of the film, including a photograph of any image forming part thereof; (ii) to sell or give on hire, or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions; (iii) to communicate the film to the public;

(e) In the case of sound recording, - (i) to make any other sound recording embodying it; (ii) to sell or give on hire, or offer for sale or hire, any copy of the sound recording regardless of whether such copy has been sold or given on hire on earlier occasions; (iii) to communicate the sound recording to the public.

Explanation : For the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.” Classes of works for which copyright protection is available Indian Copyright Act affords separate and exclusive copyright protection to the following

7 clauses of work:

1. Original Literary Work

2. Original Dramatic Work

3. Original Musical Work

4. Original Artistic Work

5. Cinematograph Films

6. Sound recording

7. Computer Programme

Copyright will not subsist in any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work or in any sound recording made in respect of a literary, dramatic or musical work, if in making the sound recording, copyright in such work has been infringed. Ownership of Copyright The author of the work will be the first owner of the copyright in the following instances:

i. 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 will, in the absence of any agreement to the contrary, be the first 67 owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author will be the first owner of the copyright in the work.

ii. In the 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 will, in the absence of any agreement to the contrary, be the first owner of the copyright therein. iii. In the case of a work made in the course of the author’s employment under a contract of service or apprenticeship, the employer will, in the absence of any agreement to the contrary, be the first owner of the copyright therein.

iv. In the case of any address or speech delivered in public, the person who has delivered such address or speech or if such person has delivered such address or speech on behalf of any other person, such other person will be the first owner of the copyright therein notwithstanding that the person who delivers such address or speech, or, as the case may be, the person on whose behalf such address or speech is delivered, is employed by any other person who arranges such address or speech or on whose behalf or premises such address or speech is delivered.

v. In the case of a government work, government in the absence of any agreement to the contrary, will be the first owner of the copyright therein.

vi. In the case of a work made or first published by or under the direction or control of any public undertaking, such public undertaking in the absence of any agreement to the contrary, will be the first owner of the copyright therein.

vii. In case of any work which is made or first published by or under the directions or control of any international organisation, such international organisation will be the first owner of the copyright therein.

68 Term of copyright Copyright generally lasts for a period of sixty years. ü In the case of literary, dramatic, musical or artistic works, the sixty year period is counted from the year following the death of the author.

In the case of cinematograph films, sound recordings, photographs, posthumous publications, anonymous and pseudonymous publications, works of government and public undertakings and works of international organisations, the 60-year period is counted from the date of publication. ü In case of Broadcast reproduction right - 25 years from the beginning of the calendar year next following the year in which the broadcast is made. ü

In case of Performers right - 25 years from the beginning of the calendar year next following the year in which the performance is made. Rights of Broadcasting Organisation and of Performers Every broadcasting organisation will have a special right to be known as 'broadcast reproduction right' in respect of its broadcasts. The broadcast reproduction right will subsist until twenty-five years from the beginning of the calendar year next following the year in which the broadcast in made.

This would prevent any person other than the broadcasting organisation from: i) Re-broadcasting what has already been broadcasted ii) Causing the broadcast to be seen or heard by the public on payment of charges iii) Making any sound/visual recording of the broadcast iv) Making any reproduction of such sound recording ro visual recording where such initial recording was done without licence or, where it was licensed, for any purpose not envisaged by such licence v) Selling or hiring or offering to sell or hire sound/visual recordings. 69 Where any performer appears or engages in any performance, he will have a special right known as the 'performer's right' in relation to such performance.

The performer's right will subsist until fifty years from the beginning of the calendar year next following the year in which the performance is made. These rights are: i) No person may make a sound/visual recording of the performer’s performances ii) Reproduce a sound/visual recording iii) Broadcast the performance iv) Communicate to the public otherwise than by broadcast No broadcast reproduction right or performer's right will be deemed to be infringed by:-

• The making of any sound recording or visual recording for the private use of the person making such recording, or solely for purposes of bona fide teaching or research; or

• The use, consistent with fair dealing, of excerpts of a performance or of a broadcast in the reporting of current events or for bona fide review, teaching or research; or

• Such other acts, with any necessary adaptations and modifications, which do not constitute infringement of copyright under the Act. Copyright Societies Collective administration of copyright by societies is a concept where management and protection of copyright in works are undertook by a society of owners of such works.

Obviously no owner of copyright in any work can keep track of all the uses others make of his work. When he becomes a member of a national copyright society, 70 that society, because of its organisational facilities and strength, is able to keep a better vigil over the uses made of that work throughout the country and collect due royalties from the users of those works. Because of the country’s membership in international conventions, the copyright societies are able to have reciprocal agreements with similar societies in other countries for collecting royalties for the uses of Indian works in those countries.

From this it can automatically be inferred that it will be in the interests of copyright owners to join a collective administration organisation to ensure better protection to the copyright in their works and for reaping optimum economic benefits from their creations. Users of different types of works also find it easy to obtain licences for legal exploitation of the works in question, though the collective administrative society. A copyright society is a registered collective administration society under Section 33 of the Copyright Act, 1957.

Such a society is formed by copyright owners. The minimum membership required for registration of a society is seven. Ordinarily, only one society is registered to do business in respect of the same class of work. A copyright society can issue or grant licences in respect of any work in which copyright subsists or in respect of any other right given by the Copyright Act. The following are the registered copyright societies in India:

* + 1. For cinematograph and television films : Society for Copyright Regulation of Indian Producers for Film and Television (SCRIPT) 135 Continental Building, Dr. A.B. Road, Worli, Mumbai 400 018;
    2. For musical works: The Indian Performing Right Society Limited (IPRS), 208, Golden Chambers, 2nd Floor, New Andheri Link Road, Andheri (W), Mumbai- 400 058 (Website: <http://www.iprs.org/>);
    3. For sound recording: Phonographic Performance Limited (PPL) Flame Proof Equipment Building, B.39, Off New Link Road, Andheri (West), Mumbai 400 053 (Website: http://www.pplindia.org/);
    4. For reprographic (photo copying) works: Indian Reprographic Rights Organization (IRRO), 18/1-C, Institutional Area, Near JNU Campus, New Delhi – 110067, (Website: http://www.irro.in/) 71 8.4. Telegraph Act & Wireless Telegraphy Act Broadcasting in India is governed by the Indian Telegraph Act, 1885 and by the Indian Wireless Telegraphy Act, 1933. The Indian Telegraph Act, 1885 gives the Government of India (GOI) exclusive rights for the establishment and working of telegraphy using electro-magnetic waves.

Governance of broadcasting has its basis in the powers bestowed on the GOI by this Act. According to the Act, "telegraph" means any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, visual or other electro-magnetic emissions, Radio waves or Hertzian waves, galvanic, electric or magnetic means. "Radio waves" or "Hertzian waves" means electro-magnetic waves of frequencies lower than 3,000 giga-cycles per second propagated in space without artificial guide.

Judicial decisions have also held that the term ‘telegraph’ includes the term telephone, television, radio, wireless, mobile and video equipment. Section 4(1) of the Telegraph Act states that the Central Government has the exclusive privilege of establishing, maintaining, and working telegraphs within India. Section 5(1) of the Telegraph Act authorizes the Central Government to take temporary possession of a telegraph in cases involving public emergencies or public safety. Section 5 (2) enables the government to lawfully intercept telegraph messages on certain grounds. These include India’s sovereignty and integrity, state security, friendly relations with foreign states, public order, and preventing the commission of an offence. Section 8 of the Telegraph Act empowers the government to revoke a telegraph license for breach of any terms and conditions or for a default in making license-fee payments.

Broadcasting means “the dissemination of any form of communication like signs, signals, writing, pictures, images, and sounds of all kinds, by transmission of electromagnetic 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 expressions shall be construed accordingly. To offer most forms of broadcasting, a broadcaster must have two licenses:

1) a general license from the MIB to offer telegraph services (under the Telegraph Act), and

2) a wireless operating license from the Wireless Planning and Communication (WPC) Wing of the Department of Telecom, (under the Wireless Telegraphy Act). Most radio and television services are also regulated by the Indian Wireless Telegraphy Act (No 17 of 1933), as they constitute ‘wireless communications’. Section 2(2) and Section 3 regulate wireless communication by requiring users of various types of wireless equipment to obtain wireless licenses for possessing and using the equipment.

These licenses are granted by the WPC (Wireless Planning & Coordination Authority) Wing of the Department of Telecommunications (DoT). Therefore, to offer most kinds of broadcasting services, a broadcasting company must obtain two types of licenses:

• A Grant of Permission (GOPA) to offer broadcast services issued by the Ministry of Information and Broadcasting under the Telegraph Act, 1885.

• A wireless operating license from the WPC (Wireless Planning & Coordination Authority) Wing of the Ministry of Communication and Information Technology under the Wireless Telegraphy Act, 1933.

## 5.5Contempt of court

Laws with respect to contempt of court that affects media law are

Article 19 of the Indian constitution lays down - "All citizens shall have the right to freedom of speech and expression, to assemble peaceably, and without arms, to form associations or unions, to move freely throughout the territory of India, to reside in any part of the territory of India, to acquire hold and dispose of property and to practice any profession or to carry on any occupation, trade or business.

However the right to freedom of speech and expression shall not affect the operation of any existing law or prevent the state from making any law insofar as such law imposes reasonable restrictions on the exercise of that right in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public decency or morality or In relation to contempt of court, defamation or incitement to offence”.

The Cable Television Networks Rules, 1994 were enacted under the Cable Television Networks (Regulation) Ordinance, 1994. The programme code under Rule 6 lays down restrictions on the content of both programmes and advertisements that can be shown on cable TV. No programme can be shown that:

* Offends against good taste or decency
* Contains criticism of friendly countries
* Contains attack on religions or communities or visuals or words contemptuous of religious groups or which promote communal attitudes
* Contains anything obscene, defamatory, deliberate, false and suggestive innuendos and half truths

Is likely to encourage or incite violence or contains anything against maintenance of law and order or which promote-anti-national attitudes

Contains anything amounting to contempt of court

The Cinematograph Act of 1952 has been passed to make provisions for certification of cinematographed films for exhibition by means of Cinematograph. Under this Act, the Board of Film Censor (i.e. Central Board of Film Certification) with advisory panels at regional centres is empowered to examine every film and sanction it whether for unrestricted exhibition or for exhibition restricted to adults. The Board is also empowered to refuse to sanction a film for public exhibition.

The Cinematograph Act lays down that a film should not be certified if any part of it is against the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or involves defamation or contempt of court or is likely to incite commission of any offence.

Under section 5B(2) the Central Government has issued the following guidelines.

A film is judged in its entirety from the point of view of its overall impact and is examined in the light of the period depicted in the film and the contemporary standards of the country and the people to whom the film relates, provided that the film does not deprave the morality of the audience. Guidelines are applied to the titles of the films also.

CBFC shall ensure that xviii) visuals or words involving defamation of an individual or a body of individuals, or contempt of court are not presented

Explanation- Scenes that tend to create scorn, disgrace or disregard of rules or undermine the dignity of court will come under the term ''Contempt of Court'': and xix) national symbols and emblems are not shown except in accordance with the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950 (12 of 1950)