

**GAUHATI UNIVERSITY**  
**Centre for Distance and Online Education (GUCDOE)**

**M.A. Second Semester**  
**(Under CBCS)**

**MASS COMMUNICATION**

**Paper: MMC 2045**  
**Media Laws and Ethics**



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## Unit: 1

### Unit Structure:

#### 1.1 Objectives

#### 1.2 Introduction

#### 1.3 History of Press Laws in India during British Rule

#### 1.4 History of Press Laws in India after Independence

#### 1.5 Summary

#### 1.6 Glossary

#### 1.7 References and Suggested Reading

#### 1.8 Answers to check Your Progress

#### 1.9 Self Assessment Questions

### 1.1 Objectives

The objective of this unit is to introduce media students to the history of press laws in India. It is necessary to trace this journey which began not long after newspapers began to be published in India as the East India Company from Britain imposed its colonial rule. The efforts to muzzle the press in the name of regulating its operations gained momentum as India came to be ruled directly under the British Crown from 1858. Even after India became independent, and despite the indispensability of a free press in the country's democratic polity, press laws are still marked by government efforts to keep some sort of oversight powers.

### 1.2 Introduction

It is a revelation how officialdom, whether representing a colonising power or working to take a free country forward, can be relentlessly pitted against the press through a succession of tough laws. Invariably, these laws are marked by overweening powers the government of the day arrogates to itself in the name of regulating the press and thereby preserving public order and social harmony. The powers to forcibly enter press premises, seize copies of publications and equipment, impose compulsory security monies and rules for their forfeiture, hold publishers and editors responsible for the smallest transgressions, enforce tough penalties for 'objectionable' writings, bind the press through licensing requirements, etc. are some of the characteristics of these press laws.

### 1.3 History of Press Laws in India during British Rule

The history of press laws in India begins barely two decades after the publication of 'Bengal Gazette' in 1780, the first Indian newspaper brought out from Calcutta by James Augustus Hickey. This newspaper lasted only two years before it was confiscated; Hickey was put behind bars for slander against Governor General Warren Hastings and his wife. According to William Hunter, Editor of the 'Imperial Gazetteer', the tone of the papers set by Calcutta journalism was 'scurrilous and servile'. Before long, criticism of the East India Company's administration and its officials drew official reprisals in the form of restrictive press laws.

The first attempt to control the press was made through the **Regulations** issued by the Governor General in 1799. The Regulations required newspapers to print the name of the

printer, publisher proprietor and editor, and to submit all materials for pre-censorship by the Secretary to the Government of India.

After pre-censorship was abolished in 1818, an ordinance was issued in 1823 introducing '**licensing**' of the press, under which all matters printed in a press, except commercial matters, required a licence from the Governor General. Similar regulations were made in Bombay in 1825 and 1827.

In 1835, the **Metcalf's Act** was introduced and made applicable to the entire territory under the East India Company. It required the printer and publisher of every newspaper to declare the location of the premises of its publication, failing which a penalty of Rs 5000 and imprisonment of 2 years could be imposed.

Licensing of the press was re-introduced by **Lord Canning's Act** of 1857. It was criticised as the 'Gagging Act' for it made licensing compulsory for all kinds of publication including books in all languages.

In 1860, the **Indian Penal Code (IPC)** was passed which listed offences like defamation and obscenity that writers, editors or publishers had to avoid. Later amendments introduced more offences into the IPC, viz. sedition in 1870, promotion of enmity between classes in 1898, and outraging religious feelings in 1927.

The **Press and Registration of Books Act of 1867** was a regulatory law which targeted the press by arming the government with wide powers to regulate the printing presses and newspapers by the system of registration, and to preserve copies of books and other matters printed in India.

The **Vernacular Press Act, 1878** was specifically designed to muzzle the newspapers published in Indian languages. In the name of punishing and suppressing seditious writings, this law gave the government powers, for the first time, to issue search warrants and enter the premises of any press even without orders from any court. It was repealed in 1881.

In 1898, the Indian Penal Code (IPC) was amended and the **Criminal Procedure Code (CrPC)** was enacted, which introduced more provisions related to offences concerning the press, like sedition (Section 124-A of IPC) and promoting enmity between classes (Section 153-A of IPC).

The **Newspaper (Incitement to Offences) Act of 1908** empowered a Magistrate to seize a press if he was convinced that a newspaper printed therein published matter which contained incitement to murder or any other act of violence or an offence under the Explosive Substances Act. This law was replaced by the more comprehensive **Indian Press Act, 1910** directed against offences involving violence and sedition, which empowered the government to require deposit of security money by the keeper of the press in question.

The **Official Secrets Act, 1923** was passed with the objective of maintaining the security of the State against leakage of secret information through espionage and wrongful communication. This draconian Act had a huge impact on the press, and most remarkably, it has remained in the law book of independent India even after more than a century has passed since its enactment by the British colonists.

The **Indian Press (Emergency) Powers Act, 1931** began as an ordinance promulgated to control the press in the backdrop of Mahatma Gandhi's Civil Disobedience Movement. It was made a permanent law in 1935, arming provincial governments with the power to make it obligatory for a printing press to deposit a security — which would be forfeited if it published any matter found 'objectionable' by the authorities.

#### **1.4 History of Press Laws in India after Independence**

At the time of India's independence, the overall state of its press was largely unknown. Since no study had been undertaken, there was no database as to how many newspapers and periodicals were being published, their ownership pattern, the number of journalists and other staff employed as well as their remuneration and service conditions, circulation patterns, advertisement revenues, newsprint supply and availability of machinery, professional standards and several other aspects.

Above all, the Constitution in 1950 granted the fundamental right to freedom of speech and expression [Article 19(1)(a)], under which freedom of the press was to be read; however, 'reasonable restrictions' had also been added to keep this freedom in check. How this would impact the press in India needed to be studied.

The **Press (Objectionable Matter) Act of 1951** was inherited from the British administration. It punished the 'printing and publication of incitement to crime and other objectionable matters'. It provided for a judicial enquiry by Sessions Judge before security could be demanded from a printing press or forfeited to the government; the person against whom complaint had been made could demand the matter to be determined with the aid of a Jury, and had right of appeal from the order of the Sessions Judge to the High Court. After the First Press Commission recommended setting up of a Press Council as a watchdog body, this law was allowed to lapse in 1956.

The **First Press Commission**, constituted in 1952 under the chairmanship of Justice BG Rajadhyaksha, was given the mandate to study how to bring order to the press industry, and to determine its present and future lines of development. Its terms of references included examining the ownership and control of newspapers, presses, news agencies and feature syndicates; working of monopolies and their effect on news presentation; newsprint and machinery supplies; methods of recruitment, training, pay scales and retirement benefits of workers; working of press advisory committees and organisations of editors and journalists; freedom of the press and identifying the laws violating this freedom (so that such laws could be repealed later on).

In its report submitted in 1954, the First Press Commission made several recommendations, including — constituting a Press Council as watchdog body, appointing a Press Registrar for the country, setting up an Advertising Council, ending restrictive practices and objectionable advertisements, placing government advertisements with respect to circulation and fixing their tariffs, no State control of news agencies, no restriction on foreign news, the need to increase the number of newspapers, mandating separate account for each newspaper, fixing price-page schedules, encouraging independence of editorial policy, implementing the Working Journalists Act, working for Indianisation of the press, diffusion of press ownership etc.

On the recommendation of the First Press Commission, the **Office of the Registrar of Newspapers for India (RNI)** was set up in 1956. It performs statutory functions as specified

in the amended Press and Registration of Books Act, 1867. These statutory functions include — compiling and maintaining a register of newspapers; issuing such newspapers a certificate of registration; scrutiny and analysis of their annual statements; ensuring that newspapers are published according to Press and Registration of Books Act, 1867; preparing and submitting to the Government annual report containing information and statistics about the Press in India, with particular reference to emerging circulation trends, ownership etc. Along with this, the RNI also carries out non-statutory functions, viz. helping to formulate newsprint allocation policy; and assessing and certifying the requirement for importing printing machinery and allied materials.

The *Newspaper (Price and Page) Act of 1956* was enacted ‘to prevent unfair competition among newspapers through price cutting’. Under this law, the Central Government issued the Daily Newspaper (Price and Page) Order, 1960, through which the number of pages published by a newspaper was made to depend upon the price charged to the readers, so that a newspaper could not increase the volume of its publication without raising its price. The Supreme Court in the case *Sakal Papers vs Union of India, 1962*, struck down this Act to be against the freedom of the press.

During the Chinese aggression in 1962, national Emergency was proclaimed, and the *Defence of India Act, 1962* empowered the Central Government to prohibit publications or communications prejudicial to the civil defence or military operations in India; prevent prejudicial press reports; prohibit the printing or publishing of any prejudicial matter in any newspaper, demand security from any press used to publish such matter and forfeiture of security, and close down any press continuing to print such matter even after forfeiture of security.

The *Press Council Act, 1965* was enacted by Parliament to establish the Press Council of India (PCI) as per the recommendation of the First Press Commission, with the twin objective of preserving freedom of the press, and of maintaining and improving the standards of press in India. However, this Act was repealed during the Emergency in 1976, and the Press Council was abolished. After the Emergency was lifted, a fresh legislation, the *Press Council Act, 1978*, was passed to re-establish the Press Council. The PCI retained its statutory, quasi-judicial and autonomous character with the same two-fold objective of preserving the freedom of the press, and maintaining and improving the standards of press in India.

The *Civil Defence Act, 1968* was passed to safeguard life and property from attack during any external aggression not amounting to actual combat, or internal disturbance. It authorised the Central Government to make orders prohibiting the printing and publication of any newspaper containing matters prejudicial to civil defence in India.

After the proclamation of national Emergency in 1971 due to war with Pakistan, the *Defence of India Act, 1971* was passed with stringent provisions against prejudicial press reports. This Act was amended in 1975 to cover Emergency provisions to meet ‘internal disturbances’, an outcome of which was the promulgation of the *Central Censorship order, 1975*.

The *Second Press Commission* was constituted in May 1977 under Justice PK Goswami, with the Janata Party government setting the broad objective of re-examining the place, status and functioning of the press in a democratic set-up. Its terms of reference was to go into the issues of safeguarding freedom of the press from pressure by the government, political parties, proprietors, advertisers, trade unions and other quarters; studying the ownership patterns and financial structures so as to ensure editorial independence; strengthening of the

economy of the press industry; promoting development of regional press; making the press play a responsible role in the development process; and suggesting measures to raise the standards of journalism.

However, Justice PK Goswami and his colleagues resigned when the Congress returned to power at the Centre in 1980. Justice KK Mathew was appointed the new chairman of Second Press Commission. Its recommendations included — the role of the press in a developing country should be '*neither that of an adversary nor an ally of the government*'; newspapers should refrain from sensational reporting of communal disturbances; the Press Council should continue, and it should be given powers to deny accreditation; 'respect for privacy' should be included in the Press Council Act of 1978; the Editor should take responsibility of all matter published in his newspaper, including advertisements; and a Newspaper Development Corporation (NDC) should be established to promote development of the press.

The ***PrasarBharati Act, 1990*** was enacted to provide for the establishment of an autonomous public broadcaster — the Broadcasting Corporation of India or PrasarBharati — to inform, educate and entertain the public, and to ensure balanced development of broadcasting on radio and television.

The ***Cable Television Networks (Regulation) Act of 1995*** was passed by Parliament to regulate private cable TV networks through mandatory registration, as well as regulation of the content they can broadcast. This Act was supported by the ***Cable Television Networks Rules*** passed earlier in 1994.

The ***Information Technology Act, 2000*** was enacted as the primary law in India which provides legal basis to electronic commerce and transactions, enables electronic governance, and deals with cyber crime. It covers civil wrongs, including unauthorised access and causing of damage and disruption to computers, computer systems and networks; and negligence and failure of a corporate entity in protecting sensitive personal data or information in a computer resource it owns, controls or operates. The criminal offences covered include — tampering with computer source documents; securing access into protected computer systems (*hacking*); sending offensive messages through a computer resource or communication device; indulging in identity theft by dishonestly using the electronic signature, password etc. of another person; violating the privacy of a person by capturing, transmitting and publishing images of his/her private body parts; publishing or transmitting in electronic form any material which is obscene or depicts a sexually explicit act or shows children in such acts; breach of confidentiality and privacy; cyber terrorism by unauthorised denial of access to a computer resource or penetrating a computer resource or introducing a computer virus etc.

The ***Right to Information Act, 2005*** provides all citizens the right to seek information from any public or government authority, or inspect any works, documents and records of such authority. No such information can be denied to the people, which cannot be denied to Parliament or State Legislature. The aim of this law is to foster transparency and thereby ensure good governance. Using this law, RTI activists and journalists have brought major scams to light.

The ***Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules*** were introduced in 2021 by the Union Government under the Information Technology Act, 2000. All intermediaries must remove or restrict access to prohibited information within 36 hours. A mechanism has been set up to address the complaints of users of social media and OTT (over-the-top) platforms, as well as a Code of Ethics and 3-tier regulatory

mechanism against digital media publishers of news and current affairs content as well as curated non-news content. The regulatory mechanism consists of self-regulation, self-regulation by publisher associations, and oversight by the Union Government through an inter-Ministerial committee. For news and current affairs publishers, the norms of journalistic conduct formulated by the Press Council of India and the programme code under the Cable Television Networks Regulation Act, 1995, both will apply.

The ***Press and Registration of Periodicals Act, 2023*** was enacted by Parliament to replace the colonial era ***Press and Registration of Books Act, 1867***, which stands repealed. The new law for the registration of newspapers and periodicals in India came into force on March 1, 2024. It defines a periodical as ‘any publication including a newspaper which is published and printed at regular intervals containing public news or comments on public news, but does not include a book or a journal of scientific, technical, and academic nature’. The registering authority, which was earlier the Registrar of Newspapers for India (RNI), has been renamed as the Press Registrar General of India (PRGI). Under the new law, registration of newspapers and periodicals will be facilitated through a paperless, online system, and the process can be completed within 60 days.

#### **4.5 Check Your Progress**

- Q. What was the first attempt to control the Press in India?
- Q. Why was Lord Canning’s Act of 1857 called the ‘Gagging Act’?
- Q. The Vernacular Press Act, 1878 was directed against which section of the Indian press?
- Q. Which body recommended the setting up of a Press Council in India and why?

#### **4.6 Summary**

A study of press laws enforced by the British colonial rulers to muzzle the press, particularly the language press with its nationalistic voices, is instructive in understanding the challenge intrepid journalists and editors faced in doing their duty to readers in particular and the people in general. In independent India, the rationale for a free press in the country’s democratic polity, is implicit in the Constitutionally guaranteed right to free speech and expression. While this right is limited by a set of reasonable restrictions, keeping an eye on the country’s diversity and sensitive points, it is still a truism that the press has to carry more than its share of burden. The ubiquity of the Internet and rise of digital media is posing a new set of challenges in keeping the press free, so it is necessary for media students to analyse how media has been made to work under stringent laws and rules.

#### **4.7 References and Suggested Reading**

Basu, D.D. (2010). *Law of the Press*. LexisNexis  
Kishore, D., Singh, G.S. (2010). *Media Law: Its Ethics and Ethos*. Har-Anand Publications

#### **4.8 Answers to check Your Progress**

Q. What was the first attempt to control the Press in india?

**Ans:** The first attempt to control the press was made through the Regulations issued by the Governor General in 1799. The Regulations required newspapers to print the name of the





## **Unit-2**

### **Contempt of Courts Act, 1971; Civil and Criminal Law of Defamation — Libel, Slander and Malign**

#### **Unit Structure:**

##### **2.1 Objectives**

##### **2.2 Introduction to Contempt Law**

##### **2.3 Contempt of Courts Act, 1971**

##### **2.4 Introduction to Defamation Law**

##### **2.5 Civil and Criminal Law of Defamation — Libel, Slander and Malign**

##### **2.6 Summing Up**

##### **2.7 Glossary**

##### **2.8 References and Suggested Reading**

##### **2.9 Answers to check Your Progress**

##### **2.10 Self Assessment Questions**

#### **2.1 Objectives**

In this unit, media students will be introduced to the laws on contempt of court and defamation, both of which are marked by reasonable restrictions on the fundamental right to free speech. If the court is to dispense justice without fear or favour, then its independence and authority must be protected by all means. Ensuring compliance with court orders is but one part of such effort. The court must also be protected from attempts by sections of the media to put it under pressure, whipping up public opinion through sensational reporting. By pre-judging cases being heard in court, the media seriously jeopardises the fairness of the trial process and thereby interferes in the administration of justice. This is why budding media professionals should be well acquainted with contempt law, so as to avoid any friction between the courts and the press, both of which are vital for the health of a democracy. Another law media students need to study thoroughly is the one on defamation, because reputations can be damaged through careless or malicious reporting. Defamation cases constitute a large part of legal action against the media. As the courts consider the right to a good reputation to be a major component of the right to life, the importance of this law needs hardly be stressed. However, the media must also report fearlessly against influential wrongdoers and public officials who have a penchant of hiding behind defamation law. It is a law that can cast a chilling effect on free speech, which again requires the court to maintain a careful balance.

#### **2.2 Introduction to Contempt Law**

Delivering justice was once a sacred duty of the king or sovereign. When the sovereign delegated this authority to judges, defying the judge was to defy the sovereign, and therefore severely punishable. With the rise of democracies, the Judiciary may have lost its royal authority of old, but has gained new status by keeping in check the Executive from misusing its powers, and the Legislature from making laws that violate constitutional provisions and safeguards.

However, in terms of power, the Judiciary is the weakest of the three arms of Government, having no control over the public purse or security forces. Unless courts are seen by the people as having full authority, it will be impossible to ensure voluntary compliance with court orders or verdicts. Rule of law will then become impossible. In countries like the UK, US, India and other Commonwealth members having the **common law system**, laws are made from cases decided by judges and statutes enacted by legislatures. Contempt of court is taken very seriously in the common law system.

Broadly, 4 kinds of misconduct are considered contempt of court, viz. —

- Misconduct with the judge in the courtroom, thereby making it impossible for the judge to carry out his duty (*contempt in the face of the court*)
- Publication of allegations against the judge or the court, which undermine people's faith in the Judiciary and thereby interferes in the administration of justice (*scandalising the court*)
- Reporting or publication in the media which can prejudice the trial process (ongoing or pending), thereby violating the right of the accused to a fair trial (*sub-judice rule & trial by media indulging in pre-judgment*)
- Willful non-compliance or disobedience of court order, or breach of undertaking given to the court (*civil contempt*)

When contempt of court is committed, if the court decides to take cognizance, it would try the case summarily by summoning the accused. The judge would explain the nature of the offence, the accused would be given time to seek legal counsel and prepare a defence, and while the judge's version of events will form the evidence, it can also be corroborated with eyewitness accounts. The accused may be let off with a warning/reprimand, or punished by fine or simple imprisonment.

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### 2.2.1 Stop to Consider

Under the Indian Constitution, the Supreme Court through *Article 129* and High Courts through *Article 215*, are given powers as Courts of Record to punish contempt.

While freedom of speech and expression is guaranteed as a Fundamental Right under *Article 19(1)(a)*, there are grounds to curtail this right as specified under *Article 19(2)* — which includes contempt of court.

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### 2.3 Contempt of Courts Act, 1971

In India, the **Contempt of Court Act, 1971**, begins by defining what is meant by this offence, which can be civil or criminal.

**Civil contempt** means willful disobedience of any court judgement/order/decree/direction/writ, or willful breach of an undertaking given to a court. It is normally punishable with a fine.

**Criminal contempt** is defined as the publication, whether by words (written or spoken) or signs or visible representation, which:

- scandalises (or tends to scandalise) — or — lowers the authority (or tends to lower the authority) of any court
- prejudices (or tends to prejudice) — or — interferes with (or tends to interfere with) the due course of a judicial proceeding
- interferes with (or tends to interfere with) — or — obstructs (or tends to obstruct) the administration of justice

[**NOTE:** ‘Scandalised’ means disgraced or reputation harmed. In the legal sense, this word has a wide interpretation. The journalist must therefore be careful whether his report will scandalise the judge or will be pardoned as fair comment.]

Primarily, a judge is scandalised if highly insulting and indecent abuse is heaped upon him, if he is called corrupt or lacking in integrity, or if it is imputed that he is biased or swayed by influence or buckles under pressure to give a wrong judgement and thereby do injustice. If this is allowed to go unpunished, the judges risk losing their authority and image, which in turn means lowering of confidence of the people in the courts and justice delivery mechanism.

**Punishment:** Criminal contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

**Discharge:** If the accused tenders an apology which satisfies the court, he can be discharged. However, the apology must be sincere, it must be tendered timely, and it must not seek to justify the offence.

**Exceptions (which can be used by the accused as defence):**

A publication is deemed *not* contempt if —

- it is coverage of proceedings in chamber or in camera (unless coverage is prohibited by court)
- it is fair & accurate report of judicial proceedings
- it is fair criticism of a judicial act
- it is innocent publication or distribution — the accused had no reason to believe that the matter he published was pending in court, or the publication he distributed contained any such matter.
- the report is true & therefore justified (however, **truth as defence** will be allowed by the court only if it is satisfied that it is in *public interest* and the intention of the accused is *bonafide*)

[**NOTE:** ‘*Truth as defence*’ was introduced by amendment of the Contempt of Court Act in 2006.]

**Trial by media** will be construed as contempt of court if the judges are convinced the reporting will prejudice the trial — and therefore interfere with or obstruct judicial proceedings or delivery of justice.

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### 2.3.1 Stop to Consider

Do contempt provisions pose a threat to free speech, and cast a chilling effect on the media? The courts must balance between the necessity of a free media on one hand, and a fair trial on the other.

- **US courts ask:** Is there a clear and present danger that the offending report will have such an effect?
  - **UK courts ask:** Is there a substantial risk of serious prejudice being caused by such a report?
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**Pending proceedings:** As per Section 3 of Contempt of Court Act, 1971, a civil proceeding is pending after a plaint is filed, while a criminal proceeding is pending after chargesheet is filed, or the court issues a warrant or summons against the accused, or takes cognizance of the matter.

A civil or criminal proceeding remains pending until it is heard and finally decided (which also includes hearing of appeal/revision), or when the limitation period has expired.

**Landmark cases:** Refer to contempt of court cases related to the BMW hit & run incident, Delhi *Mid-Day*, *Wah India*, activist and writer Arundhati Roy, advocates Kapil Sibal and Prashant Bhushan; and in Assam, the cases involving Prafulla Kumar Mahanta, Sanjib Sabhapandit and Frank Moraes of *The Times of India*.

**REFERENCE:** Refer to Press Council guidelines on Contempt of Court and Trial by Media.

### 2.3.2 Check Your Progress

Q1(a). How is civil contempt of court different from criminal contempt?

Q1(b). Is 'Truth' a defence against contempt action?

Q1(c) Why is 'trial by media' construed as contempt of court?

### 2.4 Introduction to Defamation Law

Defamation is an injury to a person's reputation:

- which is to his discredit
- which exposes him to hatred, contempt or ridicule
- which lowers him in the estimation of all right-thinking persons and make them avoid or shun his company
- which thereby affects him adversely in his office, business or calling

If a person is defamed in front of a third party by spoken words or gestures, it is **slander**; in this case, the offender is said to **malign** the person whose reputation has been damaged. If this is done in written form, it is **libel**.

The essence of defamation is **publication**, i.e. the offending statement must be made known to others in spoken or written form. The statement must:

- refer to the complainant/plaintiff
- be published by the defendant
- be defamatory
- be false

Defamation can be a civil wrong (tort) as well as a criminal offence. In India, it is considered both. The Supreme Court, in a May 2016 verdict, maintained this status quo by keeping both civil and criminal action against defamation.

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#### 2.4.1 Stop to Consider

In the Indian Constitution, among the restrictions placed by **Article 19(2)** on the freedom of speech & expression guaranteed under Article 19(1)(a) — the ground of *defamation* has also been included.

As per the settled legal position, the Supreme Court reads the *Right to Reputation* under **Article 21** which guarantees the Fundamental Right to Life and Personal Liberty.

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#### 2.5 Civil and Criminal Law of Defamation — Libel, Slander and Malign

In India, **civil law on defamation** is still *not* codified, and rests heavily on *English Common Law principles of Justice, Equity and Good Conscience*.

Three special defences can be used in court against **civil defamation** action:

- Justification by Truth — if the statement is substantially true (*NOTE: Truth is a complete defence*)
- Fair Comment — if it is a comment on a matter of public interest (*NOTE: It is a comment, and must be clear as such — not a statement of fact*)
- Privilege — under certain privileges granted by law, defamatory statements can be made; complete privilege during *parliamentary sessions* by Members, or in *court proceedings* by party, witnesses, lawyers and judges, or in matters relating to affairs of State by officials in their *official correspondence*; qualified privilege for statements made in the discharge of legal/social/moral duty, or statements made in *self-defence* by one official against another.

In recent years, damages to the tune of Rs 100 crore have been claimed in civil defamation suits in India, viz. Justice PB Sawant's suit against *Times Now* news channel, cricketer MS Dhoni against Zee TV and businessman Jay Shah against the news website *The Wire*.

The **criminal law on defamation** was well codified in India under Sections 499 to 502 of the Indian Penal Code (IPC) drafted by the British colonial administration in 1860. Although the IPC has been replaced by the *Bharatiya Nyaya Sanhita* (BNS) in 2023, the law on defamation has remained almost the same.

**Section 356(1)** of BNS is the counterpart to **Section 499** of IPC of old. Its definition of the offence of defamation is broken down here for better appreciation by students. This section reads:

‘Whoever, by words either spoken or intended to be read, or by signs or by visible representations,

makes or publishes in any manner, any imputation concerning any person

intending to harm, or knowing or having reason to believe that such imputation will harm,

the reputation of such person,

is said,

except in the cases hereinafter excepted,

to defame that person.’

*[NOTE: Both slander (spoken defamation) and libel (written/printed defamation) are included. Publishing is essential for the offence; ‘imputation’ means to ascribe, to attribute or to charge in the negative sense; terms like ‘intending’ and knowing’ are important to establish bad intention as essential in criminal prosecution; this section also refers to some exceptions which are not considered defamatory under the law]*

**Explanation 1** given under Section 356 makes it clear that a dead person may be defamed, just like a living person.

It reads: ‘It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.’

**Explanation 2** shows that a company or an association may also be defamed.

It reads: ‘It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.’

**Explanation 3** states that alternative or ironical expressions can also be used to defame a person.

It reads: ‘An imputation in the form of an alternative or expressed ironically, may amount to defamation.’

**Explanation 4** shows that a person can be defamed if an imputation is directly or indirectly made which —

- lowers his moral/intellectual character, or
- lowers his character in respect of his caste or calling, or
- lowers his credit, or
- makes others believe his body is in a loathsome or disgraceful state

**Section 356(2):** ‘Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both, or with community service.’

**Section 356(3):** ‘Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.’

**Section 356(4):** ‘Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.’

**Intention:** In criminal defamation, intention matters — ‘intending to harm, or knowing or having reason to believe that such imputation will harm’ as was specified earlier in Section 499 of IPC and its counterpart Section 356(1) of BNS, 2023.

[NOTE: In *civil defamation*, whether the defendant had any intention to do so or not is immaterial and is no defence. It is a matter of *strict liability* — if the accused person has committed defamation (whether intentionally or not), then he/she must be liable.]

**Defences against criminal defamation:** In a criminal action against defamation, Section 356(1) of BNS allows some defences (exceptions) to be used to plead in court that the statement in question was not defamatory. These defences are the same as those listed earlier in Section 499 of IPC. First of all, it has to be established in court whether the statement in question referred to the complainant, and whether it was published. Thereafter, the defences allowed and can be understood in simple terms as follows:

- that the statement concerning the person is *true*, and was made/published for the *public good* [*First Exception*]
- that an opinion was expressed in good faith about the conduct of a *public servant* (in the discharge of his *public functions*), or about his character (so far as his character appears in that conduct) [*Second Exception*]
- that an opinion was expressed in good faith about the conduct of a *public servant* (touching any *public question*), or about his character (so far as his character appears in that conduct) [*Third Exception*]
- a substantially true report can be published of the proceedings of a court, or the result of such proceedings [*Fourth Exception*]
- an opinion can be expressed in good faith about the merits of a case (civil or criminal) decided by a court, or about the conduct or character of any person as a party, witness or agent in such case [*Fifth Exception*]
- an opinion can be expressed in good faith about the merits of a public performance (thereby submitted to judgement by the public), or about the character of the author (so far as it appears in such performance) [*Sixth Exception*]
- a person having lawful authority over another can pass a censure in good faith on the conduct of the latter (in matters to which such lawful authority relates) [*Seventh Exception*]
- an accusation in good faith can be made against a person before one who has lawful authority over that person (with respect to the subject-matter of the accusation) [*Eighth Exception*]
- an imputation in good faith can be made about the character of a person for one’s own protection or of anyone else, or for the public good [*Ninth Exception*]



- a caution can be conveyed in good faith to one person against another, provided that such caution was intended for the good of the person to whom it was conveyed, or of someone in whom that person is interested, or for the public good. [*Tenth Exception*]

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### 2.5.1 Stop to Consider

#### Q. How does the court ascertain ‘good faith’?

**Ans:** Nothing is done or believed in good faith, if it is not done or believed with *due care and attention*.

#### Q. How does the court determine ‘malice’?

**Ans:** If a comment/publication is made with *actual knowledge that it was false*, or if it was made with *reckless disregard to find out the truth*, then it was made with malice.

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**Fair Comment and Freedom of Speech:** Every person has the right to hold his own opinion. A comment must always appear as a comment, a criticism or an opinion — it must never be wrapped up and presented as a fact. The writer must show his facts clearly, and separate from it his comment, so that the reader can form his own opinion.

For fair comment to be a defence, the following requirements must be there:

- It is an expression of opinion, not an assertion of facts
- The comment is fair
- It is on a matter of public interest
- It is not made with malice

[*NOTE: The defence of fair comment should be accompanied by other defences like Truth as justification*]

The journalist must remember that protection is given only to fair comment, not allegation of facts. Reporting defamatory words of others is no excuse, hence the allegations made by others should not be incorporated by the journalist in his story as facts. [In the case *Subhash Chandra Bose v. R. Knight & Sons, 1924*, Bose successfully argued in court that the offending newspaper simply paraphrased Lord Lytton’s statement that he was ‘the brain of a terrorist organisation... so much the worse for the Swarajist Party’.]

Trial by media is another aspect which figures in contempt of court. In India, as in Britain, the courts usually disapprove of comments in the media on a case that is pending or under trial (*sub-judice*). By doing so, the media ‘*pre-judges*’ the case and thereby seeks to influence or pressurise the Judiciary — such is the impression created. It is worse when sections of the media indulge in crass sensationalism in high profile crime cases. In the *Jessica Lal murder case, 2010*, while commending the media for its role in bringing the well-connected perpetrator to justice, the Supreme Court observed that efforts should be made to maintain the distinction between trial by media and informative media.

The prejudice that results from reporting has been taken into account by the Supreme Court in *RK Anand Vs. Registrar, Delhi High Court, 2009*, while explaining the meaning of ‘trial

by media' as: 'The impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt regardless of any verdict in a court of law. During high publicity court cases, the media are often accused of provoking an atmosphere of public hysteria akin to a lynch mob which not only makes a fair trial nearly impossible but means that, regardless of the result of the trial, in public perception the accused is already held guilty and would not be able to live the rest of their life without intense public scrutiny.'

Even if a court is inclined to grant an *injunction* against defamatory publication, there is the need to take care that it does not result in a 'gag order'. The Delhi High Court was of the opinion that the two-pronged test of 'necessity and proportionality' have to be satisfied before ordering postponement of publication, namely, the necessity to prevent real and substantial risk to fairness of trial, and that the salutary effect of such an injunction will outweigh the deleterious effect on free expression.

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### 2.5.2 Stop to Consider

**Freedom of Speech vis-à-vis Right to Reputation:** This is a difficult balance that must be struck, as defamation is a thin red line. In the US, courts generally take the line that — if public officials are allowed to recover damages for false and defamatory statements, regardless of the level of care taken, newspapers will be discouraged, or 'chilled', from printing stories on matters of public interest. To moderate this 'chilling' effect, the US Supreme Court has set the bar higher for standard of proof in libel cases where public officials are complainants. If a public figure sues for being defamed, he/she must prove actual malice on the part of the defendant. In contrast, if a private person sues, he/she must prove negligence on the part of the defendant.

The United States Supreme Court in its landmark decision in *New York Times v. Sullivan*, 1964, ruled that in the case of a public official, every inaccurate statement is not actionable unless it is made with malice, i.e. with actual knowledge of the falsity of the statement or with reckless disregard of the true state of affairs. The reasoning is that erroneous statements are unavoidable in free debate in a democracy and must be tolerated because debate on public issues should be uninhibited, robust, and wide open and freedom of the press must have 'the breathing space it needs to survive'.

In Britain, the strict liability rule operates in defamation cases. The complainant must prove that the statement in question was false. The defendant must prove the truth of his statement, or that his statement was in the form of an opinion based on true facts, made with fairness and without malice on a matter of public interest. Damages awarded are compensatory, and aggravated if malice or negligence is proved. According to the Defamation Act, 1996 in Britain, it is in everyone's interest in a free society that the media should be able to comment freely on matters of public interest. Such comments are protected by the defence of 'fair comment'.

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### 2.5.3 Check Your Progress

Q2(a). What are the consequences of harm to a person's reputation due to defamation?

Q2(b). Examine the defences of Truth and Fair Comment against defamation action.

## 2.6 Summing Up

While contempt of court is an important area of study for media students, two aspects stand out, viz. reckless allegations against judges which scandalise the court, and irresponsible reporting on sub-judice cases which result in trial by media and prejudicing of the trial process. The courts have to ensure the right to fair trial of the parties concerned, and any interference or usurpation of its role is unacceptable. As for defamation law, media students need to appreciate the right to reputation and the value of careful and factual reporting. Truth and fair comment in good faith are valid defences against defamation action, and the court must also be convinced about due care being taken and absence of malice. In India, both civil and criminal defamation cases can proceed; while civil cases are often marked by high damage claims, criminal cases can bring about police harassment and fears of imprisonment. These can have a chilling effect on free speech and a free press.

## 2.7 Glossary

**Chargesheet:** A formal police record containing the names of persons taken into custody, nature of the accusations, and identity of the accusers. After it is submitted to the court, trial proceedings begin against the accused.

**Injunction:** A court order requiring a person to either do or cease to do a specific act.

**Limitation period:** The period within which a person, who has a right to claim against another person, must start court proceedings to establish that right.

**Strict liability:** A standard of liability in criminal and civil law under which a person is legally responsible for the consequences of an act even in the absence of fault or bad intention on his part.

## 2.8 References and Suggested Reading

Divan, M.G. (2023). *Facets of Media Law*. Eastern Book Company

Kishore, D., Singh, G.S. (2010). *Media Law: Its Ethics and Ethos*. Har-Anand Publications

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Neelamalar, M. (2009). *Media Law and Ethics*. PHI Learning

## 2.9 Answers to check Your Progress

### Q1(a). How is civil contempt of court different from criminal contempt?

Ans: Civil contempt of court is wilful non-compliance with or disobedience of court order, or breach of undertaking given to the court. It is usually punished with a fine. However, criminal contempt involves misbehaviour in court, or scandalising the judges by publishing allegations against them, or prejudices the trial process.

### Q1(b). Is 'Truth' a defence against contempt action?

Ans: Although the truth of an allegation made against the court is a defence against contempt action, it is allowed only if the intention of the defendant was bonafide and it was made for public good.

### Q1(c) Why is 'trial by media' construed as contempt of court?

**Ans:** Trial by media is construed as contempt of court because it is an usurpation of the court's function, and interferes with judicial proceedings or obstructs the administration of justice.

**Q2(a). What are the consequences of harm to a person's reputation due to defamation?**

**Ans:** Due to harm to a person's reputation because of defamation, it lowers him in the estimation of all right-thinking persons and make them avoid or shun his company, it exposes him to hatred, contempt or ridicule, it lowers his credit, and it adversely affects him in his office, business or profession.

**Q2(b). Examine the defences of Truth and Fair Comment against defamation action.**

**Ans:** Against any defamation action in court, if the defendant can prove that the statement in question is true, and therefore justified, then it is a complete defence and he will be acquitted. The defendant can also argue that the statement was his opinion or comment made in good faith, which means he paid close attention and took due care while making the statement.

**2.10 Self Assessment Questions**

Q. Why are civil and criminal defamation actions both allowed in Indian courts?

Q. Can the media in India report on misdeeds by judges in the face of contempt threat?

## Unit-3

### Unit Structure:

#### 3.1 Objectives

#### 3.2 Introduction

#### 3.3 Sedition

#### 3.4 Crime against Women and Children

#### 3.5 Hate Speech

#### 3.6 Summary

#### 3.7 Glossary

#### 3.8 References and Suggested Reading

#### 3.9 Answers to check Your Progress

#### 3.10 Self Assessment Questions

### 3.1 Objectives

In this unit, media students will study the laws dealing with three categories of offences, namely sedition, crimes against women and children, and hate speech. While the colonial era provisions under the Indian Penal Code (IPC) have been replaced by the Bharatiya Nyaya Sanhita (BNS) passed by the Indian Parliament in 2023, there are also provisions under statutes enacted by the Parliament from time to time. Apart from their historical development, these legal provisions and special laws continue to impact the work of mediapersons.

### 3.2 Introduction

Introduced in India by British colonialists, sedition laws were primarily designed to muzzle the vernacular press and stamp out nationalistic aspirations. Many eminent journalists, editors and freedom fighters were prosecuted under these laws which were overbroad and draconian. Even after India became free, sedition remained in the Indian Penal Code and exerted a chilling effect on free speech until it was removed in 2023 when the Bharatiya Nyaya Sanhita was enacted. Criticising the government within limits and making fair comment on its working is now allowed while the new law forbids speaking or acting against the nation (*Rashtradrroh*). The media is faced with a different challenge when reporting and commenting on crimes against women and children, as privacy issues are increasingly involved, and provisions under the concerned laws require strict compliance to ensure their safety and best interests. Hate speech poses a threat to the unity and integrity of India as it is aimed to foment differences between groups of people, often with sinister political or electoral ends. The media, particularly new media, needs to be watchful about unwitting coverage of hateful content.

### 3.3 Sedition

Sedition originated as an offence in England during the 13th century, and evolved as a **political crime**. According to the Oxford online dictionary, sedition is **conduct or speech** 'inciting people to rebel against the authority of a state or monarch'. In *Stephen's Commentaries on the laws of England* it was made clear that sedition '**does not involve force or violence**', rather it is about conduct which is marked by '**unlawful display of**

**dissatisfaction**’ — this dissatisfaction could be against the king, government, constitution, parliament, court, church or state — although it falls short of ‘treason’.

It is to be remembered that **treason** is a much more serious offence, usually punished with death or long imprisonment in earlier times, because it primarily involves actively colluding with and providing material support to enemies of the king/sovereign or state/nation (*the enemies could be external, or internal like anti-national forces*). Thus, treason springs from the word ‘treachery’, which is about betrayal of trust, or breach of faith, or violation of the citizen’s allegiance to his state or nation — especially by attempting to kill or overthrow its sovereign or government. Care must therefore be taken to distinguish between ‘sedition’ and ‘treason’, for the two offences are often confused, and one term is used for the other.

Sedition in England could mean the utterance of seditious slander, publication of seditious libel, or conspiracy with seditious intention. Under the Sedition Act, 1661, those indulging in slander, libel and advocacy against the King were severely punished, and later, high crown officials and royal judges were also protected by this law like the King.

The law on sedition in India was introduced in 1870 by the British colonialists through the Indian Penal Code (IPC). It was particularly used to target the vernacular press and silence nationalist voices. Some of the prominent victims included *Bangobasi* editor Jogendra Chandra Bose for writing against child marriage sought to be legalised under the *Age of Consent Bill, 1891*, Bal Gangadhar Tilak for his patriotic writings in *Kesari*, Maulana Azad for a series of speeches in 1921-22, and Mahatma Gandhi in 1922 for his articles in *Young India*.

However, even after India became, the law on sedition was retained and remained substantially the same. **Section 124A** of IPC defined the offence as:

‘Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Section 124A further explained:

- the word ‘**disaffection**’ includes disloyalty and all feelings of enmity
- if comments are made expressing **disapprobation** of the measures of the Government so as to bring about their alteration by lawful means, or any administrative or other action of the Government, without exciting or attempting to excite hatred, contempt or disaffection — then they do not constitute an offence under this section.

In 1962, the Supreme Court in the case *Kedar Nath vs State of Bihar* explained the scope of sedition law: ‘A citizen has the *right to write or speak anything* about the government or its measures, by way of criticism or comment, so long that it *does not incite people to do violence* against the government established by law, or with the *intention of disrupting public order*’. The Supreme Court also made it clear that only acts having *pernicious intention or tendency* of creating public disorder by resort to violence would be penalised; *criticism of public measures* or *comment on government action*, however strongly worded, would be considered to be within reasonable limits. Thus the judiciary’s interpretation of sedition is as

an offence related to *public disorder* — that it is an ‘**incitement to lawless action**’. Words and speech can be criminalised and punished only in situations where it is used to incite mobs of people to violent action.

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### 3.3.1 Stop to Consider

The problem with sedition is that it has been prosecuted as a *tendency-based crime* — *there was no need to establish whether or not the offending words or conduct actually created any real and immediate risk of violence or disorder!* Therefore sedition law was perceived to cast a ‘chilling effect’ on not just the expression of unorthodox ideas, but any thought that runs contrary to the established order. Such law has come to be widely viewed as an instrument in the hands of a government to throttle political dissent. For a long time in India, the Executive was criticised by rights activists and some legal experts for using sedition law to *criminalise political dissent* by equating it with ‘*anti-national expression*’.

Sedition law has been invoked on a few occasions when demand was raised for separation from India or seeking break-up of India, which was considered to incite rebellion or use of arms. Some cases of application of sedition law, which made media headlines, are:— cartoonist Aseem Trivedi in *Mumbai Mid-Day*; health worker and activist Dr Binayak Sen for alleged Maoist links in Chhattisgarh; writer Arundhati Roy for supporting independence of Kashmir; JNUSU president Kanhaiya Kumar and others for alleged anti-India slogans; Hardik Patel for leading an agitation demanding reservation for Patidars as OBCs, which resulted in mob violence; firebrand Hindutva leader Praveen Togadia and Kashmiri Hurriyat leader Syed Ali Shah Geelani; some Kashmiri students in 2014 for supporting Pakistan in a India-Pak cricket match; several hundred villagers in Tamil Nadu against for protesting against a nuclear plant in Kudankulam; Tamil folk singer Kovan for singing against sale of liquor in government outlets; MDMK leader Vaiko for comments in support of LTTE and Tamil struggle in Sri Lanka; policemen in Karnataka agitating for higher pay; and tribal activists in Odisha opposing mining activities in their sacred lands.

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### Sedition removed from law book

Sedition was removed as an offence in the Bharatiya Nyaya Sanhita (BNS) which was passed by the Parliament in December 2023 to replace the Indian Penal Code (IPC). In place of Sedition, a new provision — **Section 152**— has been included in **Chapter VIII of BNS** dealing with ‘**Offences against the State**’. This section reads:

**152** Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication, or by use of financial means, or otherwise, excites or attempts to excite, **secession or armed rebellion or subversive activities**, or encourages feelings of **separatist activities** or **endangers sovereignty or unity and integrity of India**; or indulges in or commits any such act shall be punished with imprisonment for life or with imprisonment which may extend to seven years and shall also be liable to fine.

**Explanation:** Comments expressing disapprobation of the measures, or administrative or other action of the Government with a view to obtain their alteration

by lawful means without exciting or attempting to excite the activities referred to in this section.

So if anyone speaks words or makes signs or sends electronic communication (like emails, social media posts etc.) or uses financial means (like funding anti-national forces, attacking the nation's economic/financial system etc.) which excite, or attempt to excite, or encourage feelings or acts — or commits acts — which endanger the unity/integrity/sovereignty of India (like armed rebellion or subversive activities or separatism or secession), then that person will be prosecuted under Section 152 of BNS and punished accordingly. However, criticism of the Government is allowed, so long as it is done lawfully and does not excite (or attempt to do so) the offensive sentiments or acts prohibited under Section 152. The new provision in BNS covers financial support to 'subversive activities' and those encouraging 'feelings of separatist activities'. While introducing the BNS Bill in Parliament, it was made clear from the Government side that criticism of the government will *not* be a criminal offence, but ***speaking against the country will be punished*** — and in deciding whether an offence has been committed or not, the **intent** behind saying or doing anything under this provision will be examined by the Court.

India has thus joined countries like Britain where sedition was abolished as an offence under the Coroners and Justice Act of 2009, the USA where the first sedition law expired in 1801 and a wartime sedition law during the First World War was repealed in 1921, New Zealand where seditious offences were delisted as a crime in 2008, and Australia where 'sedition' was substituted by offences like 'treason' and 'urging violence' in a national security law in 2011.

### 3.3.2 Check Your Progress

Q. How did the Judiciary in India interpret the offence of sedition?

Q. What is the status of sedition in India as an offence?

## 3.4 Crime against Women and Children

In the Indian Penal Code (IPC), 1860, offences against women and children were scattered under various headings. In the *Bharatiya Nyaya Sanhita* which has replaced the IPC, such offences have been consolidated and placed in *Chapter V* headed '**Of Offences Against Women and Children**' from *Sections 63 to 97*. The crimes committed against **women** have been classified under four broad headings, viz. Sexual Offences, Criminal Force and Assault against Women, Offences related to Marriage, and Offence of causing Miscarriage; crimes against children have been included within Sections 91 to 97 under 'Offences Against Children'.

The **sexual offences** against women include rape, causing death or a persistent vegetative state, gang rape, sexual intercourse using deceitful means, sexual intercourse by a person in authority, sexual intercourse by husband upon his wife during separation, and disclosure of identity of the victim of certain offences. The offences involving **criminal force and assault** against women include assault or criminal force with intent to outrage a woman's modesty, sexual harassment, assault or criminal force with intent to disrobe a woman, word/gesture/act intended to insult the modesty of a woman, voyeurism, and stalking.



The offences relating to **marriage** include dowry death, cohabitation caused by a man deceitfully inducing a belief of lawful marriage, marrying again when husband or wife is still living, going through a ceremony fraudulently without lawful marriage, enticing or taking away or detaining with criminal intent a married woman, husband or his relative subjecting a woman to cruelty, kidnapping or abducting or inducing a woman to compel her marriage. Causing **miscarriage** also includes related offences like getting it done without the woman's consent, causing death while intending to cause miscarriage, causing miscarriage with the intention to prevent the child from being born alive or to cause it to die after birth, and causing death of unborn child by such act will amount to culpable homicide.

The offences against **children** listed in *Bharatiya Nyaya Sanhita* include abandonment of child under twelve years by its parent or guardian, concealing childbirth by secret disposal of its dead body, hiring/employing/engaging a child to commit an offence, procuring a child, kidnapping or abducting a child under ten years with intent to steal from it, and buying or selling a child for purposes of prostitution.

### **Women-specific Legislation**

The Parliament has also enacted specific laws to deal with various categories of offences against women, viz. —

- ***The Indecent Representation of Women (Prohibition) Act, 1986:*** This law prohibits indecent representation of women in advertisements or in publications, writings, drawings, paintings, photographs, slides, films, figures or in any other manner, as well as their sale, circulation and distribution. It is a bailable and cognisable offence; the penalty is imprisonment for a term which may extend to two years, and with fine which may extend Rs 2,000, while repeat offence will be punishable with jail term which may extend to five years and also with a fine which may extend to Rs 1 lakh.
- ***The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013:*** This law aims to create a safe and conducive work environment for women, and provide them protection against sexual harassment which includes physical contact and sexual advances, demand or request for sexual favours, making sexually coloured remarks, showing pornography, and any other unwelcome physical, verbal, or non-verbal conduct of a sexual nature. As part of their legal obligation to prevent and prohibit sexual harassment at the workplace, employers have to provide a safe working environment, undertake awareness programs, display information about the POSH Act at the workplace, and set up an internal complaints committee to receive and address complaints of sexual harassment. Penalties for non-compliance include fines and cancellation of business licences.
- ***The Dowry Prohibition Act, 1961 (28 of 1961) [Amended in 1986]:*** Enacted in 1961, this law was amended in 1984 and 1986. The penalty for giving or taking dowry, or abetting such an act, is imprisonment for a term which shall not be less than five years and with fine which shall not be less than Rs 15,000, or the amount of the value of such dowry, whichever is more.
- ***Protection of Women from Domestic Violence Act, 2005:*** This law aims to protect more effectively the rights of women who are victims of violence of any kind occurring within the family. Any act or conduct shall constitute domestic violence if it (a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the victim or tends to do so, and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or (b) harasses, harms, injures or endangers the victim with a view to coerce her or any other person related to her to meet any unlawful demand for dowry or other property or valuable

security; or (c) or has the effect of threatening the victim by such conduct; or (d) otherwise injures or causes harm, whether physical or mental, to the victim. The Magistrate may grant relief to the victim by first taking into consideration any domestic incident report received from the Protection Officer or the Service Provider (any registered voluntary association or company working to protect women's rights and interests, and providing legal, medical, financial and other aid). Thereafter the Magistrate may direct the parties to seek counselling, or pass an order to pay damages or compensation.

- ***The Immoral Traffic (Prevention) Act, 1986:*** Parliament in 1956 passed the *Suppression of Immoral Traffic in Women and Girls Act (SITA)* aiming to criminalise the organised activities of traffickers to force girls and women into prostitution, like recruiting, transporting, receiving, and harbouring. This law was the outcome of India signing in 1950 the *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* approved by the United Nations General Assembly. In 1986, SITA was amended and named *The Immoral Traffic (Prevention) Act*, or ITPA in short, which penalises with jail terms all those who facilitate, abet, indulge in and profit from commercial sexual exploitation.

### **Children-specific Legislation**

Specific laws have also been enacted by Parliament to deal with crimes against children, like

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- ***The Protection of Children from Sexual Offences (POCSO) Act, 2012:*** This law has been enacted to protect children from offences of sexual assault, sexual harassment and pornography, and prescribes stringent penalties with a maximum term of rigorous imprisonment for life, and hefty fines. It also punishes trafficking of children for sexual purposes. It provides for the establishment of Special Courts to try such offences while ensuring child-friendly procedures for reporting, recording of evidence, investigation and trial of offences.
  - ***The Child Labour (Prohibition and Regulation) Act (1986, amended in 2016):*** This law prohibits the engagement of children below 14 years in occupations — although they are allowed to help their families, or work in their family enterprises, or work as artists in the audio-visual entertainment industry including advertisement, films, TV serials or such entertainment or sports activities (except the circus) — after school hours or during vacations, and such work must not affect their school education. Adolescents (between 14 to 18 years) cannot be employed in hazardous occupations and processes. Violation of this law will be punished with imprisonment between 6 months to two years or a fine of Rs 20,000 to Rs 50,000, or both.
  - ***The Prohibition of Child Marriage Act (POCMA), 2006:*** This law forbids solemnization of marriage in which either the groom or the bride is below the marriageable age (minimum 21 years for boys and 18 years for girls). It aims to protect and provide relief to victims, and appoint Child Marriage Prohibition Officers (CMPOs) in every state. It also makes available the option to annul a marriage if petitioned by a contracting party of the marriage who was a child when the marriage was solemnised. The penalty for those who abet, promote or solemnise such marriage may go up to rigorous imprisonment for two years, or with fine which may extend to Rs 1 lakh, or both.
  - ***The Right of Children to Free and Compulsory Education Act, 2009:*** Under this law, every child between ages 6-14 years shall have the fundamental right to receive free and compulsory elementary education at a government/public school (private schools will have to keep aside 25 percent seats for the free education of children of

economically and socially disadvantaged classes in the neighbourhood). It shall be the duty of every parent or guardian to admit his/her child or ward to elementary education in the school nearby; no child shall be held back in any class or expelled till the completion of elementary education; physical punishment and mental harassment to a child in school is prohibited, and whoever does so will be liable to disciplinary action under his/her service rules.

- ***The Juvenile Justice (Care and Protection) Act (2000, amended in 2015)***: This law deals with both children alleged to be in conflict with the law, as well as children in need of care and protection. It adopts a child-friendly approach in the adjudication and disposal of matters related to apprehension, detention, prosecution, penalty, imprisonment, rehabilitation, and social integration of *children in conflict with law*; however, there is a provision for trial of a juvenile aged between 16-18 years with specified safeguards. This law also ensures the best interest of *children in need of care and protection* regarding their rehabilitation, adoption, reintegration and restoration. Rigorous imprisonment for terms varying from 3 to 10 years have been prescribed under this law for those who have charge of or control over children but assault, abuse, abandon or wilfully neglect them; perpetrate cruelty on them which leave them physically incapacitated or mentally debilitated; amputate or maim them and force them into begging, provide them intoxicants like liquor or narcotic drugs and get them addicted, etc.
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### 3.4.1 Stop to Consider

**Section 72** of Bharatiya Nyaya Sanhita makes it a crime to disclose the identity of the victim of certain offences. This provision is of importance to the media sections of which may violate this provision knowingly or unknowingly, and may be penalised.

Under the special law '***The Juvenile Justice (Care and Protection of Children) Act, 2015***', the same care must be taken not to disclose the identity of a ***child in conflict with the law*** as much as a ***child victim or witness or a child in need of care and protection***. **Section 74** of this Act specifies:

*'No report in any newspaper, magazine, news-sheet or audio-visual media or other forms of communication regarding any inquiry or investigation or judicial procedure, shall disclose the name, address or school or any other particular, which may lead to the identification of a child in conflict with law or a child in need of care and protection or a child victim or witness of a crime, involved in such matter, under any other law for the time being in force, nor shall the picture of any such child be published.'*

The penalty for violation of this provision is imprisonment for a term which may extend to six months, or fine which may extend to Rs 2 lakh, or both

The **Press Council of India (PCI)** in its guideline cautions against identification thus:

- While reporting crime involving rape, abduction or kidnap of women/females or sexual assault on children, or raising doubts and questions touching the chastity, personal character and privacy of women, the names, photographs of the victims or other particulars leading to their identity shall not be published.

- Minor children and infants who are the offspring of sexual abuse or ‘forcible marriage’ or illicit sexual union shall not be identified or photographed.
- Intrusion through photography into moments of personal grief shall be avoided. However, photography of victims of accidents or natural calamity may be done in larger public interest.

The media must be aware of the principles which govern legal proceedings against children, like presuming the accused child is innocent of criminal intent, ensuring their safety, best interests, right to natural justice, privacy and confidentiality, repatriation to family, restoration of previous status, opportunity to make a fresh start, equality and non-discrimination etc.

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### 3.4.2 Check Your Progress

Q. Under which laws are crimes against women and children tackled in India?

Q. What care must the media take to cover cases involving crimes against children?

## 3.5 Hate Speech

Hate speech can be defined as abusive or threatening speech or writing that expresses *prejudice* against a particular group, especially on the basis of race, religion, or sexual orientation (*Oxford online*); public speech that expresses *hate* or encourages *violence* towards a person or group based on something such as race, religion, sex, or sexual orientation (*Cambridge online*); speech that attacks, threatens, or insults a person or group on the basis of national origin, ethnicity, colour, religion, gender, gender identity, sexual orientation or disability (*dictionary.com*). We can think of hate speech as *verbal attack* targeting a particular group for its inherent characteristics, driven by prejudice, which can instigate violence or criminal attacks against that group.

The **United Nations** defines hate speech as:

— ‘any kind of communication in speech, writing or behaviour, that attacks or uses *pejorative or discriminatory language* with reference to a person or a group **on the basis of who they are**, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor’

Hate speech can be made in the form of slurs, insults, malicious stereotypes etc. against a group targeted as ‘the others’, ‘outsiders’, ‘invaders’, ‘usurpers’, ‘parasites’ etc. Images, cartoons, or memes can also be used to convey hate speech, both offline and online. Non-verbal gestures or use of symbols with derogatory connotations, like making the Hitler salute to Jewish people or scrawling the Nazi swastika on their properties or monuments, can be construed as hate speech.

Hate speech is considered a threat to modern, democratic societies with liberal and human values because it is used as a weapon to subdue and dominate; it is often used against

oppressed, weak and marginalised groups; it vitiates politics due to the targeting of groups for electoral gain; it can cause physical harm by inciting violence; it can cause psychological damage to victims; it breeds intolerance, sows fear and distrust, destroys social cohesion; it can have long-term impact by perpetuating discrimination, strife, inequality, injustice, and denial of rights.

### **Hate Speech vis-a-vis Freedom of Speech**

It is argued by some quarters that the best way to counter hate speech is to allow it in the ‘open marketplace of ideas’, where others will see how false and poisonous it is, and will then reject it. But the question can be asked whether weak groups can enter this so-called open marketplace of ideas and defend themselves! Another argument is that any attempt by the State to *cancel hate speech* will require laws which can only be vague and overbroad — this will be ‘a cure worse than the disease’ — because hateful expressions will be ‘driven underground’ and proliferate there, while ‘unpopular but nevertheless legitimate expression’ will be suppressed.

In the US Constitution, freedom of speech is strongly protected by the First Amendment, so the courts there generally rule against measures to censor hate speech. However, several other liberal democracies like Canada, France, Germany and New Zealand have enacted laws to curtail hate speech.

### **Hate speech in India**

**Constitutional status:** The right to freedom of speech and expression is protected by Article 19(1)(a) of the Constitution. However, **Article 19(2)** specifies the grounds for ‘reasonable restrictions’ on this fundamental right, viz. sovereignty and integrity of India, security of the State, friendly relations with Foreign States, contempt of court, defamation, public decency or morality, public order, and incitement to an offence. Of these, ‘**public order**’ and ‘**incitement to an offence**’ are relevant grounds to judge the effect of hate speech.

The 267th Report of the **Law Commission of India** states that hate speech is ‘an incitement to hatred primarily against a group of persons defined in terms of race, ethnicity, gender, sexual orientation, religious belief and the like’. The report further clarifies that hate speech is ‘any word written or spoken, signs, visible representations within the hearing or sight of a person with the intention to cause fear or alarm, or incitement to violence.’

In India’s law book, hate speech was neither defined nor was there any specific law to deal with it. However, there were certain provisions [Sections 153A, 153B, 295A, 298, 505(1c), 505(2)] under the erstwhile Indian Penal Code (IPC), special statutes or laws enacted by Parliament, and Section 95 in the erstwhile Criminal Procedure Code (CrPC) under which State governments were given powers to ban newspapers, books or documents with hate speech content. However, Parliament enacted Bharatiya Nyaya Sanhita (BNS) to replace the IPC as well as BharatiyaNagarik Suraksha Sanhita (BNSS) to replace the CrPC. The provisions dealing with hate speech in BNS have been consolidated, although these have remained more or less the same.

### **Provisions in Bharatiya Nyaya Sanhita (BNS) against Hate Speech —**

In the Bharatiya Nyaya Sanhita (BNS) which came into force on 1 July, 2024, the provisions against hate speech have been consolidated in Sections 194 and 195 under Chapter IX headed ‘Offences against Public Tranquility’:

- **Section 194** is used to punish (a) those who use spoken/written words, or signs or visible representations or electronic communication — *to promote (or attempt to promote) disharmony, or feelings of enmity, hatred or ill-will* — between different groups on ground of religion, race, place of birth, residence, language, caste, or community; or (b) those who *commit acts prejudicial to maintenance of harmony* between such different groups, and which disturbs (or is likely to disturb) the public tranquillity; or (c) *organises any exercise, movement, drill or other similar activity* — intending (or knowing it to be likely) that the participants in such activity *shall use or be trained to use criminal force or violence*, against any group which causes (or is likely to cause) *fear, alarm or a feeling of insecurity* amongst its members. The penalty will be imprisonment which may extend to 3 years, or fine, or both; if the offence is committed in a place of worship or an assembly engaged in religious worship or ceremonies, then imprisonment may extend to 5 years.
- **Section 195** penalises those who by words, signs or visible representations or electronic communication or other means — (a) makes or publishes an imputation that a class of persons being members of any religious, racial, language or regional group or caste or community, *cannot bear true faith and allegiance to the Constitution of India or uphold the sovereignty and integrity of India*; or (b) asserts, counsels, advises, propagates or publishes that such class of persons be *denied or deprived of their rights as citizens of India*; or (c) makes or publishes any assertion, counsel, plea or appeal that such a class of persons *have an obligation* which causes (or is likely to cause) disharmony or feelings of enmity or hatred or ill-will between such members and other persons; or (d) makes or publishes false or misleading information jeopardising the sovereignty, unity, integrity or security of India. The offender shall be punished with imprisonment up to 3 years, or fine, or both; if the offence is committed in a place of worship or an assembly engaged in religious worship or ceremonies, then the jail term may extend to 5 years.

### Special Statutes with provisions against Hate Speech —

There are certain statutes or laws enacted by the Parliament which have provisions against hate speech, for example:

- ***The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989*** under which Section 3(1)(x) punishes those who intentionally insult or intimidate with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view, the penalty being imprisonment between 6 months to 5 years.
- ***The Representation of Peoples Act, 1951*** has two sections to punish the fomenting of differences and conflicts between groups, and their manipulation for political ends during elections. ***Section 123(3A)*** states that it is a ‘corrupt practice’ when election candidates, their agents or any other person acting with their consent — promote (or attempt to do so) *feelings of enmity or hatred* between different classes of people on the grounds of religion, race, caste, community, or language — so as to improve the electoral prospects of that candidate or adversely affect the prospects of any other candidate. ***Section 125*** penalises any person committing such offence in connection with an election with jail term up to 3 years, or fine, or both.

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### 3.5.1 Stop to Consider

**Role of Media:** In a diverse country like India, the world's largest democracy with people of different ethnicities, religions, languages etc., hate speech is unacceptable. The mainstream media must play a constructive role. Shirin Dalvi, former editor of the Mumbai Urdu daily *Avadhnama*, was accused of hurting the religious sentiments of Muslims and Section 295 of IPC was used against her, after she reprinted the controversial cartoons originally published by the French satirical magazine *Charlie Hebdo*. There have been complaints against some TV journalists for labelling human rights activists as 'Maoist sympathisers', 'anti-national' etc. During elections, a section of political leaders indulge in hate speech, so the mainstream media has to be careful in reporting what they say. In recent years, hate speech has been moving to social media. Due to the ubiquity of digital devices like smartphones and tablets, hateful online content can instantly go viral as these can be easily shared anonymously at low cost. Vulnerable communities are particularly at risk due to this phenomenon. This has caused many countries including India to take tough steps against internet companies and social media platforms. They are being increasingly directed to block and remove offensive content, or failing that, to provide access to government agencies to decrypt such content and track the senders. This in turn has raised questions about freedom of speech, government oversight, and compelling the media to undertake self-censorship.

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### 3.5.2 Check Your Progress

Q. Why is hate speech considered a threat to society?

Q. What is the Constitutional basis to take strict legal action against hate speech?

### 3.6 Summing Up

Media students need to follow the evolution of sedition as an offence, analyse anti-sedition laws for their impact on free speech, and clearly differentiate between fair criticism of the government and unwarranted words and actions against the nation. Media coverage of crimes against women and children require special care to safeguard their safety, privacy and best interests, but similar care must also be taken when children in conflict with the law are involved. Trial by media can cause harm and invite penalties under the law. The media must also remain vigilant against hate speech, particularly as such objectionable content spreads like wildfire through the Internet.

### 3.7 Glossary

**Child in conflict with law:** A child who has committed an offence and is under the age of 18

**Disapprobation:** strong disapproval, condemnation, pronouncing as wrong or morally culpable

**Trafficking:** The illegal transportation of men, women and children along with denial of their human rights to push them into forced and hazardous labour, domestic servitude, sex work, organ harvesting etc.

**Juvenile Justice:** The legal system to deal with juvenile (those aged below 18) offenders with emphasis on their reform and rehabilitation in society

### 3.8 References and Suggested Reading

Bhatia, G. (2016). *Offend, Shock, or Disturb: Free Speech under the Indian Constitution*. OUP India

Chandrachud, A. (2017). *Republic of Rhetoric: Free Speech and the Constitution of India*. Viking

Divan, M.G. (2023). *Facets of Media Law*. Eastern Book Company

[https://www.livelaw.in/pdf\\_upload/the-bharatiya-nyaya-sanhita-2023-485731.pdf](https://www.livelaw.in/pdf_upload/the-bharatiya-nyaya-sanhita-2023-485731.pdf)

### 3.9 Answers to check Your Progress

**Q.** How did the Judiciary in India interpret the offence of sedition?

**Ans.** The Supreme Court in 1962, while giving its verdict in the case *KedarNath v. State of Bihar*, explained that sedition would be only such acts having pernicious intention or tendency to create public disorder by resort to violence. Criticism of the government or public measures will be allowed, so long as it does not incite people to take to lawless action or commit violence against the government established by law, or with the intention of disrupting public order.

**Q.** What is the status of sedition in India as an offence?

**Ans.** Sedition has been removed as an offence in India after the Bharatiya Nyaya Sanhita (BNS) was passed by the Parliament in December 2023 to replace the Indian Penal Code (IPC). In place of Sedition, a new offence will be penalised under Section 150 of BNS. It will be considered an offence against the State if by words, signs, visible representations, electronic communication, or financial means, anyone excites or encourages secession, armed rebellion, subversive activities, separatist activities, or endangers the sovereignty, unity and integrity of India; or attempts to do or indulges in such acts themselves.

**Q.** Under which laws are crimes against women and children tackled in India?

**Ans:** Crimes against women and children in India were scattered under various headings in the Indian Penal Code (IPC), 1860. In the Bharatiya Nyaya Sanhita which has replaced the IPC, such offences have been consolidated and placed in Chapter V headed 'Of Offences Against Women and Children' from Sections 63 to 97. This apart, the Parliament has enacted special laws to deal with crimes like indecent representation of women, sexual harassment of women at the workplace, domestic violence against women, child marriage, child labour, sexual offences against children etc.

**Q.** What care must the media take to cover cases involving crimes against children?





## Unit-4

### Unit Structure:

#### 4.1 Objectives

#### 4.2 Introduction

#### 4.3 Laws dealing with Obscenity

#### 4.4 Young Persons and Harmful Publications Act, 1956

#### 4.5 Right to Privacy in India

#### 4.6 Summary

#### 4.7 Glossary

#### 4.8 References and Suggested Reading

#### 4.9 Answers to check Your Progress

#### 4.10 Self Assessment Questions

### 4.1 Objectives

This unit has a two-fold objective — firstly, to introduce media students with the laws in India dealing with obscenity, along with a discussion on a reliable test for obscenity that courts can apply; and secondly, to present a brief outline on the right to privacy in India, its constitutional and legal status, breach of privacy by media, and sting journalism with its successes and ethically grey areas.

### 4.2 Introduction

Like beauty, obscenity too lies in the eyes of the beholder — what is obscene to one person may be quite inoffensive to another. But the media needs to exercise care because its products reach a large audience. Obscenity offends public morality, harms impressionable minds, and can provoke as well as attract undesirable activities. Disseminating obscene content is therefore a criminal offence, punishable with jail terms and fines. The erring media house can upset many readers or viewers, and gets a bad name. There are also special laws in India to deal with obscenity in books, periodicals, films, plays, advertisements, audio-visual media, and online platforms.

Right to privacy is not just a legal right in India. Since 2017, it has become a constitutional right, implicit within the fundamental right to life. The right to be left alone, to determine how much of oneself to share with others, to have a personal space and withdraw into it — all of these are vital for the healthy development of the individual, and indispensable for creativity. Legal action due to breach of privacy is an emerging area of litigation. This poses a challenge to the media, which has to distinguish between ‘public interest’ and ‘of interest to the public’ in its reporting on specific individuals. The collection and storage of personal data of citizens in huge databases and the rapid growth of internet-based digital media have brought privacy issues to the centre-stage.

### 4.3 Laws dealing with Obscenity

According to the Supreme Court of India, obscenity is anything ‘*offensive to decency or modesty, and is thereby lewd, filthy and repulsive*’. However, what constitutes obscenity is determined by prevailing mores and standards about propriety/morality in the community.

In the Indian Constitution, among the grounds specified by Article 19(2) on which reasonable restriction can be placed on the freedom of speech & expression guaranteed by Article 19(1)(a) — one ground states '**affront to public decency and morality**'. The challenge for the courts is to balance this ground for restriction vis-a-vis creative expression dealing with subjects like nudity and sexuality.

Obscenity is a criminal offence under Indian law. In the erstwhile Indian Penal Code (IPC), it was covered by Sections 292-294 which penalised the sale, hiring, circulation, distribution, exhibition, advertisement, import and export of any obscene material by up to 2 years jail and Rs 2,000 fine for a first offence, and up to 5 years jail and fine from Rs 10,000 to Rs 1 lakh for a repeat offence.

Section 292(1) of IPC defined obscenity as such matter which makes a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object — *lascivious*, or appeal to *prurient interest*, or its effect *taken as a whole* is such as to deprave and corrupt a person *likely to read, see or hear* the matter. [NOTE: The terms '*lascivious*' and '*prurient*' pertain to *obsessive, morbid or perverted interest in sexual/carnal matters*]

In the **Bharatiya Nyaya Sanhita (BNS)**, enacted by Parliament in December 2023 and which came into force from July 1, 2024, offences related to obscenity are covered in **Sections 294, 295 and 296**.

**Section 294(1)** states that a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, including display of any content in electronic form — shall be deemed to be **obscene** — if it is *lascivious*, or appeals to the *prurient interest*, or if its effect or (where it comprises two or more distinct items) the effect of any one of its items, **if taken as a whole**, is such as **to tend to deprave and corrupt** — *persons who are likely*, having regard to all relevant circumstances, **to read, see or hear the matter** contained or embodied in it.

With obscenity defined as above in Section 294(1), the offence, punishment and exceptions are specified in Section 294(2) of BNS.

According to **Section 294(2)**, whoever:

- (a) *sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation*, or for purposes of sale, hire, distribution, public exhibition or circulation — *makes, produces or has in his possession* any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, in whatever manner; or
- (b) *imports, exports or conveys* any obscene object for any of the purposes aforesaid, or *knowing or having reason to believe* that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation; or
- (c) *takes part in or receives profits from any business* — in the course of which he knows or has reason to believe that — any such obscene objects are, for any of the purposes aforesaid, made produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation; or
- (d) *advertises or makes known by any means whatsoever* that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person; or
- (e) offers or attempts to do any act which is an offence under this section,

— shall be punished on **first conviction** with imprisonment of either description for a term which may extend to 2 years, and with fine which may extend to Rs 5,000/-, and, in the event of a **second or subsequent conviction**, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to Rs 10,000/-.

**Exception:** This section does not extend to —

- (a) any book, pamphlet, paper, writing, drawing, painting, representation or figure — (i) the publication of which is proved to be justified as being for the public good on the ground that it is in the interest of *science, literature, art or learning or other objects of general concern*; or (ii) which is kept or used bona fide for *religious purposes*;
- (b) any representation sculptured, engraved, painted or otherwise represented on or in (i) any *ancient monument* within the meaning of the *Ancient Monuments and Archaeological Sites and Remains Act, 1958*; or (ii) any *temple, or on any car used for the conveyance of idols*, or kept or used for any *religious purpose*.

Under the law, making available obscene material to children is a more serious offence, and carries stiffer punishment, as provided for under Section 295 of BNS.

According to **Section 295**, whoever:

- sells, lets to hire, distributes, exhibits or circulates to any child any such obscene object as is referred to in Section 294, or offers or attempts so to do,

— shall be punished on first conviction with imprisonment of either description for a term which may extend to 3 years, and with fine which may extend to Rs 2,000/-, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to 7 years, and also with fine which may extend to Rs 5,000/-.

Obscene acts in a public place is also punishable, as provided for under Section 296 of BNS. According to **Section 296**, whoever, to the annoyance of others:

- (a) does any obscene act in any public place; or
- (b) sings, recites or utters any obscene song, ballad or words, in or near any public place,

— shall be punished with imprisonment of either description for a term which may extend to 3 months, or with fine which may extend to Rs 1,000/-, or with both.

### **Special Laws against Obscenity:**

There are also special laws which impose restrictions on the right to free speech, on the ground of ‘public decency and morality’, as allowed under Article 19(2). Some of these laws are —

- **Information Technology Act, 2000:** Under **Sections 67 and 67-A** of this Act, penalty of imprisonment and fine is imposed for publishing or transmitting in *electronic form* any material ‘which is lascivious, or appeals to prurient interest, or its effect is such as to tend to deprave and corrupt persons who are likely to read, see or hear the matter’, or any material which contains ‘sexually explicit act’; under **Section 67-B**, more severe penalty is imposed for publishing or transmitting material in electronic form

which depicts children engaged in sexually explicit act or conduct; or for creating text or digital images, seeking, browsing, collecting, downloading, advertising, promoting, exchanging or distributing material which depicts children in obscene or indecent or sexually explicit manner.

- ***Cable Television Networks (Regulation) Act, 1995 & Cable Television Networks Rules, 1994:*** This Act read with the Rules forbids transmitting or re-transmitting through a cable service any programme or advertisement unless it is in conformity with the prescribed programme code or advertisement code respectively. The ***programme code*** forbids airing of any programme which offends good taste or decency; contains anything obscene; denigrates women through depiction in any manner of their figure, form or body or any body part which has the effect of being indecent or derogatory, or is likely to deprave, corrupt or injure public morality; and not suitable for unrestricted public exhibition. The ***advertisement code*** forbids any advertisement which glorifies obscenity in any way or projects a derogatory image of women; the code enjoins cable operators to ensure that the portrayal of the female form is tasteful and aesthetic, and is within well-established norms of good taste and decency.
- ***Indecent Representation of Women (Prohibition) Act, 1986:*** This Act prohibits indecent representation of women through advertisements or in publications, writings, drawings, paintings, photographs, films, figures or representations in any other manner and for matters connected therewith or incidental thereto; it forbids the production, sale, hiring, distribution, circulation or sending by post of such matter; and it punishes violators of this Act with imprisonment and fine.
- ***Cinematograph Act, 1952:*** Under Sections 4 and 5-A of this Act, the Board of Film Certification may grant certificates for unrestricted or restricted viewing of films after receiving application; the 'A' certificate is granted if the film is suitable for viewing only by adults; the applicant for the certificate being the distributor/exhibitor/right holder, can thereafter exhibit the film across India under certificate for ten years, and will not be liable for punishment under any law relating to obscenity.
- ***Customs Act, 1962:*** Under Section 11(2-b) of this Act, the Central Government can prohibit, either absolutely or conditionally, the import or export of any specified goods for the maintenance of public order and standards of decency or morality.
- ***Post Office Act, 1898:*** Under Section 20 of this Act, it is forbidden to transmit by post any indecent or obscene printing, painting, photograph, lithograph, engraving, book, card, or any other article; or any postal article having upon it or on its cover any words, marks or designs of an indecent or obscene character.

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### 4.3.1 Stop to Consider

**Obscenity: Two Questions** Despite the definitions of obscenity, opinions about it vary from individual to individual, particularly across different age groups, class and creed. This is why the laws on obscenity attract controversy and are difficult to apply. Two broad questions can arise in this context :—

**What is 'obscene'?** The position taken by the Supreme Court of India on this and other related questions has evolved over several landmark cases. Obscenity has 'prurient or lascivious appeal' and it definitely carries a stronger meaning than 'indecent' which is about 'not conforming to accepted standards of morality or propriety'. Obscenity also means much more than 'vulgar' which merely evokes 'disgust and revulsion'. The undesirable element in

‘obscene’ may be better grasped by comparing with the term ‘pornographic’, although pornography is considered an ‘aggravated’ form of obscenity. Judges recognise pornography when they see it, because ‘no inspiration or thought’ lies behind such material, there is ‘no message’ in it. Pornography is ‘totally intended to arouse sexual desire or lust’; obscenity may have such ‘tendency’, although not necessarily the ‘intent’, to do so. (*Divan, 2013*), (*Chandrachud, 2017*)

**Who will be affected?** This question arises when the effect of ‘obscene’ material is considered — what is the character of the reader/viewer who is affected? Is it someone whose mind is ‘open or susceptible’ to such influences? Or instead of thinking about a particular individual, maybe it would be better to think in terms of the ‘average or reasonable’ person and ‘prevailing standards of an entire community’ in terms of morality, decency and good taste. Such questions have been pivotal in helping courts devise a test for obscenity, first in Britain during the 19th century, followed by a more comprehensive test in the US during the 20th century.

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## Test for Obscenity

The legal test for determining obscenity was laid down in **Britain** in the case *Regina v. Hicklin* in 1868. While giving his ruling, Lord Justice Alexander Cockburn addressed the question ‘what is obscene?’, which had not been defined in Britain’s Obscene Publications Act of 1857. He explained that a matter can be charged as obscene if it has the ‘tendency to deprave or corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall’.

This **Hicklin’s test** was adopted by several countries, including the US, India and other British Commonwealth countries. It continued to be applied in Britain till 1959, and in the US till 1957. It was in 1973 that the Supreme Court of the **United States** formulated a three-pronged test to determine obscenity while handing down its verdict in the *Miller v. California* case. The **Miller’s test** is as follows:

- (i) whether the ‘average’ person, applying ‘contemporary community standards’, would find that the work, taken as a whole, appeals to the prurient interest;
- (ii) whether the work depicts or describes, in a ‘patently offensive way’, sexual conduct specifically defined by the applicable state law; and
- (iii) whether the work — taken as a whole — lacks ‘serious literary, artistic, political, or scientific value’.

In **India**, during the British colonial rule, the high courts applied the Hicklin’s test, although with modifications in different cases. This legal position continued when India became free, and for more than a decade thereafter. Courts in India initially applied the standard Hicklin’s test — a material was judged ‘obscene’ if any part of it (even a small paragraph or illustration within) had a ‘tendency to deprave and corrupt’ individuals whose minds were ‘open to such influences’, i.e. even the one with the most sensitive or susceptible mind (such as an impressionable youngster).

In 1964, the Supreme Court, while deciding on its first case related to obscenity — *Ranjit Udeshi v. State of Maharashtra* — modified the Hicklin’s test before applying it. The apex court ruled that nudity or sex by itself was ‘not enough to deprave and corrupt’; it was

necessary to consider the work ‘as a whole’ — to balance the obscene and non-obscene portions, and find out whether the obscene portion overshadowed the other; and, even an obscene work can be justified if it was for the ‘public good’ (for example, a medical textbook with text and images about the sexual act and reproductive parts of the human body).

However, the Supreme Court maintained Hicklin’s test, so long as these three modifications were applied. It held that the obscenity law should protect ‘not those who could protect themselves, but those with prurient minds who took delight and secret sexual pleasure from erotic works’. This meant that the effect of such works on ‘average or reasonable’ people was not the court’s lookout. Moreover, the Supreme Court applied the rule of ‘*strict liability*’, whereby it need not be proved in court that the accused had ‘knowledge’ that the matter in question was obscene — the mere fact that the matter has been established as obscene was sufficient to render him guilty.

In 1969, Section 292 of IPC was amended, requiring the courts to consider the work in question ‘*as a whole*’, introduced a ‘*likely reader test*’ of such material (instead of the ‘most vulnerable person’ standard set by Hicklin’s test), and inserted an exception that publication of the work can be justified if it is for the ‘public good’. On the other hand, the Supreme Court’s position kept evolving in the rulings it handed down in various obscenity-related cases, before it formally abandoned its modified Hicklin’s test in 2014 in *Aveek Sarkar v. State of West Bengal*.

In the Aveek Sarkar case, the Supreme Court ruled that only those sex-related materials can be held to be obscene which have a tendency of ‘exciting lustful thoughts’, but the obscenity has to be judged from the ‘point of view of an average person’, by applying ‘contemporary community standards’, the ‘message’ conveyed by the material and its ‘background and context’. Along with this, courts have taken the position that a work considered obscene ‘has no serious literary, artistic, scientific or any other merit or value’; there is an additional requirement — the ‘obscene’ content must also have a ‘preponderating social purpose’, it must result in ‘social gain’.

To achieve such ‘social purpose’, a creator may use obscenity to depict reality in such a manner that it shocks the reader/viewer/audience, generating feelings of revulsion or horror. Such a tactic could be acceptable if it brings about soul-searching, and thereby induces a change in people’s thinking and behaviour. [NOTE: Refer to cases on Shekhar Kapoor’s film ‘Bandit Queen’ and MF Hussain’s painting ‘Bharatmata’.]

#### **4.3.2 Check Your Progress**

Q.How is obscenity legally defined in India?

Q. What is the constitutional basis for acting against obscenity?

Q. How is obscenity penalised in India?

#### **4.4 The Young Persons and Harmful Publications Act, 1956**

The Young Persons Harmful Publications Act of 1956 was enacted by Parliament to prevent the dissemination of publications harmful to young persons. The term 'harmful publication' meant any book, magazine, pamphlet, leaflet, newspaper or other publication which consists

of stories told with or without the aid of pictures or wholly in pictures, portraying wholly or mainly:

- (i) commission of offences; or
- (ii) acts of violence or cruelty; or
- (iii) incidents of repulsive or horrible nature;

— in such a way that the publication as a whole would tend to corrupt a young person into whose hands it might fall, whether by inciting or encouraging him to commit offences, or acts of violence or cruelty, or in any other manner whatsoever.

This law penalises with fine, imprisonment, or both, those who sell, hire out, distribute, publicly exhibit or put into circulation any harmful publication; or those who print, make, produce or have in possession any harmful publication for purposes of sale, hire, distribution, public exhibition or circulation; or those who advertise or make known by any means whatsoever that any harmful publication can be procured from or through any person. After conviction of those guilty of such offence, the court may order destruction of all copies of the harmful publication which are in custody of the court or remain in possession or power of those convicted.

The State Government may, after consultation with the principal law officer of the State, declare that any publication is a harmful publication, and that every copy of such publication shall be forfeited to the Government. Any police officer or other officer may be empowered by the State Government to seize the harmful publication; any Magistrate of First Class may authorise by warrant, a police officer not below the rank of sub-inspector to enter and search any place where a stock of harmful publications may be or reasonably suspected to be, and seize the publications. These may thereafter be produced before the Magistrate or a Court, who may order the harmful publications be destroyed or disposed of in any manner specified under the Code of Criminal Procedure, 1898 [replaced by the BharatiyaNagarik Suraksha Sanhita (BNSS), 2023]

Any person aggrieved by an order of forfeiture passed by the State Government, may within 60 days of the date of such order, apply to the High Court to set aside the order.

## **4.5 Right to Privacy in India**

The right to privacy is the right to be left alone; or it is the right to have a personal space that is inviolable, a space which can be physical, mental, intellectual or spiritual; or it is the right to determine how much of oneself one wishes to share with others; or it is the right to participate in a social interaction or group or to withdraw from it as one sees fit.

The right to privacy can be visualised to have a *vertical* component when the government seeks certain personal data of citizens (e.g. demographic and biometric data for Aadhaar identification number), or law enforcement/defence/intelligence agencies keep individuals under the scanner for security purposes, as well as a *horizontal* component when any individual (who could be a public spirited citizen or a journalist) seeks personal details about another individual (who could be a newsmaker, a celebrity, a public official/representative, or anyone of interest).

The Government's position is that digital databases containing various details of the population are necessary for primarily two purposes — to ensure targeted delivery of welfare scheme benefits to all genuine beneficiaries (after eliminating 'ghost' or bogus beneficiaries),



as well as to ensure the security of society and State (by tracking criminals, terrorists and rogue elements).

For **journalists**, the *right to free speech and expression* as well as the *citizens' right to know* and *right to information* has to be balanced vis-à-vis the *right to privacy* of individuals who are the subject of media inquiry.

The general principle is that *on matters of public interest*, the citizen has the *right to know and be informed*, because only this right can help the citizen be aware of public issues and form his opinions. The citizen's right to free speech and expression is primarily the right to express his opinions freely and fearlessly, which is crucial in a democracy. The journalist in India also works under the right to free speech and expression to provide information to citizens, so long as it is *relevant and obtained properly in an ethical manner*.

On the other hand, it is important to safeguard the private life of an individual, so long as it has nothing to do with his or her public duties or on matters of public interest. It is for the court to decide whether any disclosure is in public interest.

**Privacy as a legal right:** Violating an individual's privacy is a **civil offence**. In India, it is dealt with through British common law principles. A printer/publisher is liable to **pay damages** for publishing details about an individual's family, marriage, procreation, parenthood, education and other personal matters — without his/her consent.

**Privacy as a constitutional right:** In a landmark verdict on the Government of India's Aadhaar programme in August 2017, the Supreme Court in the case *Justice K. S. Puttaswamy (Retd.) & Anr. vs. Union Of India & Ors* ruled that right to privacy is a fundamental right **implicit under Article 21** which grants the fundamental right to life and personal liberty under the Constitution.

Thus the Supreme Court overturned its earlier rulings that right to privacy was not a fundamental right (*refer to the MP Sharma case of 1954 about police search and seizure of documents and Kharak Singh case of 1962 about police surveillance and visits to homes of suspected criminals*) The Court in Kharak Singh case had ruled against such visits as violation of the sanctity of home and personal dignity (under Article 21 which guarantees personal liberty), but had then also ruled that right to privacy is not guaranteed as a fundamental right under the Constitution.

**The Digital Personal Data Protection (DPDP) Act, 2023:** As people spend more and more time online for work, business, financial transactions, studies, research, entertainment, and other aspects related to living, it is very important to protect the privacy of their personal data. Already around 60% or three-fifth of India's population are active users of the Internet, and huge digital databases have been set up, some outside the country, to store their personal data. For example, the database of the Unique Identification Authority of India (UIDAI) contains the biometric and demographic details of nearly all residents of India who have to carry the 12-digit Aadhaar card for their identification. It has become a common, often mandatory, practice to link the Aadhaar card with bank account numbers of users, along with their PAN card, debit card and credit card, mobile payment apps, electricity and water bills, municipality tax, etc.

When the Supreme Court recognized the right to privacy as a fundamental right in 2017, it noted that India lacked a comprehensive privacy law, as well as related provisions and

safeguards in the existing information technology law and its rules. It then became imperative for Parliament to enact appropriate privacy laws, including a law for the protection of private personal data. In August, 2023, Parliament passed the *Digital Personal Data Protection (DPDP) Act*, a data protection law which spells out the rights and duties of those who provide their data (called *Data Principals*), imposes obligations on those who store and process the data (*Data Fiduciaries*), and provides for setting up the Data Protection Board of India (DPB).

The Data Principals, whose personal data is being collected, have the right to be informed about it, the purpose for its collection, the third parties with whom it is being shared; the right to access their data, to make corrections and deletions; the right to object to the processing of their data and the right to port their data to another organisation in certain circumstances; and the right to complain to the Data Protection Board.

The Data Fiduciaries, organisations which collect and process personal data, must first obtain consent from the individuals concerned (unless exemption is provided); use the data only for the purposes it was collected; protect the data from unauthorised access, use, disclosure, alteration, or destruction; respond to an individual's request for access, correction and deletion of his/her data, as well as his/her objection within a reasonable time; and report data breaches to the Data Protection Board within 72 hours of becoming aware of the breach.

**Right to Privacy vs Security of State:** At various times, the Supreme Court has ruled that:—

- Telephone tapping violates the right to privacy, as the government had ensured no procedural safeguards under the Telegraph Act of 1885 — such surveillance is justified only in exceptional situations like public emergency or safety interest.
- Interception of communication (wireless, electronic or oral) is a breach of right to privacy, but it can be curtailed in accordance with a procedure validly established by law, like it was done under Maharashtra Control of Organised Crime Act (MCOCA), 1999.
- Right to privacy is not absolute, it is subservient to the security of the State — thereby upholding a provision in Prevention of Terrorism Act (POTA), 2002 which mandates disclosure of information to the police by common people.

**Right to Privacy vs Right to Information:** When it is a matter of public interest, the citizens' right to know will take precedence over the individual's right to privacy, e.g. electoral candidates are bound to reveal details about their assets and criminal convictions (if any), so that voters can make up their minds with the right information. However, the Right to Information (RTI) Act, 2005 exempts disclosure of any information which has nothing to do with any public authority or public interest.

The Supreme Court has established that right to privacy does not survive:

- when the information is already a matter of public record
- in a matter of public interest involving a public official discharging his official duties.

**Privacy of public figures:** Right to Privacy is an inviolable human right. However, the degree of privacy differs from person to person and from situation to situation. The public person who functions under the public gaze as an emissary/representative of the public, cannot expect to be afforded the same degree of privacy as a private person. His acts and conduct as are of public interest (*NOTE: 'public interest' is distinct and separate from 'of*

*interest to the public*’) — even if conducted in private may be brought to public knowledge through the medium of the press.

The press has a corresponding duty to ensure that the information about such acts and conduct of public persons is in the public interest, and obtained through fair means, verified properly and reported accurately. To obtain information about acts done or conducted away from the public gaze, the press is not expected to use subterfuge, secret surveillance devices and other unethical methods. On their part, public persons are expected to bring more openness in their functioning and to cooperate with the press so that the latter can discharge its duty to provide necessary and relevant information to the public. Some points should be kept in mind in this context:

- The interviews/articles or arguments pertaining to public persons which border on events that are in public knowledge, if reported correctly, cannot be termed as intrusion into private life. There is a very thin line between public and private life and public persons should not be too thick skinned to criticism
- The media is allowed some latitude to criticise persons who are in seats of power because their work and conduct is of public interest, provided the criticism is not motivated by malice.
- The family of public figures are not valid journalistic subjects, more so if its reporting covers minors.
- When the individual himself reveals facts about his private life in the public domain — then the shield of privacy should be deemed to have been abandoned by the individual.

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#### 4.5.1 Stop to Consider

##### STING JOURNALISM

Sophisticated surveillance, eavesdropping and spying technologies have added a new dimension to investigative journalism. By a journalist going undercover and employing deception, a person is secretly recorded or caught on camera red-handed doing some wrong, corrupt or criminal act.

Sting operations are a direct invasion of privacy, but are often justified on the ground of serving public interest by exposing wrongdoing, like politicians taking kickbacks in defence deals (e.g. Operation West End by Tehelka), Members of Parliament taking cash to raise queries in the House or vote in no-trust motion against the Government, witnesses being bought to compromise the trial process involving influential people (e.g. the BMW hit-and-run case and the Jessica Lal murder case), organised stone-pelting network in Kashmir against security forces, some private banks laundering black money, spot fixing in IPL cricket, even a reverse sting by industrialist Naveen Jindal to trap TV journalists demanding advertisements for their media house.

However, sting operations can be outright mischievous, as shown in the Uma Khurana case. A teacher by profession who taught at a government school in Delhi, Uma Khurana was falsely shown in a video as pushing girl students into the flesh trade. Two journalists manipulated this sting at the behest of a business partner of Ms Khurana, causing her to be publicly humiliated and nearly lynched, summarily dismissed from her job and thrown into

jail. She was exonerated by the court, but the damage to her name and career was irreversible.

Even otherwise, sting operations throw up troubling ethical and legal questions due to the use of surreptitious means to trap wrongdoers. Does the end justify the means, even if it is for public benefit?

### **Do's and Don'ts**

- A media entity preparing to report a sting operation must obtain a certificate from the person who recorded or produced it — that the operation was genuine and bonafide.
  - There must be concurrent records in writing of the various stages of the sting operation.
  - The decision to report the sting operation should be taken by the editor after satisfying himself of the public interest of the matter, and ensuring that the report complies with all legal requirements.
  - Sting operations should be published with an awareness of the likely audience in mind. Great care and sensitivity should be exercised to avoid shocking or offending them.
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### **4.5.2 Check Your Progress**

**Q.** What is the legal remedy for breach of privacy in India?

**Q.** What is the status of right to privacy in India?

**Q.** How is the citizen's right to know and be informed balanced against the right to privacy?

### **4.6 Summary**

Obscenity is a criminal offence in India, punishable with imprisonment and fines both under the Indian Penal Code (IPC) introduced by British colonists as well as the Bharatiya Nyaya Sanhita (BNS) enacted in 2023. There are also several special laws enacted by the Parliament at various times since India became free, which penalise obscenity in print, electronic and digital media, films, advertisements and other channels. On the other hand, breach or violation of privacy is a civil wrong emerging as a major area of litigation, often marked by claims for hefty damages. Aspiring media professionals should steer clear of such pitfalls. This requires them to be well versed with the relevant laws and legal implications.

### **4.7 Glossary**

**Damages:** A remedy in common law in the form of monetary compensation paid by the offender for causing loss or injury to the claimant.

**Data Principals:** The individual to whom the personal data relates, or the lawful guardian of the individual if he/she happens to be a child or a person with disability

**Data Fiduciary:** Any person who alone or in conjunction with other persons determines the purpose and means of processing of personal data

**Liabe:** Legally answerable or responsible by law, therefore obligated to perform an act or pay a compensation or undergo a punishment

**PAN card:** Permanent Account Number card with a 10-digit alphanumeric unique identification number assigned by the Income Tax Department

**Telephone tapping:** Monitoring or interception of telephone and internet-enabled conversations by covert means and surveillance equipment

## 4.8 References and Suggested Reading

Chandrachud, A. (2017). *Republic of Rhetoric: Free Speech and the Constitution of India*. Viking

Divan, M.G. (2023). *Facets of Media Law*. Eastern Book Company

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## 4.9 Answers to check Your Progress

**Q.** How is obscenity legally defined in India?

**Ans:** The Supreme Court of India defines obscenity as anything which is offensive to ‘decency or modesty’, and is thereby ‘lewd, filthy and repulsive’. However, obscenity has to be determined by prevailing mores and standards in the community about morality.

**Q.** What is the constitutional basis for acting against obscenity?

**Ans:** Under Article 19(2) of the Indian Constitution, the right to free speech and expression can be reasonably restricted on the ground of ‘affront to public decency and morality’.

**Q.** How is obscenity penalised in India?

**Ans:** Obscenity is prosecuted as a criminal offence in India, formerly under Sections 292-294 of the Indian Penal Code (IPC), and since July 2024 under Sections 294, 295 and 296 of Bharatiya Nyaya Sanhita (BNS). If proven guilty and convicted by court, the offender is punished with imprisonment or fine or both.

**Q.** What is the legal remedy for breach of privacy in India?

**Ans:** Breach of privacy is a civil wrong in India. It is dealt with by applying British common law principles. The offender is liable to **pay damages** for publishing private details about an individual without his/her consent, like details about family, marriage, procreation, parenthood, education and other personal matters.

**Q.** What is the status of right to privacy in India?

**Ans:** The right to privacy has been upgraded from a legal right to a fundamental right since 2017 when the Supreme Court read it under Article 21 of the Constitution which guarantees the right to life and personal liberty. This verdict put the onus on Parliament to enact a comprehensive law to safeguard privacy. Till 2023, only a digital personal data protection law has been enacted.



## Unit:5

### Unit Structure:

#### 5.1 Objectives

#### 5.2 Introduction

#### 5.3 Right to Information Act, 2005

#### 5.4 Press and Registration of Periodicals Act, 2023 (replacing the *Press and Registration of Books Act, 1867*)

#### 5.5 Working Journalists' and Other Newspaper Employees' (Conditions of Services and Miscellaneous Provisions) Act, 1955

#### 5.6 Four Labour Codes

#### 5.7 Summing Up

#### 5.8 Glossary

#### 5.9 References and Suggested Reading

#### 5.10 Answers to check Your Progress

#### 5.11 Self Assessment Questions

### 5.1 Objectives

In this unit, the media students will be introduced to three important laws, namely the Right to Information Act, 2005, the Press and Registration of Periodicals Act, 2023 (which has replaced the colonial era Press and Registration of Books Act, 1867), and the Working Journalists' and Other Newspaper Employees' (Conditions of Services and Miscellaneous Provisions) Act, 1955. While the first is related to obtaining information in the public interest and serves as an important investigative news source, the second is a newly-enacted law on the system for registration of a newspaper or periodical, while the third relates to the service conditions of journalists and other press workers.

### 5.2 Introduction

The fundamental right to free speech and expression also gives citizens the right to know and the right to receive information, which provides the rationale for a free press to operate. However, it is difficult to obtain information from government or public authorities which are often bound by confidentiality requirements. In the interests of ensuring transparency in governance for public benefit, the Right to Information (RTI) Act, 2005 is a crucial legal instrument for the people to access information from government/public documents and records, learn about implementation of government schemes and projects, and inspect such works. It is also a legitimate weapon in the journalist's arsenal in investigating government wrongdoing under official covers of secrecy. The Press and Registration of Periodicals Act, 2023 is a new law under which a publisher can bring out a newspaper or periodical, although books have been excluded from the law's purview. It supplants the more than 150 years old Press and Registration of Books Act, 1867, which was enacted by British colonialists to keep an iron grip on Indian publishers and the press. It had many draconian provisions including

stiff fines and jail terms. When independent India inherited this law, starting a publication continued to be a difficult enterprise due to the convoluted and time consuming procedure. The new law makes it possible to obtain a certificate for registration through a much streamlined procedure within a couple of months. The Working Journalists' and Other Newspaper Employees' (Conditions of Services and Miscellaneous Provisions) Act, 1955 is a vital legislation for journalists covering their work, wages and service conditions. But times are changing, which necessitates an appreciation of this law when journalism was a mission.

### **5.3 Right to Information Act, 2005**

The Right to Information Act, 2005 provides all citizens the right to seek information from any public or government authority, or inspect any works, documents and records of such authority. No such information can be denied to the people, which cannot be denied to Parliament or State Legislature. The aim of this law is to foster transparency and thereby ensure good governance. For this, every public authority shall maintain all its records duly catalogued and indexed in a manner or form, which provides public access to such records and thereby facilitates the right to information under this Act. It envisages a 3-tier system of public information officers (PIOs) at the lowest level to receive, process and answer RTI queries, an appellate authority at the intermediate level, and State/Central Information Commissions (SICs/CIC) at the highest level. No court will entertain any suit, application or proceedings for denial of information under this Act. However, higher courts have been moved over orders passed by SIC/CIC.

Before the RTI Act, the disclosure of information in India was restricted by official secrets and other special laws. The RTI Act relaxed many such laws in the country. Section 22 of RTI Act states that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the *Official Secrets Act, 1923*, and any other law for the time being in force, or in any instrument having effect by virtue of any law other than this Act.

**Background:** In 1987, a few labourers in Rajasthan were refused their wages on charges of inconsistent performance. MazdoorKissan Shakti Sanghatan (MKSS), an activist group, fought for these workers and demanded that the government produce the necessary proof to verify the worker's performance records. After a series of protests, the MKSS got the copies of rolls, which also brought to the surface the corruption that existed among the officials. The MKSS began a massive agitation demanding the right to information. It turned into a national movement, which led to the Parliament passing the Freedom of Information Act, 2002. This law was strengthened further and passed as the Right to Information Act, 2005.

**How to apply:** The request for information is to be made in writing or digital form in English, Hindi, or any official language, along with a prescribed fee, addressed to the Public



Information Officer (PIO) of the department concerned, specifying particulars about the information sought.

Specific questions should be asked, these must be clear and complete — and not confusing whatsoever. Applicant should give full name, address, contact details, where he/she wants the information/response to the RTI application be sent.

A photocopy of the RTI application should be kept for record. It is advisable to send the RTI application via registered post, so as to have an acknowledgement slip. If the application is submitted to the PIO in person, written acknowledgement must be sought from him/her.

If an illiterate person approaches a PIO and wants some information under RTI, he/she can tell his requirement to the PIO and the officer is obliged to write it down and read it to him before processing it.

A poor person from a remote area need not write an RTI application on a clean sheet of paper. Even a crumpled, old, torn piece of paper will do, so long as the written content on it is legible.

If the RTI applicant cannot take a day off from work to meet the PIO concerned, he/she can go to a post office and submit the application to the assistant PIO (APIO) posted there. Their job is to receive RTI applications and forward these to the PIO or appellate authority concerned.

**Disposal of RTI application:** The concerned PIO must dispose of the request within 30 days by either providing the information, or rejecting it on valid grounds. If the information sought concerns the life or liberty of the person, it must be provided within 48 hours. Failure to provide the information within the stipulated period will be deemed as refusal of the request.

While rejecting the RTI request, the Public Information Officer (PIO) must:

- specify the reasons
- mention the period within which an appeal against the rejection may be filed
- mention the particulars of the appellate authority

**Penalties for non-disclosure:** In case the SIC/CIC, while deciding on a complaint or appeal, takes the view that:

- there was failure in providing the information sought within the time specified, or
- the RTI request was denied for malafide reasons, or
- incorrect, incomplete or misleading information was knowingly given, or
- the information requested was destroyed, or
- the furnishing of information was obstructed

— then a penalty of Rs 250/per day will be imposed on the PIO concerned (however, the total amount cannot exceed Rs 20,000/-), or disciplinary action like transfer can be recommended (however, the SIC/CIC cannot directly take action) against him.

The PIO concerned will be given the opportunity of being heard, though the burden of proof will be upon him that he acted reasonably and diligently while dealing with the RTI request.

**Exemption from disclosure:** The grounds on which request for information can be denied are specified under Sections 8 and 9 of RTI Act. These include:

- sovereignty and integrity of India
- security of India
- relations with foreign States
- will cause breach of privilege of Parliament or State Assembly
- Cabinet documents including deliberations of the Council of Ministers
- will prejudice the scientific or economic interests of India
- will cause incitement to an offence
- will constitute contempt of court
- disclosure will affect commercial confidence, trade secrets or intellectual property of a third party
- various investigative, intelligence & security agencies (however, corruption or human rights violation related information must be provided)
- will obstruct any investigation process or the capture/prosecution of offenders
- will endanger the life of any source of information/whistleblower
- disclosure has no relation to any public authority or interest, but will breach the privacy of an individual (also, personal information of a public servant)

Organisations exempted from RTI are mostly related to the country's defence and intelligence, such as RAW, BSF, CRPF, CISF, Central Bureau of Investigation (CBI), Intelligence Bureau (IB), National Security Guards (NSG) etc.

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### 5.3.1 Stop to Consider

**Successes of the RTI Act, 2005:** RTI activists and journalists have brought major scams to light, notably Adarsh housing society scam, Commonwealth Games scam, 2G spectrum scam, Red Cross Society scam in Punjab, PDS rice scam in Assam etc.

On an individual level, many persons have been benefited by RTI law. They have used it to obtain death certificates, passports, and Aadhar cards; claim pension, tax rebates, transfer of provident funds, and compensation in road accidents; verify mark-sheets; check the fairness of government appointments; obtain the details of government scheme implementation, progress of infrastructure projects etc.

**Criticism:** For large numbers of poor and marginalised people, RTI is the only means to find information about the rights and benefits due to them from government schemes. However, the RTI Act is yet to be properly implemented due to various reasons. Some of the criticisms about the implementation of this law are:

- Many State Information Commissions, and even the Central Information Commission, often remain headless and have vacancies for long. So these bodies remain dysfunctional and have large numbers of cases pending
- Infrastructural support and funding from the government is inadequate
- Response by Public Information Officials to RTI queries is frequently marked by evasion, prevarication or outright stonewalling; replies can be incomplete, false or misleading
- Recommendations by the CIC/SIC to punish errant Public Information Officials are not taken seriously by the Government; few officials are punished for delays, most are only transferred
- Governments are tardy in paying compensation to RTI complainants even after the CIC or SIC rules in their favour
- Large number of RTI appeals are pending before the appellate authority or the SIC/CIC
- Blanket exemptions from RTI have been given to security, intelligence, research and economic institutes
- Information held by private entities performing public functions cannot be accessed
- Through an amendment of the RTI Act in 2019, the tenure and salary of the Chief Information Commissioner and other Information Commissioners will be notified by the Central government. It was argued that the Information Commission is a *statutory* body (set up by a statute or law) and therefore cannot be put on the same pedestal as the Election Commission which is a *constitutional* body (bestowed by the Constitution).

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### 5.3.2 Check Your Progress

Q. What is the aim of the Right to Information Act, 2005?

Q. How are common people in India using the RTI law?

### 5.4 Press and Registration of Periodicals Act, 2023

The Parliament in 2023 enacted a law for the registration of newspapers and periodicals in India, and it came into force on March 1, 2024 after the Government of India notified in its official gazette the new law and its associated rules. The *Press and Registration of Periodicals Act, 2023*, has thus replaced the colonial era *Press and Registration of Books Act, 1867*, which stands repealed. The new law defines a **periodical** as ‘any publication

including a newspaper which is published and printed at regular intervals containing public news or comments on public news, but does not include a book or a journal of scientific, technical, and academic nature'. Therefore, publishers intending to bring out periodicals, including newspapers, will have to register their titles before publishing them. But it is no longer necessary to register books and journals, as required under the old law.

The registering authority, which was earlier the Registrar of Newspapers for India (RNI), has been renamed as the Press Registrar General of India (PRGI). Under the new law, registration of newspapers and periodicals will be facilitated through a paperless, online system, and the process can be completed within 60 days. Through the **Press Sewa portal** ([presssewa.prgi.gov.in](http://presssewa.prgi.gov.in)), individuals seeking to publish will first have to create an account, then select a title, location, and language of publication. After submission of application with prescribed fee, the title will have to be verified. The Press Registrar General will then seek comments from the specified authority, and issue a registration certificate thereafter. This online system also offers other services like e-sign facility, digital payment gateway, QR code-based digital certificates for instant download, facility for providing intimation by printing presses, percentage of probability for title availability, online access to registration data for all publishers, and filing of annual statements.

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#### 5.4.1 Stop to Consider

The earlier *Press and Registration of Books Act, 1867* was a legacy of the British Raj. It was enacted with the intent to completely control and regulate the press, printers and publishers of books and newspapers in India. Under this law, it was mandatory that every book (including pamphlets, posters, maps, charts etc.) carried the legibly printed names of the printer and place of printing. Similarly, every newspaper had to contain the names of the owner and the editor, date of publication, printed clearly on every edition. Every individual running a printing press, for the purposes of printing books or newspapers, had to duly make a declaration to that effect, before the magistrate within whose territorial jurisdiction the press was located. Violation of provisions carried a penalty of up to 2,000 rupees (a heavy fine in those days) and/or simple imprisonment for a maximum term of six months. The British colonial administration used this law to curb freedom of the press, and in particular, stamp out nationalistic aspirations in the vernacular press.

In independent India, the manual registration process under the colonial era law remained cumbersome, particularly for medium and small publishers, requiring multiple steps and approvals at various stages from offices of the State government and Central government. It was time-consuming, needing as long as 2-3 years, because a publisher intending to start a newspaper had to submit an application to the district magistrate, who sent it to the Registrar of Newspapers for India (RNI) to check for title availability. The registration process could move forward only after the RNI conveyed the availability of the title to the magistrate, who thereafter administered the oath to the publisher to abide by the provisions under the law.

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Under the ***Press and Registration of Periodicals (PRP) Act, 2023***, publishers and printers would not need to file a declaration before the district magistrate. The new law provides for an appellate authority to be called the Press and Registration Appellate Board, which will deal with appeals against refusal of certificate of registration, or suspension/cancellation of registration. There is provision of penalty only in case a periodical is published without obtaining the certificate of registration. If after six months of issuance of direction by the Press Registrar General to stop publication, the publisher still does not comply, he would be liable for punishment of imprisonment up to six months. No person will be permitted to bring out a periodical if he has been convicted by any court for an offence (a) involving terrorist act or unlawful activity, or (b) for having done anything against the security of the State.

#### **5.4.2 Check Your Progress**

Q. What is a 'periodical' under the Press and Registration of Periodicals Act, 2023?

Q. Describe briefly the new system for registration of periodicals in India.

### **5.5 Working Journalists' and Other Newspaper Employees' (Conditions of Services and Miscellaneous Provisions) Act, 1955**

One of the major issues studied by the First Press Commission of 1952 was the recruitment, training, pay scales and retirement benefits of both journalists and non-journalist workers in the Indian press. Following its recommendations, the Government enacted a wage law soon after. Its objective was to regulate some of their conditions of service. This was the *Working Journalists and Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955*.

Some notable features of this Act was:

**Work hours:** No working journalist shall be required or allowed to work in any newspaper establishment for more than 144 hours during any period of 4 consecutive weeks (excluding the time for meals). He/she will be allowed rest for a period of not less than 24 consecutive hours during any period of 7 consecutive days. (*NOTE: This effectively means 144 hours spread over 4x6 = 24 days, which is 6 hours per day. The normal working shift for a journalist in print media should therefore be 7 hours long, with 1 hour reserved for lunch*)

**Leave:** Without counting holidays or other kinds of leave as may be prescribed, every working journalist shall be entitled to casual leave, earned leave (*at full wages for not less than 1/11 of the period spent on duty*) and medical leave (*at one-half of wages for not less than 1/18 of period of service*)

**Gratuity:** This Act fixed the gratuity to be paid on termination of service (however, not on disciplinary ground). Different amounts of gratuities were specified for those in continuous service of not less than 3 years, 10 years, and in case of death in service.

**Notice period:** The notice period for retrenchment was also fixed — 6 months for editors and 3 months for other working journalists.

**Wages and Wage Boards:** The Act specified that wages meant all remuneration in terms of money (which also included dearness allowance, travel allowance, other allowances, and the value of any house accommodation or of supply of light, water, medical attendance or other amenities).

However, wages would not include bonuses, contribution paid/payable by the employer to any pension fund or provident fund, and gratuity payable on the termination of service.

Most importantly, this Act provided for the setting up of Wage Boards to fix wages, with separate boards for journalists and non-journalists (those employed in managerial, administrative, supervisory or technical capacities).

Such seven-member boards were headed by a judge of the Supreme Court or High Courts, and had two members representing working journalists, two members representing employers, and two other members. A board would receive representations from stakeholders and make recommendations to the Government, following which the latter would fix or revise the wages.

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### 5.5.1 Stop to Consider

**Significance of Wage Boards:** During the 1950s and 1960s, organised labour in India was in its nascent stage, so workers had little bargaining power to negotiate wages, terms of service and working conditions with employers/managements. To deal with this problem, the Government of India constituted various wage boards. Most such wage boards were non-statutory and tripartite (with representatives from workers, employers and independent members). But the wage boards for journalists and other workers in the press were *statutory*, i.e. set up under a statute or law by Parliament. While trade unions in various sectors grew strong enough to negotiate with employers, this was never so with journalists and other workers in the Indian press. Their bargaining power remained weak.

Since 1955, six wage boards have been constituted for journalists and other press workers. There was the first statutory Wage Board in the 1960s, followed by Justice DG Palekar Wage Board in the 1970s, Justice UN Bachawat Wage Board in the 1980s, Justice RajkumarManisana Wage Board in the 1990s, and Justice GR Majithia Wage Board in 2007. On November 11, 2011, the Government of India through a notification fixed the wages as recommended by the Majithia Wage Board. This was at once contested by some newspaper managements in the Supreme Court. However, the Supreme Court in 2017 ruled in favour of

employees, ordering newspaper managements to pay their employees the wages as revised or determined by the Majithia Wage Board (which had thoroughly gone into the wage structure of newspaper employees as compared to employees in other sectors), payable from November 11, 2011. [NOTE: Most newspaper managements sought to stonewall the Majithia wage award, although there were exceptions like *The Assam Tribune* house which implemented this award *in toto*.]

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## 5.6 Four Labour Codes

As part of labour reforms in recent years, the Government of India amalgamated 29 central labour laws into four **Labour Codes**, which were passed by Parliament, namely, the *Code on Wages, 2019*, the *Industrial Relations Code, 2020*, the *Code on Social Security, 2020* and the *Occupational Safety, Health and Working Conditions Code, 2020*. The government has defended these codes as necessary to strengthen the protection available to workers, including unorganised workers in terms of statutory minimum wages and timely payouts, social security, and healthcare of workers. Easier setting up of enterprises and hiring of labour, appointment letters and formal work contracts, re-skilling of retrenched workers, annual leave with wages after working for 180 days for every worker, annual health check-up and provision of medical facilities, applicability of Employees' Provident Fund extended to all industries, labour and social security benefits to gig workers and platform workers, etc. are among other benefits sought to be provided through these four labour codes.

Notably, the Labour Code on Wages allows increase in work hours from 8 hours to maximum 12 hours per day (however, the total number of work hours per week remains capped at 48 hours, which means 8 hours x 6 days and 12 hours x 4 days are both allowed), four-days work week (12 hour shifts per working day), increase of overtime hours from 50 hours to 125 hours per quarter (3 months), larger mandatory contributions to Provident Fund (PF) by both employees and employers, cut in take-home salary but larger retirement corpus and gratuity payouts, capping the deductions in monthly wages under various heads at maximum 50%, payment of wages within two days to employees leaving an organisation, etc. As Labour is a subject in the Concurrent List on which both the Central and State governments have jurisdiction, the labour codes are at various stages of implementation because the rules must first be published by State governments to set them in motion. Besides, protracted negotiations between the Government and labour unions have to be concluded satisfactorily for all concerned.

Journalist unions across the country have been protesting that the passage of Labour Codes will compel journalists to work for longer hours with little job security. The statutory wage boards for journalists and other press employees, associated with a history of struggle, will have become a thing of the past. However, it must be remembered that the media scene in India has expanded far beyond newspapers and news magazines to include television and FM radio channels, digital internet-based news portals and other emerging new media entities. Their employees too need clearly defined, proper wage scales and service conditions.

### 5.6.1 Check Your Progress

Q. What was the workload of journalists under the *Working Journalists and Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955*?

Q. Why did the Government of India compile four Labour Codes?

### 5.7 Summing Up

The Right to Information (RTI) Act, 2005 is a strong legal instrument in the hands of citizens to access information from government and public authorities about various government services available to them, public examinations and appointments, implementation of public welfare schemes, government projects and works etc.. The Press and Registration of Periodicals (PRP) Act, 2023, has replaced the earlier colonial era law that was aimed at keeping harsh control over publishers and the press in India. The new law has greatly streamlined the process of registration of newspapers and periodicals, and in keeping with Digital India, this process is wholly online. It promises to be a boon for small publishers wishing to enter print media. The Working Journalists and Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955 is a historically important piece of legislation in independent India to trace the development of the media industry and its workers. How this legislation stacks up against the Labour Codes to be implemented across the country will be significant for media professionals seeking better pay and working conditions as well as economic security.

### 5.8 Glossary

**Appellate Board:** A body vested with the power or authority to review and decide appeals.

**Annual Statement:** A report giving an overview of a firm's financial condition and operations in the previous year, listing also its assets and liabilities in the balance sheet.

**Bonus:** An amount of money given in addition to a worker's normal salary or wages as reward or incentive for performance at work

**Dearness Allowance:** An allowance paid as cost of living adjustment to help cope with rising prices; it is calculated as a percentage of basic salary and is a component of the worker's take-home salary

**Deductions:** A sum of money that can be subtracted from a taxpayer's gross income to lower the income that is subject to taxation; deductions can be made under various heads like family situation, medical expenses, loans taken, investments made in government instruments etc.

**Gratuity:** A monetary benefit paid by the employer to an employee, exiting an organisation after a stipulated period, as a reward for services rendered.



**Gig Workers:** Workers engaged in temporary jobs, for example project-based or part-time hires, freelancers, and independent contractors

**Platform Workers:** Workers using an online platform to provide services directly to individual or group customers

**Provident Fund:** A long-term savings fund to which both employer and employee make contributions to support the employee after retirement.

## 5.9 References and Suggested Reading

Divan, M.G. (2023). *Facets of Media Law*. Eastern Book Company

Roy, A. (2018). *The RTI Story: Power to the People*. Roli Books

Press and Registration of Periodicals Act, 2023.

(accessed at

<https://mib.gov.in/sites/default/files/Press%20and%20Registration%20of%20Periodicals%20Act%202023.pdf>)

## 5.10 Answers to check Your Progress

### Q. What is the aim of the Right to Information Act, 2005?

**Ans:** The aim of the Right to Information Act, 2005 is to foster transparency and ensure good governance. This law provides all citizens the right to seek information from any public or government authority, or inspect any works, documents and records of such authority. No such information can be denied to the people, which cannot be denied to Parliament or State Legislature. For this, every public authority shall maintain all its records duly catalogued and indexed in a manner or form, which provides public access to such records and thereby facilitates the right to information under this Act.

### Q. How are common people in India using the RTI law?

**Ans:** Common people in India have been benefited by RTI law in many ways. They have used it to obtain death certificates, passports, and Aadhar cards; they have claimed pension, tax rebates, transfer of provident funds, and compensation in road accidents; examinees have verified their answer scripts and mark-sheets; candidates for government jobs have checked the fairness of appointments; public spirited citizens have obtained details of implementation of government schemes, progress of infrastructure projects etc.

### Q. What is a 'periodical' under the Press and Registration of Periodicals Act, 2023?

**Ans:** Under the Press and Registration of Periodicals Act, 2023, a periodical is any publication including a newspaper, published and printed at regular intervals, which contains public news or comments on public news. However, books or scientific, technical, and academic journals are not covered in this definition of periodicals under the new law.



# Unit:1

## Unit Structure:

### 1.1 Objectives

### 1.2 Introduction

### 1.3 Cinematograph Act, 1952

### 1.4 Cable TV Networks (Regulation) Act, 1995

### 1.5 Summing Up

### 1.6 Glossary

### 1.7 References and Suggested Reading

### 1.8 Answers to check Your Progress

### 1.9 Self Assessment Questions

## 1.1 Objectives

The objective of this unit is to introduce students of media studies with the Cinematograph Act, 1952 and the Cable TV Networks (Regulation) Act, 1995. Both are key legislations, the first deals with the legal framework necessary to exhibit films properly, while the second deals with the legal provisions needed to ensure broadcast of appropriate television content in India.

## 1.2 Introduction

Cinema and television are both powerful mediums of audio-visual expression. While cinema tells stories which can reflect the human condition in creative ways with strong commentary and entertaining idioms, television can break news instantly and offer analytical programmes to inform, educate and entertain the public. However, in a diverse country like India with its own developmental agenda and set of challenges, it is imperative to have regulatory mechanisms in place to ensure that the Constitutionally guaranteed right to free speech and expression is not misused, and that reasonable restrictions must always temper this right. The Cinematograph Act, 1952 and the Cable TV Networks (Regulation) Act, 1995 have been enacted by Parliament with this broad objective, along with the framing of Rules and necessary amendments to keep these laws in sync with changing times.

## 1.3 The Cinematograph Act, 1952

The Indian film industry is one of the largest and most globalised industries in the world, producing more than 3,000 films annually in more than 40 languages. As the second oldest film industry in the world after Hollywood in the USA, the Indian film industry for over a century has been a major source of entertainment across the length and breadth of India, and a huge unifying influence on her people. Globally too, cinema is a significant contributor to India's soft power, promoting her culture, society, and values far and wide. Considering Indian cinema's popularity and impact, a robust legal framework is a must to regulate the exhibition and related aspects of filmmaking.

In India, a film can be exhibited only after a certificate from authority. This is granted under the *Cinematograph Act, 1952*, enacted by the Parliament with the objective of allowing films

for viewing only after being certified by an empowered body, and for regulating the exhibition of films by means of cinematographs. The body which certifies films for public exhibition is the Board of Film Certification (often loosely referred to as the Board of Film Censors). Any apparatus used for the representation of moving pictures or series of pictures is defined as a 'cinematograph' under the Act.

Constituted by the Central Government, the Board of Film Certification consists of a Chairman and non-official Members. It is headquartered at Mumbai, and has 9 regional offices at Mumbai, Chennai, Thiruvananthapuram, Bangalore, Hyderabad, New Delhi, Kolkata, Cuttack and Guwahati. There are advisory panels at the regional offices to assist in the examination of films. The panel members are nominated by the Central Government for two years and they come from different walks of life.

Anyone wishing to exhibit a film will have to make an application to the Board in the prescribed manner, seeking a certificate for exhibition. The Board may, after examining the film, do any of the following:

- (a) allow the film for unrestricted public exhibition with a 'U' certificate; or add a caution with a 'UA' certificate that the parents or guardian of any child below the age of 12 years, should decide whether to allow their child to see the film; or
- (b) allow the film for public exhibition restricted to adults, with an 'A' certificate; or
- (c) allow the film for public exhibition restricted to members of any profession or class of persons, having regard to the nature, content and theme of the film, with an 'S' certificate; or
- (d) direct the applicant to carry out cuts or modifications in the film as the Board thinks necessary before allowing it for public exhibition in any of the above categories; or
- (e) refuse to allow the 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 under *Section 5(B)*. The Vision of the Board of Film Certification is to 'ensure good and healthy entertainment' through films under this law and rules. A certificate granted by the Board for exhibiting a film will be valid throughout India for a period of 10 years.

A film shall not be certified for public exhibition if, in the opinion of the Board, the film or any part of it, is against the interests of the sovereignty and integrity of India; security of the State; friendly relations with foreign States; public order, decency or morality; or involves defamation, or contempt of court, or is likely to incite the commission of any offence. Grant of a certificate or an order refusing to grant a certificate for exhibiting any film shall be published in the Gazette of India.

If the applicant is aggrieved by any order of the Board, he may, within 30 days from the date of such order, make an appeal to the Appellate Tribunal. Constituted by the Central Government, the Tribunal will have as its Chairman a retired Judge of a High Court or a person qualified to be a Judge of a High Court.

The Central Government may suspend or revoke a certificate granted by the Board — if it is convinced that the film for which the certificate was granted — (a) is being exhibited in a form other than the one in which it was certified; or (b) the film, or any part of it, is being exhibited in contravention of the provisions of the Act or the Rules made thereunder. During

the period in which a certificate remains suspended, the film shall be deemed to be an uncertified film. The applicant may, within 60 days of publication of the notification in the Official Gazette, apply to the Central Government to review its order, setting out the grounds on which he considers such review to be necessary. After giving the aggrieved person a reasonable opportunity of being heard, and after making further inquiry, the Central Government may pass such order as it thinks fit — confirming, modifying or reversing its decision. The Board will then dispose of the matter in conformity with the Government's order.

If any person — exhibits a film other than the film certified by the Board; or a film granted 'A' certificate that should be shown to adults, but is instead shown to a person who is not an adult; or a film with 'S' certificate for restricted viewing by any profession or class of persons, but instead shown to a person who is not member of such a profession or class; or alters/tampers with the film after it has been certified; or fails to comply with specific provisions of the Cinematograph Act — then he shall be punishable with imprisonment which may extend to 3 years, or with fine which may extend to Rs 1 lakh, or with both; and if the offence continues, then with further fine which may extend to Rs 20,000 for each day the offence continues.

Along with such violations of the Cinematograph Act, if the person exhibiting the film flouts any order made by the Central Government or the Board of Film Certification, then a police officer may enter any place in which he has reason to believe that the film has been or is being or is likely to be exhibited, search it, and seize the film.

Along with the mandatory certification of films for exhibition, the Act makes the licensing of cinematograph exhibitions compulsory. No one shall exhibit a film by means of a cinematograph elsewhere than in a place licensed under the Act, or without complying with the conditions and restrictions imposed by such licence. The District Magistrate shall have the authority and power to grant licence under this Act.

### 1.3.1 The Cinematograph (Amendment) Act, 2023

In July, 2023, Parliament passed the Cinematograph (Amendment) Act, 2023, thereby amending the Cinematograph Act of 1952. It primarily aims to extend the coverage of the Cinematograph Act, 1952, which was focused on censorship, to henceforth encompass copyright protection and combating piracy — thereby safeguarding the intellectual property rights of filmmakers and content creators.

The salient points of the amendment to the Cinematograph law are:

- (i) Curb the menace of *piracy* through unauthorised cam-cording in the theatre, and the copying and online transmission & exhibition of pirated copies of any film. Strict penal provisions have been incorporated, ranging from minimum 3 months imprisonment and fine of Rs.3 lakh, which can be extended up to 3 years imprisonment and fine up to 5% of the audited gross production cost of the film.
- (ii) Improve the *age-based categories* of film certification by further subdividing the UA category into three age-based categories, viz. seven years (UA 7+), thirteen years (UA 13+), and sixteen years (UA 16+), instead of twelve years. These age-based markers are only recommendatory, meant for parents or guardians to consider whether their children should view such a film.

- (iii) Certificate issued by the Board of Film Certification allowing exhibition of a film, will be perpetually valid, instead of 10 years under the Cinematograph Act of 1952.
  - (iv) Separate certificate will be necessary to exhibit a film on television and other media. As only ‘Unrestricted’ public exhibition category films can be shown on TV, films with ‘A’ or ‘S’ certificate will require a separate certificate for exhibition on TV or any other media. Before granting a separate certificate, the Board may direct the applicant to make appropriate deletions or modifications in the film.
  - (v) Align the Cinematograph law with Supreme Court judgements, as well as relevant legislations and existing Executive orders. The Board of Film Certification stands to gain greater autonomy due to removal of revisional powers of the Central Government as per the Supreme Court’s verdict in the case of *K.M. Shankarappa vs Union of India, 2000*.
  - (vi) References to the erstwhile State of Jammu and Kashmir to be omitted in line with the *Jammu and Kashmir Reorganisation Act, 2019*.
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### 1.3.2 Stop to Consider

**Industry Status:** Indian film industry was accorded ‘industry status’ in 2001 by the Government of India. This was a significant step which brought about a transformational change to this sector and was instrumental in rationalising its working. Earlier, the operations and transactions related to filmmaking were mostly unstructured. The bulk of investment came from private lenders who charged exorbitant interest rates, and also from the underworld seeking to launder black money. After receiving industry status, the Indian film industry began to attract funds from banks and financial institutions, as well as the corporate sector. With the Government opening the doors to 100% foreign direct investment (FDI) in this sector, foreign institutional investors and even film studios have begun funding filmmakers. A new breed of venture capitalists too have been putting up money for technical services in this sector, like animation and film editing. Legally binding contracts have become the norm, instead of the informal handshake agreements of earlier times. Tax benefits are being given by the Government; to combat piracy causing losses to the tune of Rs 20,000 crore every year to the film industry, the Government has piloted an amendment of the Cinematograph law through Parliament in 2023. All these changes are contributing to the Indian film industry becoming global in its outlook, operations and footprint.

**Freedom of Expression:** Cinema is a powerful means of creative and independent expression, and its use for social commentary and depiction of reality leaves a powerful impact. The right to free speech and expression guaranteed under Article 19(1)(a) of the Indian Constitution also contains within it the filmmaker’s ‘right to exhibit films’ and the people’s ‘right to be entertained’. However, like the right to a free press, there is no right to independent filmmaking explicitly provided for in the Constitution — rather it is implicit within Article 19(1)(a), although the right to make and exhibit films must also abide by the ‘reasonable restrictions’ to free speech laid down in Article 19(2). This has been repeatedly established in various landmark cases by the Supreme Court over the years.

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### 1.3.3 Check Your Progress

Q. What was the objective for enactment of the Cinematograph Act, 1952?

Q. What are the certificates for exhibiting films awarded by the Board of Film Certification?

## 1.4 The Cable TV Networks (Regulation) Act, 1995

As the national broadcaster, while *Doordarshan* grew from strength to strength throughout the 1980s, cable TV began to make inroads in urban India. Corporates, luxury hotels and affluent apartment complexes patronised taped TV programmes and foreign films — which were transmitted from video players in control rooms set up by private operators.

With the Gulf War of 1991, satellite TV came to India. Five star hotels in Mumbai and Delhi arranged live shows of the war through CNN, the 24x7 American TV news channel. Then came the big foreign player STAR TV, followed by domestic channels like Zee TV and Sun TV joining the fray. In keeping with the then Narasimha Rao government's liberalisation of the Indian market in 1992, private TV channels began to provide film and music entertainment as well as news and current affairs.

The floodgates opened with a landmark Supreme Court judgement in 1995 that 'airwaves are public property', thereby putting an end to state monopoly over broadcast spectrum. In the case *The Secretary, Ministry of Information and Broadcasting vs Cricket Association of Bengal*, the Supreme Court made it clear that the first facet of broadcasting freedom is 'freedom from state or governmental control, in particular from the censorship by the government... public broadcasting is not to be equated with state broadcasting'.

With government-controlled *Akashvani* and *Doordarshan* rapidly losing their dominant positions in public broadcasting, the Centre sought to bring in laws to deal with the 'invasion from the skies' and regulate the burgeoning broadcast sector. The *Cable Television Networks (Regulation) Act, 1995* was enacted to regulate cable TV networks in the country. The salient points of this legislation are:

- registration as a cable TV operator under this Act is mandatory to operate a cable TV network
- content telecast on cable TV must be in conformity with prescribed programme code / advertisement code
- compulsory transmission of specified number of *Doordarshan* and regional channels
- seizure and confiscation of equipment for violating provisions of this Act
- punishment for violating provisions of this Act with jail term up to 2 years for first offence and up to 5 years for repeat offence, and/or fine up to Rs 1,000 for first offence and Rs 5,000 for repeat offence

### 1.4.1 Cable Television Networks Rules, 1994,

Earlier, under the *Cable Television Networks Rules, 1994*, a programme code and an advertisement code had already been laid down. As per this **Programme Code**, no programme should be carried on cable TV service which:

- affects the integrity of the nation
- likely to promote anti-national attitudes, incite violence or affect law & order
- attacks religions or communities
- criticises friendly countries

- casts aspersions on the integrity of the President of India or the Judiciary
- amounts to contempt of court
- is defamatory or makes false innuendos
- maligns or slanders any individual or group (ethnic, linguistic, regional etc)
- denigrates women, injures public morals
- denigrates children, programme unsuitable for their viewing
- offends good taste or decency
- encourages superstition & blind belief
- violates the cinematograph law
- violates the copyright law

The *Advertisement Code* under the 1994 Rules forbids any advertisement on cable TV service which is:—

- against any provision of the Constitution
- opposed to any law of the country
- glorifies crime or violence
- incites people to violence, public disorder or breach of law
- offends public morality or decency
- exploits the Constitution/national emblem/personality of any national leader
- denigrates any race, nationality, religion, colour or caste
- projects women in indecent, derogatory or subordinate manner
- depicts children in indecent manner / engaged in unhealthy practices / doing dangerous acts
- exploits social evils like dowry, child marriage etc.
- directed towards any religious or political end
- promotes tobacco products / liquor / intoxicants
- promotes infant milk substitutes / feeding bottle
- claims miraculous properties of product or some magic cure
- advertises any product with defects / deficiencies specified in the Consumer Protection Act, 1986
- violates the standards of practice of advertising agencies (as approved by the Advertising Agencies Association of India)

### 1.4.2 Stop to Consider

**Self-regulation by TV channels:** With the Indian Parliament enacting the Cable TV Networks (Regulation) Act, 1995 and the Cable TV Networks Rules, 1994, the onus was on private TV channels to either regulate themselves properly and maintain their independence, or allow the Government oversight powers.

The *News Broadcasters Association (NBA)* represents the private TV news & current affairs broadcasters. Funded entirely by its members, the NBA presents a unified front before the Government to speak strongly on matters that affect their industry. Another such organisation is the *Broadcast Editors' Association*. As a mechanism for self-regulation, the NBA has its Code of Ethics to regulate TV content, and it set up the **News Broadcasting Standards Authority (NBSA)** to administer this code and broadcasting standards. The NBSA is



empowered to warn, express disapproval or censure any news TV channel violating the code and hand down a fine up to Rs 1 lakh.

Broadly, the NBA Code of Ethics calls upon TV news channels:

- fair, impartial and objective presentation of news reports
- not to glorify crime or violence, or incite to it; any reconstruction of criminal deed must not cross the bounds of good taste & sensibility
- women or juvenile victims of sexual assault, aggression and trauma not to be identified
- no explicit depiction of sexual activity / perversion / violence
- no encouragement to superstition and occultism
- no intrusion on privacy unless there is a larger and identifiable public interest
- sting operations to be undertaken only as last resort in the larger public interest, that too for getting conclusive evidence of wrongdoing or criminality; besides, there must not be any use of sex, narcotics, intimidation or violence in recording any sting operation
- national security must never be endangered; no broadcast of sensitive information that can put lives or security at risk; no encouragement to secessionist interests; care to be taken to use only maps and specified terminology permitted by the government
- mistakes made during broadcasts must be acknowledged and corrected immediately on air in a manner visible to large number of viewers
- viewer feedback must be responded to promptly by displaying on website; complaints if found true must be acknowledged immediately on air

For **non-news channels**, there is a separate and detailed guideline by **Indian Broadcasting Foundation (IBF)**. It covers programming ethics vis-à-vis themes like crime & violence; sex, obscenity & nudity; horror & occult; religion & community; drugs, tobacco, solvents & alcohol; harm & offence; and general restrictions.

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### 1.4.3 Check Your Progress

- Q. How did the Supreme Court open the way for private TV broadcasting in India?  
Q. What was the objective of the Cable Television Networks (Regulation) Act, 1995?

## 1.5 Summing Up

The Cinematograph Act, 1952 put in place a legal framework for exhibition of films through a scheme of certification issued by the Board of Film Certification, along with obligations placed upon cinematograph operators in terms of compulsory licensing. Indian film industry having been accorded 'industry' status by the Government of India, the Cinematograph law too has been amended to help rationalise its working further and protect it from crippling piracy losses. On the other hand, television broadcasting remains in a state of flux due to intense competition among private TV players in both news and non-news categories. The Cable TV Networks (Regulation) Act, 1995 and Cable TV Networks Rules, 1994 have contributed to keep some sort of order in this sector, to which private TV broadcasters have responded with their own self-regulatory guidelines. These legal provisions and initiatives are

relevant in the continuing debate over media freedom and governmental efforts towards an effective oversight mechanism.

## 1.6 References and Suggested Reading

Divan, M.G. (2023). *Facets of Media Law*. Eastern Book Company

Kishore, D., Singh, G.S. (2010). *Media Law: Its Ethics and Ethos*. Har-Anand Publications

## 1.7 Answers to check Your Progress

**Q.** What was the objective for enactment of the Cinematograph Act, 1952?

**Ans:** The Parliament enacted the *Cinematograph Act, 1952*, with the objective of allowing films for viewing in India only receiving certification by an empowered body, and for regulating the exhibition of films by means of cinematographs.

**Q.** What are the certificates for exhibiting films awarded by the Board of Film Certification?

**Ans:** Under the Cinematograph Act, 1952, the Board of Film Certification grants certificates for four categories of films, viz. 'U' certificate for unrestricted public exhibition of a film; 'UA' certificate with a caution for parents/guardians of a child under 12 years of age whether to allow their child to see the film; 'A' certificate for public exhibition of a film to be restricted only to adults; and 'S' certificate for public exhibition of a film restricted to members of any profession or class of persons.

**Q.** How did the Supreme Court open the way for private TV broadcasting in India?

**Ans:** In 1995, the Supreme Court ruled in the landmark case *The Secretary, Ministry of Information and Broadcasting vs Cricket Association of Bengal*, that 'airwaves are public property', and that the first facet of broadcasting freedom is 'freedom from state or governmental control, in particular from the censorship by the government'. This verdict put an end to state monopoly over broadcast spectrum, and soon private TV news and non-news channels were broadcasting television content across India.

**Q.** What was the objective of the Cable Television Networks (Regulation) Act, 1995?

**Ans:** As state broadcasters *Akashvani* and *Doordarshan* rapidly lost ground to private TV channels, the Central Government piloted a legislation in parliament to deal with this 'invasion from the skies'. The Cable Television Networks (Regulation) Act, 1995 was enacted to regulate the burgeoning broadcast sector, and in particular the private cable TV networks in the country. Under this law, Cable TV Operators had to compulsorily register themselves, telecast TV content in accordance with the prescribed programme code and advertisement code, and also transmit a specified number of Doordarshan and regional channels.

## 1.8 Self Assessment Questions

**Q.** Do you think 'self-regulation' by private TV broadcasters has been successful?



## Unit-2

### Unit Structure:

#### 2.1 Objectives

#### 2.3 Introduction

#### 2.3 PrasarBharati (Broadcasting Corporation of India) Act, 1990

#### 2.4 PrasarBharati's Guidelines for TV Content

#### 2.5 Summing Up

#### 2.6 Glossary

#### 2.7 References and Suggested Reading

#### 2.8 Answers to check Your Progress

#### 2.9 Self Assessment Questions

### 2.1 Objectives

The objective of this unit is to acquaint students of media studies with the lead-up to a national broadcaster and the legal instrument needed to establish it. After the development of radio and television broadcasting in India, the question was whether a national broadcaster can be free of government control. After all, a free media is an essential prerequisite of a democratic polity. The PrasarBharati (Broadcasting Corporation of India) Act, 1990 passed by Parliament was the legal instrument with which the PrasarBharati Corporation was established, having as its two arms Akashvani and Doordarshan. Apart from studying the structure of PrasarBharati as the national broadcaster of India, media students need to ponder over its degree of autonomy, function and role. Its programme code for both radio and TV broadcasting must be thoroughly understood, for it forms the basis of do's and don'ts for producers, broadcasters and other media professionals associated with it.

### 2.2 Introduction

For nearly four decades after India became free, broadcast media in the country essentially meant *Akashvanias* the national radio broadcaster. In the early 1920s, radio broadcasting had begun in India through amateur radio clubs in Calcutta, Bombay, Madras and Lahore, and by 1927, they had joined hands with some businessmen to form a private company named 'Indian Broadcasting Company'. When it failed to sustain itself financially, the British colonial government took over and it became the Indian State Broadcasting Service (ISBS). In 1936, it was renamed All India Radio (AIR) which continued till 1957, when it became Akashvani with a countrywide network of transmitters and radio stations engaged in varied, extensive programming.

Television started as an offshoot of Akashvani in 1959, when it collaborated with UNESCO to set up a TV centre in New Delhi and telecast educational programmes in the capital region. In 1965, general service TV programming for limited hours had begun, and by 1976, Akashvani and its TV unit, named Doordarshan, had been separated. In 1982, as New Delhi hosted the 9th Asian Games, Doordarshan took off rapidly as the national television broadcaster with colour telecast and a proliferation of high- and low-powered transmitters.

*Akashvani* and *Doordarshan* followed strict ethics guidelines in broadcasting news and other programmes with their threefold objective to *inform, educate and entertain* the public. Should these national broadcasters be independent of government control? The *AK Chanda-*

*led committee* in a 1967 report, while recommending separation of radio and TV among its slew of recommendations, had suggested that the two should be constituted as broadcasting corporations under public control with semi-government character. While the government should have the authority to make the two corporations broadcast certain programmes or forbid broadcasts, such power should be used sparingly and its scope be clearly defined, the committee felt.

In the aftermath of Emergency (1975-77), the question became urgent whether it was desirable to have national broadcasters of the world's largest democracy slavishly follow the dictates of the government of the day. A committee under eminent journalist BG Verghese was appointed to study the question of autonomy for *Akashvani* and *Doordarshan* and make recommendations. In its 1978 report, the *BG Verghese committee* argued for an independent national broadcaster having constitutional safeguards. Its report noted: 'The Executive, abetted by a captive Parliament, shamelessly misused the broadcasting during Emergency and this must be prevented for all times.'

### **First attempt towards autonomous national broadcaster**

Ignoring the recommendation for constitutional safeguards, the Janata Party regime introduced in 1979 a watered down bill for an 'autonomous corporation' to be named *PrasarBharati* for both *Doordarshan* and *Akashvani*. However, the bill lapsed when the Congress led by Indira Gandhi returned to power in 1980. The PC Joshi committee, constituted two years later with limited purpose to prepare a software plan for *Doordarshan*, too noted that the proposed *PrasarBharati* would be lacking in 'functional freedom'.

### **Second attempt: PrasarBharati as national broadcaster**

The PrasarBharati (Broadcasting Corporation of India) Bill was introduced in Parliament in 1989 and was passed by Lok Sabha next year after several amendments. It received the assent of the President on 12 September, 1990, but came into force on 23 November, 1997. Under this Act, the *PrasarBharati Corporation* was set up as India's autonomous public broadcaster with *Akashvani* and *Doordarshan* as its two arms. The headquarters of the Corporation is New Delhi, and it may establish offices, kendras or stations at other places in India, and with the permission of the Government, outside India as well.

## **2.3 PrasarBharati (Broadcasting Corporation of India) Act, 1990**

This Act made it clear that the primary duty of the national broadcaster is to organise and conduct public broadcasting services to inform, educate and entertain the public, as well as to ensure balanced development of broadcasting on radio and television. Further, the PrasarBharati Corporation must ensure that broadcasting is conducted as a public service. Among its objectives spelled out in *Section 12* of the Act, some are as follows:

- Upholding the country's unity and integrity and the values enshrined in the Constitution
- Safeguarding the right of the citizen to be informed freely, truthfully and objectively on all matters of public interest, and presenting a 'fair and balanced flow of information with contrasting views'
- Promoting social justice; combating exploitation and inequality; advancing the welfare of weaker sections of society, working classes, rural people, residents of backward, remote and border areas

- Paying special attention to the fields of education and spread of literacy, agriculture, rural development, environment, health and family welfare, science and technology
- Adequate coverage to be given to diverse cultures and languages; sports and games to encourage healthy competition and sportsmanship spirit
- Providing special programmes to cater to the needs of minorities, tribes, women, youth, children, handicapped and vulnerable sections etc.
- Promoting national integration and facilitating regional broadcasting services in every State by broadcasting in various languages
- Providing comprehensive broadcast coverage by choosing appropriate technology, best utilisation of frequencies available, and ensuring high quality reception; upgrading radio and TV broadcast technology by promoting research and development (R&D) activities; expanding broadcast coverage by establishing additional channels of communication at all levels

The general supervision, direction, and management of the affairs of the Corporation is vested in the ***PrasarBharati Board***, which consists of a Chairman, an Executive Member, one Member (Finance) and one Member (Personnel), six part-time Members, the Director Generals of Akashvani and Doordarshan as ex-officio Members; one representative of the Union Ministry of Information and Broadcasting, and two representatives of the employees of the Corporation. The Chairman and the part-time Members should be persons of eminence in public life; the Executive Member should have special knowledge or practical experience in administration, broadcasting, education, literature, culture, arts, music, dramatics or journalism; the Member (Finance) and the Member (Personnel) are chosen for their expertise and experience in finance and personnel management & administration respectively. The term of office of the Chairman and part-time Members will be three years, of the Executive Member five years, and of the Member (Finance) and Member (Personnel) will be six years.

The Corporation may also appoint ***committees*** if required to perform its functions efficiently, exercise its powers, and discharge its duties. Further, it may associate with any person whose help or advice is needed to carry out the provisions of the Act. There will be a ***Parliamentary Committee*** to oversee that the Corporation discharges its functions and meets the objectives as stipulated in the Act; this Committee will consist of 22 members — 15 from the Lok Sabha and 7 from the Rajya Sabha — and will periodically submit its report to the Parliament. There will also be a ***Broadcast Council*** to receive, consider and dispose of complaints; this Council will consist of a President and 10 other Members, with two of them from the Lok Sabha and two from the Rajya Sabha.

To enable PrasarBharati Corporation to discharge its functions efficiently, the Central Government may, after due appropriation is made by Parliament by law, make payments in each financial year which consists of the proceeds of broadcast receiver licence fees, as well as through equity, grant-in-aid or loan. All receipts of the Corporation are credited to its own fund deposited in one or more nationalised banks. The Corporation may spend such sums as needed for performing its functions; it may also invest its moneys in the securities of the Central Government or any State Government.

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### 2.3.1 Stop to Consider

It was intended that the *PrasarBharati (Broadcasting Corporation of India) Act, 1990* would bring about a national broadcaster in India enjoying the kind of autonomy and independence

the British Broadcasting Corporation (BBC) does. However, the Government of India has retained the powers to make rules for PrasarBharati, issue grants or allowances, and control the salaries of its employees. **Section 22** of the Act gives the Government powers to issue directions to PrasarBharati which it may think necessary so as to make a broadcast on any matter of public interest, or not to make a broadcast in the interests of:

- sovereignty, unity & integrity of India,
- security of the State, and
- preservation of public order

This besides, the Government may require PrasarBharati to furnish such information it deems necessary. Further, political parties through their representatives in the Parliamentary Committee get to exercise some control over the PrasarBharati Board vested with powers to superintend, direct and manage the affairs of the Corporation.

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## 2.4 PrasarBharati's Guidelines for TV Content

PrasarBharati has its own broadcast code. Its *programme code* for Doordarshan and Akashvani does not permit anything that:

- offends good taste or decency, or is defamatory in nature;
- contains criticism of friendly countries;
- contains anything affecting the sovereignty and integrity of India and the security of the State;
- promotes anti-national attitude;
- contains visuals or words attacking religions or communities, or expresses contempt of such groups, or promotes communal attitudes;
- encourages or incites violence, or is likely to be prejudicial to public order;
- casts aspersions on the integrity of the President, Governors and the Judiciary;
- misuses or wrongly/improperly depicts the national flag, national emblem, national anthem and map of India;
- may cause disharmony in Centre-State relations;
- encourages superstition, dogma or blind belief, and hinders development of scientific temper and spirit of inquiry;
- aggravates social inequities and evils like caste, child marriage, dowry, alcohol and substance abuse;
- amounts to contempt of Court;
- maligns or defames any individual or group, and affects the social, public and moral life of the country;
- contains visuals or words which reflect a slandering, ironical and snobbish attitude in the portrayal of certain ethnic, linguistic and regional groups;
- denigrates women through depiction in any manner of the figure/form/body of a woman, in a way which is indecent or derogatory to women, or is likely to deprave, corrupt or injure public morality or morals;
- explicitly portrays violence against children, women and senior citizens, or physical and emotional maltreatment without concern for their health, safety, privacy and dignity;
- encourages ecological spoliation or has been produced by causing cruelty to animals and destruction of the environment;

- contains undue publicity or glorification of individuals and institutions/organisations;
- contravenes general directives issued by the Central Government for regulating content under relevant statutory provisions; and
- is likely to incite an offence, or contravenes prevailing laws including provisions of the Copyright Act, 1957.

Regarding the Production process in Doordarshan, all programmes/episodes must conform to the Broadcasting Code of PrasarBharati, along with its technical formats and standards. The Producer has to submit the script and tapes (rough-cuts, final tapes) for preview by the Preview Committee comprising not more than three official members including a technical member and involving two outside experts. If the Preview committee suggests changes in the programme or episode, the Producer must carry these out within the shortest possible time at own cost. The Producer shall also supply the promos (video, audio and print) or publicity material.

PrasarBharati also has a detailed *advertisement code* to go along with its broadcast code. No advertisement can be presented as news. No advertisement is permitted which:

- is against any provision of the Constitution of India;
- exploits friendly relations with other countries;
- exploits the national emblem or the personality of any national or state leader;
- derides any race, caste, colour, religion, or nationality;
- glorifies criminality or violence;
- tends to incite people to breach of law, crime, violence or public disorder;
- is obscene or offends public morality;
- projects a derogatory image of women, or portrays them with passive/submissive qualities, or encourages them to play a subordinate/secondary role in family and society;
- exploits social evils like dowry, child marriage etc.;
- endangers the safety of children, or creates in them any interest in unhealthy practices, or shows them begging or in undignified or indecent manner;
- promotes tobacco products, liquor or intoxicants; infant milk substitutes or food and feeding bottle;
- the goods or services advertised shall not suffer from any defect or deficiency as mentioned in Consumer Protection Act, 2019;
- shall contain no references which are likely to lead the public to infer that the product advertised or its any ingredient has special/miraculous/supernatural property or quality which is difficult to prove;
- is associated with money lenders, chit funds, savings schemes and lotteries not conducted by government agencies or nationalised banks or PSUs, unlicensed employment services, matrimonial agencies, fortune tellers;
- depicts cruelty or violence towards animals in any form, or promotes unscientific belief that causes harm to animals;
- any indecent, vulgar, suggestive, repulsive or offensive theme or treatment must be avoided;
- all advertisements should be clearly distinguishable from the programme and should not in any manner interfere with it;
- no programme shall carry advertisements exceeding 12 minutes per hour, which may include up to 10 minutes per hour of commercial advertisements, and up to 2 minutes per hour of a channel's self-promotional programmes.



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### 2.4.1 Check Your Progress

Q. What is the primary duty of the national broadcaster mandated by the PrasarBharati Act?

Q. What is the primary function of the PrasarBharati Board?

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## 2.5 Summing Up

From its initiation in the early 1920s, radio broadcasting had matured as India became free and in the three decades thereafter. Akashvani's television arm began on an experimental note in 1959, general service telecasting began in 1965 for limited hours in the Delhi region. Although by 1976 Doordarshan had become a separate entity from Akashvani, it was in 1982 that TV caught on in India due to the Asian Games and colour telecast. However, the experience of Emergency in 1975-77 had raised the question about the need for autonomy of a national broadcaster. In 1990 after Parliament passed the PrasarBharati (Broadcasting Corporation of India) Act, it was only in 1977 that the law came into force. The PrasarBharati Corporation came into existence with Akashvani and Doordarshan as its two arms, its primary duty being to organise and conduct public broadcasting services to inform, educate and entertain the public, as well as to ensure balanced development of radio and TV broadcasting. Although mandated to be an autonomous entity, PrasarBharati remains under considerable control by the Government due to the Parliamentary Committee's oversight power, presence of Members of Parliament in the PrasarBharati Board, and the Central Government holding the purse strings. PrasarBharati's broadcast code shows clearly that it has to maintain a balance between its nation building responsibilities and seeking to be autonomous and competitive in the market.

## 2.6 Glossary

**Broadcasting:** Electronic transmission of radio and television signals distributing audio and video content to a widespread mass audience

**Consumer protection:** Safeguarding buyers of goods and services from unfair market practices through advocacy, awareness creation, mobilisation, and representation

**Rough-cut:** The early edited cut and reassembled film stock which is the first stage in which the film resembles the final product

## 2.7 References and Suggested Reading

<https://ddashboard.legislative.gov.in/actsofparliamentfromtheyear/prasar-bharati-broadcasting-corporation-india-act-1990>

[https://prasarbharati.gov.in/wp-content/uploads/2022/05/Approved-Notification-01\\_2022-Ops-Programme-Code-of-Prasar-Bharati-18052022.pdf](https://prasarbharati.gov.in/wp-content/uploads/2022/05/Approved-Notification-01_2022-Ops-Programme-Code-of-Prasar-Bharati-18052022.pdf)

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## **Unit-3**

### **Media and Public Interest Litigation ; Press Council of India Act, 1965; Information Technology Act, 2005**

#### **Unit Structure:**

#### **3.1 Objectives**

#### **3.2 Introduction**

#### **3.3 Media and Public Interest Litigation**

#### **3.4 Press Council of India Act, 1965**

#### **3.5 Information Technology Act, 2000**

#### **3.6 Summing Up**

#### **3.7 Glossary**

#### **3.8 References and Suggested Reading**

#### **3.9 Answers to check Your Progress**

#### **3.10 Self Assessment Questions**

#### **3.1 Objectives**

The objective of this unit is threefold — to highlight the growing role of public interest litigation (PIL) in raising matters of public importance for media, to highlight the law under which the Press Council of India (PCI) was established and its role as a watchdog of both press freedom and press ethics, and to discuss the law and rules on information technology which also impact the media in this digital age.

#### **3.2 Introduction**

The study of public interest litigation (PIL) is of special significance for media students. Issues of vital public interest are usually involved in PIL cases, and their coverage by media helps begin an informed discourse, creates broad awareness among the people, and often the government or the authorities concerned are moved to take corrective action. The Press Council of India (PCI) is a nodal institution to safeguard press freedom while playing a watchdog role to ensure ethical journalistic practices. Its relevance needs to be examined and appreciated in the context of the rise of new media, as well as the need for proper regulation vis-a-vis a free press. As information and communication technologies grow more ubiquitous as well as disruptive, the media too must capitalise on the opportunities while facing the challenges. The Information Technology Act, 2000 was framed when India was riding the dotcom revolution at the start of the millennium. This was the law which made electronic

commerce and governance possible in the country while enabling law enforcement agencies to battle cyber crime and bring offenders to justice. The use of networked computer resources in ever more areas of human activity and the sweep of social media have necessitated continuing upgrades of this law. This also impacts media activities and is therefore important for media studies.

### **3.3 Media and Public Interest Litigation**

Public Interest Litigation (PIL) is a legal proceeding or action initiated in court to protect public interest. It may be a matter in which the rights of a weak, disadvantaged and marginalised group have been affected, which in turn bears implications for the interests of the public at large. It is not necessary for the affected group or party to move the court — any other individual or party can do so on its behalf, or the court itself may take up its litigation.

Normally, a party bringing a case to court must have locus standi, i.e. its right(s) have been affected or it has a legitimate interest in the outcome of the case. When the court's decision in a case is pending, status quo has to be maintained and there is no scope for granting interim relief.

In PIL, there is no need for a party to have locus standi in moving the court to secure justice for the affected party. While the court is hearing the PIL, it can grant interim relief to the victim(s).

The concept of PIL originated in the USA. The idea was to involve un-represented groups and interests (e.g. the poor, the minorities, consumers, environmentalists, activists for various other public causes etc.) in the decision-making process by providing them legal representation.

**PIL in India:** For nearly three decades after India gained independence, large sections of the population were unable to access the legal system due to poverty, illiteracy, ignorance of their rights, and unfamiliarity with court language and procedure. This resulted in de-facto denial of justice to the very people who needed it the most.

During the Emergency years (1975 to 1977), there was widespread abuse of State power. Civil and political rights of the people were suspended, and the courts could do very little. After the Emergency was lifted, soul-searching began in the Judiciary as the Press exposed many incidents of custodial violence, human rights violation, governmental repression and law-breaking.

In the Supreme Court, Justice VR Krishna Iyer and Justice PN Bhagwati became the pioneers of judicial activism. They took the lead that the Court must reach out to the people, and the justice delivery system has to be modernised and made more accessible. Justice Bhagwati, who later went on to be the Chief Justice of India, introduced the practice of taking cognizance of letters written by social workers, civil liberty activists, lawyers and journalists directly to him. The locus standi rule was relaxed. Any public spirited individual or civil society group — on behalf of poor and disadvantaged people — could now approach the Supreme Court and High Courts seeking legal remedies in cases where public interest was at

stake. Public Interest Litigation thus struck roots in India. (NOTE: Justice PN Bhagwati is known as the Father of PIL in India)

Before long, PIL jurisprudence was dealing with some of the most headline grabbing cases. In 1979, an advocate filed a PIL in Supreme Court on behalf of HussainaraKhatoon, an undertrial prisoner in Bihar, on the basis of a news report by The Indian Express which highlighted the plight of thousands of undertrial prisoners languishing for long years in various jails across Bihar (*HussainaraKhatoon v. State of Bihar*). The case led to the release of more than 40,000 undertrial prisoners.

The next PIL case involved the shocking Bhagalpur blinding case (*Anil Yadav v. State of Bihar, 1981*), based on media reports of 33 suspected criminals in jail blinded with acid put in their eyes. The Supreme Court issued interim orders to bring the victims to Delhi for eye treatment and provide them free legal aid, while directing speedy prosecution of the guilty policemen.

Advocate and environment activist MC Mehta has filed major PILs in Supreme Court, winning verdicts against the dumping of untreated sewage from tanneries in Kanpur into the Ganges, polluting industrial units affecting the Taj Mahal, and the conversion of public vehicles in Delhi from diesel to CNG mode.

In *Citizens for Democracy v. State of Assam, 1995*, the Supreme Court ruled that handcuffs and other fetters shall not be forced upon a prisoner while lodged in jail or in transit from one jail to another or to the court and back.

The 1997 landmark PIL case *Vishaka vs State of Rajasthan* was instrumental in the Supreme Court framing guidelines to deal with sexual harassment of women at the workplace.

Taking up a PIL by SarbanandaSonowal, former AASU president and later Chief Minister of Assam, the Supreme Court in 2005 struck down the *Illegal Migrants Detection by Tribunals (IMDT) Act, 1983* as unconstitutional.

Another important PIL case was *Shreya Singhal vs Union of India, 2013* resulting in the Supreme Court striking down Section 66A of the Information Technology Act, 2000. This section allowed arrests for 'objectionable' content posted on the internet (through an amendment of this law in 2008, the Government had armed itself with powers to detain and imprison anyone for allegedly making 'offensive and intimidating' posts).

**Phases of PIL development:** Three broad phases have been observed in the development of PIL in India. In the **first phase** from the late 1970s and continued through the 1980s, PIL cases were generally filed by public spirited individuals like lawyers, social activists, journalists and academics. Their complaints mostly related to human rights abuse due to action or non-action by the government. The Judiciary responded by coming to the rescue of disadvantaged people like child labourers, bonded labourers, mentally challenged persons, pavement dwellers, prisoners and women.

In the **second phase**, filing of PIL cases became more institutionalised with specialised NGOs and lawyers beginning to regularly move the higher courts on matters of public

interest. The issues became broader and more diverse like sexual harassment at the workplace, corruption in administration, protection of the environment, rule of law and good governance. The Judiciary took a bolder stance, began holding the government agencies more strictly to account, and took a serious view of non-compliance with its orders.

In the **third phase** that is continuing till present, there has been a huge expansion of issues raised through PIL. This has led to misuse of PILs, adding to the burden of courts where lakhs of cases remain pending for years. Judges are therefore becoming stricter with frivolous complainants. On the other hand, the higher courts are also taking up broader policy issues that concern the Executive and sometimes the Legislature.

### **Benefits of PIL:**

Access to justice was democratised — anyone with the right credentials could knock at the Court's door on behalf of poor and disadvantaged victims.

Vigilant and public spirited citizens have an inexpensive legal remedy, sometimes they can also avail of free legal aid.

By expanding the standing of public spirited individuals and institutions to initiate class action through PILs, the higher courts assumed a more active role to safeguard the rule of law.

Justice delivery mechanism became more remedial — the higher Judiciary became more activist in making the Indian legal system less procedural and more public welfare oriented.

New techniques of judicial fact finding were established e.g. the higher courts began to appoint their own fact-finding commissions, or entrusted strict responsibilities to agencies like NHRC or CBI to probe and submit reports on human rights violations.

To prevent human rights abuse, the higher courts began active monitoring of State institutions like jails, juvenile homes, women's protective homes and mental asylums — which in turn helped bring about improvement in their conditions.

Protection of human rights gained prominence as PILs were filed in Court to rescue people locked up for years without trial, or from custodial torture, bondage, exploitation, sexual harassment and other wrongs.

Under the Court's writ jurisdiction, new kinds of relief were created, e.g. interim compensation to the victims of State power misuse.

### **3.3.1 Stop to Consider**

Misuse of PIL: The growing misuse of PILs has caused eminent jurists and judges like former Chief Justice AS Anand to warn against 'political interest litigation' and 'private inquisitiveness litigation'. The Supreme Court has framed a guideline for regulating PILs:

- Encourage only genuine and bonafide PILs, ascertain whether these are in substantial public interest, and cross-check the facts given.

- Verify credentials of the petitioner, ascertain that there is no personal gain or any private or oblique motive behind it
- Strike a balance between conflicting interests — so that in the name of safeguarding rights, no wild & reckless allegation or mischievous petition is allowed
- Impose exemplary cost on busybodies and frivolous PILs

*[NOTE: It must be remembered that while writ petitions are filed in court to secure individual rights, PILs are filed to protect group interests and thereby secure a larger public interest.]*

### **3.3.2 Check Your Progress**

Q. What do you understand by PIL?

Q. What are the benefits of PIL in India?

## **3.4 Press Council of India Act, 1965**

The Press Council of India (PCI) was set up in 1966 following an Act of Parliament on the recommendations of the First Press Commission. Its objective was to ‘preserve the freedom of the press and to maintain and improve the standards of newspapers in India’. In The Press Council Act, 1965, it was laid down that the PCI would be a 26-member body with the Chairman to be nominated by the Chief Justice of India. Among the 25 other members, 13 would be from the working journalists; six would be from newspaper managements; three would have ‘special knowledge or experience’ in the fields of education, science, literature, law or culture; and the remaining three would be Members of Parliament with two Members from the Lok Sabha and one Member from the Rajya Sabha.

However, The Press Council Act, 1965 was repealed in 1976 during the Emergency. The Press Council was abolished. After the Emergency was lifted, Parliament passed a fresh legislation — The Press Council Act, 1978 — to revive the Press Council.

### **3.4.1 Stop to Consider**

#### **Second Press Commission**

Immediately after the Emergency was lifted, the incoming Janata Party government constituted the Second Press Commission in May 1977 under Justice PK Goswami. Its broad objective was to re-examine the place, status and functioning of the press in a democratic set-up. Its terms of reference was to go into the issues of safeguarding freedom of the press from pressure by the government, political parties, newspaper proprietors, advertisers, trade unions and other quarters; studying the ownership patterns and financial structures so as to ensure editorial independence; strengthening the economy of the press industry; promoting the development of regional press; making the press play a responsible role in the development process; and suggesting measures to raise the standards of journalism.

However, Justice PK Goswami and his colleagues resigned when the Congress returned to power at the Centre in 1980. Justice KK Mathew was appointed the new chairman of the Second Press Commission. Its recommendations included:

- The role of the press in a developing country should be ‘neither that of an adversary nor an ally of the government’
- Newspapers should refrain from sensational reporting of communal disturbances
- The Press Council should continue; it should be given powers to deny accreditation
- ‘Respect for Privacy’ should be included in the Press Council Act of 1978
- The Editor should take responsibility of all matter published in his newspaper, including advertisements
- A Newspaper Development Corporation (NDC) should be established to promote the development of the press.

**Present status:** The Press Council of India at present remains a statutory, quasi-judicial, autonomous authority with the two-fold objective of preserving the freedom of the press, and maintaining and improving the standards of newspapers and news agencies in India. Its purpose is not only to act as a watchdog upon the press but also to encourage a new perspective into the journalistic fraternity. It can also play an advisory role by — either suo-motu or on a reference made to it by the Government — undertaking studies and expressing its opinion about any bill, legislation, law or other matters concerning the press and conveying its opinion to the Government or the persons concerned. Besides, in matters of public importance concerning its statutory responsibilities, the Press Council may suo-motu take cognizance and constitute a special committee to make an on-the-spot inquiry.

**Composition:** The Press Council is a body corporate having perpetual succession. It consists of the Chairman and 28 other members (13 are working journalists with six of them being editors and seven being working journalists other than editors; six from newspaper managements; one from news agency management; five are Members of Parliament with three from the Lok Sabha and two from the Rajya Sabha; and the remaining three members having special knowledge or practical experience in education, science, law, literature and culture, and who are selected from the Sahitya Academy, the University Grants Commission, and the Bar Council of India).

The PCI Chairman is selected by a committee consisting of the Chairman of Rajya Sabha, the Speaker of Lok Sabha, and a person elected by members of the Council from among themselves.

**Functions:** The Press Council discharges its functions primarily through adjudication on complaints received by it, either against the Press for violation of journalistic ethics, or by the Press for interference with its freedom.

The PCI's functions are to help newspapers and news agencies maintain their independence; build up a code of conduct for newspapers, news agencies and journalists; ensure high standards of public taste; encourage sense of responsibility and public service; keep watch on developments likely to restrict the supply and dissemination of news of public interest and



importance; promote a proper functional relationship among all classes of persons engaged in production or publication of newspapers and news agencies: remain vigilant over monopoly or concentration of ownership of newspapers and news agencies which may affect press freedom; keep watch on foreign assistance received by a newspaper or news agency; undertake studies of foreign newspapers, their circulation and impact in India; and undertake such studies and express its opinion regarding any matter referred to it by the Central Government.

**Powers of Press Council:** The PCI has been vested with powers to censure as well as general powers to carry out its statutory functions —

**Power to censure:**

- i) Where PCI has reasons to believe, after inquiry, that a newspaper or a news agency has offended the standards of journalistic ethics or public taste, or that an editor or working journalist has committed professional misconduct — it may warn, admonish or censure them or disapprove of their conduct.
- ii) The PCI may require any newspaper, in the public interest, to publish any particulars relating to any inquiry against a newspaper or news agency, an editor or a journalist working therein, including the name of such newspaper, news agency, editor or journalist.
- iii) The decisions of PCI are final and cannot be questioned in any court of law.
- iv) However, the PCI cannot hold inquiry into any matter of which any proceeding is pending in court.

**General powers:**

- (i) To perform its functions or hold an inquiry, PCI will have the same powers throughout India as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908) — to summon and question any person under oath; to ask for and inspect any document; to receive evidence on affidavit; to requisition any public record or copies thereof from any court or office; to issue commissions to examine any witnesses or documents etc.
- (ii) Every inquiry held by the PCI shall be deemed a judicial proceeding within the meaning of Sections 193 and 228 of Indian Penal Code.
- (iii) The PCI may, if it considers necessary in carrying out its objective or performing any of its functions, make observations in any of its decisions or reports about the conduct of any authority, including the Government.

*[NOTE: The Press Council has no powers to impose any penalty on individual journalists and publications, nor can it force any newspaper, news agency, editor or journalist to reveal the source of any news or information.]*

**Funds:** The Press Council receives a substantial part of its funds through grants-in-aid from the Central government from time to time. Along with other receipts, PCI is also empowered to levy a fee from newspapers and news agencies for its services.

**Paid News:** The Press Council describes ‘paid news’ as any news or analysis appearing in any media, print or electronic, ‘for a price in cash or kind as a consideration’. A particularly serious view is taken of paid news published during election time, because the reader is hampered in forming a correct view of the candidate in whose favour or against he decides to cast his vote, which is harmful to democracy. Besides, laws are broken due to paid news. Candidates who pay for news published in their favour or against their opponents, do not show the money spent in their election expense account, thereby violating rules framed by the Election Commission. Media entities receiving money for paid news do not disclose it in their statements of accounts, thereby violating income tax and company laws. The PCI takes cognizance of news content in print media on receiving complaints or on its own initiative, and adjudicates upon such cases under Section 14 of the Press Council Act, 1978.

### **3.4.2 Stop to Consider**

#### **Debate over Media Council**

There has been much debate over the necessity, powers and functions of a wider body than the Press Council to oversee all the components of modern media from print to electronic to internet-based media. Critics have long dubbed the Press Council an outdated, toothless body that needs to be replaced by a body with wider ambit and more powers. The idea has been discussed since the turn of the millennium, with proposals to constitute a Media Council put forward by former Press Council chairpersons like Justices PB Sawant, MarkandeyKatju and K Jayachandra Reddy. They all called for amendment of the Press Council Act, 1978, to rename the Press Council as Media Council and give it more power, and to ensure that the new body continues to be self-regulatory rather than allowing the government and vested interests to control it. The idea was that a single overarching body is needed to deal in coordinated manner with the evolving mass media spectrum, which has come to include a range of broadcast and new internet-based media, besides traditional print and electronic media. However, the rapid advent of social media has prompted doubts whether a wider Media Council would be effective and relevant without any control over this emerging media.

### **3.4.3 Check Your Progress**

Q. What is the objective of the Press Council of India?

Q. What are the powers of the Press Council of India?

## **3.5 Information Technology Act, 2000**

The primary law in India which provides the legal basis to electronic commerce and transactions, enables electronic governance, and deals with cyber crime is the Information Technology Act, 2000.

After the United Nations Commission on International Trade Law (UNCITRAL) adopted the model law on electronic commerce (e-commerce) in 1996 to bring uniformity in the law,

India became the 12th country to draft a comprehensive cyber law, notifying it on 17 October, 2000.

The **objectives** of the Information Technology Act, 2000 are:

- legal recognition to transactions done via electronic exchange of data or electronic means of communication or e-commerce, in place of paper-based communication.
- legal recognition to digital signatures for the authentication of any information or matters requiring legal authentication
- legal recognition to and facilitate the electronic transfer of funds between banks and financial institutions
- legal recognition to bankers for keeping books of accounts in electronic form
- facilitate the electronic filing of documents with government agencies and departments
- facilitate the electronic storage of data

While enacting this law, Parliament also amended certain provisions of the *Indian Penal Code*, *Indian Evidence Act, 1872*, *Reserve Bank of India Act, 1934*, and *Banker's Book Evidence Act, 1891*, so as to make these compliant with new digital technologies.

Legal recognition of electronic records and digital signatures puts these at par with traditional paper records and signed documents, so that these can be accepted as evidence in a court of law.

The Information Technology Act, 2000 provided for setting up the **Cyber Appellate Tribunal** to resolve disputes arising from this law, and the **Indian Computer Emergency Response Team (ICERT or CERT-In)** to serve as the national agency for responding to cyber security threats.

**Cyber crime and penalties:** The Information Technology Act, 2000 deals with both civil wrongs and criminal offences.

**Civil wrongs** are covered under **Sections 43-45**, covering unauthorised access and causing of damage and disruption to computers, computer systems and networks; negligence and failure of a corporate entity in protecting sensitive personal data or information in a computer resource it owns, controls or operates; failure of a person required under this Act to furnish, or to furnish within the time specified any required information, document, report, return, record, or book of accounts to the Controller or the Certifying Authority ..

**Criminal offences** are covered under **Sections 65-78** viz. — tampering with computer source documents; sending offensive messages through a computer resource or communication device; dishonestly receiving stolen computer resource or communication device; indulging in identity theft by dishonestly using the electronic signature, password or other identification feature of another person; cheating by impersonation using computer resource; violating the privacy of a person by capturing, transmitting and publishing images of his/her private body parts; publishing or transmitting in electronic form any material which is obscene or depicts a sexually explicit act or shows children in such acts; securing access into protected computer

systems (hacking); intermediaries (e.g. internet services providers, search engines and social media platforms).not preserving and retaining information as specified by the government; breach of confidentiality and privacy; disclosing information in breach of lawful contract; misrepresentation by publishing false certificate with digital signature; and cyber terrorism by unauthorised denial of access to a computer resource or penetrating a computer resource or introducing a computer contaminant or virus.

### **Amendment in 2008:**

A major amendment was made to the IT Act, 2000 in 2008 to include:

- **Section 66A** which penalised sending of ‘false, threatening, annoying, and offensive’ messages
- **Section 69** which gave authorities the power to intercept or monitor or decrypt any information generated, transmitted, received or stored in any computer resource, as well as to block internet sites and apps in the interests of the nation
- Punishment for child pornography, voyeurism, and cyber terrorism

### **3.5.1 Stop to Consider**

#### **Controversy over free speech:**

The amendment of the IT Act, 2000 in 2008 invited criticism — particularly for *Section 66A* — dealing with publishing of ‘offensive, false or threatening information’. It stated: ‘Any person who sends, by any means of a computer resource, any information that is grossly offensive or has a menacing character; or any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult shall be punishable with imprisonment for a term which may extend to three years and with fine.’ Such terms were vague and ill-defined, and this provision could be used to muzzle free speech, it was pointed out.

Several arrests were made under *Section 66A* — a professor of Jadavpur University for sharing a cartoon of West Bengal Chief Minister Mamata Banerjee; a businessman in Puducherry for tweeting about corruption to the son of Union Minister P Chidambaram; two girls in Mumbai, one for posting a message on Facebook criticising the shutdown in Mumbai during the funeral of Shiv Sena founder Bal Thackeray, and the other for ‘liking’ the post.

In November 2012, Shreya Singhal, a Delhi-based law student, filed a PIL in Supreme Court, arguing that Section 66A was vaguely worded, and so violated Articles 14, 19(1)(a) and 21 of the Constitution. Other activists and NGOs too petitioned the apex court against this provision. In March 2015, the Supreme Court struck down *Section 66A* as ‘unconstitutional’ in its entirety, ruling that it ‘arbitrarily, excessively and disproportionately invades the right of free speech’ guaranteed under Article 19(1)(a) of the Constitution.

**Secondary or subordinate legislation:** Under the provisions of Information Technology Act, 2000, secondary legislation has been framed by the Union Government in the form of guidelines and rules. This is done to keep the IT law up-to-date with rapid changes in information and communication technologies, as well as the rise and tremendous sweep of social media.

**In 2011**, four sets of rules were introduced in this law as it stood amended in 2008. These were:

- **Security Practices Rules** which required sensitive personal information to be disclosed to government agencies, which had to maintain specified security standards to safeguard such information.
- **Intermediary Guidelines Rules** which prohibited content of specific nature on the internet, and required intermediaries (e.g. website host) to block such content.
- **Cyber Café Rules** which required cyber cafés to register with a registration agency, and maintain a log of identity of users and their internet usage (which had implications for their privacy)
- **Electronic Service Delivery Rules** under which the government could specify that certain services should be delivered electronically, such as applications, certificates, licences etc.

Under the amended law and the rules, **‘unlawful’ information** was defined as that —

- which belongs to another person and to which the user does not have any right
- which is grossly harmful, harassing, blasphemous, defamatory, obscene, pornographic, paedophilic, libellous, invasive of another’s privacy, hateful, or racially/ethnically objectionable, disparaging, relating to or encouraging money laundering/gambling, or otherwise unlawful in any manner
- which harms minors in any way
- which infringes any patent, trademark, copyright, or other proprietary rights
- which violates any law for the time being in force
- which deceives or misleads the addressee about the origin of such messages, or communicates any information grossly offensive or menacing in nature;
- which impersonates another person;
- which contains software viruses or any other computer code, files or programs ‘designed to interrupt, destroy or limit the functionality’ of any computer resource;
- which threatens the unity, integrity, sovereignty, defence or security of India; friendly relations with foreign states; public order; causes incitement to an offence; prevents investigation of any offence etc.

**In 2018**, the *Intermediary Guidelines Rules of 2011* were further amended, following a debate in Parliament on growing number of incidents like mob violence and lynching due to spread of fake news and rumours on social media platforms.

The 2011 Rules had prohibited intermediaries from hosting ‘unlawful’ content, which they were required to block and remove. The 2018 Rules added a new category of ‘unlawful’ information or content, viz. that which ‘*threatens public health or safety*’.

**Intermediaries** are entities who store or transmit data on behalf of other persons; they are classified as conduits, who are technical providers of internet access or transmission services (e.g. internet or telecom service providers), and hosts, who provide content (e.g. online and social media platforms, storage services, and search engines). While intermediaries are not held responsible for any message or information posted by a third party using their platform, they must observe certain ‘due diligence requirements’ under the IT Act, 2000 for holding or transmitting that message or information.

The 2018 Rules sought to make intermediaries having over 50 lakh users, more accountable for the content on their platforms. Intermediaries had to provide information or assistance within 72 hours when asked by any government agency on the grounds of State security, cyber security, investigation, detection, prosecution or prevention of offences. They had to deploy technology based automated tools to identify and remove/disable public access to unlawful information or content within 24 hours. They were required to break end-to-end encryption of messages in order to ascertain their origin. They were expected to preserve such information and records for at least 180 days to help in investigation. They had to report cybersecurity incidents to the Indian Computer Emergency Response Team. It was mandatory for them to publish on their website the name and contact details of the Grievance Officer and the mechanism by which users or victims can notify their complaints.

**In 2021**, the Union Government enacted the *Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules* under the IT Act, 2000. These replaced the Intermediary Rules of 2011. Under the 2021 Rules, a mechanism has been set up to address the complaints of users of **social media** and **OTT (over-the-top) platforms**, as well as a Code of Ethics and 3-tier complaint mechanism against **digital media publishers** of news and current affairs content and curated audio-visual content.

Thus OTT platforms, which deliver streamed video or audio content over the internet to devices like smartphones, tablets and laptops, have been brought within the ambit of the IT Act and Rules. All intermediaries must now remove or restrict access to prohibited information within 36 hours. Apart from publishing the obligations of users, intermediaries must also notify them that non-compliance may result in termination of their access or usage rights.

A new category of social media intermediaries have been created — those having over 50 lakh registered users are now termed **significant social media intermediaries (SSMI)**, e.g. Facebook, Twitter and Google. These entities will have to observe additional due diligence requirements, e.g. assisting law enforcement agencies to identify and track the 'first originator' of an unlawful information within India on its platform (on the ground of threat to the integrity and security of India, sexual abuse of children, rape and other heinous offences); deploying technology-based measures to promptly identify such unlawful material; verifying users by requiring them to identify themselves on the basis of their number or account;

appointing key officials like a chief compliance officer to ensure compliance with the IT Act and Rules, a nodal official to coordinate with law enforcement agencies, and a grievance official, etc.

**Digital media publishers and intermediaries** which provide news and current affairs content (e.g. online papers, news portals, news aggregators and agencies) as well as curated non-news audio and video content — would have a 3-tier regulatory structure consisting of (i) self-regulation, (ii) self-regulation by associations of publishers, and (iii) oversight by the Union Government through a committee of representatives from Ministries and Departments like Information and Broadcasting, Women and Child Development, Law and Justice, and others.

For **news and current affairs publishers**, the *norms of journalistic conduct formulated by the Press Council of India*, and the *programme code under the Cable Television Networks Regulation Act, 1995* — both will apply. **Online publishers of curated content** must classify content in specific age-appropriate categories, restrict access to age-inappropriate content by children, and implement an age verification mechanism; exercise discretion in showing content which may affect the sovereignty, integrity and security of India, or may disturb public order; consider the diversity of races and religions in India before featuring their beliefs and practices; and improve access to their content by disabled persons.

### 3.5.2 Check Your Progress

Q. What are the objectives of the Information Technology Act, 2000?

Q. What is 'unlawful information' under the Information Technology Act, 2000?

### 3.6 Summing Up

Public interest litigation (PIL) is an important legal route to ensure access to justice for weak and disadvantaged groups. Media reports on denial of rights, oppression and injustice to such groups have formed the basis for PILs filed in court by public spirited citizens, and sometimes *suomotu* action by courts themselves. The Press Council of India (PCI) continues to be a bulwark of press freedom and also a watchdog of press ethics. Due to the rise of new media, a wider body in place of PCI is needed to safeguard a free media overall, as well as more powers to ensure journalistic norms. The Information Technology Act, 2000 and subsidiary rules framed under it have been periodically upgraded to keep pace with rapidly changing technology, which bears implications for media as well due to the convergence of information and communication technologies.

### 3.7 Glossary

**Interim relief:** Temporary relief or remedy granted by court to help a party in a law suit

**Intermediaries:** Entities who store or transmit digital data, information or content on behalf of other persons, e.g. internet or telecom service providers, social media platforms, storage services, and search engines

**Locus standi:** Right to appear in court or ability to initiate legal action

**Paid news:** Payment in cash or kind to journalists or media houses for positive coverage

**Status quo:** Maintaining of current status by parties while their dispute is being heard in court

### 3.8 References and Suggested Reading

Bhuwania , A. (2016). *Courting the People: Public Interest Litigation in Post-Emergency India*. Cambridge University press

See [https://www.indiacode.nic.in/bitstream/123456789/1744/1/A1978\\_\\_37.pdf](https://www.indiacode.nic.in/bitstream/123456789/1744/1/A1978__37.pdf) for Press Council Act, 1978,

See [https://www.indiacode.nic.in/bitstream/123456789/13116/1/it\\_act\\_2000\\_updated.pdf](https://www.indiacode.nic.in/bitstream/123456789/13116/1/it_act_2000_updated.pdf) for Information Technology Act, 2000,

### 3.9 Answers to check Your Progress

#### Q. What do you understand by PIL?

**Ans:** Public Interest Litigation (PIL) is a legal proceeding or action initiated in court to protect public interest. It may be a matter in which the rights of a weak, disadvantaged and marginalised group have been affected, which in turn affects the interests of the public at large. It is not necessary for the affected group or party to move the court — any other individual or party can do so on its behalf, or the court itself may take up its litigation. In PIL, there is no need for a party to have locus standi in moving the court to secure justice for the affected party. While the court is hearing the PIL, it can grant interim relief to the victim(s).

#### Q. What are the benefits of PIL in India?

**Ans:** The introduction of PIL in India has been marked by far-reaching benefits. Access to justice has been democratised as poor and disadvantaged groups can be represented in court by a third party. It offers an inexpensive legal remedy, enabling public-spirited individuals and institutions to initiate legal action through PILs. The courts have begun to assume a more active role in safeguarding the rule of law, making the legal system less procedural and more public welfare oriented, monitoring State institutions and holding them to account, and appointing their own fact-finding commissions or entrusting strict responsibilities to probe agencies. Protecting human rights gained prominence as PILs were filed to rescue people locked up for years without trial, or from custodial torture, bondage, exploitation, sexual harassment and other wrongs.





## Unit-4

### Unit Structure:

#### 4.1 Objectives

#### 4.2 Introduction to Intellectual Property

#### 4.3 Plagiarism

#### 4.4 Copyright and Copyright Act, 1957

#### 4.5 Copyleft

#### 4.6 Open Educational Resources (OER) & Open Media Resources (OMR)

#### 4.7 Summing Up

#### 4.8 Glossary

#### 4.9 References and Suggested Reading

#### 4.10 Answers to check Your Progress

#### 4.11 Self Assessment Questions

### 4.1 Objectives

The objective of this unit is to introduce to students of media studies the concept of intellectual property and its protection. Plagiarism and copyright violation can be seen as different sorts of theft of intellectual property, and these are examined in this unit for their relevance to media. Plagiarism is strictly dealt with in the academic as well as journalistic fields, while protecting copyright of authors/creators is an increasingly tough challenge in the Digital Age. This unit also introduces the students to the Open Movement, which espouses free flow of information and knowledge across the world. A new kind of protection called 'copyleft' has emerged which seeks to balance the author's rights with the need to ensure freedom for users of the author's work. Along with introduction to the 'copyleft' concept, this unit ends with a discussion on open educational and media resources (OER & OMR) which are relevant for media studies.

### 4.2 Introduction

#### Protecting Intellectual Property

**Intellectual property (IP)** is a creation of the intellect or mind, such as literary, musical and artistic works; inventions in science and technology; and designs, symbols, names and images used in commerce and industry. To enable the creator to earn recognition and financial benefit, his/her intellectual property is protected by law, i.e. through copyright, patent, trademark, industrial design, trade secret, geographical indication, etc.

It is a mandate of the World Intellectual Property Organization (WIPO), created as a special agency of the United Nations in 1967, to promote the cause of IP protection across the world. After the Trade Related Intellectual Property Rights (TRIPS) agreement was signed in 1994,

the World Trade Organization (WTO) required its member nations to set minimum standards of IP protection.

It is necessary to encourage the creator and help foster an environment in which creativity and innovation can flourish. This is expected to contribute to the progress of countries. However, it is also necessary to strike the right balance in protecting the interests of creators as well as *wider public interest*.

The United Nations on several occasions has noted the conflict between protecting intellectual property (and economic rights connected to it) on one hand, while safeguarding human rights and social wellbeing on the other. It is argued that an overbroad and restrictive IP protection regime goes against human rights to food, health, education etc. which should be universally accessible. For example, granting patents to drug firms for creating life-saving drugs will encourage research and development (R&D), but should it make drugs expensive so that poor people cannot afford it? Can patent holders for improved crop varieties be allowed to monopolise and price these beyond the reach of poor people?

### **The Open Movement**

By the close of the 20<sup>th</sup> century, the development of the Internet, World Wide Web and digital technologies led to an 'Open' philosophy and various models based on it. These included *sharing information and knowledge freely*, avoiding restrictive IP protection practices (mainly copyright), improving access to information and knowledge for wide groups of stakeholders, and thereby promoting efficiencies. Efforts began in several countries and international forums to develop open source (relating to business and technology), open source software and hardware, open design, open data, open knowledge, open content, open educational resources etc. The lead was taken by UNESCO as part of its commitment towards free exchange of ideas and knowledge across the world.

### **4.3 Plagiarism**

The act of using another person's words, expressions, ideas, thoughts or work, not giving due credit to the creator, and pretending it to be one's own original work or output is called **plagiarism**. Whether one uses words, ideas or expressions, or summarises or paraphrases the work of another, one must name the source. Not citing, acknowledging or quoting the source in one's work is considered plagiarism. While plagiarism is not a crime under Indian criminal law, it can be punished in court for copyright infringement, violation of moral rights, or as a civil wrong (tort).

Plagiarism and copyright violation are not one and the same thing. Even if a piece of writing is not protected by copyright (the copyright period may have expired or the writing may be in public domain), it could still be plagiarised to earn academic name or credit wrongfully. Another aspect of plagiarism is **self-plagiarism**, which happens when a writer or journalist or scholar uses parts of his/her own earlier writings/reports/papers for a newer work. This is a

type of recycling which is dishonest because readers expect to encounter new ideas and thoughts. Self-plagiarism can also result in copyright violation.

Plagiarism is considered a **moral/ethical wrong** committed both against the teacher or research supervisor, employer or publisher on one hand, and those who study it (primarily students and researchers) on the other. In academia, it is considered a serious breach of ethics — the erring scholar's work may be scrapped, the research supervisor may lose his/her position. Loss of professional image and integrity means an end to the plagiarist's career.

The growth of the Internet and widespread use of search engines have created challenges both for copyright protection and preventing plagiarism. The **University Grants Commission (UGC)** defines **plagiarism** as '*an act of academic dishonesty and breach of ethics*' which involves '*using someone else's work as one's own*'. In this definition, data plagiarism and self-plagiarism have also been included. After the UGC in 2017 framed a guideline for the 'promotion of academic integrity and prevention of plagiarism in higher educational institutions', it was approved by the Union Ministry of Human Resource Development and notified in July 2018. The UGC has taken a strict stand because academics and scholars indulging in plagiarism in their publications bring disrepute not just to their institutions but also to their country.

As per the UGC guideline, higher educational institutions must set up a mechanism to create awareness about plagiarism, conduct sensitisation seminars for faculty and students, include academic ethics in their coursework, provide training in using technology to detect plagiarism, take undertaking from students/scholars and certificate from their research supervisors that the work is original and no content has been plagiarised, upload soft copies of dissertations/theses on the UGC's Inter-University Information and Library Network Centre (INFLIBNET) for hosting in the online 'ShodhGanga' e-repository, refer suspected cases of plagiarism to the Academic Misconduct Panel (AMP), and based on the AMP's report the Plagiarism Disciplinary Authority (PDA) will hand down its decision.

For the **core** area of any research work, the UGC stipulates original ideas and observes '**Zero Tolerance**' to plagiarism. For **non-core** areas, the plagiarism levels have been quantified, as per which **similarities** up to 10% in thesis, research paper, dissertation or article would be in **Level 0** which shall carry no penalty for students/scholars; between 10% to 40% would be in **Level 1** which shall require resubmission of revised manuscript by the student/scholar within 6 months; between 40% to 60% would be in **Level 2** which shall require resubmission of revised manuscript by the student/scholar after 1 year but not exceeding 18 months; similarities above 60% would be in **Level 3** which shall cause cancellation of registration of the student/scholar for the program. For **academics/faculties** submitting research manuscripts for publication, the UGC guideline has prescribed stiffer penalties for plagiarism, including publication bars for one to three years, blocking of annual increments, denial of permission to be research supervisor, and for repeat offence, outright dismissal from service.

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### 4.3.1 Stop to Consider

In **journalism**, plagiarism can not only result in suspension or termination of service of the erring journalist, it can also cause considerable damage to the reputation and image of the media organisation that employed him/her. Truth and integrity must always form the core of a journalistic report as the journalist goes about collecting inputs from sources, conducting interviews of subjects, visiting the sites of news or feature stories, and doing background research. Staying original at every stage requires hard work, but it is safe and rewarding. The journalist can use fact-checking and anti-plagiarism softwares to examine every bit of information carefully. The rapid spread of artificial intelligence (AI) software makes such care and caution highly necessary.

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### 4.3.2 Check Your Progress

**Q:** Define plagiarism. Why is self-plagiarism considered dishonest?

**Q.** What is the penalty for plagiarism in academic work?

## 4.4 Copyright and Copyright Act, 1957

**Copyright** (literally, the right to copy) is a legal protection for the right of the creator, or anyone he/she authorises, to **reproduce** his/her works for a limited period. For copyright to be granted, the work must be **original** and involve a degree of **labour, skill, knowledge and judgement**.

The creator is basically given a **monopoly** for a limited period on the copying, performance or communication of his/her work. All rights to the work are immediately **reserved** for the creator. Without taking permission (in the form of a licence) from the creator, no one else can perform, communicate, republish, reproduce, modify or adapt his/her work. Works covered by copyright can include books, music, photographs, paintings, sculptures, videos, films, advertisements, computer programs, databases, maps and technical drawings.

Copyright does not cover ideas, concepts and information themselves, only the ***form or manner in which these are expressed***. Copyright infringement or violation is reproducing, distributing, displaying or performing a work, or to make derivative works from that work, without permission from the copyright holder. In case authorization involves paying compensation to the owner, failure to do so would be deemed copyright infringement.

The 1886 Berne Convention first established recognition of copyrights among sovereign nations, so that an unscrupulous publisher could not profit by stealing newly published works from one country and publishing these in another. The regulations framed at the Berne Convention were incorporated into the World Trade Organization's TRIPS agreement, thereby giving global status to this copyright protection regime.

According to WIPO, copyright protects two types of rights — **economic rights** allow the creator to be financially rewarded (for a limited period) due to use of his work by others; and **moral rights** so that the creator can preserve and protect his link with the work by claiming authorship, preventing any distortion of the work, and objecting to any derogatory reference to it which can hurt the creator's reputation.

#### 4.4.1 Copyright law in India

Copyright laws were enforced in India by the British colonial administration first in 1847 and then again in 1914. After India became free, the Copyright Act, 1957 was enacted. It was amended extensively in 1983, minor changes were made to it in 1994, and amended again in 2012.

The copyright law seeks to protect the fruits of a creator's labour, knowledge, skills etc. for a limited period, so that others cannot exploit it by reproducing it unlawfully. Under the Copyright Act, 1957, 'work' means a literary, dramatic, musical or artistic work; a cinematograph film; or a sound recording. So the author gets copyright for his literary work, the composer for his musical work, the photographer for his photograph, the filmmaker for his film, etc. This Act also defines 'publication' to be making a work available to the public by issuing copies or by communicating the work in various ways.

Copyright is an **exclusive right** which enables the creator to reproduce his work, issue copies of it to the public, publish it, communicate it, adapt it, translate it, perform it, make a cinematograph film or sound recording of it, sell it or rent it out commercially for a period specified under the law. If anyone else (e.g. a publisher, a broadcaster, or a performer) wants to do any such act with the work, he/she must get a **licence** from the **creator** or the **Registrar of Copyright** who is appointed by the Central government.

The **Copyright Board** functions as a civil court over copyright disputes, whose Chairman has to be a judge of the Supreme Court or a High Court, while its Secretary is the Registrar of Copyright. *[NOTE: Under the Copyright Act, 1957, there was an Appellate Board, which in 2021 was merged with the Copyright Board under the Copyright (Amendment) Rules]*

**Copyright term:** Under the Copyright Act, 1957, the copyright will remain with the author for his/her work *published within the lifetime of the author and 60 years after his/her death* (the counting begins from the calendar year following the year of death of the author).

If more than one author were involved, the counting will be from the calendar year following the death of the last author.

If a work is *published after the death of the author*, copyright will begin from the *calendar year following the year of publication*. If a work is published *anonymously or under pseudonym*, copyright will begin from the calendar year following the year of publication of the work.

**Author's special rights:** Whether the author holds the copyright or assigns it wholly or partially to another person, he/she would still continue to have the right to —

- claim authorship over the work
- restrain any distortion, mutilation, or modification of the work which would harm his honour or reputation, and in case such an act is committed, the author can claim damages

**Copyright owner:** Under the Copyright Act, 1957, the 'owner of copyright' is the exclusive licensee or licence holder. If the work in question is anonymous or created under a pseudonym —and till the time the identity of the author (or any of the authors in a work of joint ownership) is not revealed, the publisher will be the owner of copyright.

**First copyright owner:** The author of a work is the first copyright owner under the Copyright Act, 1957. However, this will not happen in the following cases:

- if the author/photographer/producer created his/her work in the course of employment under a contract of service or apprenticeship, then the first copyright owner will be the proprietor. However, this condition will not apply if doing the work was not part of the creator's duty as an employee.
- if the work or its publication was done as a government work, or as a work done under the direction of a public sector undertaking, then the first copyright owner will be the government or the public sector undertaking.
- if a painting or portrait was drawn, or a photograph was taken, or an engraving or a sculpture or a film was made for a payment offered by a person, then that person will be the first copyright owner.
- if a composition was written on request for a reward or an honorarium, then the person who made the request to the author will become the first copyright owner.

**Remedies for copyright infringement:** If the author's copyright is infringed, then he/she can move the court to seek —

- **civil remedies** like damages, costs, accounts, injunctions, recovery of possession of infringing copies etc. (The suit or civil proceeding arising due to copyright violation will be instituted in the district court which has jurisdiction over the area where the complainant/plaintiff resides, works, or carries out his business.)
- **criminal proceedings**, whereby if the charge of copyright violation of a work is proved, the offender can be punished with imprisonment of not less than 6 months (which may extend to 3 years) and/or fine not less than Rs 50,000/- (which may extend to Rs 2 lakh). However, if the offender had not violated copyright to make any gain, then the court may hand down a lesser penalty. For repeat offences, the penalty will be more, with jail term not to be less than 1 year which may extend to 3 years, and fine not to be less than Rs 1 lakh which may extend to Rs 2 lakh.

**Penalty for copyright infringement of a computer programme:** The penalty for knowingly making use of an infringing copy of a computer programme on a computer is imprisonment for not less than seven days which may extend to 3 years and with fine which not less than Rs 50,000 which may extend to Rs 2 lakh. But if the computer programme had not been used for gain or in trade or business, then the court may hand down lesser punishment.

### **Which acts are not copyright infringement?**

The following are some common acts which do not constitute copyright infringement —

- a *fair dealing* with a literary/dramatic/musical/artistic work for the purpose of (i) private use including research, and (ii) criticism or review
- a *fair dealing* of the work for the purpose of reporting current events in a (i) newspaper or magazine, or (ii) by broadcast, or in a cinematographic film, or by means of photographs
- a reproduction of the work for the purpose of (i) a judicial proceeding or report of any judicial proceeding, or (ii) a publication by the Secretariat of a Legislature for Members
- a public reading or recitation of any reasonable extract from a published literary or dramatic work
- a reproduction of the work during classroom instruction by teacher or student, or in a question in an examination as well as in the answer thereof.
- publication of short passages from published literary or dramatic works in a compilation for use in educational institutions (*NOTE: Not more than 2 passages from works of the same author should not be published by the same publisher in 5 years*); performance of the work in an educational institution
- performance of the work as part of the activities of a club or similar organisation which are not run on profit motive
- performance of the work by an amateur club or society for a non-paying audience, or for the benefit of a religious institution

**Performer's rights:** The rights of artists for their performances in literary works, films, songs, sculptures, paintings, etc. are recognised under **Section 38** of the Copyright Act, 1957. This came about in 2012 following amendment of the law. The works of artists will be protected for 50 years after the performance, during which period they will receive royalties for their work. Their rights cannot be transferred or sold through agreement, neither can production houses buy them out. This provision allows artists to retain ownership of their work and receive fair compensation for it.

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#### **4.4.1 Stop to Consider**



In case of a film having similarity with a novel or play, the Supreme Court ruled in *Anand vs. Deluxe Films, 1978* that —

- despite similarities, if there are *also dissimilarities* between the two works which show that there was *no intention to copy* from the original, and that the *coincidence was incidental*, then there is no copyright violation
  - when the *theme is the same but treatment and presentation is different* (from the original work), then there is no copyright violation
  - since a film has a *broader perspective* than a stage play, the producer can *legitimately introduce different incidents and give it more colour* (than the original work)
- 

#### 4.4.2 Check Your Progress

Q: What is copyright? Why is it granted?

Q: What are the legal remedies for copyright infringement?

### 4.5 Copyleft

COPYLEFT has become a vital component to make ‘Openness’ in data and content possible. The Open Knowledge Foundation (OKFN) defines ‘Open’ as allowing anyone ‘to freely access, use, modify, and share for any purpose’.

The concept of Copyleft originated with the development of software in the 1980s. A piece of software is also a work over which the creator can exercise copyright — if it is an original work involving the creator’s labour, knowledge, judgement and skill. Copyright is a reward and also an incentive to the creator who gets monopoly and proprietary rights over the work, but users of the work are not given any freedom at all. An important aspect of software is that users need to modify, adapt and repurpose it to suit their requirements. If this is allowed, a piece of software can serve as a ‘source’ which can be put to different uses. But software developers cannot do this because of copyright held by the creator.

Software programmer Richard Stallman pioneered the concept of ‘copyleft’ as part of the GNU Project for software freedom, which he explained in the *GNU Manifesto* released in 1985. In his experience, even when a software is put without copyright in the public domain, some users — after making changes to it — convert their ‘derivative’ software into a closed-ended, proprietary work by copyrighting it. Thus they were accessing free software for their own use, but selfishly not sharing it with others after modifying and repurposing it.

Stallman decided to work within the copyright framework to ensure that software remains free for all users. First, a software after development will be copyrighted, then all users would be given the right to use, modify and redistribute not only the ‘source’ software code, but also

the codes of all other software they derived from the source software. Thus copyright will be used to guarantee the freedom of all users in accessing and sharing the ‘source’ software as well as all its ‘derivative’ versions. This practice was named ‘copyleft’ as it was opposite in aim and principle to ‘copyright’, although copyleft works within the copyright regime.

The copyright owner of a software can grant copyleft licence to users — the idea is that if they are using the software made freely available to them, then whatever products they make from it should be free as well. The software developed in Stallman’s GNU Project are made available with a GNU General Public License (GNU-GPL). According to the Free Software Foundation (FSF) established by Stallman in 1985, **copyright** grants *control to authors* of software over its copying, modification and distribution, while **copyleft** gives *four freedoms to users*, viz.

- **Freedom 0** — freedom to use the work for any purpose,
- **Freedom 1** — freedom to study the work, and change it to suit the user’s needs (which necessitates access to the source software code),
- **Freedom 2** — freedom to copy and share the work with others,
- **Freedom 3** — freedom to share the modified versions of the work with others (so that other users can benefit from the changes made to the original work or source software)

## 4.6 Open Educational Resources (OER) & Open Media Resources (OMR)

To support the free flow of information and knowledge across the world, and thereby help in the framing of effective responses to global challenges, UNESCO champions **Open Solutions** — which has four major components, namely Open Educational Resources (OER), Open Access to Scientific Information (OA), Free and Open Source Software (FOSS) and Open Data.

Open educational resources (OER) are free and openly licensed educational materials which can be used for teaching, learning, research, and other purposes. Such materials are either in public domain or are under copyright but released under an *open licence* (which safeguards the author’s intellectual property rights and also permits users to access the material at no cost as well as to reuse, repurpose, and redistribute it).

The types of open educational resources include full courses, course materials, modules, learning objects, open textbooks, openly licensed (often streamed) videos, software, tests and other tools, and materials or techniques used to support access to knowledge. OER often have a **GNU** or **Creative Commons** licence which spell out specifically how the material may be used, reused, adapted, and shared. Such open copyright licences aim to provide non-discriminatory rights to everyone everywhere, while avoiding heavy intellectual property (IP) restrictions.

Open educational resources often involve intellectual property rights. Educational materials like textbooks are protected under ‘All Rights Reserved’ terms of conventional copyright.

However, *alternative and more flexible licensing options* have gradually become available. Developers of OER software have benefited from the General Public License under the GNU Project of **Free and Open Source Software (FOSS)** community. Since 2001, the work of **Creative Commons**, a global non-profit organisation formed at the initiative of the United Nations, has also provided much impetus to OER development. Under the Creative Commons system, authors can protect copyright for their work while offering certain limited usage rights to the public.

One major benefit of OER is their *potential to reduce costs*. New OER can be assembled or simply reused or repurposed from existing open resources, and therefore need not be created from scratch. However, these are not cost-free — there are some costs involved in the assembly and adaptation process, as well as in hosting and disseminating the material. Some OER must also be created originally at some time or other.

The term ‘Open Educational Resources’ (OERs) was coined at UNESCO’s 2002 meet on the impact of open courseware for higher education in developing countries. The idea was to take forward the new global phenomenon of openly sharing educational resources, make learning materials freely available for adaptation and repurposing, and expand access to learning of better quality at lower cost. The rapid expansion of technology-mediated approaches would make learning worldwide a reality.

UNESCO has held two World OER Congresses, one at Paris in 2012, the other at Ljubljana in 2017. These witnessed the wide participation of Ministers of Education and Human Resource Development, senior policymakers, experts, educators, librarians, researchers etc. from various countries. Building upon the OER Action Plan laid out in the Ljubljana Congress, UNESCO’s General Assembly adopted a comprehensive set of recommendations in 2019 with the twin objective of helping Member States create ‘inclusive knowledge societies’ as well as to achieve the UN’s Sustainable Development Goals (SDGs) set for 2030, particularly the goals related to quality education; gender equality; industry, innovation and infrastructure; reduce inequalities within and across countries; for peace, justice and strong institutions etc.

To help Member States implement the recommendations on OER, UNESCO has set up the OER Dynamic Coalition which aims to support networking and sharing of information to create synergies around five major areas of action — (i) building capacity of stakeholders to create, access, reuse, adapt and redistribute OER; (ii) developing supportive policies; (iii) encouraging inclusive and equitable quality OER; (iv) nurturing the creation of sustainable models for OER; and (v) facilitating international cooperation.

There are several OER initiatives available in India, including NPTEL (National Programme on Technology Enhanced Learning), SWAYAM (Study Webs of Active-learning for Young Aspiring Minds), e-PG Pathshala, Shodhganga, FOSSEE (Free and Open Source Software in Education), NDL (National Digital Library of India), AICTE Online Courses etc. Among OER initiatives from abroad, notable are DOAJ (Directory of Open Access Journals), DOAB (Directory of Open Access Books), Open Access Thesis & Dissertations, ScienceDirect Open

Access Content, Open Knowledge Repository - World Bank, Project Gutenberg, Project Euclid, etc.

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#### 4.6.1 Stop to Consider

In India, the National Council of Educational Research and Training (NCERT) as part of its *Education for All* mission, has digitised all its textbooks from 1st standard to 12th standard, and made these available online for free. However, NCERT textbooks are **copyrighted**. Copies may be downloaded and used as textbooks or for reference, but republication is strictly prohibited. No agency or individual may make electronic or print copies of these books and redistribute them in any form whatsoever. Use of these online books as a part of digital content or software is also strictly prohibited. No website or online service is permitted to host these online textbooks. In order to discourage piracy, the online textbooks carry a **watermark** on all pages declaring NCERT's copyright, viz. — 'NCERT, NOT TO BE PUBLISHED'.

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**Open Media Resources (OMRs):** Media professionals too can access resources in text, photo, video, audio etc. freely online, provided the work is in **public domain** or comes under '**Open Content**', or the creator has clearly defined the rights of use through 'Creative Commons' or such other licensing mechanisms. At all times, media professionals must ensure that using such material comes under 'Fair Use' doctrine of copyright law.

#### 4.6.2 Check Your Progress

**Q:** Define copyleft. How is it different from copyright?

**Q:** What are open educational resources (OERs)? Give some examples of OERs in India.

#### 4.7 Summing Up

We must value intellectual property and strive to safeguard it — which ensures due recognition and rewards for creators of intellectual property, and helps encourage the spirit of creativity and innovation in society. Plagiarism and copyright violation are major threats to intellectual property, although the former is considered as primarily an ethical wrong while the latter can be tried in court as a civil wrong or criminal offence. However, there is also the need to protect wider public interest and work for social wellbeing, which is not served by a restrictive intellectual property protection regime. Information and knowledge must flow freely across the world, which would make possible the reaching of the Sustainable Development Goals (SDGs) set by the UN as well as the framing of effective responses to

global challenges. This has set off an Open Movement and promotion of Open Solutions, the components of which are open educational resources, free flow of scientific information, open data, and open media resources.

## 4.8 Glossary

**Creative Commons:** A US-based non-profit and international network committed to provide free access to educational and creative works.

**GNU:** It is the acronym of ‘GNU’s not UNIX!’ which is a collection of free software that can be used as operating systems, with LINUX being the most well-known.

**SDGs:** The 17 sustainable development goals to be reached by 2030, which were set by Member States of the United Nations in 2015.

**Watermark:** A kind of physical marker on paper or a digital marker which is used to identify the ownership of copyright.

## 4.9 References and Suggested Reading

<https://copyright.gov.in/documents/copyrightrules1957.pdf>

[https://www.ugc.gov.in/pdfnews/7771545\\_academic-integrity-Regulation2018.pdf](https://www.ugc.gov.in/pdfnews/7771545_academic-integrity-Regulation2018.pdf)

<https://www.gnu.org/licenses/copyleft.en.html>

<https://copyleft.org/>

<https://www.unesco.org/en/open-educational-resources>

## 4.10 Answers to check Your Progress

**Q:** Define plagiarism. Why is self-plagiarism considered dishonest?

**Ans:** The act of using another person’s words, expressions, ideas, thoughts or work, not giving due credit to the creator, and pretending it to be one’s own original work is called plagiarism. Self-plagiarism is considered dishonest because it is a kind of recycling of old ideas and thoughts by a writer or journalist or scholar, using parts of his or her own earlier writings or reports or papers for a newer work. Besides, self-plagiarism can also result in copyright violation.

**Q.** What is the penalty for plagiarism in academic work?

**Ans:** While plagiarism is not a crime under Indian criminal law, it can be tried as a civil offence, or a copyright infringement, or a violation of moral rights. But in academics, plagiarism is considered a moral or ethical wrong committed against the teacher or research supervisor, the educational institution, and other scholars and researchers who may unknowingly use the plagiarised work for their own study or research. It may also be a blot on the country’s image.

**Q:** What is copyright? Why is it granted?

**Ans:** Copyright is a legal protection through which the creator of a work gets monopoly or exclusive right for a limited period on copying or reproduction, performance, or communication of his/her work. The creator may also grant permission in the form of a licence to another person, who will then use the copyright to reproduce, republish or issue copies of the work, communicate or perform it, adapt it, translate it, or make a film or sound recording of it.

**Q:** What are the legal remedies for copyright infringement?

**Ans:** The creator or copyright holder of a work can move the court to seek legal remedies if the copyright is violated. This can be in the form of civil remedies like seeking damages or costs, or injunctions against or seizure of infringing copies. Criminal proceedings may also result in the offender being punished with jail term of not less than 6 months which may extend to 3 years, and/or fine not less than Rs 50,000 which may extend to Rs 2 lakh.

**Q:** Define copyleft. How is it different from copyright?

**Ans:** Copyleft is the right or licence given to users of a work by its creator or copyright owner, under which the user must not only freely share with other users the original work, but also the derivative works the user created by modifying and repurposing the original work. The concept of copyleft was formulated by Richard Stallman working in the field of software development, so sharing the original work and derivative works means sharing the source software code and derivative software code(s). While copyright grants exclusive control to creators/authors over the copying, modification and distribution of the work, copyleft gives users the freedoms to use the work for any purpose, study the work and make changes to it, copy the work and share it freely with other users, and also share freely with them the modified versions.

**Q:** What are open educational resources (OERs)? Give some examples of OERs in India.

**Ans:** Open educational resources (OERs) are free and openly licensed educational materials which can be used for teaching, learning, research, and other purposes. Such resources can be full courses, course materials, modules, learning objects, textbooks, videos, software, tests and other tools, and materials or techniques used to support access to knowledge. Such materials are either in public domain or under copyright but released with an open licence which safeguards both the author's intellectual property rights and permits users to freely access the material as well as to reuse, repurpose, and redistribute it. Some examples of OERs created in India are NPTEL, SWAYAM, e-PG Pathshala, Shodhganga, etc.

## **4.11 Self Assessment Questions**

Q. How will the rapid advent of artificial intelligence (AI) tools impact plagiarism?



# **Unit: 1**

## **Freedom of Speech and Expression, Right to Reply**

### **Unit Structure:**

#### **1.1 Introduction**

#### **1.2 Goals**

#### **1.3 Origin of Free Speech and Expression**

#### **1.4 Meaning and Scope of Article 19(1)(a)**

#### **1.5 Freedom of Speech and Expression within the Indian Constitution**

#### **1.6 Reasonable Restrictions on the Right to Freedom of Speech and Expression**

#### **1.7 Goals of Freedom of speech and expression**

#### **1.8 Case Studies**

#### **1.9 New Perspectives on Speech and Expression Freedom**

#### **1.10 Right to Reply**

#### **1.11 Summing Up**

#### **1.12 References and Suggested Readings**

#### **1.13 Check your Progress**

#### **1.1 Introduction**

In this unit we will study about Freedom of Speech and Expression guaranteed by the Constitution of India. It is enshrined in Article 19(1)(a). This topic can be frequently seen in the news and is hence, very important for the students of Mass Communication to have a good understanding on it. To allow all citizens to engage in the political and social activities of the nation is a fundamental component of a functional democracy. In a functioning democracy, there is plenty of freedom of speech, thinking, and expression in all media (written, spoken, broadcast, etc.).





Freedom of speech is guaranteed not only by the Indian Constitution but also by international statutes such as the Universal Declaration of Human Rights (declared on 10th December 1948), the International Covenant on Civil and Political Rights, the European Convention on Human Rights and Fundamental Freedoms, etc. We shall also discuss why reasonable restrictions on this freedom are required.

## **1.2 Goals**

This unit's objective is to familiarise students with the significance of this act. Article 19(1)(a) of the Indian Constitution guarantees the right to freedom of speech and expression in India, although this right is exclusive to Indian citizens and is not extended to foreigners. Article 19(1)(a) guarantees the freedom of speech, including the ability to express one's opinions in writing, vocally, through gesture, or in any other way. It also covers the freedoms of speech and publishing or spreading one's opinions.

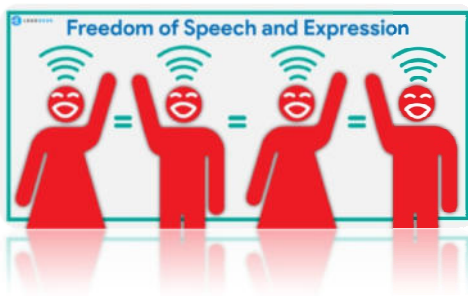
The aforementioned right, which is protected by our constitution, is thought to be one of the most fundamental components of a strong democracy since it enables people to actively engage in the social and political life of their nation.

## **1.3 Origin of Free Speech and Expression**

The concept of free speech and expression as a fundamental right has a rich historical background:

- Its roots can be found in important documents such as the English Bill of Rights (1689).

- The French Declaration of the Rights of Man and of the Citizen (1789) likewise upholds it.
- Moreover, it is acknowledged as an inalienable right in the 1948 Universal Declaration of Human Rights published by the United Nations.
- The value of a free exchange of ideas and perspectives is emphasised in Article 11 of the French Declaration, which guarantees people' freedom to write, speak, and publish.
- Article 19 of the UDHR recognises the right to freedom of speech and opinion as a basic human right.
- Free expression is also protected by the International Covenant on Civil and Political Rights.
- Article 19(1)(a) of the Indian Constitution provides the right to freedom of speech and expression to all citizens.
- The goal of granting freedom of speech and ideas is emphasised in the preamble.
- However, under Article 19(2), this freedom is subject to "reasonable restrictions" for things like maintaining public order and the integrity of the sovereign.
- The fundamental element of free speech is the freedom to think, express, and obtain information without worrying about the actions of the government.
- It gives people the ability to hold individuals in positions of authority responsible and to challenge the government and its policies.
- In the end, this promotes free speech in public and improves democracy.



#### 1.4 Meaning and Scope of Article 19(1)(a)

According to Article 19(1)(a), all citizens can freely express their thoughts. This right includes the freedom to express views through any medium. This includes words, writing, pictures, gestures, signs, etc.

- ✚ It also covers press freedom since the dissemination of information is involved.
- ✚ The free flow of information and exchange of ideas is essential. This can happen through platforms and the press.

- ✚ The circulation of information is as important as publishing it. If not published, the material would be worthless.
- ✚ Thus, the right to freedom of speech includes the ability to spread not just one's own ideas but also the ideas of others.
- ✚ It encompasses the freedom to publish the views of others. Without this, there would be no press freedom.
- ✚ Freedom of expression serves several purposes:
  - ✚ It helps individuals achieve self-fulfillment.
  - ✚ It aids the pursuit of truth and knowledge.
  - ✚ It improves people's ability to make informed decisions.
  - ✚ It creates a balance between stability and societal change.
  - ✚ All members of society are free to form and share their own beliefs.



### **1.5 Freedom of Speech and Expression within the Indian Constitution**

Freedom of speech and expression has been claimed as the mother of all liberties. The preamble of the Constitution of India resolves to secure for the citizen of India, liberty of thoughts, expression and belief. Article 19 (1) of the Indian Constitution says that All citizens shall have the right:

- a) to freedom of speech and expression;
- b) to assemble peaceably and without arms;
- c) to form associations or unions;
- d) to move freely throughout the territory of India;
- e) to reside and settle in any part of the territory of India;
- f) to practice any profession, or to carry on any occupation, trade or business.

### **1.6 Reasonable Restrictions on the Right to Freedom of Speech and Expression**

Article 19(1) (a) of the Constitution of India states that, all citizens shall have the right to freedom of speech and expression. The Preamble of the Constitution, which states that we humbly pledge to protect the freedom of speech and thought to every citizen, serves as the inspiration for this article. Every person is presumed to have the freedom to freely express his

thoughts, opinions, beliefs, and convictions through speaking, writing, printing, or any other means. This is known as the Right of Freedom of Speech and Expression. The exercise of this right is, however, subject to reasonable restrictions for certain purposes being imposed under Article 19(2) of the Constitution of India.

- The Grounds on which this Freedom could be restricted

Clause (2) of Article 19 of the Indian Constitution imposes certain restrictions on free speech under following heads:

1. **Security of the State:** State security may justify the imposition of reasonable restrictions on the right to free speech and expression. It is important to distinguish between the ideas of "public order" and "state security." Severe and aggravating public disturbances, such as uprisings, insurgencies, and wars against the state (as a whole or in part) are all considered security of the state.

2. **Friendly relations with foreign States:** This foundation was incorporated in the 1951 Constitution (First Amendment) Act. If exercising one's right to free speech puts India's relations with other nations or states in danger, the state may impose reasonable restrictions on that right.

3. **Public order:** A state of public tranquilly, safety, and harmony is referred to as "public order." Public peace is violated by anything that disturbs public order [Om Prakash v. Emperor, AIR 1948 Nag, 199]. However, public order is not always disrupted by simply condemning the administration. It has been determined that a law that penalises deliberate remarks that hurt the religious feelings of any group is a justifiable restriction meant to preserve public order. This ground was added by the Constitution (First Amendment) Act of 1951 in reaction to the conditions brought about by the Supreme Court's decision in Romesh Thapar's case. The Supreme Court has ruled that state security and law and order are not the same as public order.

4. **Decency and Morality:** Ethics and manners the Indian Penal Code's Sections 292 to 294, which forbid the sale, distribution, or display of offensive language, are instances of restrictions on the right to free speech and expression based on morality and decency.

5. **Contempt of court:** A person cannot be in contempt of court due to their fundamental right to free expression. The definition of "contempt of court" is given in Section 2 of the

Contempt of Courts Act, 1971. "Contempt of court" refers to either civil or criminal contempt under the Act.

6. **Defamation:** It is forbidden by Article 19 clause (2) for anyone to say anything that harms the reputation of another. Sections 499 and 500 of the Indian Penal Code declare defamation to be a crime in India. There are limitations to the freedom of expression. It doesn't mean that you can damage someone else's reputation, which is protected by Article 21 of the constitution. The only circumstances in which the truth can serve as a defence against defamation are where the statement was made "for the public benefit." And the courts will make that determination based on the facts.

7. **Incitement to commit an offence:** The Constitution (First Amendment) Act of 1951 also included this reason. A person is likewise prohibited under the Constitution from making any comment that incites others to commit a crime.

8. **Sovereignty and integrity of India:** This ground was introduced later by the Constitution (Sixteenth Amendment) Act, 1963. This is intended to make it illegal for anybody to make remarks that undermine India's integrity and sovereignty.

### **1.7 Goals of Freedom of speech and expression**

Freedom of speech not only allows people to communicate their feelings, ideas, and opinions to others, rather it serves a broader purpose as well. These purposes can be classified into four categories:

1. It helps individuals in self- realization.
2. It helps in discovery of truth.
3. It helps in the decision-making process;
4. It provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.

### **1.8 Case Studies**



➤ **Virendravs The State Of Punjab And Another(And ... on 6 September, 1957**

(Equivalent citations: 1957 AIR 896, 1958 SCR 308, AIR 1957 SUPREME COURT 896, 1958 SCC 1; Bench: Bhuvneshwar P. Sinha, J.L. Kapur, A.K. Sarkar)

**Facts:** The issue of the state's linguistic and sectarian division has led to severe interfaith strife in the state of Punjab between the Hindus and the Akali Sikhs. Two people filed the petition, and they came from two different newspapers. The stance of their journals was to back the "Save Hindi agitation." The Home Ministry Office issued a notification under the contested Act that forbade the printing and dissemination of any content connected to the "Save Hindi agitation." The petitioners filed a complaint, claiming that the state legislature's 1956 Punjab Special Powers (Press) Act was unconstitutional.

**Judgement:** The court determined that Section 2 of the contested Act violated the right to freedom of speech and expression as it not only placed limitations but also outright forbade the exercise of this right, as stipulated by the Constitution.

➤ **Sakal Papers (P) Ltd., And Others vs The Union Of India on 25 September, 1961**

(Equivalent citations: 1962 AIR 305, 1962 SCR (3) 842, AIR 1962 SUPREME COURT 305; Author: J.R. Mudholkar; Bench: J.R. Mudholkar, Bhuvneshwar P. Sinha, A.K. Sarkar, K.C. Das Gupta, N. RajagopalaAyyangar)

**Facts:** The petitioner owned 'Sakal', a private limited company that published newspapers in Marathi on a daily and weekly basis. This journal used to be a major force in shaping public opinion and disseminating news. They stated that their net circulation of copies was 52,000 on weekdays and 56,000 on Sundays across Maharashtra and Karnataka. Nonetheless, the Newspaper (Price and Page) Act, 1956, and the Daily Newspapers (Price and Page) Order, 1960 were passed by the Central Government. The government set a maximum page count that the newspapers might publish as a result of that decree. Thus, the petitioner brought a case contesting the Act's validity.

**Judgement:** The court determined that both the Act's Section 3(1) and any orders issued in accordance with it would be illegal.

- In the recent case of **Kanhaiya Kumar v. State of NCT of Delhi** students of Jawaharlal Nehru University organized an event on the Parliament attack convict Afzal Guru, who was hanged in 2013. The event was an artistic, musical, and poetic protest against the judicial assassination of Afzal Guru. There have been claims that anti-Indian chants were

yelled by the protesting students. As a result, a complaint was brought against multiple students alleging violations of Sections 124-A, 120-B, and 34. Kanhaiya Kumar, the head of the students union at the university, was taken into custody following claims that he had engaged in "anti-national" sloganeering. The Delhi High Court granted Kanhaiya Kumar bail since the police inquiry was still preliminary and it was unclear exactly what part Kumar had played in the protest.

- The Court noted in **Indian Express Newspapers v. Union of India** that while "freedom of press" is mentioned in Article 19(1) (a) of the Indian Constitution, it is not used in the text of the article. Press freedom cannot be interfered with for the sake of the general welfare. Therefore, courts have a key responsibility to protect journalistic freedom and declare unconstitutional any laws or government actions that infringe upon it in violation of the constitution. Press freedom is also restricted when pre-censorship of a magazine is imposed or when a newspaper is forbidden from publishing its own opinions on any hot-button issue.



- In **Mahesh Bhatt v. Union of India**, the Delhi High Court declared that some regulations made under the Cigarettes and Other Tobacco Products (Prohibition and Regulation) Act, 2003 were unconstitutional because they went against Article 19(1)(a) of the Indian Constitution and were therefore extra vires. This Act forbids depictions of smoking in motion pictures outright. The filmmaker's and artist's right to use project life in all its colours, including its flaws, was supported by the court.
- **Union of India v. K.A. Abbas**: This is one of the earliest cases in which the Indian Supreme Court has considered the question of prior censorship of films under Article 19(2). Films are categorised under the Cinematograph Act, 1952 into two groups: "A" films, which are intended only for adult audiences, and "U" pictures, which are intended for unlimited distribution. After the petitioner's film was denied the "U" certificate, he contested the legality of the censorship, arguing that it infringed upon his fundamental

right to free speech and expression. Nonetheless, the Court determined that motion pictures have a deeper emotional impact than any other kind of art. Therefore, it was decided that pre-censorship and the categorization of films as "U" or "A" were legitimate and was justified under Article 19(2) of the Constitution.

- One case that contested the legality of **the Newsprint Control order was Bennet Coleman and Co. v. Union of India**. The Order was alleged to violate Article 19(1)(a) of the Indian Constitution since it set a maximum page count that a newspaper could publish. The government asserted that newsprint fixing would promote the expansion of small newspapers and avoid trade monopolies. Additionally, it provided justification for its order of page level decrease, by pointing out that large daily dedicate a significant portion of their space to advertisements; as a result, the page reduction will have little impact on them. The newsprint policy was deemed an unjustified restriction by the Court, which also noted that it restricted the petitioner's freedom of speech and expression. Therefore, any limitation on a newspaper's page count or page level fixing is void and in violation of Article 19(1)(a).



#### **Activity 1**

Take a recent Newspaper and list down all the headlines. Now try to analyse the words used by using the following clues-

a) Are they giving a tilt in favour of the Government?

b) Are they favouring the opposition?

c) Are they neutral?

### **1.9 New Perspectives on Speech and Expression Freedom**

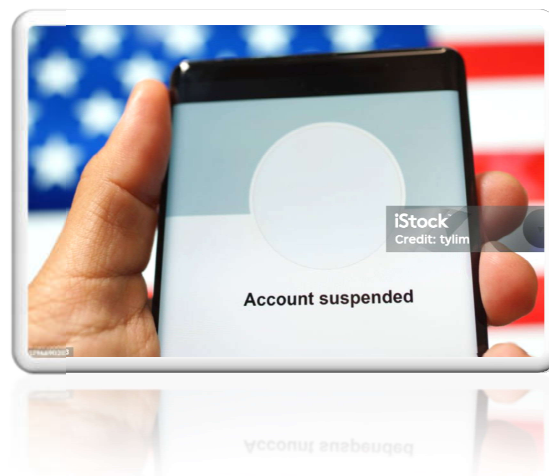
There is no government monopoly on electronic media: The Supreme Court ruled that citizens have the freedom under Art. 19(1)(a) to telecast and broadcast any significant event to viewers/listeners through electronic media, television, and radio. This decision broadened the scope and extent of the right to free speech and expression. Such a right may only be restricted by the government for the purposes listed in Art. 19 clause (2) and for no other



purpose. Every citizen has the fundamental right to communicate using the most effective means possible, including watching television.

### **Commercial Advertising**

The court found that the right to free expression included protection for commercial communication, or advertising. The government may, however, impose restrictions if it is dishonest, unfair, deceptive, or false. As an alternative, the court stressed that "Commercial Speech" is a right that the broader public has access to. It is protected to speak and hear such expression under Article 19(1)(a). If telephone tapping satisfies the requirements in Art. 19(1)(b)(2), it is deemed an infringement of privacy and a violation of Art. 19(1)(a). The Home Secretary of both the federal and state governments is the only person who can approve phone tapping, according to the court's guidelines. The telephone tapping order is only valid for a maximum of two months, unless the review authority extends it beyond that time. It is reviewed by a higher authority committee.



### **Freedom of Speech in Art**

Indian citizens are entitled to freedom of speech and expression in all forms of media, including the arts, under the Constitution. Judgement of art should be based on the relevance and context of the artistic expression, according to rulings from the SC. If profanity is insignificant or overwhelmed by the artwork as a whole, it will be overlooked. The Cinematograph Act of 1952 places limitations on what can be screened in theatres and on screens. Movies are regulated and certified by the CBFC.

## **Freedom of Speech on Social Media**

The fundamental right to post on social media has been recognised by the High Courts. This independence is likewise enjoyed by government personnel. On social media, they are free to voice their political views as long as they abide by the guidelines.

## **Sedition vs. right to Free Speech and Expression**

According to Section 124A of the Indian Penal Code, it is illegal to incite disloyalty, hatred, or contempt for the duly elected government through written or spoken words, visual representations, or any other means. This sedition statute from the colonial era has drawn a lot of criticism for limiting freedom of speech and expression. Legitimate criticism aimed at reform has frequently been misconstrued as sedition, despite the section's clarification that only attempts to stir hate, contempt, or disaffection count as sedition. An act must have the intent to cause public disturbance or disrupt the peace for it to be considered seditious.

The Supreme Court limited the use of Section 124A to individuals who violated the law and incited violence through their free speech in the *Kedarnath Singh v. State of Bihar* decision. People who criticise the administration are still often accused of sedition, even after these legal explanations. In order to preserve the integrity of free speech and expression, calls have been made to remove this clause as a result of the abuse.

## **Hate Speech**

The SC had asked the Law Commission to empower the EC to restrict hate speeches irrespective of when they are made. However, the Law Commission recommends considering certain factors before restricting a speech. This includes the context, speaker, victim, and impact.

### **1.10 Right to Reply**

In general, the right to respond to criticism from the public in the same forum where it was published is known as the right of reply or right of correction.

The right to reply is guaranteed under the Brazilian Constitution. In other nations, this is not so much a legal right as an editorial choice that some media outlets and publications make for those who have received harsh criticism from them. Proposals have been made in Europe for a legally binding right of reply that covers all media, including radio, television, the internet,

and print media such as newspapers and magazines. A resolution allowing everyone the right to react was already voted on by the Council of Europe's Committee of Ministers in 1974. A right of reply is described as "offering a possibility to react to any information in the media presenting inaccurate facts... which affect... personal rights" in Article 1 of a 2004 Council of Europe guideline. A right of reply can also be part of the editorial policy of a news publication or an academic journal. The BBC's Editorial Guidelines states:

*When our output makes allegations of wrongdoing, iniquity or incompetence or lays out a strong and damaging critique of an individual or institution the presumption is that those criticised should be given a "right of reply", that is, given a fair opportunity to respond to the allegations.*

### **1.11 Summing Up**

One of the most fundamental protections offered to citizens by civil society is the right to freedom of expression within the confines of speech. In summary, we may state that the freedom of speech and expression is a crucial fundamental right, the reach of which has been extended to liberties of the press, the right to information (including commercial information), the right to remain silent, and the right to criticise.

In today's society, the freedom to express one's opinions via words is no longer the exclusive right; it now encompasses the use of many forms of communication as well. Article 19(2) of the Indian Constitution allows appropriate restrictions on the right as we discussed.

### **1.12 References and Suggested Readings**

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Nanda Dr.Sukanta K., Media Law, Central Law Publication, First Edition (2014) P.25

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BhasinLalit, Media World & the Law, Universal Law Publishing Co. 2010 edition, P. 27

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"BBC - Editorial Guidelines - Guidelines - Section 6: Fairness, Contributors and Consent - Right of Reply". BBC. Retrieved 17-04-2024.

**1.13 Check your Progress**

*(Use the space below to write your answers)*

1. Write a note on the importance of Freedom of Speech and Expression.

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2. Briefly discuss the restrictions on the freedom of speech and expression.

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3. Write short notes on Right to Reply.

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## **Unit-2**

### **Communal Writing and Sensational Reporting, Yellow Journalism; Freebies, Bias, Coloured Reports, Paid Journalism**

#### **Unit Structure:**

#### **2.1 Introduction**

#### **2.2 Objectives**

#### **2.3 The Importance of Ethics in Journalism**

#### **2.4 Key Ethical Principles in Journalism**

#### **2.5 Historical Overview of Yellow Journalism**

#### **2.6 Summing Up**

#### **2.7 References and Suggested Readings**

#### **2.1 Introduction**

In the vast landscape of journalism, ethics serve as the compass guiding reporters, editors, and media organizations toward truth, accuracy, and fairness. Journalism ethics encompass a set of principles and standards that uphold the integrity and credibility of the profession while navigating the complexities of reporting in an ever-changing media landscape.

#### **2.2 Objectives**

1. To explore the foundational principles and standards that uphold integrity and credibility in journalism, focusing on accuracy, fairness, independence, minimizing harm, transparency, and accountability.
2. Investigate the historical development and impact of phenomena such as yellow journalism and sensational reporting, tracing their origins, characteristics, and lasting effects on media landscapes.
3. Examining contemporary challenges and trends in journalism, such as communal reporting, digital journalism ethics, the influence of bias, and the complexities of paid journalism, to understand their ethical implications and effects on journalistic practice.

4. To investigate guidelines, best practices, and strategies for navigating ethical dilemmas in journalism, including transparency, disclosure, maintaining independence, balancing commercial interests with journalistic integrity, and combating misinformation.
5. Exploring ways to promote and uphold ethical conduct in journalism, emphasizing the importance of professionalism, adherence to ethical standards, fostering audience trust, and advancing the role of journalism in a democratic society.

## 2.3 The Importance of Ethics in Journalism

Ethics form the foundation upon which the public's trust in journalism is built. Journalists have a responsibility to serve the public interest, to seek the truth, and to present information in a fair, accurate, and unbiased manner. Without adherence to ethical standards, journalism risks becoming sensationalized, biased, and unreliable, undermining its essential role in fostering informed public discourse and holding power to account.

## 2.4 Key Ethical Principles in Journalism

**Accuracy and Truthfulness:** Journalists have a duty to verify information rigorously and to report it accurately. They should strive to present a comprehensive and truthful account of events, avoiding the dissemination of misinformation or misleading content.

**Fairness and Impartiality:** Fairness requires journalists to provide all relevant parties with an opportunity to present their perspectives and to represent those perspectives accurately and impartially. Objectivity does not mean neutrality; rather, it entails a commitment to balance and fairness in reporting.

**Independence and Autonomy:** Journalists should maintain independence from undue influence or pressure, whether from advertisers, sources, or political entities. This independence enables journalists to serve as watchdogs and to hold power to account without fear or favor.

**Minimizing Harm:** Journalists should exercise caution and sensitivity when reporting on sensitive or traumatic topics, taking care to minimize harm to individuals or communities involved. This principle also encompasses considerations of privacy and consent in the gathering and dissemination of information.

**Transparency and Accountability:** Journalists should be transparent about their methods, sources, and potential biases, allowing audiences to assess the credibility and reliability of their reporting. Additionally, media organizations should hold themselves accountable for errors and corrections, fostering trust and accountability within the profession.

## Ethical Dilemmas in Journalism

Navigating ethical dilemmas is an inherent challenge in journalism, as reporters often encounter conflicting interests or pressures in their pursuit of stories. From balancing the public's right to

know with concerns of privacy to navigating the influence of corporate interests on editorial decisions, journalists must continually grapple with ethical considerations in their reporting practices.

Ethical journalism is not merely a set of rules or guidelines but a commitment to upholding the principles of truth, fairness, and accountability in service to the public. As the media landscape evolves and new challenges emerge, journalists must remain steadfast in their adherence to ethical standards, recognizing that the integrity of journalism is essential to a healthy democracy and informed society.

## **2.5 Historical Overview of Yellow Journalism**

Yellow journalism, a term coined in the late 19th century, refers to a style of sensationalist and often irresponsible reporting characterized by lurid headlines, exaggerated stories, and a focus on scandal and spectacle. This chapter provides an overview of the historical development of yellow journalism, tracing its origins, key proponents, and lasting impact on the media landscape.

### **Origins of Yellow Journalism**

Yellow journalism emerged in the United States during the late 19th century, a period marked by rapid industrialization, urbanization, and intense competition among newspapers for readership and advertising revenue. The term "yellow journalism" is commonly attributed to the New York World and the New York Journal, two prominent newspapers owned by Joseph Pulitzer and William Randolph Hearst, respectively.

### **Key Proponents of Yellow Journalism**

1. **Joseph Pulitzer:** A Hungarian-American newspaper publisher, Pulitzer is often credited as one of the pioneers of yellow journalism. His newspaper, the New York World, employed sensationalist tactics such as bold headlines, graphic illustrations, and serialized stories to attract readers.
2. **William Randolph Hearst:** Hearst, a wealthy media magnate and owner of the New York Journal, was a fierce competitor of Pulitzer. He embraced sensationalism even more fervently, employing tactics such as "fake news" stories, sensational headlines, and aggressive promotion to outsell his rivals.

### **Characteristics of Yellow Journalism**

1. **Sensationalism:** Yellow journalism thrived on sensationalist reporting, often prioritizing shock value over factual accuracy. Stories were embellished with dramatic language, exaggerated claims, and sensational headlines to grab readers' attention.
2. **Political Agenda:** Yellow journalism was frequently driven by a political agenda, with newspapers using their influence to promote specific ideologies, support political

candidates, or attack rivals. This partisan bias often compromised journalistic integrity and impartiality.

3. **Manufactured Conflicts:** In their quest for sensational stories, yellow journalists sometimes manufactured or exaggerated conflicts, scandals, and crises to sell newspapers. This practice contributed to public hysteria and misinformation.

### **Impact of Yellow Journalism**

1. **Influence on Public Opinion:** Yellow journalism played a significant role in shaping public opinion and influencing political discourse. Its sensationalist tactics often incited public outrage, perpetuated stereotypes, and fueled moral panics.
2. **Legacy of Investigative Journalism:** Despite its ethical shortcomings, yellow journalism laid the groundwork for modern investigative journalism by exposing corruption, injustice, and societal ills. Journalists such as Nellie Bly and Ida B. Wells used their platforms to advocate for social reform and expose abuses of power.
3. **Regulatory Response:** The excesses of yellow journalism prompted calls for media regulation and reform. The era saw the rise of media literacy movements, ethical codes of conduct, and journalistic standards aimed at curbing sensationalism and promoting responsible reporting.

Yellow journalism, while infamous for its sensationalism and excesses, remains a pivotal chapter in the history of media and journalism. Its legacy underscores the enduring tensions between profit-driven sensationalism and the pursuit of truth and journalistic integrity. By understanding the origins, characteristics, and impact of yellow journalism, we gain valuable insights into the evolving nature of media ethics, the dynamics of public discourse, and the role of journalism in shaping society.

### **STOP TO CONSIDER**

1. **Ethical Foundations of Journalism:** Understand how ethics shape the credibility and trustworthiness of journalism, including the principles of accuracy, fairness, independence, minimizing harm, transparency, and accountability.
2. **Ethical Dilemmas in Journalism:** Explore the challenges journalists face in balancing conflicting interests and pressures, such as the tension between the public's right to know and concerns of privacy, as well as the influence of corporate interests on editorial decisions.
3. **Historical Context of Yellow Journalism:** Learn about the emergence of yellow journalism in the late 19th century United States, its sensationalist and irresponsible reporting style, and its impact on shaping public opinion and media ethics.



4. **Key Proponents and Characteristics of Yellow Journalism:** Examine the roles of influential figures like Joseph Pulitzer and William Randolph Hearst in promoting sensationalism, as well as the characteristics of yellow journalism such as sensationalism, political agendas, and the manufacturing of conflicts.
5. **Impact and Legacy of Yellow Journalism:** Investigate how yellow journalism influenced public opinion, contributed to the development of investigative journalism, and prompted regulatory responses aimed at curbing sensationalism and promoting responsible reporting.

## **Evolution of Sensational Reporting**

Sensational reporting, characterized by exaggerated or lurid content intended to provoke strong emotional reactions from audiences, has a long and complex history within the realm of journalism. This chapter explores the evolution of sensational reporting, tracing its development from early tabloids to modern-day media platforms, and examining the factors that have shaped its trajectory.

### **Early Forms of Sensational Reporting**

1. **Tabloid Press:** The origins of sensational reporting can be traced back to the rise of tabloid newspapers in the 19th century. Tabloids, with their sensationalist headlines, scandalous stories, and emphasis on crime, celebrity gossip, and human interest, catered to the sensational appetites of the masses.
2. **Penny Dreadfuls:** In the 19th century, penny dreadfuls emerged as a popular form of sensational literature, featuring serialized stories of crime, horror, and adventure targeted at working-class readers. These inexpensive publications capitalized on sensationalism to attract readers and generate revenue.

### **Rise of Sensationalism in Mainstream Media**

1. **Competition and Commercial Pressures:** As media markets became increasingly saturated and competitive, mainstream newspapers and magazines began to adopt sensationalist tactics to attract readers and advertisers. Sensational headlines, graphic imagery, and scandalous stories became staples of mainstream journalism.
2. **Technological Advances:** The advent of new technologies, such as photography, telegraphy, and later, television and the internet, facilitated the rapid dissemination of sensational content. These technological innovations enabled media organizations to capture and convey sensational stories with unprecedented speed and immediacy.

### **Sensational Reporting in the Digital Age**

1. **Clickbait and Viral Content:** In the digital age, the proliferation of social media platforms and online news aggregators has intensified the pressure to produce sensational content that attracts clicks, likes, and shares. Clickbait headlines, sensationalized images, and viral stories dominate online media landscapes, driving traffic and engagement.
2. **Infotainment and Reality TV:** The blurring of lines between news and entertainment has contributed to the rise of sensational reporting in television and digital media. Reality TV shows, celebrity gossip websites, and sensational talk shows prioritize spectacle and drama over substantive content, catering to audience demand for sensationalism.

### **Ethical and Societal Implications**

1. **Truth and Accuracy:** Sensational reporting often sacrifices truth and accuracy in favor of dramatic storytelling and emotional impact. This can lead to misinformation, sensationalized narratives, and the distortion of facts, undermining the credibility of journalism and eroding public trust.
2. **Impact on Society:** Sensational reporting has profound implications for society, shaping public perceptions, attitudes, and behaviors. It can perpetuate stereotypes, fuel moral panics, and sensationalize tragedy, contributing to a culture of fear, anxiety, and sensationalism.

The evolution of sensational reporting reflects broader shifts in media consumption, technological innovation, and cultural norms. While sensationalism has proven to be a powerful tool for attracting attention and generating revenue, its ethical and societal implications cannot be overlooked. As journalists and media organizations navigate the complexities of the digital age, maintaining a commitment to truth, accuracy, and journalistic integrity remains essential in countering the allure of sensationalism and upholding the principles of responsible journalism.

### **Ethics of Communal Reporting**

In recent years, the concept of communal reporting has gained traction, reflecting a shift towards collaborative, participatory approaches to journalism. Communal reporting involves engaging with communities as active participants in the news-gathering process, empowering them to contribute to and shape journalistic narratives. In this chapter, we'll explore the ethical considerations inherent in communal reporting, examining issues such as inclusivity, representation, transparency, and accountability.

#### **Inclusivity and Representation:**

Communal reporting seeks to amplify diverse voices and perspectives that may be marginalized or underrepresented in traditional media narratives. Ethical communal reporting endeavors to ensure inclusivity by actively soliciting input and contributions from a broad cross-section of the

community, including minority groups, marginalized communities, and voices from the grassroots.

### **Transparency and Trust:**

Transparency is essential in fostering trust and credibility in communal reporting. Journalists must be transparent about their objectives, methods, and decision-making processes, ensuring that community members understand how their contributions will be used and how journalistic narratives are constructed. Open communication and accountability build trust between journalists and the communities they serve.

### **Collaborative Decision-Making:**

Communal reporting involves collaborative decision-making processes that prioritize the input and feedback of community members. Ethical communal reporting respects the autonomy and agency of participants, involving them in decisions about story selection, framing, and presentation. Empowering communities to co-create journalistic narratives enhances ownership and relevance, fostering a sense of shared responsibility for the news.

### **Empathy and Sensitivity:**

Ethical communal reporting requires journalists to approach communities with empathy, sensitivity, and cultural competence. Journalists must be attuned to the nuances of community dynamics, historical contexts, and socio-cultural factors that shape lived experiences. Respectful engagement and listening ensure that communal reporting practices prioritize the dignity and well-being of community members.

### **Accountability and Impact:**

Communal reporting carries ethical responsibilities to ensure that journalistic narratives accurately reflect community perspectives and experiences. Journalists must be accountable for the impact of their reporting on communities, recognizing the potential consequences of misrepresentation or harm. Ethical communal reporting involves ongoing reflection, dialogue, and responsiveness to community feedback to mitigate unintended consequences and uphold accountability.

### **Digital Literacy and Participation:**

In the digital age, communal reporting often takes place on online platforms and social media, where digital literacy and participation are key. Ethical communal reporting involves empowering communities with the skills and knowledge to engage meaningfully in the news-gathering process, critically evaluate information, and contribute to informed public discourse. Educating and equipping community members with digital literacy skills fosters more inclusive and democratic forms of journalism.

The ethics of communal reporting center on principles of inclusivity, transparency, collaboration, empathy, and accountability. By embracing participatory approaches that prioritize community engagement and representation, journalists can uphold the values of ethical journalism while fostering a more democratic, inclusive, and responsive media ecosystem.

## SAQ

1. How do ethics contribute to the credibility and trustworthiness of journalism, and what are the key ethical principles journalists should uphold?
2. Can you identify and discuss specific ethical dilemmas journalists might face, such as balancing the public's right to know with concerns of privacy or navigating corporate influences on editorial decisions?
3. Describe the emergence of yellow journalism in the late 19th century United States and its impact on shaping public opinion and media ethics.
4. Who were the key figures associated with yellow journalism, and what were the main characteristics of this sensationalist reporting style?
5. How did yellow journalism influence public opinion, contribute to the development of investigative journalism, and prompt regulatory responses aimed at promoting responsible reporting?

## Impact of Bias on Journalism

Bias, whether conscious or unconscious, can significantly influence the practice of journalism, shaping the selection, framing, and presentation of news stories. This chapter explores the multifaceted impact of bias on journalism, examining its manifestations, consequences, and strategies for mitigation.

## Understanding Bias in Journalism

1. **Types of Bias:** Bias in journalism can manifest in various forms, including political bias, ideological bias, cultural bias, and corporate bias. These biases may influence reporting by affecting story selection, source attribution, language use, and framing.
2. **Sources of Bias:** Bias in journalism can stem from a variety of sources, including individual journalists' beliefs and perspectives, organizational cultures and editorial policies, commercial pressures, audience expectations, and societal norms and values.

## Consequences of Bias in Journalism

1. **Erosion of Trust:** Bias in journalism undermines the credibility and trustworthiness of news organizations, leading to skepticism and distrust among audiences. When journalists are perceived as having partisan agendas or ideological biases, their reporting may be dismissed as propaganda or misinformation.

2. **Polarization and Divisiveness:** Bias in journalism can contribute to polarization and divisiveness within society by reinforcing existing beliefs, stereotypes, and partisan divides. Biased reporting may exacerbate social tensions, foster echo chambers, and inhibit constructive dialogue and understanding.

### **Strategies for Mitigating Bias**

1. **Transparency and Accountability:** News organizations can mitigate bias by promoting transparency and accountability in their reporting practices. This includes disclosing potential conflicts of interest, providing context and background information, and offering opportunities for audience feedback and correction.
2. **Diverse Perspectives:** Embracing diversity in newsrooms and among sources can help mitigate bias by ensuring a range of perspectives and voices are represented in reporting. Diverse newsrooms are better equipped to challenge assumptions, counteract bias, and provide nuanced coverage of complex issues.
3. **Critical Media Literacy:** Educating audiences about media literacy and critical thinking skills is essential for mitigating the impact of bias on journalism. By empowering individuals to evaluate news sources, recognize bias, and seek out diverse perspectives, media literacy initiatives can foster informed citizenship and resilience against misinformation.

Bias is a pervasive and complex phenomenon that can exert a significant influence on journalism, shaping the way news stories are reported, interpreted, and consumed. While bias may never be entirely eliminated from journalism, its impact can be mitigated through transparency, accountability, diversity, and critical media literacy. By recognizing the challenges posed by bias and adopting strategies to address them, journalists and news organizations can uphold the principles of fairness, accuracy, and impartiality, thereby strengthening the integrity and credibility of journalism in an increasingly polarized and complex media landscape.

### **Colored Reports**

Colored reports refer to articles or pieces of content that incorporate vibrant visuals, such as photographs, infographics, charts, and illustrations, alongside written text. These visual elements serve to enhance the storytelling process, providing additional context, clarity, and engagement for the audience. Colored reports are often found in magazines, newspapers, online publications, and multimedia platforms, where they are used to convey complex information in a visually appealing manner.

The term "colored" in this context does not necessarily refer to the literal color of the content but rather signifies the inclusion of various visual elements beyond traditional black-and-white text.

These visual elements can range from photographs capturing the essence of a story to data-driven infographics illustrating statistical trends or timelines.

Colored reports in journalism serve several purposes:

1. **Enhanced Visual Representation:** Visual elements help to break up dense text, making the content more visually appealing and easier to digest for readers.
2. **Increased Engagement:** The inclusion of colorful visuals can capture the audience's attention and encourage them to interact with the content for a longer duration.
3. **Effective Communication:** Visuals can convey information quickly and succinctly, complementing the written text and reinforcing key points.
4. **Storytelling:** Visuals add depth and richness to storytelling by providing additional context, emotions, and perspectives that may not be fully captured in words alone.
5. **Information Visualization:** Charts, graphs, and infographics can distill complex data into easily understandable visual representations, allowing readers to grasp the main insights at a glance.

Colored reports play a crucial role in modern journalism, especially in the digital age, where multimedia storytelling is increasingly prevalent. By leveraging a combination of text and visuals, journalists can craft compelling narratives that resonate with their audience and effectively convey information across diverse platforms and mediums.

### **Ethics of Freebies in Journalism**

In the realm of journalism, the issue of accepting freebies or complimentary goods and services raises complex ethical considerations. While journalists often receive offers of gifts, perks, or complimentary access to events, accepting such freebies can potentially compromise their integrity, impartiality, and credibility. In this chapter, we'll delve into the ethics surrounding the acceptance of freebies in journalism and explore the principles that guide ethical decision-making in this context.

#### **The Principle of Independence:**

At the core of journalistic ethics lies the principle of independence. Journalists are expected to maintain autonomy and impartiality in their reporting, free from undue influence or bias. Accepting freebies, especially from sources or organizations being covered, can create a perception of indebtedness or favoritism, undermining the journalist's independence and credibility.

#### **Conflicts of Interest:**

Accepting freebies can give rise to conflicts of interest, where the journalist's personal or professional interests may be at odds with their duty to provide fair and unbiased reporting. Whether it's receiving gifts, hospitality, or exclusive access, journalists must be vigilant in assessing the potential conflicts that arise from accepting such perks and take proactive measures to mitigate them.

### **Transparency and Disclosure:**

Transparency is paramount in maintaining the trust of the audience. Journalists should disclose any relationships, gifts, or favors that could reasonably be perceived as influencing their reporting. By being transparent about their interactions with sources and the receipt of freebies, journalists can uphold their integrity and allow readers to make informed judgments about the credibility of their work.

### **Professional Integrity:**

Journalistic integrity demands a commitment to truthfulness, accuracy, and accountability. Accepting freebies without proper consideration for the ethical implications can erode trust in the profession and undermine the credibility of journalistic endeavors. Journalists must prioritize their ethical responsibilities above personal gain or convenience to uphold the standards of their profession.

### **Guidelines and Best Practices:**

Many journalistic organizations have established guidelines and codes of conduct to address the ethical dilemmas surrounding the acceptance of freebies. These guidelines typically outline permissible practices, such as accepting nominal gifts of minimal value or attending events of public interest on a complimentary basis, while also prohibiting actions that could compromise journalistic integrity. Journalists should familiarize themselves with these guidelines and adhere to best practices to navigate ethical gray areas effectively.

The ethics of accepting freebies in journalism are multifaceted, requiring careful consideration of principles such as independence, conflicts of interest, transparency, and professional integrity. By adhering to ethical standards, journalists can uphold the trust of their audience, maintain their credibility, and fulfill their vital role as purveyors of accurate and unbiased information.

### **Paid Journalism**

Paid journalism, where writers or journalists receive compensation for their work, presents a unique set of ethical challenges in balancing the need for financial sustainability with the integrity of journalistic practice. In this chapter, we'll explore the intricacies of paid journalism, examining the ethical considerations, potential conflicts of interest, and strategies for upholding journalistic standards in a commercial environment.

### **The Business of Journalism:**

In today's media landscape, many journalists work for publications or platforms that rely on advertising revenue, subscriptions, or sponsorships to sustain their operations. This commercial imperative can create pressures to prioritize content that attracts readership or generates revenue, potentially compromising editorial independence and objectivity.

### **Ethical Considerations:**

Paid journalism raises ethical questions about the influence of financial incentives on editorial decision-making. Journalists must navigate the tension between serving the interests of their audience and meeting the expectations of their employers or clients. Upholding principles of accuracy, fairness, and impartiality becomes paramount in preserving the credibility and trustworthiness of journalistic endeavors.

### **Conflicts of Interest:**

The pursuit of financial gain in paid journalism can lead to conflicts of interest, where the journalist's professional obligations conflict with their personal or financial interests. Whether it's accepting payment for favorable coverage, promoting sponsored content, or engaging in undisclosed partnerships, journalists must be vigilant in identifying and mitigating potential conflicts that could undermine their integrity.

### **Maintaining Independence:**

Maintaining editorial independence is essential for preserving the integrity of journalism. Journalists should resist external pressures to compromise their autonomy or editorial judgment in pursuit of financial gain. By adhering to ethical standards and maintaining a clear separation between editorial content and commercial interests, journalists can safeguard their independence and credibility.

### **Disclosure and Transparency:**

Transparency is key to maintaining the trust of the audience in paid journalism. Journalists should disclose any financial relationships, sponsorships, or conflicts of interest that may influence their reporting. By providing full and transparent disclosure, journalists empower their audience to make informed judgments about the credibility and integrity of the content they consume.

### **Striking a Balance:**

Balancing the commercial imperatives of paid journalism with ethical standards requires careful deliberation and principled decision-making. Journalists must prioritize the public interest, truthfulness, and accountability while also recognizing the economic realities of the media



industry. By striking a balance between commercial viability and journalistic integrity, journalists can navigate the complexities of paid journalism responsibly.

Paid journalism presents journalists with both opportunities and challenges in maintaining ethical standards while pursuing financial sustainability. By upholding principles of independence, transparency, and accountability, journalists can navigate the ethical complexities of paid journalism and fulfill their crucial role as stewards of truth and public information.

### **CHECK YOUR PROGRESS**

1. Discuss the key ethical principles in journalism and explain how adherence to these principles is essential for maintaining the credibility and trustworthiness of the profession. Provide examples to illustrate the significance of accuracy, fairness, independence, minimizing harm, transparency, and accountability in journalistic practice.
2. Examine the historical origins and development of yellow journalism in the late 19th century United States. How did yellow journalism contribute to shaping public opinion and influencing the media landscape during that era? Discuss the key proponents, characteristics, and lasting impact of yellow journalism on modern journalism ethics and practices.
3. Explore the evolution of sensational reporting from early tabloids to modern-day media platforms. How have technological advancements and shifts in media consumption patterns influenced the proliferation of sensationalism in journalism? Discuss the ethical and societal implications of sensational reporting, including its impact on truth, accuracy, and public discourse.
4. Analyze the ethical considerations inherent in communal reporting, particularly in terms of inclusivity, transparency, collaborative decision-making, empathy, and accountability. How does communal reporting differ from traditional journalistic practices, and what are the potential benefits and challenges of adopting communal reporting approaches in modern media environments? Provide examples to support your analysis.
5. Examine the ethical dilemmas surrounding the acceptance of freebies in journalism. Discuss the principles of independence, conflicts of interest, transparency, and professional integrity that journalists must consider when deciding whether to accept complimentary goods or services. How can journalists navigate these ethical dilemmas effectively while upholding the credibility and trustworthiness of their reporting?

### **Ethics in Digital Journalism**

In the fast-paced and ever-evolving landscape of digital journalism, ethical considerations are more crucial than ever. As journalists navigate the complexities of the digital age, they must

uphold principles of truth, accuracy, fairness, and accountability while adapting to new technologies and platforms. In this chapter, we'll delve into the ethical challenges and best practices in digital journalism, exploring key issues such as accuracy, transparency, privacy, and engagement.

### **Accuracy and Verification:**

In the era of instant news and social media, maintaining accuracy is paramount. Journalists must verify information rigorously before publication, especially when sourcing from user-generated content or unverified sources online. Fact-checking, corroborating multiple sources, and verifying the authenticity of multimedia content are essential practices to uphold accuracy in digital journalism.

### **Transparency and Attribution:**

Transparency is fundamental to building trust with the audience. Journalists should clearly attribute sources, disclose conflicts of interest, and provide context for their reporting. Transparent communication about the methods used to gather and verify information fosters credibility and accountability in digital journalism.

### **Privacy and Consent:**

Respecting individuals' privacy rights is essential in digital journalism, particularly when reporting on sensitive or personal matters. Journalists must obtain informed consent when publishing personal information or images of individuals, especially in cases involving vulnerable populations or traumatic events. Balancing the public interest with the right to privacy requires careful consideration and ethical judgment.

### **Avoiding Harm:**

Journalists have a responsibility to minimize harm in their reporting, especially when covering topics that may have adverse consequences for individuals or communities. Sensitivity to cultural, social, and ethical considerations is crucial in digital journalism to avoid perpetuating stereotypes, inciting violence, or causing unnecessary harm to subjects or sources.

### **Engagement and Interaction:**

Digital journalism offers unprecedented opportunities for audience engagement and interaction. However, journalists must approach engagement ethically, respecting the rights and dignity of participants and avoiding manipulation or exploitation for sensationalism or clicks. Engaging with audiences in meaningful dialogue fosters trust, transparency, and accountability in digital journalism.

### **Combatting Misinformation and Disinformation:**

In the age of fake news and misinformation, journalists play a vital role in combating falsehoods and promoting truthfulness. Upholding rigorous standards of verification, providing context, and debunking misinformation responsibly are essential strategies for maintaining integrity and trustworthiness in digital journalism.

### **Adherence to Professional Standards:**

Ultimately, adherence to professional standards and codes of ethics is foundational to ethical conduct in digital journalism. Journalists should familiarize themselves with industry guidelines, organizational policies, and ethical principles established by professional associations to guide their decision-making and behavior in the digital sphere.

Ethics lie at the heart of digital journalism, guiding journalists in their pursuit of truth, accountability, and public service. By upholding principles of accuracy, transparency, privacy, and engagement, journalists can navigate the ethical complexities of the digital age and fulfill their vital role as guardians of democracy and purveyors of trustworthy information in the digital era.

### **Future Directions in Ethical Journalism**

As journalism continues to evolve in response to technological advancements, changing audience behaviors, and evolving societal norms, the landscape of ethical considerations is also undergoing transformation. In this chapter, we'll explore emerging trends and future directions in ethical journalism, examining key issues such as artificial intelligence, diversity and representation, community engagement, and the role of journalism in democracy.

### **Embracing Artificial Intelligence and Automation:**

Artificial intelligence (AI) and automation are poised to revolutionize journalism, offering opportunities to streamline news production, enhance storytelling, and personalize content delivery. However, ethical considerations surrounding the use of AI in journalism, such as algorithmic bias, data privacy, and the potential for misinformation, must be carefully addressed to ensure responsible and ethical implementation.

### **Promoting Diversity and Representation:**

Inclusivity and diversity are essential values in ethical journalism, yet newsrooms continue to grapple with issues of representation and equity. Future directions in ethical journalism must prioritize the amplification of diverse voices, perspectives, and experiences, both within newsrooms and in coverage. Embracing diversity enriches storytelling, fosters empathy, and strengthens the connection between journalists and their audience.

### **Fostering Community Engagement and Trust:**

Building trust and engagement with audiences is imperative for the sustainability of journalism in the digital age. Future directions in ethical journalism should prioritize community engagement initiatives that involve audiences in the journalistic process, solicit feedback, and foster meaningful dialogue. By prioritizing transparency, accountability, and responsiveness, journalists can strengthen trust and credibility with their audience.

### **Championing Press Freedom and Democracy:**

As guardians of democracy, journalists have a critical role to play in defending press freedom and holding power to account. Future directions in ethical journalism should prioritize the protection of journalists' safety and independence, combatting censorship, and advocating for policies that uphold the principles of free expression and access to information. Journalists must remain vigilant in defending democracy against threats posed by authoritarianism, disinformation, and anti-press rhetoric.

### **Embracing Ethical Innovation:**

Ethical journalism must adapt to the evolving media landscape by embracing innovative approaches that uphold ethical principles while leveraging new technologies and platforms. From immersive storytelling techniques to collaborative investigative projects, ethical innovation in journalism can enhance audience engagement, foster transparency, and promote accountability in the public interest.

## **STOP TO CONSIDER**

1. **Accuracy and Verification:** In the digital age, maintaining accuracy is paramount for journalists. They must rigorously verify information before publication, especially when sourcing from user-generated content or unverified sources online. Fact-checking, corroborating multiple sources, and verifying the authenticity of multimedia content are essential practices.
2. **Transparency and Attribution:** Transparency is fundamental to building trust with the audience. Journalists should clearly attribute sources, disclose conflicts of interest, and provide context for their reporting. Transparent communication about the methods used to gather and verify information fosters credibility and accountability.
3. **Privacy and Consent:** Respecting individuals' privacy rights is crucial in digital journalism, particularly when reporting on sensitive or personal matters. Journalists must obtain informed consent when publishing personal information or images of individuals, especially in cases involving vulnerable populations or traumatic events.
4. **Engagement and Interaction:** Digital journalism offers unprecedented opportunities for audience engagement and interaction. However, journalists must approach engagement ethically, respecting the rights and dignity of participants and avoiding manipulation or

exploitation for sensationalism or clicks. Meaningful dialogue fosters trust, transparency, and accountability.

5. **Combatting Misinformation and Disinformation:** Journalists play a vital role in combating fake news and misinformation. Upholding rigorous standards of verification, providing context, and responsibly debunking misinformation are essential strategies for maintaining integrity and trustworthiness in digital journalism.

### **Investing in Ethical Leadership and Training:**

Ethical leadership and training are essential for fostering a culture of integrity and responsibility in journalism. News organizations should invest in comprehensive ethics training programs for journalists and editorial staff, providing guidance on navigating ethical dilemmas, upholding professional standards, and promoting a culture of ethical decision-making throughout the organization.

The future of ethical journalism lies in embracing innovation, promoting diversity, fostering community engagement, and championing the principles of press freedom and democracy. By prioritizing ethical considerations in their reporting practices, journalists can navigate the complexities of the digital age with integrity, responsibility, and a steadfast commitment to serving the public interest.

### **SUGGESTED READING**

1. "The Elements of Journalism: What Newspeople Should Know and the Public Should Expect" by Bill Kovach and Tom Rosenstiel
2. "Trust Me, I'm Lying: Confessions of a Media Manipulator" by Ryan Holiday
3. "Yellow Journalism: Puncturing the Myths, Defining the Legacies" by W. Joseph Campbell
4. "Digital Journalism Ethics: Traditions and Transitions" edited by Kristy Hess and Lisa Waller
5. "The New Ethics of Journalism: Principles for the 21st Century" edited by Kelly McBride and Tom Rosenstiel
6. "The Indian Media Business" by Vanita Kohli-Khandekar
7. "Media Ethics: Truth, Fairness and Objectivity" by Jaishri Jethwaney and Supriya Singh
8. "Ethical Dilemmas of Journalism in India" edited by Jaishri Jethwaney and Nupur Tiwari
9. "Press Laws and Media Ethics in India" by V.B. Coutinho

10. "Journalism Ethics and Standards: The Indian Context" by M.V. Kamath

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McBride, K., & Rosenstiel, T. (n.d.). *The New Ethics of Journalism: Principles for the 21st Century*.

## **Unit:3**

### **Press Council of India Codes and Press Ombudsman, Proposed Media Council, Accountability and Independence of Media.**

#### **Unit Structure:**

#### **3.1 Introduction**

#### **3.2 Goals**

#### **3.3 Press Council of India Act, 1978**

#### **3.4 Ombudsman**

#### **3.5 Functions of Ombudsman**

#### **3.6 Indian Penal Code And Criminal Procedure Code**

#### **3.7 Professional Bodies**

#### **3.8 Accountability and Independence of Media**

#### **3.9 Summing Up**

#### **3.10 References and Suggested Readings**

#### **3.11 Check your Progress**

#### **3.1 Introduction**

After going through all the earlier sections, you should be aware of some of the nation's most significant media legislation by now. It is expected of the media to effectively and efficiently support society in areas including political empowerment, cultural revitalization, educational advancement, and social awareness. Thus, in order to carry out these responsibilities and realize national goals, it becomes crucial for the mass media establishments to make sure that they carry out their obligations in accordance with the legislation of the land.

In this unit we will talk about the legal requirements and the regulatory framework that the Indian government and professional associations have set for media professionals in this subject.

### 3.2 Goals

This unit's objective is to familiarise students with the role of Press Council of India Act; appreciate the need for Ombudsman in a media organisation; and discuss the clauses of the Indian Penal Code (IPC), and Indian Criminal Procedure Code applicable to media persons.

### 3.3 Press Council of India Act, 1978

One of the recommendations of the first Press Commission of India (1952-54) was to set up a press council in India. It took the government several years to act on the recommendation. The Press Council of India Act was enacted in 1965, and the Council came into existence in 1966. The first Press Council functioned until 1975 when it was suddenly abolished during the internal emergency from 1975 to 1977. The Press Council was, however, revived in 1978, when emergency was lifted, general elections were held and Janata Party government headed by Morarji Desai came to power at the Centre.

#### ➤ Composition

Under the Act of 1978, the Press Council of India consists of 28 members, and a chairman. The law requires that the chairman would be nominated by a threeperson committee



consisting of the chairman of the RajyaSabha, speaker of the LokSabha and a person elected by the outgoing PCI for the purpose. Until now all the chairmen of the PCI have been sitting or retired judges of the Supreme Court of India. Of the 28 members of the PCI, 13 members are working journalists, six being editors and remaining seven from among working

journalists other than editors - three editor and four working journalists are from language newspapers. Besides, members are from managements of daily newspapers - two each from big, medium and small newspapers. One member comes from the managements of news agencies. Another three members are nominated by three organisations - one each by University Grants Commission, Sahitya Academy and Bar Council of India. Five more members are from Parliament - who are in no way connected with the business of newspapers: three from LokSabha (to be nominated by the LokSabha Speaker) and two from RajyaSabha (to be nominated by chairman of RajyaSabha).

The term of office of the chairperson and all members is for three years. The PCI membership of MPs is automatically terminated if fresh elections are to LokSabha are held,



or those from Rajya Sabha complete their tenure in that house. The chairperson and members are eligible for re-nomination for another term of three years. Chairperson is a full-time officer, whereas all other members are not for full time, but they are paid all admissible allowances whenever called for a meeting.

➤ **Objects and Functions**

In the Press Council of India Act, a number of functions have been assigned to it. However, the two most important objectives of the Press Council of India are to protect press freedom and to maintain and improve the standards of the press. In this respect the Council adjudicates complaints of journalists for protecting press freedom. It also adjudicates public complaints against newspapers and journalists. The Chairman has the right to take up any complaint *soumotu*, i.e. on his own.

➤ **Power to censure**

The Council has the power to censure an editor or a journalist of a newspaper or a news agency if it is found that the standards of journalistic ethics or of public taste have been offended by them. Such an action will be taken only after due inquiry by the Council. The Council does not take up any complaint which is already pending in a court of law. The Council is largely funded by central government. It has the power to levy fees on newspapers and news agencies depending upon their circulation.

It is relevant to mention here some of the important adjudications and guidelines issued by the PCI on subjects of national importance. These relate to: communal writings and comments on communalism in the press; cases of libel and defamation; objectionable investigative reporting; obscenity and vulgarity in the news stories, features, etc.; right to reply; right to privacy; denial of advertisements to news-papers and magazines; press freedom; and, improper use of press freedom by journalists of newspapers and news agencies.

It may also be pointed out that PCI has prepared a code of conduct for journalists, in collaboration with the Indian Law Institute; and conducted studies in relation to protection of journalists' confidential sources of information; norms of journalistic conduct; coverage of terrorism by the press; communal disturbances, reporting general elections; coverage of AIDS stories, and many other subjects of public interest and intimate concern. However, the Council's complaint procedure is very time consuming, and is not user friendly. It has no

punitive power against the erring press. Therefore it is often called a 'paper tiger' or 'toothless tiger'.

Time to time,  
of India  
should be given  
powers against

## OMBUDSMAN

the Press Council  
demanded that it  
more punitive  
erring newspapers,

but the government never accepted its demand. There is a fear that if the demand is accepted it may become an institution for some sort of unconstitutional censorship. There has also been a demand that a media council should be set up in place of PCI which could cover the newspapers, and television broadcast. At present PCI deals only with newspapers. The present Press Council of India was set up in 1978 when there were no private news channels. Today newspapers and television channels both are competing with each other in presentation of news as well as for earning advertisement revenue. Under these circumstances, a demand has arisen that there should be one single body to deal with complaints against the press as well as television channels.

It needs to be noticed that India has a statutory press council, whereas in most of the other parts of the world where democracy is firmly established the press council is of voluntary nature. Sweden, Canada, USA, Australia, New Zealand, etc are the countries with such institutions for the self-regulation of the press.

### 1.4 Ombudsman

The term Ombudsman was first used in a contemporary sense in Sweden in 1809 when the government appointed a Swedish Parliamentary Ombudsman to protect people's rights. It resembled an executive branch-independent supervisory body. Ombudsmen, in general, are individuals who receive public complaints, look into them, and make informal efforts to reach mutually agreeable resolutions. In India, the insurance and banking industries have nominated ombudsmen. Universities, hospitals, and other institutions may also appoint them. An alternative perspective holds that an ombudsman is designated by a relevant authority to look into grievances made against an individual or an entity.

In the words of Stephen Pritchard, president of the American Organisation of News Ombudsmen, a news ombudsman is tasked with reviewing and looking into complaints regarding accuracy, fairness, balance, and good taste in news reporting from readers of

newspapers, listeners, and viewers of radio and television stations. The ombudsman recommends appropriate remedies or responses to correct or clarify news reports. In the USA, several newspapers, television and radio stations have their ombudsmen. In India, the Times of India was the first national daily to have its own ombudsman. Former chief justice of the Supreme Court of India, P.N. Bhagwati, occupied the position for a few years but The Times of India soon gave up without giving any reasons. At present, The Hindu has an ombudsman, known as Readers' Editor. The New York Times calls its ombudsman as Public Editor. In some organisations it is known as readers' representative, readers' advocate, and so on.

### **1.5 Functions of Ombudsman**

The office of the ombudsman derives its functions from the essential tenets of ethics of journalism. While the codes of journalistic ethics are laid down by professional media organisations, the particular media office also plays a significant role in prescribing certain do's and don'ts for the ombudsman. Ombudsman monitors news and feature columns and all editorial materials that appear in the pages of the newspaper for fairness, accuracy, and balance; to bring the objectionable news items to news staff's notice.

It is important to note that no two ombudsmen operate in precisely the same way. To ensure accuracy, impartiality, and balance, they all closely and critically review news articles, features, cartoons, photos, and other graphic materials. The editor is notified of any contents that they believe fall short of the newspaper's standards, and they forward them to the editorial staff who are in charge of creating, publishing, or providing these materials.

Items that are judged improper or inferior are frequently the subject of thorough investigations, and persons who object to them are often contacted with comments or responses. It is the duty of those who create these texts to provide explanations for readers, viewers, or listeners, as applicable. Furthermore, a lot of news ombudsmen occasionally write columns that explain, critique, or praise articles, features, and other content. Ombudsmen may start readers' or public forums in an effort to establish a closer relationship with the readers. Direct communication with the public and the explanation of media customs and practices are the goals of this kind of activity. However, rather than acting as enforcers, news ombudsmen typically serve solely as advisors.

In the USA, there is an Organisation of News Ombudsmen to help the profession of journalism “achieve and maintain high ethical standards in news reporting, thereby enhancing its own credibility among the people it serves; to establish and refine standards for the job of news ombudsman or readers’ representative; to help in the wider establishment of the position of news ombudsman on newspapers and elsewhere in the media; to provide a forum for exchanging experiences, information and ideas among its members; and, finally to develop contacts with publishers, editors, press councils and other professional organisations for the overall well being of journalism profession.”



In his book Ethics in Media Communication, renowned American researcher Professor Louis A. Day noted that “ombudsmen are considered representatives of the public; they should also be even-handed in their handling of complaints. They must be fair to both readers and their newspapers and editors. One problem has been the public’s perception of ombudsmen, who are sometimes viewed as cosmetic response to reader criticism.... Ombudsman has been established to promote the positive role of the readers’ representatives. Ombudsmen can provide an avenue for constructive criticism and platform for readers’ grievances against newspapers.”

## **1.6 INDIAN PENAL CODE AND CRIMINAL PROCEDURE CODE**

In India, Indian Penal Code (IPC), 1860, Criminal Procedure Code (CrPC), 1973 and many other laws exist to maintain general law and order situation in the country. It is important for you to know some provisions of IPC which are relevant for journalistic profession.

### **➤ Section 124 A of Indian Penal Code**

Writing or Publishing or Selling Seditious Material: Under this section, “whoever by words spoken or written, or by signs, or visible representation, or otherwise, brings or

attempts to bring into hatred or contempt, excites or attempts to excite disaffection towards, the government established by law in India shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.”

“Disaffection includes disloyalty, conspiracy to dislodge the legally elected government and spreading feelings of sedition and enmity.”

This section also advocates that if anyone publishes writings which “incite violence or create public disorder, or is intended to create disorder or has tendency to do so with a view to subverting the government established by law would be punished.” Therefore, any matter containing such thoughts if published in a newspaper or magazine, or book would be deemed seditious. Even selling such materials as containing seditious stuff would constitute offence under this section, hence punishable. However, the press would be free to comment on such matters of public interest and general concern provided that it is done fairly and without exciting hatred. But such comments should keep clear of treason, sedition or indecency. It is, therefore, in the interest of media persons to be vigilant so as not to be caught unawares of any legal offence as per the provisions of this law.

#### ➤ **Section 153 A of Indian Penal Code**

According to Section 153 A (1) someone who is promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony by words, either spoken or written, or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with maximum imprisonment of three years, or fine, or both.

Section 153 A (2) stipulates that an individual who engages in any behaviour that jeopardises the preservation of harmony among diverse religious, racial, linguistic, or regional groups, castes, or communities, and that disrupts or is likely to disrupt public peace, may face a maximum sentence of three years in prison, a fine, or both.

It should be noted that media personnel covering periodic communal riots or disturbances in India run the risk of being subject to the provisions of this law. Media professionals are urged to pay careful attention to the particular rules that the Press Council of India has previously formulated and produced for journalists covering acts of terrorism, sectarian and communal unrest.

In addition to the provisions of the IPC mentioned above, some other relevant IPC sections that media persons should be wary of include: Section 171 G (publishing false statements in connection with an election; Section 292 (publishing and sale of obscene book, magazines, etc.); Section 293 (sale of obscene books meant for young persons); Section 295A (deliberate and malicious acts intended to outrage religious beliefs of any class); and Sections 499,500, 501, 502 and 505 (all relate to law of defamation discussed already).



Similar sections of the CrPC include: Section 91(court summons issued to media persons to produce document); Section 93 (when search warrant may be issued against journalists about some news story or article); Section 95 (power to declare certain publication forfeited and to issue search warrants for the same); Section 96 (application to High Court to set aside declaration of the forfeiture); Section 108 (security for good behaviour from persons disseminating information on seditious matters); Section 144 (power to issue order to journalists in urgent cases of nuisance or apprehended danger); Section 345 (procedure to be followed in certain cases of contempt); and Section 349 (imprisonment or committal of a journalist refusing to answer or produce documents needed by the court).

### **1.7 Professional Bodies**

Even though journalism as a practice and a profession dates back more than 230 years, reputable associations, unions, or groups of journalists didn't exist until 1947, when independence was achieved. The All-India Newspaper Editors' Conference, led by Durga

Das, was the first respectable organisation of senior journalists to be founded in 1948. Senior Indian writer Durga Das went on to become the Hindustan Times' editor. Subsequently, the Indian Federation of Working Journalists (IFWJ), led by M. Chalapathi Rau, the National Herald editor, was established in 1950 as another organisation for journalists.

In Delhi, India, the National Union of Journalists (India) was established in 1972. This was an IFWJ breakaway faction. In 1989, the IFWJ saw yet another split, leading to the creation of the Indian Journalists Union. Nonetheless, a number of other recently established organisations have emerged, including the Women Journalists Association, the Editors Guild of India, the Association of News Cameramen, the Association of Small and Medium Newspapers Federation, and staff members of various cable networks. Founded in 1939 as the Indian and Eastern Newspaper Society, the Indian Newspaper Society is the oldest group that primarily represents newspaper owners.

These journalistic organisations have occasionally made requests on behalf of media professionals and media freedom. It is vital to note that the majority of these organisations have always been focused on important issues and concerns affecting the media.

### **1.8 Accountability and Independence of Media**

The Press Council of India (PCI) is an official organisation that works to protect press independence and freedom. The PCI has created standards for media independence and accountability in order to accomplish this goal. The media should be responsible for their reporting and answerable to the public, according to the PCI Guidelines. Journalists ought to behave ethically; pressure from any group or person, or personal interest, should not affect their behaviour. Media outlets should also be open and honest about how they operate and respond appropriately to any errors in their reporting.

- **Case Study: (Allegations Against Justice Chandramauli Kumar Prasad)**

Activist lawyer Prashant Bhushan has moved Supreme Court, which is sub-Judice seeking an order to Centre for removal of (retired) Justice Chandramauli Kumar Prasad from the post of Chairman, Press Council of India (PCI) for his alleged “official misconduct” while dealing with cases to confer huge



pecuniary advantage to a private party (Mistry Construction) and thus committed criminal misconduct under section 13(1) (d) of the Prevention of Corruption Act as a judge of the apex court.

In Jessica Lal Murder's case, the media took up the task of administering justice and seeing that the suspect is prosecuted, media conducted candlelight vigils and public polls. The media have raked up the accused's past history, including photographs of the accused in the bars and pubs after he was acquitted and how he celebrated after his acquittal. The Apex Court observed that to avoid interference in the administration of justice the freedom of speech must be used carefully and cautiously (Para 149). When media court hindered a fair investigation and prejudiced the accused's right of defence that will be a transgression to justice.

### **1.9 Summing Up**

In conclusion, it might be said that media professionals need to be aware of the key legal provisions of many laws, including PCI, the Criminal Procedure Code, the Indian Penal Code, and the Working Journalists Act. The two parts of the Indian Penal Code that have been discussed in this lesson address hate speech and preserving intercommunal peace in the nation. India has a press council by statute, but recent changes in the media landscape have also made the necessity for a media council clear. The press council, which exclusively works with newspapers, was established in the days before private news channels. The times have changed as of late.

Additionally, the idea of an ombudsman in the media sector has been described. However, the nation's major media outlets have mostly disregarded this idea. The national organisations for media professionals have also been briefly mentioned. These organisations have occasionally made requests on behalf of media professionals and media freedom.

### **1.10 References and Suggested Readings**

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Radhakrishnamurti B. (1976), Indian Press Laws, India Law House, Allahabad,

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Sinha, K.P. (1997), Freedom of Press in India, JanakiPrakashan, Patna



### 1.12 Check your Progress

*(Use the space below to write your answers)*

1. Do you think the Press Council of India should be invested with more powers?

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2. What are the provisions of Section 153 A (2) IPC?

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3. What precautions should journalists take to be wary of the provisions of the IPC and Cr.PC to protect themselves?

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## **Unit-4**

### **Election Commission of India Guidelines for Media, Government and Media Ethics**

#### **Unit Structure:**

#### **4.1 Introduction**

#### **4.2 Objectives**

#### **4.3 Understanding Election Commission Guidelines for Media Conduct**

#### **4.4 Media's Role in Shaping Public Opinion During Elections**

#### **4.5 Government and Media Ethics**

#### **4.6 Summing up**

#### **4.7 References and Suggested Readings**

#### **4.8 Model Questions**

#### **4.9 Answer to check your progress/ Possible Answers to SAQ**

#### **4.1 Introduction to Election Commission of India Guidelines for Media, Government and Media Ethics:**

Dear learners in this unit we will do a thorough analysis of the guidelines for media given by the Election Commission of India and the complex relationship between government and media ethics in the context of Indian electoral processes. Central to this discussion are the guidelines established by the Election Commission of India (ECI) for State and District Election Offices regarding media conduct during elections. The 'Handbook on Media Matters for CEOs & DEOs', which contains the ECI's directives, aims to guarantee fairness for all parties participating in the election process, including political organizations and voters. These recommendations highlight the critical role that the media plays in forming public opinion and impacting democratic processes. They also emphasize the importance of adhering to ethical norms and regulatory measures.

In India, the government and media ethics have a symbiotic relationship that goes beyond elections to promote honest governance, facilitate public discourse, and protect the democratic fabric of the country. The media, which is frequently praised as the fourth estate of democracy, plays a vital role in maintaining accountability, examining authority, and distributing knowledge.

In this unit, we will explore the complex relationship between media ethics and government in India, especially during election periods. By conducting a thorough analysis of ethical issues, legal frameworks, and their consequences for democratic government.

#### **4.2 Objectives:**

This unit is an attempt to understand the media guidelines as given by the Election Commission of India and the relationship between government and media ethics. After completing the unit you will be able to –

- Understand the Election Commission of India's guidelines for media conduct during elections and their importance in ensuring fairness.
- Recognize the media's pivotal role in shaping public opinion, particularly during Indian elections.
- Examine the interdependent connection between government and media ethics.

#### **4.3 Understanding Election Commission Guidelines for Media Conduct:**

The Election Commission of India (ECI) has created a thorough manual called the Handbook on Media Matters for CEOs & DEOs (2024). This guide aims to tackle a range of concerns that impact media involvement in elections. This document presents a comprehensive overview of the different recommendations and updates related to areas such as the Media Certification and Monitoring Committee (MCMC), Pre-certification of Political Advertisements, Paid News, Social Media Engagement and regulations, regular Media Monitoring and Feedback, Media facilitation and Information Dissemination, Allotment of broadcast time to political parties, and regulations & guidelines for media coverage during elections. The ECI's standards for media behavior stress the significance of pre-certification of political advertisements, which is an ongoing practice throughout the year, rather than being limited to election periods. Political advertisements displayed on television, cable networks, cinema halls, public audio-visual displays, e-newspapers, social media platforms, internet websites, and bulk SMSs/voice messages must receive certification from the relevant

committee. The restrictions also apply to any commercials of political character on Radio, including private FM channels during the period Model Code of Conduct is in existence.

Let us discuss the various guidelines related to Media through the following points (According to the 'Handbook on Media Matters for CEOs & DEOs') –

- 1) Media Certification and Monitoring Committees (MCMC)** - These committees are responsible for pre-certifying political advertisements and monitoring media content during elections. The District Level MCMC includes members like the District Election Officer, an intermediary expert, and a representative from the Central Government's Information & Broadcasting Ministry. Their duties include scanning political advertisements to ensure compliance with certification, monitoring advertisements for candidate-related content, and reporting daily on candidate expenditures. The State Level MCMC, or Appellate Committee, deals with appeals on advertisement certification and all cases of Paid News. The social media expert in MCMC assists in certifying political advertisements on social media, scanning for Paid News, and ensuring adherence to election laws on social media platforms. These committees play a crucial role in maintaining transparency and fairness in media coverage during elections.
- 2) Pre-Certification of political Advertisement:** Pre-certification means getting approval from the Media Certification and Monitoring Committee (MCMC) before using political advertisements. This process is important for advertisements on TV, cable networks, cinema halls, radio, e-newspapers, social media, and internet websites by political parties, organizations, or individual candidates. The Supreme Court has allowed the ECI to form committees for certifying political advertisements, ensuring compliance with laws that ban advertisements promoting hatred or disturbing public tranquility. The pre-certification process applies year-round, not just during elections, and includes social media and internet advertising. The MCMC has the power to refuse certification for any advertisement deemed unsuitable. Candidates and parties must also ensure that their advertisements meet with the Model Code of Conduct.
- 3) Paid News:** Paid News here refers to any news or analysis appearing in any media (print and electronic) for a price in cash or kind as compensation. The Commission has adopted the definition of Paid News given by the Press Council of India and considers paid News misleads the public and affects their ability to form correct judgments, causing undue influence on voters and infringing on their Right to Information. It aims to bypass election expenditure restrictions and negatively affects the equal playing field for all contesting candidates and parties. To improve its vigilance, the Commission has set up a Media Certification and Monitoring Committee (MCMC) at the district and state levels to monitor media for Paid News and other violations besides certification of advertisements.

The time range for determining paid news cases is from the date of filing of nomination by the candidate. The District MCMC analyzes complaints/problems of Paid News and sends notices to candidates for explanation/disclosure of expenditure. The State MCMC considers all matters on appeal or suo moto and decides within 96 hours. The candidate may appeal against the judgment of the State MCMC to the ECI within 48 hours. The social media expert at MCMC aids in certifying political advertisements planned to be published on social media platforms, monitoring social media platforms for suspected incidents of Paid News, and assuring commitment to election laws on social media platforms. The Commission has faced the problem of Paid News on the ground during the electoral process. Political parties and media groups have addressed the Commission, asking tough steps against Paid News. The Parliament has also discussed the subject, and there was consensus across all political parties that harsh actions should be taken against Paid News. The Commission has set up MCMCs at the district and state levels to monitor media for Paid News and other violations besides certification of advertisements.

4) **Social Media: Guidelines, Engagement & Regulation:** Here the focus is on the role of social media as a powerful communication and advocacy platform for all stakeholders. The guidelines covers the following major points-

- **Social Media Guidelines:** Social media is within the category of electronic media, and all political advertisements on social media platforms must be pre-certified. Candidates are obliged to submit details of their authentic social media accounts when filing nominations. Expenses for social media campaigns, including advertisements, account maintenance, content production, and personnel compensation, must be included in the election expense account.
- **Voluntary Code of Ethics:** The Internet and Mobile Association of India (IAMAI) and major social media platforms agreed upon a Voluntary Code of Ethics during the General Elections 2019. This code contains voter awareness programs, a grievance redressal channel, a notice mechanism for election law infractions, and pre-certification of political advertisements broadcast through social media platforms.
- **Appointment of Social Media Nodal Officers:** The appointment of Social Media Nodal Officers is vital for overseeing social media activities during elections. These officers play a significant role in ensuring compliance with guidelines, monitoring violations, and collaborating with social media platforms.
- **SOP for Reporting Social Media Violations:** The guideline describes a Standard Operating Procedure (SOP) for reporting social media violations. For this, the Nodal Officers are required to mention relevant provisions of election law, IPC, and the Model Code of Conduct while reporting violations. They must submit relevant links, screenshots, and transcripts of the posts for reporting.

- 5) Regular Media Monitoring and feedback:** Media monitoring is an essential aspect of perception management and keeping the Election Commission of India (ECI) informed about ongoing activities and important election-related matters reported in the media. The Commission has instructed that the office of Chief Electoral Officers (CEOs) of states and Union Territories (UTs) should establish a Permanent Media Cell, which daily monitors relevant election-related news from local media coverage. News of relevance should be compiled and submitted with a gist daily. During elections, the media cell should be further strengthened with infrastructure and manpower to monitor local and regional news channels for election management and probable violation monitoring. The Electronic Media Monitoring Centre (EMMC) monitors all election management-related news on national and regional news channels during all General Elections. EMMC monitors all election management-related news on the day of poll and a day prior to that and submits two-hourly reports to the Commission and concerned CEO office. The CEO office ascertains the status on the items on the report and files an ATR/Status report within two hours/before the generation of the next report to the Commission. The CEO office informs the action taken in the matter to the media, and if the news item is not found correct, the media may be informed to issue a rebuttal. The ATR report received from the CEO office is presented/sent to the Commission for perusal. Analysis of Media Monitoring is done by the ECI after each phase of the poll, and a final analysis is done after the elections are over. A Nodal officer is appointed in the CEO office to coordinate for EMMC reports and the ATRs during elections.
- 6) Media facilitation and Information Dissemination:** The Election Commission of India has created standards for media coverage of elections, which assist media for adequate and effective coverage of the election process without affecting the laws for elections and the rights of the public. Some aspects of media facilitation and information dissemination are based on the following points-
- Issuance of Authority Letters/Media Passes
  - Procedure to Apply for Authority Letters and Its Issuance
  - Sponsoring Authority for Media Passes
  - Signing Authority for Media Passes
  - Coverage of Actual Polling Inside the Polling Stations
  - Procedure for Coverage Inside the Counting Hall
  - Announcement of Round-Wise Results
  - Creation of Media Centers (MC) and Facilities Available
  - Permanent Media Cell & Regular Media Interactions
- 7) Allotment of broadcast time to political parties:** The distribution is determined by how well each party performed in the most recent general or assembly elections for the Lok Sabha. The allotment is available exclusively to national parties and recognized state

parties of the state concerned on All India Radio and Doordarshan. The allotment is done in an equal manner, and the additional time is determined depending on the party's poll performance. The period of broadcast is between the date of publication of the list of contesting candidates for the election and two days before the date of poll in each phase. The Prasar Bharati Corporation, in consultation with the Commission, establishes the actual date and time for broadcast. Broadcasts are not permitted to criticize other countries, attack religions or communities, contain anything obscene or defamatory, incite violence, amount to contempt of court, aspersion against the integrity of the President and Judiciary, affect the Nation's unity, sovereignty, and integrity, or criticize any individual by name. The Prasar Bharati Corporation may host a maximum of two national panel discussions and/or debates on the national channel of Doordarshan and All India Radio, where each nationally recognized party can propose one representative. The Election Commission of India certifies the names of moderators for such panel discussions and debates in cooperation with the Prasar Bharati Corporation. The Chief Electoral Officer's office coordinates with political parties and AIR & DD authorities in the State about the implementation of the plan.

**8) Regulations & guidelines for media coverage during elections:** here it focuses on the importance of media coverage during elections and the need for regulations to ensure free and fair elections. Lets look at the following points-

- **Media Coverage Related Provisions:** it discusses the provisions related to media coverage during elections, including Section 126 of the Representation of the People Act, 1951, which prohibits public meetings during the period of 48 hours ending with the hour fixed for the conclusion of the poll. The section also prohibits the display of any election matter by means of cinematograph, television, or other similar apparatus during the same time.
- **Restrictions on Exit Poll and Opinion Poll:** The restrictions on exit polls and opinion polls during elections. Section 126A of the Representation of the People Act, 1951, prohibits the conduct of any exit poll and the publication or publicizing of its results during the period beginning from the commencement of the hours fixed for poll on the first day of poll and continuing till half an hour after the closing of the poll in all the states and union territories.
- **Guidelines of Press Council of India and Norms of Journalistic Conduct-2020:** the guidelines of the Press Council of India and the Norms of Journalistic Conduct-2020, which are to be followed by the print media/newspapers during elections.
- **Guidelines of NBSA:** the guidelines of the News Broadcasting Standards Authority (NBSA), which are to be followed by broadcast media during elections.
- **Voluntary Code of Ethics:** the Voluntary Code of Ethics, which was agreed upon by the Internet and Mobile Association of India (IAMAI) on behalf of its

members during the General Elections to Lok Sabha 2019 and Legislative Assemblies planned along with the Lok Sabha election. The code is applicable for all elections, including Legislative Assembly elections, and is in force from 20.03.2019.

### **Stop To Consider**

The Election Commission of India (ECI) has released directives for the media during elections, underlining the significance of media as a crucial partner in electoral processes. These directives encompass a range of elements such as Media Certification and Monitoring Committee (MCMC), Pre-certification of Political Advertisements, Paid News, Social Media Engagement and Regulations, Regular Media Monitoring and Feedback, Media Facilitation and Information Dissemination, Allotment of Broadcast Time to Political Parties, as well as Regulations & Guidelines for Media Coverage during Elections. The primary goal of these directives is to guarantee transparency, fair electoral processes, and adherence to laws in order to uphold the integrity of the electoral process.

### **Check your progress**

**Question 1: What is the purpose of the Handbook on Media Matters for CEOs & DEOs (2024) published by the Election Commission of India?**

**Question 2: What are the various guidelines related to Media?**

## **1.4 Media's Role in Shaping Public Opinion During Elections**

The media plays an important role in influencing public opinion during elections, its major role is to distribute authentic information, maintain transparency and highlighting electoral violations. Media has a crucial function in supplying voters with vital information to enable them to make well-informed decisions. The Election Commission of India sees the media as an important ally in elections, whether it is spreading election related news or bringing electoral violations to



awareness. Media can affect public opinion, by making it a powerful tool in modern society. The media which includes television, radio, print and social media has the power to influence public opinions in either a positive or a negative way. Therefore, it is very crucial for media coverage during elections to be impartial objective and precise.

Let us discuss some of the role of media in the following points –

- 1. Providing information:** during the elections, the main role of media is to disseminate authentic information to the people by reporting in a fair manner. This helps the people to understand and develop their opinions so that well informed decisions can be made. Media has an ultimate effect on public opinion as they are responsible in prioritizing the information which are given to the people.
- 2. Political campaigns during elections:** media not only plays a role in favor of the people but it also provides a platform for the candidates and political parties to reach a wide audience. Media highlights the election campaigns, conducts interviews, debates and analyses polls which helps the people to have a better understanding of various agendas of the political parties.
- 3. Keeping an Eye on Politicians:**Media acts as a watchdog in a democracy, it plays an important role in keeping an eye on the politicians so that they are responsible towards its people. The media is responsible for finding out if there is any corruption and helps in bringing it out in front of the people which shapes public opinion for elections.
- 4. Educating the voters:** Media helps the voters understand issues related to the election in an informative way and it empowers them to make decisions wisely. Through in-depth analysis and expert commentary media provides valuable insights into the backgrounds of the candidates and various promises made by them. Media through its fair and honest reporting can influence the people during elections, whereas if the media acts in a biased manner then it can also shape the opinions of the public in a wrong way.
- 5. Free and fair reporting during elections:** Free and honest reporting is essential in influencing public opinion during elections. Unbiased coverage by media organizations helps voters in selecting parties and candidates with knowledge. First and foremost, factual information about the political system is provided to voters through free and fair reporting. This covers election manifestos, commitments made during the campaign by the candidates. When media sources offer a range of viewpoints, voters are better equipped to analyze all of their options. Impartial reporting promotes confidence in the democratic process, people are more inclined to have faith in election results when they perceive media outlets to be unbiased. On the other hand, exaggerated or biased information could affect public perception, voters may be persuaded in favor of or against specific politicians if they receive disproportionate coverage for them and their parties or if false information is disseminated. This weakens the democratic values and may result in unjust election outcomes.

## Stop To Consider

The media holds significant influence in shaping public opinion during elections by providing authentic information, facilitating political campaigns, monitoring politicians and educating voters. Through fair reporting and analysis, it empowers people to make informed decisions. However, biased media coverage can distort general opinion. Thus keeping impartiality and accuracy is crucial for media's role in ensuring a well informed electorate.

### Check your progress

**Question 3: What is the media's role during elections?**

**Question 4: How does the media help voters to make decisions?**

**Question 5: Why should the media be fair and honest during elections?**

## 1.5 Government and Media Ethics

In a society the government and media play important roles in upholding public awareness and ensuring responsible and fair governance of the nation. However there are instances where their complex relationship gives rise, to dilemmas. The media is tasked with covering government activities and holding officials accountable for their actions. To fulfill this duty it is essential to uphold values such as impartiality, fairness and accuracy. Various factors, like biases, commercial interests and political ideologies can influence the media's conduct and compromise its ethical integrity. Nevertheless, it is the government's responsibility to safeguard the independence and freedom of the press. This involves respecting journalist's legal rights and refraining from any actions that could be perceived as attempts to censor or control the media.

At times governments may feel compelled to leverage their authority to shape media narratives in ways that align with their agendas. This could involve using regulations or enforcement measures to intimidate or penalize dissenting voices or providing treatment to media outlets that support their policies. To address these challenges effectively both governments and the media must follow a shared set of principles that prioritize the welfare of citizens-

1. The media should aim to report information in a manner without any bias.
2. It is important to verify all information before publishing promptly correct any errors transparently.
3. Protect the privacy and dignity of individuals while avoiding sensationalism or exploitation.

4. Furthermore disclosing conflicts of interest and avoiding any appearance of bias or improper conduct is crucial.
5. For the government, this means respecting the freedom of the press, and avoiding actions that could be perceived as attempts to suppress or manipulate the media
6. Providing timely, transparent, and accurate information to the media and the public
7. Avoiding conflicts of interest, and ensuring that government actions are motivated by the public interest rather than personal or political considerations
8. Respecting the rule of law, and ensuring that journalists and media organizations are not subject to arbitrary or discriminatory treatment
9. By adhering to these ethical principles, both the media and the government can help to build a more informed, engaged, and responsible society.

### **Stop To Consider**

The government and the media play very important roles in keeping the people informed and making sure that the government is run responsibly. But their complicated relationship can cause problems, for example: the media's duty is to report on government actions and hold officials accountable potentially compromised by their own political ideologies, commercial interests and biases. The government must protect the press freedom and independence and the media should be able to work in a fair, unbiased, accurate and open manner. Both the government and media should avoid having conflicts of interest and put the well being of the people first. By following ethical principles they can build a more informed, engaged and responsible society.

### **Check your progress**

**Question 6: What should the media do to make sure they report news without taking sides?**

**Question 7: What are some important rules which both the media and the government should follow to be fair and honest?**

1.6

### **Summing up**

Dear Learners, now let's look into the summary of the entire unit, here we learned about the guidelines provided by the Election Commission of India regarding media conduct during

elections and the relationship between the government and media ethics. The guidelines of ECI emphasize on the critical role of the media in shaping public opinion, ensuring fairness and upholding democratic processes. We also discussed various aspects such as Media Certification, Paid News, Social Media Engagement, Regular Media Monitoring and guidelines for media coverage during elections. We focused on the importance of transparency, fairness and adherence to ethics to maintain the integrity of the electoral process. The media is portrayed as a crucial ally in elections, responsible for disseminating authentic information, maintaining transparency and highlighting electoral violations to enable voters to make well informed decisions.

### **1.7 References and Suggested Readings:**

1. Election Commission of India *Handbook on Media Matters for CEOs & DEOs*, Edition- 1, February 2024
2. M Neelamalar *Media Law and Ethics*, August 2015
3. Press Council of India *Norms of Journalist Conduct*, Edition- 2022
4. Maxwell McCombs *Setting the Agenda: Mass Media and Public Opinion*, Edition- 2, 2014

### **1.8 Model Questions:**

1. What is the main objective of the Election Commission of India's guideline for media conduct during elections?
2. What is the role of the Media Certification Committees (MCMC) during elections according to the ECI?
3. Why is it important for media coverage during elections to be impartial, objective and precise?
4. What role does the media play in shaping public opinion during elections?
5. What are some of the key principles that both the government and media should follow to ensure ethical conduct?

### **1.9 Answer to check your progress/ Possible Answers to SAQ**

**Answer 1:** The Handbook on Media Matter for CEOs & DEOs (2024), issued by the ECI serves as a comprehensive manual which is aimed at ensuring fair and transparent media conduct during the electoral process. It provides detailed guidelines and directives for State and District Election Offices regarding the involvement of media in elections. By offering clear instructions and standards the handbook aims to promote accountability, integrity and adherence to ethical norms

among media organizations, political parties and candidates. Moreover, it seeks to empower election officials with the knowledge and necessary tools to effectively manage media related activities thus contributing to the overall credibility and integrity of the electoral process.

**Answer 2:** The Election Commission of India (ECI) has outlined several guidelines about media conduct during elections in India. These encompass a wide range of areas, including Media Certification and Monitoring Committees (MCMC), Pre-certification of Political Advertisements, Paid News, Social Media Engagement and regulations, Regular Media Monitoring and Feedback, Media facilitation and Information Dissemination, Allotment of broadcast time to political parties, and Regulations & guidelines for media coverage during elections. Each of these guidelines addresses specific aspects of media involvement in elections, aiming to ensure fairness, transparency, and compliance with electoral laws and ethical standards. They highlight the critical role of the media in shaping public opinion and maintaining the integrity of the democratic process, while also emphasizing the importance of upholding ethical principles and regulatory measures.

**Answer 3:** The media plays a crucial role during elections by disseminating authentic information, facilitating political campaigns, scrutinizing politician's actions, educating voters, and ensuring free and fair reporting. The media acts as a watchdog, holding politicians accountable and also by providing a platform for political discourse and public awareness.

**Answer 4:** The media helps voters make informed decisions by providing them with authentic information about candidates, political parties, and electoral issues. Through news reports, debates, interviews, and analysis, the media offers insights into various agendas, policies, and promises, empowering voters to understand the implications of their choices.

**Answer 5:** The media should be fair and honest during elections to uphold the principles of democracy and ensure that all candidates and political parties have equal opportunities. Fair and honest reporting promotes transparency builds trust in the electoral process and enables voters to make informed decisions based on accurate information. Biased or dishonest media coverage can distort public opinion and undermine the democratic process. Therefore, maintaining fairness and honesty in media coverage is essential for the health of a democracy.

**Answer 6:** To report news without taking sides, the media should strictly follow the principles of impartiality, objectivity, and accuracy. This involves presenting all relevant information fairly, providing a platform for diverse viewpoints, verifying facts before publication, avoiding sensationalism or bias, and disclosing any conflicts of interest. By prioritizing factual reporting and maintaining editorial independence, the media can ensure that their coverage is balanced and free from any kind of influence.

**Answer 7:** Some important rules for both the media and the government to be fair and honest include:

1. Respecting freedom of the press and avoiding censorship or control of media outlets.
2. Providing timely, transparent, and accurate information to the public.
3. Avoiding conflicts of interest and disclosing any potential biases or improper conduct.
4. Upholding principles of impartiality, objectivity, and integrity in reporting and decision-making.
5. Following legal and ethical guidelines, including those related to privacy, defamation, and protection of sources.
6. Promoting diversity and inclusion in media representation and government policies.
7. Ensuring accountability and transparency in government actions and media practices.

By following these rules, both the media and the government can build public trust, uphold democratic values, and contribute to a more informed and engaged society.

## **Unit-5**

### **Ethical Reporting On Children and Women; Privacy Issues**

#### **Unit Structure:**

#### **5.1 Introduction**

#### **5.2 Objectives**

#### **5.3 Importance of Ethical Reporting**

#### **5.4 Ethical Challenges in Journalism**

#### **5.5 Empowering Communities for Change**

#### **5.6 References**

#### **5.1 Introduction**

Ethical journalism serves as the cornerstone of responsible and credible reporting. It encompasses a set of principles and practices that guide journalists in their pursuit of truth while upholding moral values and respecting the dignity and rights of individuals and communities.

#### **5.2 Objectives**

1. Investigate the importance of ethical reporting in maintaining public trust in the media and upholding journalistic integrity, with a focus on its role in serving the public interest and promoting accuracy, fairness, and transparency.
2. Examine the core principles of ethical journalism, including accuracy, fairness, independence, and sensitivity, and analyze their application in reporting on issues concerning children and women, particularly in avoiding sensationalism and respecting the dignity of vulnerable populations.
3. Explore the ethical challenges faced by journalists in their day-to-day work, such as navigating conflicts of interest, protecting sources' confidentiality, and balancing the public's right to know with individuals' right to privacy, with a specific focus on reporting on issues related to children and women.
4. Investigate the evolving ethical landscape of journalism in the context of rapid technological advancements and changing media landscapes, analyzing new challenges such as the spread of misinformation and the rise of social media and evaluating how journalists adapt ethical practices to meet contemporary realities.

5. Evaluate ethical decision-making frameworks and tools available to journalists when faced with ethical dilemmas, examining their effectiveness in guiding principled decisions that minimize harm to individuals and communities, particularly when reporting on sensitive issues affecting children and women.

### **5.3 Importance of Ethical Reporting**

Ethical reporting is vital for maintaining public trust in the media and ensuring the integrity of journalistic practices. By adhering to ethical standards, journalists uphold their role as watchdogs of society, serving the public interest with accuracy, fairness, and transparency.

#### **Core Principles of Ethical Journalism**

- **Accuracy:** Journalists have a duty to verify information before publishing or broadcasting it. Accuracy ensures that the public receives reliable and truthful news.
- **Fairness and Impartiality:** Reporting should be fair, balanced, and free from bias. Journalists should strive to present multiple perspectives and provide context to enable audiences to form informed opinions.
- **Independence:** Journalists must maintain independence from undue influence, whether from governments, advertisers, or other external parties. Independence ensures that journalists can report without fear or favor.
- **Sensitivity and Respect:** Journalists should treat subjects with sensitivity and respect, particularly when reporting on vulnerable populations such as children and women. Avoiding sensationalism and exercising empathy are essential aspects of ethical reporting.

### **5.4 Ethical Challenges in Journalism**

While ethical principles provide a framework for responsible reporting, journalists often face complex challenges in their day-to-day work. These challenges may include navigating conflicts of interest, protecting sources' confidentiality, and balancing the public's right to know with individuals' right to privacy.

#### **Evolving Ethical Landscape**

In an era of rapid technological advancement and changing media landscapes, ethical considerations in journalism continue to evolve. New challenges, such as the spread of misinformation and the rise of social media, require journalists to adapt ethical practices to meet contemporary realities.

#### **Ethical Decision-Making in Journalism**

Ethical decision-making is a critical skill for journalists. When faced with ethical dilemmas, journalists should engage in thoughtful deliberation, consult relevant ethical guidelines and



codes of conduct, and consider the potential impact of their actions on individuals and communities.

Ethical reporting is not just a professional obligation but a moral imperative. By upholding ethical standards, journalists uphold the integrity of the profession and contribute to a more informed, democratic society.

## **Ethical Guidelines and Principles**

Ethical guidelines and principles form the bedrock of responsible journalism. They provide journalists with a framework for making ethical decisions and conducting their work with integrity, accuracy, and fairness.

### **Ethical Principles**

- **Accuracy and Truthfulness:** Journalists have a fundamental obligation to report the truth. This requires rigorous fact-checking, verification of sources, and correction of errors promptly.
- **Fairness and Balance:** Reporting should be fair, balanced, and free from bias. Journalists should strive to present multiple perspectives and give voice to diverse viewpoints.
- **Independence and Objectivity:** Journalists must maintain independence from outside influences, including advertisers, political interests, and personal biases. Objectivity in reporting means presenting information impartially and without undue influence.
- **Respect for Privacy and Dignity:** Journalists should respect the privacy and dignity of individuals, particularly when reporting on sensitive topics or vulnerable populations such as children and women. Obtaining informed consent and protecting identities are essential aspects of ethical reporting.

### **Codes of Ethics**

Many journalistic organizations and professional associations have established codes of ethics to guide journalists in their work. These codes typically outline principles and standards of conduct that journalists are expected to adhere to, such as the Society of Professional Journalists' Code of Ethics or the Ethical Journalism Network's Five Principles of Journalism.

### **Transparency and Accountability**

Transparency is crucial for maintaining the public's trust in journalism. Journalists should be transparent about their methods, sources, and potential conflicts of interest. Accountability means taking responsibility for one's actions and being open to feedback and criticism from the public.

## **Ethical Considerations in Reporting on Children and Women**

When reporting on issues related to children and women, journalists must pay particular attention to ethical considerations. This includes protecting the identities of victims, avoiding stereotypes and stigmatization, and prioritizing the well-being and safety of those involved.

### **Ethical Decision-Making Frameworks**

Ethical decision-making in journalism often involves navigating complex situations with competing interests. Journalists may use ethical decision-making frameworks, such as the Potter Box or the SPJ Ethical Decision-Making Process, to analyze ethical dilemmas and arrive at principled decisions.

Ethical guidelines and principles are the compass that guides journalists in their pursuit of truth and public service. By upholding these standards, journalists can foster trust, integrity, and accountability in their reporting, thereby fulfilling their vital role in democratic society.

### **STOP TO CONSIDER**

1. **Importance of Ethical Reporting:** The significance of ethical reporting in maintaining public trust in the media and upholding journalistic integrity, serving the public interest with accuracy, fairness, and transparency.
2. **Core Principles of Ethical Journalism:** Key principles such as accuracy, fairness and impartiality, independence, and sensitivity and respect, which provide a foundation for responsible reporting and guide journalists in their work.
3. **Ethical Challenges in Journalism:** The complex challenges journalists face in their day-to-day work, including navigating conflicts of interest, protecting sources' confidentiality, and balancing the public's right to know with individuals' right to privacy.
4. **Evolving Ethical Landscape:** The changing ethical considerations in journalism due to rapid technological advancement and shifts in media landscapes, including new challenges like the spread of misinformation and the rise of social media, necessitating adaptations in ethical practices.
5. **Ethical Decision-Making in Journalism:** The critical skill of ethical decision-making for journalists, involving thoughtful deliberation, consultation of relevant ethical guidelines and codes of conduct, and consideration of the potential impact of their actions on individuals and communities.

### **Challenges in Reporting on Children and Women**

Reporting on issues affecting children and women is essential for shedding light on their experiences, amplifying their voices, and driving social change. However, journalists often encounter unique challenges when covering these topics, ranging from ethical dilemmas to practical obstacles.

## **Protecting Identities and Privacy**

One of the foremost challenges in reporting on children and women is protecting their identities and privacy. Victims of abuse, exploitation, or other sensitive issues may face additional harm if their identities are revealed. Journalists must navigate the delicate balance between the public's right to know and the individual's right to privacy.

## **Obtaining Informed Consent**

Obtaining informed consent from children and women, particularly in vulnerable situations, can be challenging. Journalists must ensure that individuals fully understand the implications of participating in a story and that their consent is voluntary and informed. This may involve explaining the potential risks and benefits, as well as providing support and resources.

## **Avoiding Harm and Retraumatization**

Reporting on traumatic experiences, such as abuse or violence against children and women, carries the risk of retraumatizing survivors and perpetuating harm. Journalists must approach these stories with sensitivity, empathy, and a commitment to minimizing harm. This may involve refraining from graphic or sensationalized descriptions and providing resources for support and counseling.

## **Overcoming Stigma and Stereotypes**

Children and women are often subject to stigma and stereotypes that can distort media coverage and perpetuate harmful narratives. Journalists must be vigilant in challenging stereotypes, avoiding victim-blaming language, and portraying individuals with dignity and respect. By amplifying diverse voices and experiences, journalists can help combat stigma and promote understanding and empathy.

## **Access to Information and Sources**

Gaining access to information and sources related to children and women's issues can be challenging due to factors such as confidentiality concerns, institutional barriers, and cultural taboos. Journalists may need to employ creative strategies, build trust with sources, and collaborate with advocacy organizations to access the information they need while respecting individuals' privacy and safety.

## **Addressing Intersectionality**

Intersectionality—the interconnected nature of social categorizations such as race, gender, class, and sexuality—adds complexity to reporting on issues affecting children and women. Journalists must recognize and address intersecting forms of discrimination and oppression, ensuring that their reporting reflects the diverse experiences and realities of individuals across different intersecting identities.

Reporting on children and women's issues requires sensitivity, ethical rigor, and a commitment to amplifying marginalized voices and challenging systemic inequalities. By

navigating these challenges with care and integrity, journalists can contribute to a more inclusive, empathetic, and informed public discourse.

### **Privacy Issues and Legal Considerations**

Privacy is a fundamental right that must be safeguarded in journalism, particularly when reporting on sensitive topics such as children and women. This unit explores the privacy issues and legal considerations that journalists must navigate when covering these subjects.

#### **SAQ**

1. How can journalists balance the public's right to know with the need to protect the privacy and identities of children and women when reporting on sensitive issues?
2. What are the ethical considerations and challenges journalists face in obtaining informed consent from children and women, especially in vulnerable situations?
3. How can journalists minimize the risk of harm and retraumatization when reporting on traumatic experiences, such as abuse or violence against children and women?
4. What strategies can journalists employ to challenge stereotypes and stigma associated with children and women, ensuring that their reporting reflects dignity and respect?
5. How do journalists navigate access to information and sources related to children and women's issues, considering factors such as confidentiality concerns, institutional barriers, and cultural taboos?

### **Right to Privacy**

The right to privacy is enshrined in various international and domestic laws and conventions, including the Universal Declaration of Human Rights and the European Convention on Human Rights. Journalists have a responsibility to respect individuals' privacy rights, particularly when reporting on matters that involve intimate or personal information.

### **Confidentiality and Source Protection**

Confidentiality is essential for maintaining trust between journalists and their sources, particularly when reporting on sensitive topics. Journalists must honor promises of confidentiality and protect the identities of sources, even in the face of legal pressure. Shield laws and other legal protections exist in many jurisdictions to safeguard journalists' ability to protect their sources.

### **Data Protection Laws**

In an era of digital journalism and online media, data protection laws play a crucial role in safeguarding individuals' privacy rights. Laws such as the European Union's General Data Protection Regulation (GDPR) impose obligations on journalists to handle personal data responsibly and transparently, including obtaining consent for data processing and providing individuals with control over their information.

## **Consent and Informed Consent**

Obtaining informed consent is essential when reporting on matters that involve individuals' personal information or experiences. Journalists must ensure that individuals understand the implications of participating in a story and that their consent is voluntary, informed, and revocable. This may involve explaining the potential risks and benefits, as well as providing opportunities for individuals to withdraw consent.

## **Privacy in Investigative Reporting**

Investigative reporting often involves uncovering information that powerful individuals or institutions would prefer to keep hidden. Journalists must navigate the tension between the public's right to know and individuals' right to privacy, ensuring that their reporting serves the public interest while minimizing harm to individuals involved.

## **Legal Risks and Liabilities**

Journalists face potential legal risks and liabilities when reporting on matters that implicate individuals' privacy rights. Defamation, invasion of privacy, and copyright infringement are among the legal claims that journalists may encounter. Understanding relevant legal principles and consulting with legal experts can help journalists mitigate these risks.

Privacy issues and legal considerations are central to ethical journalism, particularly when reporting on sensitive topics like children and women. By adhering to legal standards, respecting individuals' privacy rights, and obtaining informed consent, journalists can uphold the integrity of their reporting while fulfilling their responsibility to inform the public.

## **Tools and Resources for Ethical Reporting**

Ethical reporting requires more than just good intentions—it requires practical tools, resources, and guidelines to guide journalists in navigating complex ethical dilemmas. This chapter explores a range of tools and resources available to journalists to support ethical reporting practices.

## **Ethical Guidelines and Codes of Conduct**

Professional organizations and journalism associations publish ethical guidelines and codes of conduct that provide journalists with a framework for ethical decision-making. Examples include the Society of Professional Journalists' Code of Ethics, the Ethical Journalism Network's Five Principles of Journalism, and the Code of Practice of the International Federation of Journalists. These guidelines outline principles and standards of conduct that journalists are expected to uphold in their work.

## **Ethical Decision-Making Frameworks**

Ethical decision-making frameworks provide journalists with structured approaches to analyzing and resolving ethical dilemmas. Examples include the Potter Box, the SPJ Ethical Decision-Making Process, and the Ethical Journalism Initiative's Ethical Journalism Toolkit.

These frameworks typically involve steps such as identifying ethical issues, gathering relevant information, considering alternative courses of action, and evaluating potential consequences.

### **Fact-Checking and Verification Tools**

Fact-checking and verification tools help journalists ensure the accuracy and reliability of their reporting. Tools such as FactCheck.org, PolitiFact, and the Poynter Institute's International Fact-Checking Network provide journalists with resources for verifying claims, debunking misinformation, and assessing the credibility of sources.

### **Privacy and Security Resources**

Journalists reporting on sensitive topics may face risks to their own privacy and security, as well as the privacy and safety of their sources. Resources such as the Committee to Protect Journalists' Safety Kit, the Electronic Frontier Foundation's Surveillance Self-Defense guide, and the Dart Center for Journalism and Trauma's Safety Resources provide journalists with guidance on safeguarding their digital communications, protecting their physical safety, and navigating legal risks.

### **Diversity and Inclusion Guides**

Diversity and inclusion guides offer journalists insights and best practices for representing diverse perspectives and voices in their reporting. Resources such as the Diversity Style Guide, the Conscious Style Guide, and the Solutions Journalism Network's Equity and Inclusion Toolkit provide journalists with guidance on avoiding stereotypes, challenging bias, and amplifying marginalized voices.

### **Training and Professional Development Programs**

Training and professional development programs offer journalists opportunities to deepen their understanding of ethical principles and practices. Organizations such as the Poynter Institute, the Reuters Institute for the Study of Journalism, and the Knight Center for Journalism in the Americas offer workshops, webinars, and online courses on topics such as media ethics, investigative reporting, and digital security.

Ethical reporting is an ongoing commitment that requires continuous learning, reflection, and adaptation. By leveraging the tools and resources available to them, journalists can enhance their ethical decision-making skills, uphold professional standards, and contribute to a more informed, transparent, and accountable media ecosystem.

### **Intersectionality and Representation**

In the landscape of journalism, the quest for accuracy and fairness is perennial. Yet, amidst this pursuit, a critical aspect often overlooked is intersectionality—the interconnected nature of social categorizations such as race, gender, class, and sexuality, which shape individual experiences. When reporting on issues concerning children and women, understanding

intersectionality is paramount, as it unveils the diverse tapestry of identities within these groups.

Intersectionality prompts journalists to delve beyond surface-level narratives and acknowledge the multifaceted identities that individuals embody. It recognizes that a woman's experience can vary significantly depending on factors such as race, ethnicity, sexual orientation, and socioeconomic status. Similarly, a child's experience may be shaped by their gender identity, disability, or cultural background. By embracing intersectionality, journalists can unearth the nuanced realities of marginalized communities and foster a more inclusive and authentic representation in their reporting.

Central to intersectionality is the imperative to amplify the voices and perspectives of those who have historically been marginalized or silenced. This involves actively seeking out diverse sources and stakeholders whose lived experiences offer unique insights into the issues being covered. Rather than relying solely on traditional power structures and dominant narratives, journalists must engage with grassroots activists, community leaders, and individuals from underrepresented backgrounds to ensure their reporting reflects the complexities of lived realities.

Moreover, intersectionality challenges journalists to critically examine their own biases and privilege, recognizing the inherent power dynamics that shape media representation. By interrogating assumptions and embracing humility, journalists can guard against perpetuating stereotypes and marginalizing already vulnerable communities. This self-reflection is essential for cultivating a more inclusive and equitable media landscape.

### **Understanding Power Dynamics in Media Representation**

In the intricate web of media representation, power dynamics play a pivotal role, shaping how children and women are portrayed and perceived in society. These dynamics are multifaceted, influenced by stereotypes, biases, and unequal power structures ingrained in our collective consciousness. Understanding these nuances is crucial for journalists striving to report ethically and responsibly.

Stereotypes and biases often pervade media representations, pigeonholing individuals into narrow, predefined roles. For children, these stereotypes can range from the innocent cherub to the troublesome delinquent, limiting the spectrum of their experiences and potential. Similarly, women are frequently depicted through tropes of the nurturing mother, seductive temptress, or hapless damsel, reinforcing traditional gender norms and marginalizing their diverse identities.

Moreover, unequal power structures exacerbate these issues, perpetuating a cycle where those in positions of power dictate the narrative, often at the expense of marginalized groups. In the media landscape, this manifests through the underrepresentation of diverse voices and the perpetuation of dominant narratives that reinforce existing power hierarchies.

### **Ethical Navigation of Power Dynamics**

In navigating these complex power dynamics, journalists must adopt a conscientious approach, mindful of their role as storytellers and gatekeepers of information. One crucial strategy is to actively seek out and amplify marginalized voices, providing a platform for their stories to be heard. By elevating diverse perspectives, journalists can challenge dominant narratives and foster a more inclusive media landscape.

Additionally, interrogating one's own biases and assumptions is paramount in ensuring fair and balanced reporting. This involves critically examining the sources of information, questioning underlying narratives, and striving for authentic representation that reflects the complexity of human experiences.

Furthermore, journalists must be vigilant in holding power accountable, whether it be political, corporate, or institutional. By scrutinizing power dynamics within their own industry and challenging unethical practices, journalists can contribute to a more equitable media ecosystem.

### **CHECK YOUR PROGRESS**

1. How does intersectionality influence the representation of children and women in journalism, and why is it important for journalists to understand this concept when reporting on issues related to these groups?
2. Discuss the role of power dynamics in shaping media representations of children and women, including the perpetuation of stereotypes and the underrepresentation of diverse voices. How can journalists navigate these dynamics ethically in their reporting?
3. Explain the concept of informed consent and its significance in journalistic practice, particularly when reporting on sensitive issues involving children and women. What are the ethical considerations and challenges journalists face in obtaining informed consent from individuals in vulnerable situations?
4. Discuss the ethical responsibilities of journalists in protecting the privacy and identities of children and women when reporting on sensitive topics. How can journalists balance the public's right to know with individuals' right to privacy in their reporting?
5. Analyze the evolving ethical landscape in journalism, considering factors such as rapid technological advancement and shifts in media landscapes. How do these changes impact ethical considerations, particularly when reporting on issues concerning children and women?

### **Strategies for Responsible Reporting**

To navigate power dynamics ethically, journalists can employ a variety of strategies in their reporting practices. Firstly, cultivating empathy and sensitivity towards the subjects of their stories can humanize representations and mitigate harmful stereotypes. Building trust and



rapport with sources is essential for eliciting authentic narratives, particularly from marginalized communities who may be wary of media exploitation.

Moreover, embracing diversity in newsrooms is imperative for fostering a culture of inclusivity and representation. By recruiting journalists from diverse backgrounds and experiences, news organizations can bring a breadth of perspectives to their reporting, enriching the discourse and challenging entrenched power structures.

Ultimately, responsible reporting requires a commitment to truth, integrity, and social justice. By actively engaging with power dynamics in media representation, journalists can wield their influence to effect positive change, amplifying the voices of the marginalized and challenging the status quo. In doing so, they uphold the fundamental principles of journalism as a cornerstone of democracy and societal progress.

### **Reporting with Sensitivity: Trauma-Informed Journalism**

Trauma-informed reporting practices are essential tools for journalists covering sensitive issues affecting vulnerable populations, such as children and women who have experienced trauma. Whether it's domestic violence, sexual assault, or displacement, these topics demand a compassionate and ethical approach to storytelling that prioritizes survivors' well-being while minimizing harm.

At the core of trauma-informed reporting is the recognition that trauma can profoundly impact individuals' lives, shaping their perceptions, behaviors, and responses to external stimuli. Journalists must acknowledge the complexities of trauma and its ripple effects, understanding that survivors may have diverse coping mechanisms and experiences.

### **Approaches for Sensitively Reporting on Traumatic Experiences**

When reporting on traumatic experiences, journalists must adopt a range of approaches to ensure sensitivity and minimize retraumatization. First and foremost, it's crucial to prioritize survivors' agency and consent throughout the reporting process, respecting their autonomy and boundaries.

Empathy and active listening are foundational to trauma-informed reporting, allowing journalists to establish trust and rapport with survivors. By creating a safe space for survivors to share their stories at their own pace, journalists can facilitate healing and empowerment while honoring their resilience.

Moreover, journalists should exercise caution when describing traumatic events, avoiding sensationalism or graphic detail that may sensationalize trauma and exploit survivors' pain. Instead, focus on contextualizing the story within broader social, cultural, and systemic factors, shedding light on the root causes and potential solutions.

### **Minimizing Harm and Prioritizing Well-Being**

In addition to sensitivity in storytelling, journalists must take proactive steps to minimize harm and prioritize survivors' well-being. This includes providing access to resources and support services for survivors, such as helplines, counseling, and legal assistance.

Furthermore, journalists should be mindful of the potential consequences of their reporting on survivors' safety and privacy. Take precautions to anonymize survivors or obtain their explicit consent before sharing personal details that could jeopardize their security.

Collaboration with trauma experts and advocates can enhance journalists' understanding of trauma-informed reporting practices, providing valuable insights and guidance throughout the reporting process. By partnering with organizations that specialize in supporting survivors, journalists can ensure their reporting is informed, responsible, and compassionate.

### **The Ethical Imperative of Trauma-Informed Journalism**

At its core, trauma-informed journalism is rooted in principles of ethics, empathy, and social responsibility. By centering survivors' voices and experiences with dignity and respect, journalists can contribute to a more compassionate and inclusive media landscape.

Ultimately, trauma-informed reporting is not just about telling stories; it's about amplifying marginalized voices, challenging stigmatization, and advocating for systemic change. Through thoughtful and ethical journalism, we can honor survivors' resilience, foster healing, and create a more empathetic society.

### **The Role of Media Literacy in Ethical Reporting**

Media literacy is a fundamental skill in today's information-saturated world, empowering individuals to critically engage with media content, discern fact from fiction, and navigate the complexities of modern communication. For issues concerning children and women, media literacy is particularly crucial in fostering ethical reporting and challenging harmful stereotypes.

At its core, media literacy involves developing the ability to analyze, evaluate, and interpret media messages, recognizing the influence of biases, agendas, and power dynamics inherent in media representations. By equipping audiences with these skills, we can cultivate a more informed and discerning public capable of demanding accountability from media organizations.

### **The Role of Journalists in Audience Education**

Journalists play a pivotal role in promoting media literacy and audience education, serving as guides and facilitators in navigating the media landscape. Through their reporting, journalists can model ethical practices, transparency, and accountability, demonstrating the importance of critical thinking and responsible engagement with media content.

One approach for journalists is to incorporate elements of media literacy into their reporting, providing context, analysis, and tools for audiences to deconstruct and interrogate media narratives. By demystifying the news-gathering process and highlighting the nuances of

ethical decision-making, journalists can empower audiences to become active participants in shaping media discourse.

### **Strategies for Educating the Public**

To effectively educate the public about media literacy and ethical reporting practices, journalists can employ a variety of strategies tailored to their audience's needs and preferences. This may include producing educational content such as explainer videos, infographics, or interactive quizzes that break down complex concepts and promote critical thinking skills.

Engaging directly with audiences through workshops, panel discussions, or community events can also foster dialogue and collaboration between journalists and the public. By creating opportunities for open communication and mutual learning, journalists can build trust and credibility with their audience while promoting media literacy and ethical reporting practices.

### **Empowering Audiences for Social Change**

Ultimately, media literacy is not just about consuming information; it's about empowering individuals to effect positive change in their communities and society at large. By arming audiences with the tools and knowledge to critically evaluate media content, challenge stereotypes, and demand accountability from media organizations, we can build a more equitable and inclusive media ecosystem.

Journalists have a unique opportunity to catalyze this transformation, serving as catalysts for change and advocates for media literacy and ethical reporting. Through collaboration, innovation, and a commitment to transparency and integrity, journalists can inspire audiences to become active agents of social change, shaping a media landscape that reflects the diversity, complexity, and humanity of our world.

### **Collaborative Journalism and Community Engagement**

Collaborative journalism represents a paradigm shift in the way stories are reported and told, emphasizing partnership, inclusivity, and community engagement. In the context of issues affecting children and women, collaborative journalism offers unique opportunities to amplify marginalized voices, address systemic injustices, and foster meaningful change.

At its core, collaborative journalism involves forging partnerships with communities, organizations, and experts to co-create stories that reflect diverse perspectives and experiences. By pooling resources, expertise, and networks, journalists can produce more comprehensive and impactful reporting that resonates with audiences and drives social impact.

### **STOP TO CONSIDER**

1. **Intersectionality in Journalism:** Understanding and incorporating intersectionality into reporting practices to represent the diverse experiences and identities of children and women accurately.
2. **Trauma-Informed Reporting:** Implementing trauma-informed reporting practices to ethically cover sensitive issues affecting vulnerable populations, such as children and women who have experienced trauma.
3. **Media Literacy and Audience Education:** Recognizing the importance of media literacy in empowering audiences to critically engage with media content and promoting ethical reporting practices.
4. **Empathy and Sensitivity in Reporting:** Cultivating empathy and sensitivity towards subjects to humanize representations and mitigate harmful stereotypes, particularly when reporting on issues concerning children and women.
5. **Collaborative Journalism and Community Engagement:** Embracing collaborative journalism approaches to partner with communities, organizations, and experts to co-create stories that reflect diverse perspectives and drive meaningful social change.

### **The Benefits of Community Engagement**

Community engagement lies at the heart of collaborative journalism, providing a platform for dialogue, collaboration, and mutual learning between journalists and the communities they serve. By actively involving community members in the reporting process, journalists can gain valuable insights, build trust, and ensure the relevance and accuracy of their stories.

For issues concerning children and women, community engagement is particularly vital, as it allows journalists to center the voices and experiences of those directly impacted by the issues being reported on. By listening to survivors, advocates, and community leaders, journalists can uncover untold stories, challenge stereotypes, and advocate for systemic change.

### **Strategies for Collaborative Reporting**

To effectively engage with communities and co-create stories, journalists can employ a range of strategies tailored to the specific needs and dynamics of their audience. This may include organizing focus groups, town hall meetings, or community forums to solicit input and feedback on story ideas, framing, and approach.

Collaborating with local organizations and experts can also enhance the depth and accuracy of reporting, providing access to resources, data, and firsthand accounts that may otherwise be overlooked. By building relationships with trusted partners, journalists can navigate complex issues with sensitivity and nuance, ensuring that their reporting reflects the realities of those directly affected.

**SAQ**

1. How can journalists cultivate empathy and sensitivity towards the subjects of their stories to mitigate harmful stereotypes, particularly when reporting on issues concerning children and women?
2. What are the key principles and approaches for sensitively reporting on traumatic experiences, such as domestic violence or sexual assault, while prioritizing survivors' well-being and minimizing harm?
3. What role does media literacy play in fostering ethical reporting practices, particularly in challenging harmful stereotypes and promoting accountability from media organizations?
4. How can journalists incorporate elements of media literacy into their reporting to empower audiences to critically engage with media content and demand transparency and integrity from media organizations?
5. What strategies can journalists employ to effectively engage with communities and co-create stories that reflect diverse perspectives and experiences, particularly in the context of collaborative journalism initiatives focusing on issues affecting children and women?

### **Empowering Communities for Change**

Ultimately, collaborative journalism is not just about producing stories; it's about empowering communities to become agents of change in their own right. By amplifying their voices, advocating for their needs, and mobilizing support, journalists can catalyze meaningful action and drive systemic reform.

Through collaborative reporting, journalists can help bridge the gap between communities and decision-makers, fostering dialogue, empathy, and understanding across diverse perspectives. By working together towards common goals, we can build a more inclusive and equitable society where the voices of children and women are heard, valued, and respected.

### **SUGGESTED READING**

1. "The Empathy Exams (2014)" by Leslie Jamison
2. "Trauma Stewardship: An Everyday Guide to Caring for Self While Caring for Others (2009)" by Laura van DernootLipsky
3. "Media Literacy in the Digital Age (2018)" by Rainer Winter
4. "The Media and Modernity: A Social Theory of the Media (1995)" by John B. Thompson
5. "Collaborative Journalism: The Pursuit of Global Social Justice (2021)" by An Nguyen
6. "Media Ethics: Principles, Practices, and Perspectives (2016)" by UjjwalaBarve

7. "The Ethical Journalist: Making Responsible Decisions in the Digital Age (2009)" by Gene Foreman
8. "Media Ethics and Laws (2018)" by K. PandurangaRao
9. "Ethical Dimensions of Indian Media: Principles and Practices (2017)" by AnuraagBatra and Sourindra Banerjee
10. "Media Ethics and Accountability Systems in India (2019)" edited by ParanjayGuhaThakurta and Shalini Singh

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## Unit: 6

### CBFC and Film Certifications

#### Unit Structure:

- 6.1 Introduction
- 6.2 Objectives
- 6.3 Overview of CBFC
  - 6.3.1 Historical background and evolution of film censorship in India
  - 6.3.2 Legal framework: Cinematograph Act, 1952
  - 6.3.3 Vision, Mission and Objectives of CBFC
- 6.4 Structure and Organization
  - 6.4.1 Structure of the CBFC: Regional offices and key personnel
  - 6.4.2 Certification process: Pre-censorship and post-censorship
  - 6.4.3 Classification categories: U, UA, A, S, and their criteria
  - 6.4.4 Examination and certification of films: Procedures and guidelines
- 6.5 Need of CBFC in India
- 6.6 Criticism, Controversies and Challenges
  - 6.6.1 Case studies: Notable films that faced censorship or certification issues
  - 6.6.2 Challenges faced by the CBFC in the digital era
- 6.7 Summing Up
- 6.8 References and Suggested Readings
- 6.9 Model Questions
- 6.10 Answers to Check Your Progress/Possible Answer to SAQ

#### 6.1 Introduction

Censorship and certification of films is very crucial and significant in a multicultural country like India. The Central Board of Film Certification (CBFC), established under the Cinematograph Act of 1952, plays a pivotal role in certifying films for public exhibition, ensuring they adhere to certain standards of morality, decency, and public order. Throughout history, the CBFC has been both lauded and criticized for its decisions, sparking debates on freedom of expression, cultural sensitivities, and governmental oversight. In this we will explore the functions, structure, controversies, and future directions of the CBFC in the dynamic landscape of Indian cinema.

#### 6.2 Objectives

This unit is an attempt to give a brief overview of CBFC and film certification as an ethical and legal media entity. After going through this unit you will be able to,

- explain the historical evolution and legal framework of film censorship in India,
- explore the structure and organizational set up of the CBFC to gain insight into its operational procedures,

- analyze the roles and responsibilities of the CBFC in regulating content in Indian cinema, evaluating its impact on the stakeholders in upholding societal norms and values and
- examine the controversies and challenges faced by the CBFC throughout history, with particular focus on freedom of expression and cultural discourse.

### 6.3 Overview of CBFC

The Central Board of Film Certification (CBFC), often referred to as the Censor Board, stands as the governmental regulatory body overseeing the Indian filmmaking industry. Established under the Cinematograph Act of 1952, its primary function is to certify the suitability of various forms of cinematic content, including feature films, short films, trailers, documentaries, and theatre-based advertising, for public exhibition. Operating under the purview of the Ministry of Information and Broadcasting, the CBFC holds the responsibility of ensuring that films comply with established guidelines regarding morality, decency, and public order. This entails a meticulous process of screening and rating, wherein films undergo scrutiny to determine their appropriateness for public viewing. With the advent of the digital age, the CBFC's role has evolved to encompass a diverse array of media formats and distribution channels. Annually previewing almost 13000 cinematic items, the CBFC plays a pivotal role in shaping the cultural landscape of Indian Cinema, navigating the delicate balance between artistic expression and societal sensibilities. As we embark on this journey, we delve into the multifaceted dimensions of the CBFC's functions, controversies, and evolving role within the dynamic realm of Indian filmmaking.

Let us here discuss about the historical background of film censorship in India and subsequent legal frameworks as well as objectives and functions of CBFC.

#### 1.3.1 Historical background and evolution of film censorship in India

##### Stop to Consider

The establishment of the Central Board of Film Certification (CBFC) in 1952 is a pivotal moment in the evolution of film censorship in India. The creation of the CBFC represented a significant departure from the colonial-era censorship apparatus and underscored the newly independent India's commitment to regulating the film industry in accordance with its own democratic principles and societal values.

The historical background and evolution of film censorship in India trace back to the early 20th century, coinciding with the emergence of cinema as a popular form of entertainment in the country. During the colonial era, British authorities exercised control over the burgeoning film industry, primarily to suppress any content deemed politically or culturally subversive. The Cinematograph Act of 1918 was among the earliest legislative measures aimed at regulating film exhibition, granting colonial administrators broad powers to censor content perceived as objectionable to British empire. This act made it mandatory for exhibitors to secure a license from local civil authorities to screen a film, and for censorship to precede any



film exhibited in India. However, film censorship was actually introduced through the Cinematograph Act of 1920, seven years after the release of India's first film, 'Raja Harishchandra'. Under the provision of this act, Censorship boards, initially independent bodies under police chiefs in major cities of Madras (now Chennai), Bombay (now Mumbai), Calcutta (now Kolkata), Lahore (now in Pakistan), and Rangoon (now Yangon in Myanmar), regulated films to suppress content perceived as politically or culturally subversive.

Following India's independence in 1947, the newly formed government inherited the colonial-era censorship apparatus, which underwent significant transformations in the post-independence period. Autonomous regional censors in different cities were absorbed into the Bombay Board of Film Censors. The enactment of the Cinematograph Act of 1952 marked a crucial milestone in the evolution of film censorship, with the reorganisation of the Bombay Board of Film Censors into the Central Board of Film Censors (CBFC) as the statutory body responsible for certifying films for public exhibition. The CBFC, later renamed as the Central Board of Film Certification with the 1983 revision of Cinematography rules, was empowered to review and classify films based on their content, determining their suitability for different audience demographics.

Throughout the decades that followed, film censorship in India remained a contentious and evolving issue, shaped by a complex interplay of political, cultural, and societal factors. The 1970s witnessed heightened censorship measures during the period of Emergency, when civil liberties were curtailed and dissenting voices silenced. However, the subsequent decades saw a gradual relaxation of censorship norms, coinciding with the liberalization of India's economy and society.

The 1990s marked a significant turning point in India's film censorship landscape, with the Supreme Court's landmark judgment in the case of "S. Rangarajan v. P. Jagjivan Ram" reaffirming the principle of freedom of speech and expression, while also recognizing the state's authority to impose reasonable restrictions in the interest of public order, morality, and decency. This ruling paved the way for a more nuanced approach to film censorship, balancing the rights of filmmakers with the need to uphold societal values and norms.

In the 21st century, the advent of digital technology and the proliferation of online streaming platforms have posed new challenges to traditional forms of film censorship. The CBFC has grappled with issues such as piracy, online streaming, and the global dissemination of content, prompting calls for a comprehensive overhaul of India's film certification framework to adapt to the digital age. This will be discussed in detail later in this unit.

### **1.3.2 Legal framework: Cinematograph Act, 1952**

#### **Stop to Consider**

Cinematograph Act of 1952 governs CBFC. It outlines CBFC's guideline and act as the legal framework for film Certification. Guidelines determine suitability based on language, nudity, violence, etc.

The Cinematograph Act of 1952 serves as the principal legislation governing CBFC in India, providing the legal framework for the regulation of film exhibition and censorship in the country.

The Act formally established the Central Board of Film Certification and delineates the composition, powers, and functions of the CBFC, empowering it to examine and classify films based on their content.

The Act outlines the certification process wherein filmmakers are required to submit their films to the CBFC for review and certification before public exhibition. The CBFC evaluates the content of the films and assigns appropriate certification categories such as U (Universal), UA (Parental Guidance), A (Adults Only), and S (Restricted to Specialized Audiences).

The Cinematograph Act provides guidelines for classifying films based on various factors including language, nudity, violence, and themes. These criteria help the CBFC determine the suitability of films for different audience demographics and impose necessary restrictions accordingly.

The Act also grants the CBFC the authority to refuse certification to films that are deemed unfit for public exhibition. This power enables the CBFC to uphold certain standards of morality, decency, and public order, and prevent the dissemination of content that may be deemed harmful or offensive.

However, the Act also entitles the filmmakers with the right to appeal against the CBFC's decision to refuse certification or impose certain restrictions on their films. The Act provides a mechanism for filmmakers to seek redressal through the Appellate Tribunal or the courts, ensuring a degree of due process and judicial oversight.

Over the years, the Cinematograph Act has been amended and supplemented by various rules, guidelines, and notifications issued by the government to address changing societal norms and technological advancements. These amendments aim to modernize the film certification process, streamline administrative procedures, and enhance transparency and accountability within the CBFC.

### 1.3.3 Vision, Mission and Objectives of CBFC

#### Stop to Consider

CBFC's vision ensures healthy entertainment, while its mission promotes transparency and modernization. Objectives aim for responsible content and societal harmony.

CBFC works with the **Vision** “to ensure good and healthy entertainment in accordance with the provisions of the Cinematograph Act 1952 and the Cinematograph (Certification) Rules 1983.”

Its **Mission** says that CBFC will perform,

- To ensure healthy entertainment, recreation and education to the public.
- To make the certification process transparent and responsible.
- To create awareness among advisory panel members, media and film makers about the guidelines for certification and current trend in films through workshops and meetings.
- To adopt modern technology for certification process through computerization of certification process and up gradation of infrastructure.
- To maintain transparency about Board's activities through voluntary disclosures, implementation of e-governance, prompt replies to RTI queries and publication of annual report.
- To develop CBFC as a Centre of Excellence.

There are a few **objectives of Film Certification** in a multicultural country like India with demography diverse in every possible way. Let us have a look on the objectives of Film Certification as mentioned on CBFC website,

- the medium of film remains responsible and sensitive to the values and standards of society;
- artistic expression and creative freedom are not unduly curbed;
- certification is responsible to social changes;
- the medium of film provides clean and healthy entertainment; and
- as far as possible, the film is of aesthetic value and cinematically of a good standard.

CBFC aims to strike a balance between artistic expression and public sensitivities. It performs with a goal to maintain religious, regional, ethnic and cultural harmony. India's diverse cultural and religious landscape necessitates careful scrutiny of film content to prevent the propagation of content that may incite unrest or offend religious or ethnic sentiments.

#### **Check Your Progress**

1. What is the principal legislation governing the Central Board of Film Certification (CBFC) in India?
2. What is the CBFC's vision regarding entertainment?
3. What are the objectives of Film Certification in India?
4. What powers does the Cinematograph Act grant the CBFC?

#### **1.4 Structure and Organization**

The Central Board of Film Certification (CBFC) is comprised of a chairperson and a board of members- not less than 12 and not more than 25, all appointed by the central government. Prasoon Joshi currently chairs the board, succeeding Pahlaj Nihalani on August 11, 2017, following Nihalani's dismissal. The board is further organized into regional offices throughout India, each headed by a Regional Officer. Under their supervision, Examining

Committees assess films for certification. The CBFC's structure ensures effective oversight of film classification processes and compliance with regulatory standards across the country.

#### **1.4.1 Structure of the CBFC: Regional offices and key personnel**

##### **Stop to Consider**

The Central Board of Film Certification (CBFC) is constituted of non-official members and a Chairman, all appointed by the Central Government. Headquartered in Mumbai, it operates through nine Regional Offices located in Mumbai, Kolkata, Chennai, Bangalore, Thiruvananthapuram, Hyderabad, New Delhi, Cuttack, and Guwahati. These Regional Offices are supported in film examination by Advisory Panels.

The Central Board of Film Certification (CBFC) functions through a well-organized decentralized structure, with its headquarters located in Mumbai and nine regional offices strategically dispersed across India: Bangalore, Chennai, Cuttack, Guwahati, Hyderabad, Kolkata, Mumbai, New Delhi, and Trivandrum. Each regional office assumes a pivotal role in the film certification process, ensuring adherence to established guidelines and standards.

At the heart of CBFC's regional offices are key personnel including Regional Officers and Advisory Panel Members. Regional Officers are appointed to oversee the certification process within their designated regions. They are entrusted with the responsibility of managing day-to-day operations, liaising with filmmakers and stakeholders, and ensuring that films undergo certification in compliance with regulatory mandates. Additionally, Regional Officers serve as the primary point of contact for addressing inquiries, grievances, and appeals pertaining to film certification.

Advisory Panel Members are individuals with expertise in various domains such as film industry professionals, academics, and representatives from civil society. The members of the panels are nominated by Central. Their invaluable insights and recommendations enrich the CBFC's decision-making process, ensuring that certification decisions are informed by a diverse array of perspectives and considerations.

The decentralized structure of CBFC's regional offices facilitates streamlined and effective film certification processes, thereby fostering the promotion of responsible and culturally sensitive cinema across the diverse landscape of India.

#### **1.4.2 Certification process**

##### **Stop to Consider**

CBFC's film certification process ensures compliance with guidelines, involves examining and revising committees, and follows specific time limits.

The film certification process administered by the Central Board of Film Certification (CBFC) is a structured procedure designed to ensure that films comply with established

guidelines and standards before public exhibition. It involves several key steps to assess the content of the film and determine its suitability for different audience demographics.

Initially, the film producer submits an application for certification to the CBFC, marking the commencement of the process. Subsequently, the film undergoes examination by an examining committee appointed by the CBFC. This committee reviews the content of the film and may recommend certification without cuts, with cuts, or refusal of certification altogether.

In cases where there are disagreements within the examining committee or if the applicant is dissatisfied with their decision, the chairperson of the CBFC may refer the film to a revising committee. The revising committee then evaluates the film and makes a final recommendation regarding its certification status.

Ultimately, the CBFC's chairperson makes the final decision on the certification of the film based on the recommendations provided by the examining and revising committees. Throughout this process, the CBFC aims to balance artistic expression with societal sensitivities, ensuring that films are certified in accordance with regulatory requirements.

In terms of timeline, the CBFC has established specific time limits for each stage of the certification process to ensure efficiency and transparency. These time limits include scrutiny of the application within 7 days, formation of the examination committee within 15 days, forwarding of the examination committee report to the chairman within 10 days, and communication of the certification order to the applicant within 3 days, among others.

Overall, the film certification process of the CBFC follows a systematic approach aimed at upholding standards of morality, decency, and public order while facilitating the exhibition of diverse cinematic content in India.

#### **1.4.1 Classification categories: U, UA, A, S, and their criteria**

##### **Stop to Consider**

The CBFC categorizes films into U, UA, A, and S certificates, indicating suitability for different audiences. It balances artistic freedom with societal norms, aiming to guide viewers and foster informed choices.

The Central Board of Film Certification (CBFC) categorizes films into four distinct categories: U, UA, A, and S, each indicating the suitability of the film for different audience demographics.

**U Certificate:** Films with a U certification are deemed fit for unrestricted public exhibition and are considered family-friendly. These films typically feature universal themes such as education, family, drama, romance, sci-fi, and action. While mild violence may be present, it cannot be prolonged. Additionally, very mild sexual scenes may be included, but without any nudity or explicit sexual detail.

**UA Certificate:** Films with a UA certification may contain moderate adult themes that are not overly strong in nature. However, they are not considered appropriate for children below 12 years of age without parental guidance. Such films may feature moderate to strong violence, moderate sexual content (including traces of nudity and moderate sexual detail), frightening scenes, bloodshed, or muted abusive language.

**A Certificate:** Films with an A certification are restricted to adult audiences aged 18 and above. These films may feature strong violence, explicit and intense sexual scenes, and the use of abusive language. However, content that insults or degrades women or any social group, as well as nudity, is strictly prohibited. Some controversial and adult themes are considered unsuitable for young viewers.

**S Certificate:** Films with an S certification are restricted to specialized audiences and cannot be viewed by the general public. Only individuals associated with specific professions or fields, such as doctors or scientists, are permitted to view these films. The content of S-certified films is often highly specialized and may contain subject matter relevant only to professionals in specific domains.

The categorization of films by the CBFC ensures that viewers are provided with clear guidance regarding the content and suitability of films, allowing them to make informed decisions about what they choose to watch. However, the classification system is often a subject of debate and discussion, reflecting the ongoing tension between the desire for creative freedom among filmmakers and the responsibility to uphold societal standards and values.

#### 1.4.2 Examination and certification of films: Procedures and guidelines

##### Stop to Consider

The Cinematograph Act of 1952 and guidelines under Section 5B ensure films align with societal norms, prohibiting content that compromises India's sovereignty or promotes harmful behaviour. CBFC enforces strict regulations, safeguarding against violence, substance abuse, and derogatory depictions, promoting responsible storytelling and upholding ethical standards in filmmaking.

As mentioned above, the Cinematograph Act of 1952 serves as the legislative backbone for film certification and regulation in India. This Act stipulates that films must not be certified if any part of their content compromises the sovereignty, security, or public order of India, or if they exhibit indecency, defamation, or contempt of court. It says, a film will not be certified, if it contains contents,

- against India's sovereignty and integrity
- against the State's security
- against friendly relations with foreign nations
- against public order
- against decency
- involves defamation or contempt of court or

- likely to incite the commission of any offence.

Films are evaluated based on their overall impact, considering the depicted period and contemporary societal standards, ensuring they do not undermine audience morality. The Central Board of Film Certification (CBFC) is tasked with certifying films for unrestricted public exhibition while ensuring their suitability for family viewing, fostering an environment where all family members, including children, can watch together. Even the titles of films undergo scrutiny to align with established rules and guidelines.

As mentioned in the website of CBFC, the process of film certification is guided by the following legal provisions:

- Article 19(1) of the Constitution says that all persons shall have “freedom of speech and expression”. However, Article 19(2) of the Constitution lays down provisions for imposing reasonable restrictions on the exercise of this right.
- The Cinematograph Act, 1952.
- The Cinematograph (Certification) Rules, 2024.
- The Guidelines issued by the Government under Section 5B of the Cinematograph Act.
- The Cable Television Networks (Regulation) Act, 1995 r.w. The Cable Television Network Rules, 1994 (Programmes and Advertising Codes therein).
- The Cigarettes and other Tobacco Products Act (COTPA) , 2003 & Rules 2004.
- The Prevention of Cruelty to Animals Act.The Emblems and Names (Prevention of Improper Use) Act, 1950.The Prevention of Insults to National Honour Act, 1971.
- The Drug and Magic Remedies Act.
- The Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989.
- The Indecent Representation of Women (Prohibition) Act 1986.
- The Protection of Children from Sexual Offences Act (POCSO Act) 2012, Etc.

The Central Board of Film Certification (CBFC) enforces stringent guidelines issued by the Government under Section 5B of the Cinematograph Act 1952,to ensure that films adhere to societal norms and values while promoting responsible and culturally sensitive content. These guidelines encompass various aspects of filmmaking to safeguard against the glorification or justification of anti-social activities, violence, or criminal behaviour. Scenes depicting the involvement of children in violence or abuse are strictly prohibited, as are depictions of cruelty towards animals or the abuse of physically and mentally handicapped individuals.

Furthermore, the CBFC prohibits scenes that gratuitously depict violence, cruelty, or horror, aiming to prevent the desensitization or dehumanization of viewers. Content that encourages or glamorizes substance abuse, including alcohol, drugs, or tobacco, is also strictly regulated to ensure that films do not promote harmful behaviours.

The guidelines emphasize the importance of respecting human sensibilities by avoiding vulgarity, obscenity, or derogatory depictions of women or marginalized groups. Additionally, scenes containing sexual violence or perversions are minimized and presented with sensitivity, especially if they are integral to the film's theme.

Films must also refrain from promoting communal, obscurantist, or anti-national attitudes, and they should not question the sovereignty and integrity of India or jeopardize public order or national security. Content defaming individuals or institutions, or showing contempt towards the court, is prohibited.

Moreover, the CBFC evaluates films in their entirety, considering their overall impact and the period depicted, as well as contemporary societal standards. This holistic approach ensures that films do not undermine the morality of the audience and are suitable for public exhibition.

The CBFC's guidelines serve to uphold ethical standards in filmmaking, promoting responsible storytelling and safeguarding against content that may have a negative impact on society.

### **Check Your Progress**

5. Who is the current chairperson of the Central Board of Film Certification (CBFC)?
6. How many regional offices does the CBFC have across India?
7. What are the four categories into which films are classified by the CBFC?
8. What is the purpose of the Cinematograph Act of 1952 in relation to film certification?
9. What guidelines does the CBFC follow to enforce responsible and culturally sensitive content in film?

## **1.5 Need of CBFC in India**

In a multicultural and multilingual society like India with diverse ethnic, regional and religious identities, the Central Board of Film Certification (CBFC) plays a pivotal role in regulating the content of films to ensure they resonate with the diverse cultural fabric while upholding ethical and moral standards. Let us discuss here, why the CBFC is indispensable in such a dynamic social landscape:

**Cultural Sensitivity:** India is a mosaic of diverse cultures, languages, and traditions. The CBFC ensures that films respect and reflect this diversity, avoiding stereotypes, derogatory portrayals, or misrepresentations of any particular community or culture. By promoting cultural sensitivity, the CBFC fosters social cohesion and harmony.

**Language Diversity:** With over 1,600 languages and dialects spoken across the country, language diversity is a hallmark of Indian society. The CBFC ensures that films are accessible to audiences from different linguistic backgrounds by certifying films in various languages and dialects. This helps in preserving linguistic diversity and promoting inclusive entertainment.

**Social Cohesion:** Films are a powerful medium for shaping public discourse and perceptions. The CBFC plays a crucial role in fostering social cohesion by certifying films that promote



unity, tolerance, and respect for all communities. By curbing divisive content and promoting inclusive narratives, the CBFC contributes to nation-building and social integration.

**Ethical Standards:** Upholding ethical standards in filmmaking is essential for safeguarding the interests of viewers, especially children and vulnerable groups. The CBFC ensures that films adhere to ethical guidelines, prohibiting content that promotes violence, obscenity, or harmful behavior. By promoting responsible storytelling, the CBFC protects viewers from potentially harmful influences.

**Cultural Heritage:** India boasts a rich cultural heritage spanning thousands of years. The CBFC plays a crucial role in preserving and promoting this cultural heritage by certifying films that celebrate India's history, art, and traditions. By showcasing India's cultural richness on the silver screen, the CBFC contributes to cultural preservation and identity.

**Freedom of Expression:** While ensuring cultural sensitivity and ethical standards, the CBFC also upholds the fundamental right to freedom of expression. It provides a platform for filmmakers to express their creativity and share diverse perspectives while ensuring that such expression does not infringe upon societal values or norms. By striking a balance between artistic freedom and social responsibility, the CBFC fosters a vibrant and dynamic film industry.

The CBFC is designed to serve as a guardian of cultural diversity, social cohesion, ethical standards, and freedom of expression in the realm of cinema. However, the board has often been criticised for being orthodox and for being not consistent in its application of censorship guidelines. Let us discuss about the controversies and challenges surrounding CBFC decisions in the next section.

#### **Check Your Progress**

10. Why is the Central Board of Film Certification (CBFC) indispensable in a multicultural and multilingual society like India?
11. What fundamental right does the CBFC uphold while regulating film content?

### **1.6 Criticism, Controversies and Challenges**

The Central Board of Film Certification (CBFC) has faced considerable criticism for its perceived overreach and inconsistency in censoring films, particularly those that touch on sensitive political, social, or religious issues. Critics contend that the board's tendency to restrict films critical of the government or addressing controversial topics undermines the fundamental right to freedom of expression. Furthermore, the CBFC's alleged inconsistency in applying censorship guidelines has raised concerns about transparency and fairness in the certification process.

Opponents of the CBFC's censorship powers argue that such restrictions stifle artistic creativity and hinder open discourse on important societal issues. They view the board's actions as a form of censorship that impedes filmmakers' ability to address pressing concerns and express dissenting viewpoints.

However, defending argument holds that it plays a vital role in safeguarding public morality and decency by regulating the content of films. They contend that certain restrictions are necessary to protect vulnerable audiences, including children, from exposure to inappropriate or harmful content.

The debate over the CBFC's censorship practices reflects broader tensions between the need to balance freedom of expression and the responsibility to uphold diverse societal and cultural norms as well as values. Finding a middle ground that respects both artistic freedom and public sensitivities remains a contentious issue in India's film scenario.

### **1.6.1 Case studies: Notable films that faced censorship or certification issues**

#### **Stop to Consider**

The Central Board of Film Certification (CBFC) in India has faced numerous controversies over its censorship of films, highlighting tensions between artistic expression, societal norms, and political influence. Issues such as extensive editing, bans, and delayed certifications underscore challenges in balancing regulatory oversight with creative freedom in the film industry.

The Central Board of Film Certification (CBFC) in India has often found itself at the centre of controversies surrounding the censorship of notable films. These controversies reflect the complex relationship between artistic expression, societal norms, political influence, and regulatory oversight in the Indian film industry.

The CBFC has often faced criticism for its handling of films that tackle sensitive social and political issues. Documentaries like "War and Peace" and "Final Solution," which address topics such as nuclear weapons testing and religious riots, have been subjected to extensive editing or outright bans. These incidents raise questions about the CBFC's commitment to freedom of expression and its susceptibility to political pressure.

The resignation of CBFC chairpersons, such as Vijay Anand and Leela Samson, amid controversies underscores the challenges faced by individuals tasked with leading the board. Anand's proposal to legalize X-rated films and Samson's protest against political interference highlight the internal struggles within the CBFC and its vulnerability to external influence.

Moreover, the CBFC's decisions regarding the certification of foreign films have also sparked debates. The demand for multiple cuts in "The Girl with the Dragon Tattoo" was refused by the director. The refusal to certify "Udta Punjab" also raised concerns amongst many. With "Mohalla Assi", Delhi High Court allowed the release of the film with one cut and adult

certification, setting aside the denial order of CBFC. Again with “Had Anhad”, The Board refused a certificate to the documentary without cuts. However, Delhi High Court allowed the film to be released uncut and asked the Union of India to pay ₹10,000 to the petitioner as legal fees. Such incidents exemplify the board's stringent approach to content deemed inappropriate or controversial. Such decisions not only impact filmmakers but also raise concerns about censorship and artistic freedom in India's film industry.

The cases of “Garam Hawa”, "Lipstick under My Burkha" etc. further illustrates the CBFC's contentious relationship with filmmakers. The initial denial of certification due to perceived objectionable content led to an appeal to the Film Certification Appellate Tribunal (FCAT) and eventual release with cuts. This incident highlights the power dynamics between filmmakers, regulatory bodies, and the judiciary in determining the fate of films.

Additionally, the delayed certification of films like "No Fathers in Kashmir" reflects the bureaucratic hurdles faced by filmmakers in navigating the certification process. The prolonged uncertainty surrounding certification can stifle creativity and hinder the timely release of important cinematic works.

In recent years, the CBFC's decisions regarding giving not-suited film certification have come under increased scrutiny from the public and industry stakeholders. In 2023, CBFC's decision of giving A certificate to film ‘OMG 2’ with a subject related to teenage issues faced negative public reaction and raised a question on CBFC's integrity.

While the board plays a crucial role in regulating the content of films to ensure compliance with legal and ethical standards, its actions have often been viewed as arbitrary, inconsistent, and prone to external influence. As India's film industry continues to evolve, there is a pressing need to reform the certification process to strike a balance between regulatory requirements and creative expression.

#### **Self Assessment Question**

1. Discuss the films banned by CBFC since its inception with the causes of denial or ban.

### **1.6.2 Challenges faced by the CBFC in the digital era**

#### **Stop to Consider**

In the digital era, the CBFC grapples with challenges posed by online streaming platforms like Netflix and YouTube, which offer diverse content globally. Films like "Kaafiron Ki Nammaz" and "Unfreedom" faced certification issues but found release avenues digitally. The decentralized nature of digital distribution complicates CBFC's regulatory oversight, raising concerns about content regulation and adherence to local

In the digital era, the Central Board of Film Certification (CBFC) faces a myriad of challenges that significantly impact its role in regulating the content of films. These challenges stem from the proliferation of digital platforms, changing audience preferences, technological advancements, and evolving modes of content distribution.

One of the foremost challenges faced by the CBFC is the rise of online streaming platforms and social media. With the advent of platforms like Netflix, Amazon Prime Video, and YouTube, audiences have unprecedented access to a wide range of content from across the globe. In 2016, the makers of award winning film “Kaaifiron Ki Nammaz” decided to go for a digital release, when CBFC refuses to certify it. The film “Unfreedom”, scrutinising same sex relationships and religious fundamentalism in India, was denied a rating by the Censor Board. Later, the film's streaming was later allowed through Netflix in India. In the digital era, the CBFC grapples with challenges posed by online streaming platforms like Netflix and YouTube, which offer diverse content globally.

This decentralized distribution model makes it difficult for the CBFC to monitor and regulate the content being consumed by viewers. Unlike traditional cinema halls, where films undergo certification before public exhibition, digital platforms often bypass CBFC scrutiny, leading to concerns about the dissemination of inappropriate or unregulated content.

Moreover, the global nature of digital platforms presents challenges in enforcing regulatory standards. Content hosted on international platforms may not be subject to Indian censorship laws, making it challenging for the CBFC to ensure compliance with local regulations. This lack of jurisdictional control raises questions about the efficacy of the CBFC's certification process and its ability to uphold Indian cultural and ethical values in the digital space.

### **Check Your Progress**

12. What are some of the criticisms leveled against the Central Board of Film Certification (CBFC) regarding its censorship practices?
13. How have notable films like "War and Peace," "Final Solution," and "Udta Punjab" been affected by the CBFC's certification decisions?
14. What are the challenges faced by the CBFC in the digital era, particularly concerning the regulation of content on online streaming platforms?
15. How do the challenges posed by digital platforms affect the CBFC's ability to uphold regulatory standards and ensure compliance with Indian cultural values?

## **7.1 Summing Up**

The Central Board of Film Certification (CBFC), established in 1952 under the Cinematograph Act, is the regulatory body overseeing India's film industry, certifying films for public exhibition. Its objectives include ensuring responsible content and societal

harmony, guided by a vision for healthy entertainment and transparency. The CBFC operates through nine Regional Offices and Advisory Panels, categorizing films into U, UA, A, and S certificates based on audience suitability. It enforces guidelines to align films with societal norms and ethical standards, prohibiting content compromising sovereignty or promoting harmful behavior. Despite its efforts, the CBFC faces controversies over censorship, highlighting the tension between artistic expression and regulatory oversight. In the digital era, challenges arise from online streaming platforms offering diverse global content, complicating CBFC's regulatory control. Many films faced certification issues but found release digitally, raising concerns about content regulation and adherence to local standards. As the CBFC navigates these complexities, it continues to play a pivotal role in shaping India's cinematic landscape, balancing creative freedom with societal sensitivities.

## 7.2 References and Suggested Readings

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## 7.3 Model Questions

### Short Answer Questions:

1. What is the primary function of the Central Board of Film Certification (CBFC) in India?
2. How does the CBFC categorize films, and what do these categories signify?
3. What are some of the challenges faced by the CBFC in the digital era regarding content regulation and distribution?

### Long Answer Questions:

1. Discuss the historical background of film censorship in India and the evolution of the Central Board of Film Certification (CBFC) since its establishment in 1952, highlighting key legislative frameworks and the objectives behind its formation.
2. Analyze the controversies surrounding the CBFC's censorship decisions, citing specific examples of films that faced extensive editing, bans, or delayed certifications.

3. Explore the challenges encountered by the CBFC in the digital era, considering the proliferation of online streaming platforms and the decentralization of content distribution. Assess how these challenges impact the CBFC's regulatory oversight and its ability to uphold cultural and ethical values in the digital space.

#### **7.4 Answers to Check Your Progress/Possible Answer to SAQ**

**Answer to Question No. 1:** The Cinematograph Act of 1952 serves as the principal legislation governing the CBFC.

**Answer to Question No. 2:** CBFC's vision is to ensure good and healthy entertainment in accordance with the provisions of the Cinematograph Act 1952 and the Cinematograph (Certification) Rules 1983.

**Answer to Question No. 3:** There are a few objectives of Film Certification in a multicultural country like India with demography diverse in every possible way. Objectives are put as,

- the medium of film remains responsible and sensitive to the values and standards of society;
- artistic expression and creative freedom are not unduly curbed;
- certification is responsible to social changes;
- the medium of film provides clean and healthy entertainment; and
- as far as possible, the film is of aesthetic value and cinematically of a good standard.

**Answer to Question No. 4:** The Cinematograph Act, 1952 grants CBFC the authority to examine and classify films, refuse certification for unfit content, and outlines the certification process for filmmakers.

**Answer to Question No. 5:** Prasoon Joshi is the current Chairperson of CBFC.

**Answer to Question No. 6:** There are Nine regional offices of CBFC in Bangalore, Chennai, Cuttack, Guwahati, Hyderabad, Kolkata, Mumbai, New Delhi, and Trivandrum.

**Answer to Question No. 7:** The four categories of certification of CBFC are U, UA, A, and S.

**Answer to Question No. 8:** The purpose of Cinematograph Act, 1952 is to ensure films comply with regulatory standards and uphold societal values.

**Answer to Question No. 9:** CBFC follows the Guidelines issued by the Government under Section 5B of the Cinematograph Act 1952.

**Answer to Question No. 10:** The CBFC ensures cultural sensitivity, promotes language diversity, fosters social cohesion, upholds ethical standards, preserves cultural heritage, and balances freedom of expression.

**Answer to Question No. 11:** The CBFC upholds the fundamental right to freedom of expression while ensuring that artistic expression aligns with societal values and norms.

**Answer to Question No. 12:** Some criticisms against the CBFC include allegations of overreach and inconsistency in censoring films, especially those addressing sensitive political, social, or religious issues. Critics argue that the board restricts films critical of the government and that its censorship practices undermine freedom of expression.

**Answer to Question No. 13:** Notable films like "War and Peace," "Final Solution," and "Udta Punjab" have faced various challenges due to the CBFC's certification decisions. "War and Peace" had to undergo extensive editing, "Final Solution" was banned initially, and "Udta Punjab" faced demands for numerous cuts before its release.

**Answer to Question No. 14:** In the digital era, the CBFC grapples with challenges posed by online streaming platforms like Netflix and YouTube, which offer diverse content globally. The decentralized distribution model makes it difficult for the CBFC to monitor and regulate content, bypassing its scrutiny and raising concerns about inappropriate dissemination.

**Answer to Question No. 15:** The challenges posed by digital platforms affect the CBFC's ability to enforce regulatory standards and ensure compliance with Indian cultural values. Content hosted on international platforms may not be subject to Indian censorship laws, making it challenging for the CBFC to uphold local regulations and maintain cultural integrity in the digital space.

# **Unit:1**

## **Human Rights Laws (Human Rights Act 1993) and Universal Declarations.**

### **Unit Structure:**

#### **1.1 Introduction**

#### **1.2 Goals**

#### **1.3 Preliminary**

#### **1.4 Definition**

#### **1.5 Constitution of National Human Rights Commission**

#### **1.6 Universal Declaration of Human Rights**

#### **1.7 Background of the United Nations Declaration of Human Rights**

#### **1.8 The Universal Declaration of Human Rights' structure**

#### **1.9 Importance of the Universal Declaration of Human Rights**

#### **1.10 Summing Up**

#### **1.11 References and Suggested Readings**

#### **1.12 Check your Progress**

#### **1.1 Introduction**

In this unit we will study the Human Rights Act, 1993 in relation to India's commitment to advancing and defending human rights that is embodied in the National and State Human Rights Commissions. 'Human Rights' are those rights to life, liberty, equality, and dignity of the individual that are enshrined in the Indian Constitution or International Covenants and are upholdable in Indian courts, according to the Protection of Human Rights Act, 1993.

Another important part of this unit is The United Nations General Assembly (UNGA) adopted the Universal Declaration of Human Rights (UDHR), an international declaration. It establishes each person's freedoms and rights within the human race.



## **1.2 Goals**

This unit's objective is to familiarise students with the significance of these acts in order to improve their awareness of the protection of human rights and Universal Declaration and issues related to or incidental to it.

## **1.3 Preliminary**

Short title, extend and commencement.

1. Short title, extend and commencement. This Act may be called the Protection of Human Rights Act, 1993.
2. It extends to the whole of India:  
Provided that it shall apply to the State of Jammu and Kashmir only in so far as it pertains to the matters relatable to any of the entries enumerated in List I or List III in the Seventh Schedule to the Constitution as applicable to that State.
3. It shall be deemed to have come into force on the 28th day of September, 1993.

## **1.4 Definition**

Definition.- (1) In this Act, unless the context otherwise requires,-

- (a) "armed forces" means the naval, military and air forces and includes any other armed forces of the Union;
- (b) "Chairperson" means the Chairperson of the Commission or of the State Commission, as the case may be;
- (c) "Commission" means the National Human Rights Commission constituted under section 3;
- (d) "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India;
- (e) "Human Rights Court" means the Human Rights Court specified under section 30;

(f) "International Covenants" means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16th December, 1966;

(g) "Member" means a Member of the Commission or of the State Commission, as the case may be, and includes the Chairperson;

(h) "National Commission for Minorities" means the National Commission for Minorities constituted under section 3 of the National Commission for Minorities Act, 1992 (19 of 1992);

(i) "National Commission for the Scheduled Castes and Scheduled Tribes" means the National Commission for the Scheduled Castes and Scheduled Tribes referred to in article 338 of the Constitution;

(j) "National Commission for Women" means the National Commission for Women constituted under section 3 of the National Commission for Women Act, 1990 (20 of 1990);

(k) "notification" means a notification published in the Official Gazette;

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

(m) "public servant" shall have the meaning assigned to it in section 21 of the Indian Penal Code (45 of 1860);

(n) "State Commission" means a State Human Rights Commission constituted under section 21.

(Any reference in this Act to a law, which is not in force in the State of Jammu and Kashmir, shall, in relation to that State, be construed as a reference to a corresponding law, if any, in force in that State).

### **1.5 Constitution of National Human Rights Commission**

The Central Government shall constitute a body to be known as the National Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to, it under this Act.

(2) The Commission shall consist of-

- (a) a Chairperson who has been a Chief Justice of the Supreme Court;
- (b) one Member who is, or has been, a Judge of the Supreme Court;
- (c) one Member who is, or has been, the Chief Justice of a High Court;
- (d) two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

(3) The Chairpersons of the National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Women shall be deemed to be Members of the Commission for the discharge of functions specified in clauses (b) to (j) of section 12.

(4) There shall be a Secretary-General who shall be the Chief Executive Officer of the Commission and shall exercise such powers and discharge such functions of the Commission as it may delegate to him.

(5) The headquarters of the Commission shall be at Delhi and the Commission may, with the previous approval of the Central Government, establish offices at other places in India.

### **1.6 Universal Declaration of Human Rights**

The history of human rights has been significantly influenced by the UDHR. In accordance with Resolution 217, it was approved by the UNGA on December 10, 1948. 48 United Nations members voted in support, 0 voted against, 8 abstained, and 2 did not cast a ballot during that period. The overview of the Universal Declaration of Human Rights is as follows:

The thirty articles that make up the UDHR outline a person's "basic rights and fundamental freedoms." It is applicable to all people regardless of their ethnicity, religion, or nationality.

It served as the initial stage in the creation of the International Bill of Human Rights, which was finished in 1966 and went into effect in 1976. It also directly influenced the growth of international human rights law.

The Universal Declaration of Human Rights is not legally enforceable, but its principles have been expanded upon and integrated into a number of subsequent international treaties, regional human rights agreements, and state legal frameworks.

All 193 United Nations members have ratified at least one of the nine legally binding treaties of the UDHR, with the majority having ratified four or more.

## **1.7 Background of the United Nations Declaration of Human Rights**

Two months after World War II concluded, in October 1945, 51 nations formed the United Nations. Fears of a devastating World War II had been stirred by two world wars, the nuclear bombings of Hiroshima and Nagasaki, and a worldwide refugee crisis.

In addition to addressing human rights, the UN was established to prevent such a catastrophe. Among all those who advocated for the realisation of these ideas, Eleanor Roosevelt, the late US President Franklin Delano Roosevelt's wife, would be instrumental in the creation of the Universal Declaration of Human Rights.

In 1945, Eleanor Roosevelt was selected by President Harry Truman to the US delegation to the UN. She was a globally renowned advocate for claims of poverty and equal civil rights. After taking over as chair of the UN Commission on Human Rights in April 1946, she embarked on the task of writing a global human rights declaration.

Eleanor's experiences in both World Wars - she worked with shell-shocked soldiers undergoing psychological treatments during World War I and saw the devastated cities of Europe during World War II - had an impact on her beliefs about human rights and her desire for world peace. It was in no way simple to draft the Universal Declaration of Human Rights. To begin with:

- I. To put it another way, neither the United States of America nor the Soviet Union could agree on what human rights were; they each had their own idea of what a human rights were.
- II. Because they believed that the economic and social rights outlined in the UDHR were 'communist' in character and extent, many conservative US lawmakers disliked supporting these rights.

But thanks to Eleanor's charm and tact, there was enough support for the UDHR to pass as a resolution.

The only other woman on the Commission on Human Rights and a UN delegate representing India's recent independence, Hansa Mehta, played a significant role in forming the declaration. She was the one who altered the first item of the original statement to read, "All human beings are born free and equal," rather than, "All men are born free and equal."

Despite the fact that the proclamation isn't enforceable or binding. It would be used as a template for laws in numerous nations. On December 10, 1946, the draft was approved by the UN General Assembly following its presentation. Every year on December 10, the anniversary of the Universal Declaration's adoption, people commemorate World Human Rights Day, also known as International Human Rights Day.

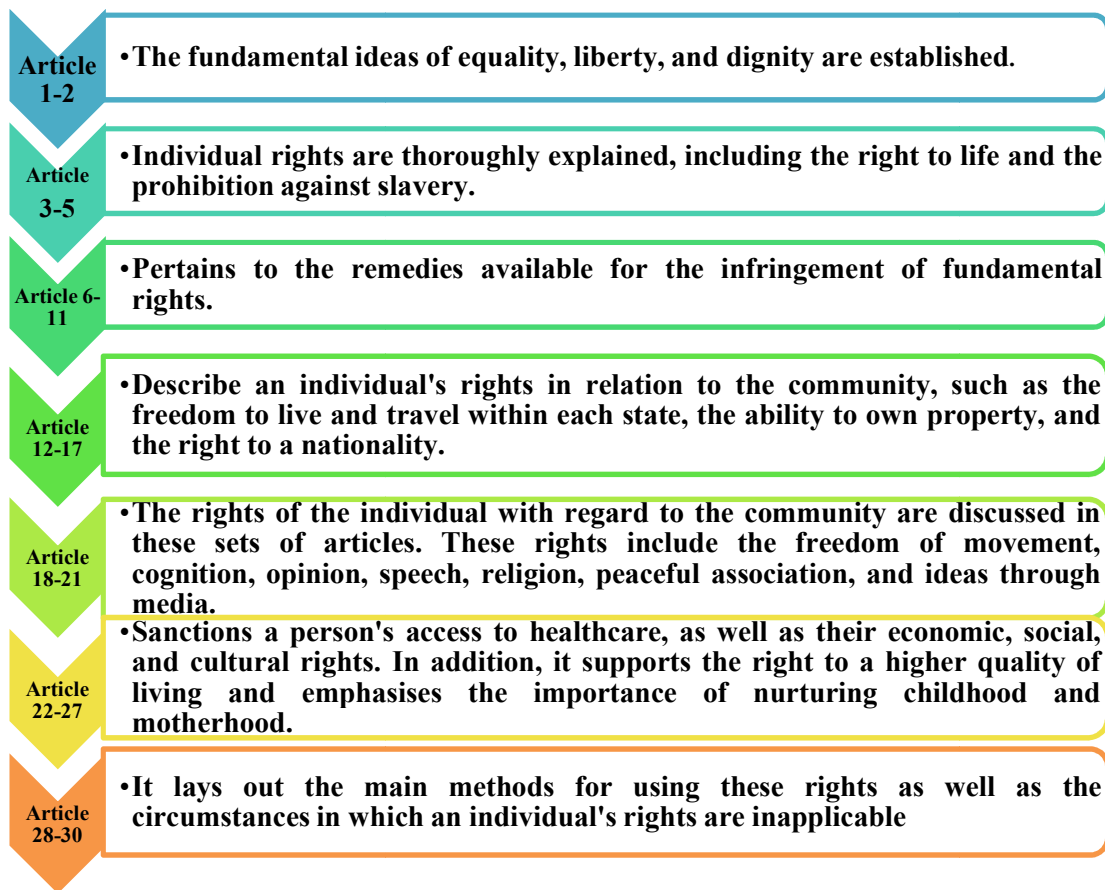
### **1.8 The Universal Declaration of Human Rights' structure**

The Code Napoleon, a collection of rules drafted by Napoleon Bonaparte decades earlier, had an impact on the construction of the Universal Declaration of Human Rights.

The second draft, written by French jurist René Cassin, who had worked on the first draft written by Canadian legal expert John Peters Humphrey, is where the final framework was formed. The following are the contents of the Declaration- the preamble provides specifics of the historical and social factors that contributed to the creation of the UDHR. It has thirty articles in total.



A summary of all the articles are outlined below:



### 1.9 Importance of the Universal Declaration of Human Rights

Many people view the UDHR as a revolutionary declaration that offers a thorough and universal set of principles in a secular, apolitical framework that transcends political, religious, and cultural beliefs. The Declaration established the notion that all citizens of all societies, regardless of jurisdiction or political system, are equally bound by the law by being the first piece of international legislation to utilise the phrase "rule of law." In terms of international law, a declaration differs from a treaty in that it often expresses a goal or understanding between the parties rather than imposing legal responsibilities. Because of this, the Universal Declaration of Human Rights serves as a foundational text for the UN and, consequently, the 193 parties that make up the UN Charter.

### 1.10 SUMMING UP

In this unit we have learned how promoting and defending human rights is the primary responsibility of the National Human Rights Commission (NHRC), an independent body under the control of the Indian government. It is a legislative body that was created in 1993 under the "Protection of Human Rights Act" and is referenced in the Indian Constitution.

Further the unit proceeds with Universal Declaration of Human Rights. It states that everyone has the right to exercise their human rights, regardless of their identity or place of residence. The rights to life, liberty, privacy, and free speech are among the civil and political liberties enumerated in the Universal Declaration.

### 1.13 References and Suggested Readings

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### 1.12 Check your Progress

*(Use the space below to write your answers)*

1. Write a note on the importance of Universal Declaration of Human Rights.

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2. Briefly discuss the Constitution of National Human Rights Commission.

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3. Write short notes on Eleanor Roosevelt and Hansa Mehta.

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## **Unit: 2**

### **UNCRC, Geneva Convention.**

#### **Unit Structure:**

#### **2.1 Introduction**

#### **2.2 Goals**

#### **2.3 Rules of Geneva Convention**

#### **2.4 The Geneva Conventions' advantages**

#### **2.5 The 1949 Geneva Conventions – A brief Summary**

#### **2.6 Key Points**

#### **2.7 The summary of United Nations Convention on the Rights of the Child (UNCRC)**

#### **2.8 Summing Up**

#### **2.9 References and Suggested Readings**

#### **2.10 Check your Progress**

#### **2.1 Introduction**

The Geneva Convention is a body of laws and procedures aimed at preventing the effects of conflict on civilians as well as military troops, as well as safeguarding a territory's resources. This convention was updated in 1949 and was first established in 1864.



The conventions contain a number of rules, including the following: government employees must continue to work during a war and must not be harmed, prisoners of war and military personnel must be treated with respect, no danger should be caused to the native population during any war, no biological or chemical examinations of prisoners of war should be conducted, military personnel shall not be killed or tortured, and many more.

The Geneva Convention and its later amendments form a body of General International Law, which is also known as the Humanitarian Law of Armed Conflicts. Its objectives are to

provide survivors of military conflicts with adequate protections, humane treatment, and fundamental guarantees of compassion and respect. The accords that govern the treatment of people, war prisoners, and soldiers who have been deemed incapable of fighting or hours of battle are part of the Geneva Convention.

## **2.2 Goals**

The goal of this unit is to acquaint the students with the significance of the 3 agreements and 4 supplementary treaties that make up the convention of Geneva, which establish ethical principles for wartime conduct.

## **2.3 Rules of Geneva Convention**

The list of some of the Geneva Convention's first regulations and standards, as well as subsequent changes, is provided below. One can comprehend the types of regulations and modifications found in the Geneva Convention on the Rules of War.

- When under the control of a hostile entity, captured troops and commanders have the right to be treated for their life, integrity, personal freedoms, and beliefs. They need to be protected from attacks and reprisals of any kind. They will be able to get help and interact with their family.
- There are just a certain amount of alternatives available to organisations and military members during a war for combat plans and tactics. It is against the law to use weapons or fighting tactics that cause excessively many casualties or suffering.
- It is against the law to murder or seriously hurt an opponent who surrenders in battle.
- When defending civilians and property, combatants must always be able to tell military members from civilians. The indigenous people as a whole and defenseless people should not be harmed. The primary objective of all attacks must be military targets.
- Patient collection and care falls under the purview of the combatant side that controls the wounded and ill. Transportation, technology, medical personnel, and institutions are all safeguarded. It is necessary to revere the red cross or crescent as a source of protection.
- It is forbidden to torture, kill, or subject sick and injured people to scientific testing.
- The wounded and impacted individual needs to be protected against robbery and abuse.

- All prisoners of war will be freed when the fighting is done, and they will be returned back as soon as they choose.
- As long as safety allows, civilians ought to be able to lead normal lives. People should never be jailed or expelled unless it is absolutely required for humanitarian reasons. If incarceration is necessary, the conditions must be almost identical to those of war prisoners.
- It is against international law to use any of the official protective emblems established by the Geneva Conventions to deceive adversaries or commit other crimes.
- Weapons that cause unnecessary pain and suffering and warfare techniques that result in wide-ranging, protracted, and grave environmental risks are prohibited.
- Government employees will be permitted to continue working. The governed territory's rules are in effect as long as they don't present a risk to public safety.

## **2.4 The Geneva Conventions' advantages**

Nearly 190 nations uphold the Geneva Conventions because they consider some combat operations to be so horrible and destructive that they harm the whole world community. The recommendations serve to draw a line, as much as possible within the confines of hostilities and armed conflicts, between the humanitarian behaviour of military personnel, healthcare providers, and residents and unrestrained cruelty towards them.

## **2.5 The 1949 Geneva Conventions – A brief Summary**

- **The first Geneva Convention protects wounded and sick soldiers on land during war.**

The Geneva Convention on the Wounded and Sick, which was first adopted in 1864 and then again in 1906 and 1929, is being amended with the adoption of this convention. There are 64 articles in it. These safeguard not only the ill and injured but also medical staff, clergy, medical units, and medical transports. The distinguishing insignia are also recognised by the Convention. It includes two annexes with a model identity card for medical and religious staff and a draft agreement for hospital zones.

- **The second Geneva Convention protects wounded, sick and shipwrecked military personnel at sea during war.**

The Hague Convention of 1907 for the Adaptation of the Geneva Convention's Principles to Maritime Warfare was replaced by this Convention. In terms of both structure and content, it closely resembles the first Geneva Convention's

requirements. It comprises 63 articles that are especially relevant to maritime warfare. As an illustration, it guards medical ships. It features one appendix with a sample identity card for clergy and medical staff.

➤ **The third Geneva Convention applies to prisoners of war.**

The Prisoners of War Convention of 1929 was superseded by this convention. It has 143 articles, as opposed to the 1929 Convention's only 97. Conventions I and II have expanded the groups of people who are eligible for the status of prisoner of war. The terms and locations of detention were clarified, especially in relation to the labour performed by POWs, their access to funds, the relief they get, and the legal actions taken against them. The Convention sets forth the idea that, upon the end of hostilities, prisoners of war shall be promptly released and repatriated. There are five annexes to the Convention that contain different model regulations, identity cards, and other cards.

➤ **The fourth Geneva Convention affords protection to civilians, including in occupied territory.**

Adopted prior to 1949, the Geneva Conventions exclusively addressed combatants and did not address civilians. The catastrophic effects of not having a convention for the protection of people during times of conflict were made abundantly evident by the events of World War II. The World War II experiences were taken into consideration when the 1949 Convention was enacted. There are 159 articles in all. It does not address the conduct of hostilities per se; instead, the topic is briefly covered in the Additional Protocols of 1977 and relates to protecting populations generally from some effects of conflict. The majority of the Convention addresses the treatment and status of protected persons, making a distinction between the circumstances of foreign nationals on the land of a combatant party and civilians residing in occupied territory. It includes comprehensive guidelines on humanitarian assistance for people living in occupied territory as well as a statement of the Occupying Power's responsibilities to the civilian populace. A detailed protocol for the care of civilian internees is also included. Model cards, model regulations on humanitarian help, and a model agreement on hospitals and safety zones are contained in its three annexes.

➤ **Common Article 3**

A significant development was the inclusion of non-international armed conflicts in Article 3, which is shared by the four Geneva Conventions. These kinds of disputes differ a lot. These include conventional civil wars, internal armed conflicts that spread

to neighbouring States, and internal conflicts in which the government is assisted by external parties or a multinational army. Common Article 3 lays down basic guidelines from which deviations are not allowed. It is comparable to a mini-Convention inside the Conventions since it condenses the main provisions of the Geneva Conventions and applies them to disputes that are not international in nature:

- All people under enemy control must be treated humanely, without exception. It expressly forbids hostage-taking, brutal, humiliating, and degrading treatment, mutilation, torture, and unfair trials.
- It mandates the gathering and care of the ill, injured, and shipwrecked.
- It gives the ICRC permission to provide its services to the warring parties.
- It demands that the parties to the dispute use "special agreements" to formally ratify all or some of the Geneva Conventions.
- It acknowledges that the parties to the conflict's legal position is unaffected by the application of these principles.
- Given that most armed conflicts today are non-international, applying Common Article 3 is of the utmost importance. Its full respect is required.



## 2.6 Key Points

The Geneva Conventions (1949) and their Additional Protocols are international treaties that contain the most important rules limiting the barbarity of war. They protect people who do not take part in the fighting (civilians, medics, aid workers) and those who can no longer fight (wounded, sick and shipwrecked troops, prisoners of war).

- ✚ The first Geneva Convention protects wounded and sick soldiers on land during war.
- ✚ The second Geneva Convention protects wounded, sick and shipwrecked military personnel at sea during war.
- ✚ The third Geneva Convention applies to prisoners of war.

- ✚ The fourth Geneva Convention affords protection to civilians, including in occupied territory.
- ✚ Article 3, common to the four Geneva Conventions, covers situations of non-international armed conflicts. They include traditional civil wars, internal armed conflicts that spill over into other States or internal conflicts in which a third State or a multinational force intervenes alongside the government.
- ✚ Two Protocols of 1977: Additional to the four 1949 Geneva Conventions were adopted in 1977. They strengthen the protection of victims of international (Protocol I) and non-international (Protocol II) armed conflicts and place limits on the way wars are fought.
- ✚ In 2005, a third Additional Protocol was adopted creating an additional emblem, the Red Crystal, which has the same international status as the Red Cross and Red Crescent emblems.
- ✚ The International Committee for the Red Cross (ICRC), an international humanitarian organisation, has the mandate to monitor that signatories follow the rules in situations of conflict.
- ✚ Established in 1863, the ICRC operates worldwide, helping people affected by conflict and armed violence and promoting the laws that protect victims of war.
- ✚ An independent and neutral organization, based in Geneva, Switzerland. The ICRC is funded mainly by voluntary donations from governments and from National Red Cross and Red Crescent Societies.



## 1.7 The summary of United Nations Convention on the Rights of the Child (UNCRC)

**Article 1** (definition of the child): All Convention rights apply to anyone under the age of 18.

**Article 2** (non-discrimination) states that no child shall be subjected to discrimination on the basis of their race, sex, religion, language, ability, or any other status, or based on their thoughts or words, or based on their family history.

**Article 3** (best interests of the child) states that each choice or action that has an impact on children must be made with the kid's best interests in mind.

**Article 4** (Convention Implementation):

Governments shall take all reasonable steps to ensure that every child can exercise their rights, including establishing policies and enacting legislation that upholds and defends such rights.

**Article 5:** A child's developing capacities and parental guidance.

In order for children to fully enjoy their rights, governments must recognise the rights and obligations of parents and other caretakers to provide direction and guidance to their offspring as they grow older. It is imperative to acknowledge the child's growing ability to exercise self-determination in this manner.

**Article 6:** Development, Survival, and Life

Each and every child is entitled to life. In order to guarantee that children live and reach their full potential, governments must take all necessary measures.

**Article 7:** Birth Registration, Name, Nationality, and Care:

All children are entitled to birth registration, a name, and nationality, and, to the greatest extent feasible, to know and receive care from their parents.

**Article 8:** Identity Preservation and Protection

Each and every child is entitled to an identity. Governments are required to uphold this right, respect it, and stop illegal changes to a child's name, nationality, or family structure.

**Article 9** (parental separation)

If a parent is abusing or neglecting their child, for example, the child's best interests should take precedence over the parent's desire to keep the child away from them. Unless it poses a risk to their safety, children whose parents have separated have the right to maintain contact with both parents.

**Article 10** (family reunification) states that if a parent or child wants to live with them in the same nation, the government must act promptly and compassionately. A child has the right to visit and stay in touch with both of their parents even if they are separated by distance and live in different nations.

**Article 11** (Child abduction and non-return)

Governments must take all necessary measures to prevent parents or other family members from forcibly removing children from their own country or from preventing them from going back.

**Article 12** (respect for the views of the child)

Every child has the right to express their views, feelings and wishes in all matters affecting them, and to have their views considered and taken seriously. This right applies at all times, for example during immigration proceedings, housing decisions or the child's day-to-day home life.

**Article 13** (freedom of expression)

Every child must be free to express their thoughts and opinions and to access all kinds of information, as long as it is within the law.

**Article 14** (freedom of thought, belief and religion)

Every child has the right to think and believe what they choose and also to practise their religion, as long as they are not stopping other people from enjoying their rights. Governments must respect the rights and responsibilities of parents to guide their child as they grow up.

**Article 15** (freedom of association)

Every child has the right to meet with other children and to join groups and organisations, as long as this does not stop other people from enjoying their rights.

**Article 16** (right to privacy)

Every child has the right to privacy. The law should protect the child's private, family and home life, including protecting children from unlawful attacks that harm their reputation.

**Article 17** (access to information from the media)

Every child has the right to reliable information from a variety of sources, and governments should encourage the media to provide information that children can understand. Governments must help protect children from materials that could harm them.

**Article 18** (parental responsibilities and state assistance)

Both parents share responsibility for bringing up their child and should always consider what is best for the child. Governments must support parents by creating support services for children and giving parents the help they need to raise their children.

**Article 19** (protection from violence, abuse and neglect)

Governments must do all they can to ensure that children are protected from all forms of violence, abuse, neglect and bad treatment by their parents or anyone else who looks after them.

**Article 20** (children unable to live with their family)

If a child cannot be looked after by their immediate family, the government must give them special protection and assistance. This includes making sure the child is provided with alternative care that is continuous and respects the child's culture, language and religion.



**Article 21** (adoption)

Governments must oversee the process of adoption to make sure it is safe, lawful and that it prioritises children's best interests. Children should only be adopted outside of their country if they cannot be placed with a family in their own country.

**Article 22** (refugee children)

If a child is seeking refuge or has refugee status, governments must provide them with appropriate protection and assistance to help them enjoy all the rights in the Convention. Governments must help refugee children who are separated from their parents to be reunited with them.

**Article 23** (children with a disability)

A child with a disability has the right to live a full and decent life with dignity and, as far as possible, independence and to play an active part in the community. Governments must do all they can to support disabled children and their families.

**Article 24** (health and health services)

Every child has the right to the best possible health. Governments must provide good quality health care, clean water, nutritious food, and a clean environment and education on health and well-being so that children can stay healthy. Richer countries must help poorer countries achieve this.

**Article 25** (review of treatment in care)

If a child has been placed away from home for the purpose of care or protection (for example, with a foster family or in hospital), they have the right to a regular review of their treatment, the way they are cared for and their wider circumstances.

**Article 26** (social security)

Every child has the right to benefit from social security. Governments must provide social security, including financial support and other benefits, to families in need of assistance.

**Article 27** (adequate standard of living)

Every child has the right to a standard of living that is good enough to meet their physical and social needs and support their development. Governments must help families who cannot afford to provide this.

**Article 28** (right to education)

Every child has the right to an education. Primary education must be free and different forms of secondary education must be available to every child. Discipline in schools must respect children's dignity and their rights. Richer countries must help poorer countries achieve this.

**Article 29** (goals of education)

Education must develop every child's personality, talents and abilities to the full. It must encourage the child's respect for human rights, as well as respect for their parents, their own and other cultures, and the environment.

**Article 30** (children from minority or indigenous groups)

Every child has the right to learn and use the language, customs and religion of their family, whether or not these are shared by the majority of the people in the country where they live.

**Article 31** (leisure, play and culture)

Every child has the right to relax, play and take part in a wide range of cultural and artistic activities.

**Article 32** (child labour)

Governments must protect children from economic exploitation and work that is dangerous or might harm their health, development or education. Governments must set a minimum age for children to work and ensure that work conditions are safe and appropriate.

**Article 33** (drug abuse)

Governments must protect children from the illegal use of drugs and from being involved in the production or distribution of drugs.

**Article 34** (sexual exploitation)

Governments must protect children from all forms of sexual abuse and exploitation.

**Article 35** (abduction, sale and trafficking)

Governments must protect children from being abducted, sold or moved illegally to a different place in or outside their country for the purpose of exploitation.

**Article 36** (other forms of exploitation)

Governments must protect children from all other forms of exploitation, for example the exploitation of children for political activities, by the media or for medical research.

**Article 37** (inhumane treatment and detention)

Children must not be tortured, sentenced to the death penalty or suffer other cruel or degrading treatment or punishment. Children should be arrested, detained or imprisoned only as a last resort and for the shortest time possible. They must be treated with respect and care, and be able to keep in contact with their family. Children must not be put in prison with adults.

**Article 38** (war and armed conflicts)

Governments must not allow children under the age of 15 to take part in war or join the armed forces. Governments must do everything they can to protect and care for children affected by war and armed conflicts.

**Article 39** (recovery from trauma and reintegration)

Children who have experienced neglect, abuse, exploitation, torture or who are victims of war must receive special support to help them recover their health, dignity, self-respect and social life.

**Article 40:** Justice for Juveniles

A youngster who has broken the law, whether culpable or not, deserves respect and dignity. They are entitled to a fair trial that considers their age as well as legal help. Governments are required to oversee a judicial system that allows minors who have run afoul of the law to be reintegrated into society and to establish a minimum age at which children may be tried in a criminal court.

**Article 41** (respect for higher national standards):

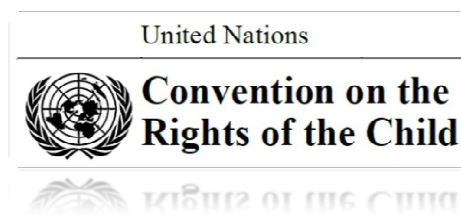
A nation is required to uphold its laws and standards if they surpass the current Convention.

**Article 42:** Knowledge of Rights

The Convention needs to be aggressively promoted to adults and children by the government. There are 54 articles in the Convention overall.

**Articles 43–54** discuss the cooperation of governments and adults in guaranteeing that every child has access to all of their rights, which include:

**Article 45:** When it comes to children's rights, UNICEF can offer professional counsel and support.



**Optional Protocols** There are three agreements, called **Optional Protocols**, that strengthen the Convention and add further unique rights for children. They are optional because governments that ratify the Convention can decide whether or not to sign up to these **Optional Protocols**. They are: the **Optional Protocol on the sale of children, child prostitution and child pornography**, the **Optional Protocol on the involvement of children in armed conflict** and the **Optional Protocol on a complaints mechanism for children (called Communications Procedure)**.

## 1.8 SUMMING UP

The most significant international treaties restricting the savagery of war are the Geneva Conventions and their Additional Protocols. They defend those who are unable to fight (wounded, sick, and shipwrecked troops, prisoners of war) as well as those who do not participate in the conflict (citizens, medics, aid workers).

The foundation of international humanitarian law, which governs armed combat conduct and aims to mitigate its effects, is found in the Geneva Conventions and their Additional Protocols. They particularly safeguard non-combatants (citizens, medical personnel, and relief workers) as well as those who have left the fighting, including injured, ill, and shipwrecked soldiers and prisoners of war. The Conventions and their Protocols stipulate that action must be taken to stop or prevent any violations. Strict guidelines are included in them to address "severe breaches." It is necessary to locate, prosecute, or extradite those who have committed serious violations, regardless of their nationality.

## 1.9References and Suggested Readings

International Committee of the Red Cross.(n.d.).Overview of the Geneva Conventions. Retrieved from <https://www.icrc.org/en/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm>

<https://www.icrc.org/en/what-we-do/protecting-civilians/law-and-policy/geneva-conventions>

<https://www.geneva-academy.ch/>

[https://www.unicef.org.uk/wp-content/uploads/2019/10/UNCRC\\_summary-1\\_1.pdf](https://www.unicef.org.uk/wp-content/uploads/2019/10/UNCRC_summary-1_1.pdf)

## 1.10Check your Progress

*(Use the space below to write your answers)*

1. Write a short note on the common article 3 of the Geneva Convention

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2. What are the main points of the 1949 Geneva Conventions?

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3. Write a note on the summary of the United Nations Convention on the Rights of the Child.

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**Activity**

Provide examples of situations where the Geneva Conventions have been applied to protect civilians and individuals affected by armed conflicts?

## **Unit:3**

### **International Humanitarian Laws and Conflict Reporting, challenges and safety measures of media personnel, embedded journalism, parachute reporting.**

#### **Unit Structure:**

#### **3.1 Introduction**

#### **3.2 Objectives**

#### **3.3 About International Humanitarian Laws (IHL)**

#### **3.4 IHL and Conflict Reporting**

#### **3.5 Challenges and Safty Measures of Media Personel**

#### **3.6 Embedded Journalism**

#### **3.7 Paratute Reporting**

#### **3.8 Summing up**

#### **3.9 References and Suggested Readings**

#### **3.1 Introduction:**

International Humanitarian Laws are important to study for the journalist for reporting in the border areas, conflict areas and in the states where there may be a war like situation. This laws gives you an idea about the various provisions world wide to minimize the war and conflict sufferings and injuries. It is also regulate the war methods. For centuries, one of the most difficult challenges of humanity is to limit the violence generated in theatres of war by alleviating the suffering of victims and forging acceptable rules for both parties of wars. International humanitarian law (IHL) was one solution to this conundrum. The idea of IHL germinated slowly in the early modern period, but in the formative years between roughly 1860

and 1910 the idea of protecting the victims of conflict (known as “Geneva law”) was gradually separated from the regulation of the means and methods of war (known as “Hague law”). This process was foremost the work of States, with their regulatory system of conferences and conventions, but often, dedicated individuals and non-State actors involved in the “peace through law” movement played prominent roles in it.

The development of IHL was not inevitable, however, and it was often the unintended consequence of opposing State interests that neutralized each other. It may be mentioned here that, the term IHL itself did not originate until 1953. Pre-1864 history is replete with humanitarian initiatives, but many are not well known. The history of IHL is cut into two, as it were: before and after Henry Dunant, the inspirator of the First Geneva Convention. Pre-1864 humanitarianism does not play any substantial role in most of today's IHL works. Under any long-term view of IHL, however, the adoption of the First Geneva Convention in 1864 constitutes a landmark moment. At the time when Thiers met Ranke, in 1870, developments in the IHL field showed the rhythm of a dancing procession. After the initial successes of 1864, the Franco-Prussian War cast a shadow over IHL proposals made at a conference in Brussels in 1874. Twenty-five years later the proposals were eventually integrated into new regulations at The Hague in 1899. The Hague Regulations – an integral part of the Hague Conventions – endure until today. An impressive series of IHL customs and conventions has been accumulated since 1899, and many perspicacious commentaries have been published on all their aspects.

### **3.2 Objectives**

Main objectives of this topic is to give an overview of the International Humanitarian Laws in view of growing wars and conflicts world wide and increasing number of sufferings.

a) To get the idea of necessity and functions of IHL

b) To relate the HL with Conflict Situation and Conflict reporting

c) Embedded journalism and parachute journalism

### **3.3 About International Humanitarian Laws (IHL)**

International humanitarian law (IHL), sometimes called the “law of war” or “law of armed conflict,” regulates relations between States, international organizations and other subjects of international law in times of armed conflict. It is a branch of public international law that consists of rules aimed at protecting people who are not or are no longer participating in the hostilities and at restricting the means and methods of warfare. In other words, IHL consists of international treaty law and customary rules that are specifically meant to resolve humanitarian issues arising directly from armed conflict, whether of an international or a non-international character.

The written rules of international humanitarian law can be found in the following treaties:

- The various declarations and conventions signed in The Hague, Netherlands (in 1899, 1907, 1954, 1957, 1970, and 1973). They establish the rules governing the conduct of hostilities.
- The four 1949 Geneva Conventions further codified the rules and customs of the law of armed conflict. They set limits to the methods of warfare that may be used, and they added rules relating to the protection and relief of non-combatants during hostilities. As of April 2013, 195 States are party to these Conventions.

Each of the Conventions establishes the conditions for providing relief to a specific category of persons. The first three (GCI, GCII, GCIII) set forth the rules for the treatment of combatants who are wounded, shipwrecked, or prisoners of war in international armed conflicts. The fourth Convention (GCIV) establishes provisions for the protection of the civilian population, also in international armed conflicts.

- The two Additional Protocols to the Geneva Conventions were adopted in 1977 to consolidate and improve the rules of protection for victims of conflicts:

—The first Additional Protocol to the Geneva Conventions, Relating to the Protection of Victims of International Armed Conflicts (API), reinforces and completes the provisions foreseen by the Fourth Geneva Convention. As of June 2015, 174 States are party to Additional Protocol I.



—The second Additional Protocol, Relating to the Protection of Victims of Non-international Armed Conflicts (APII), completes the provisions for the protection of victims of non-international armed conflicts, originally foreseen by Common Article 3 to the four Geneva Conventions. As of June 2015, 168 States are party to Additional Protocol II.

In addition to the international conventions governing international and non-international armed conflicts, international humanitarian law is also constituted by rules considered to be part of customary international humanitarian law. Indeed, some rules on armed conflicts have become customary due to their duration and constancy. They are obligatory for the States and for the belligerents, even when they have not formally adhered to them. This is what happened with the Geneva Conventions, but there are other guarantees that enter into this category of customary international law rules (see below on customary international humanitarian law).

### Stop To Consider

International Humanitarian Laws are related to war and Conflict.

Thus this is also known as Law of War.

#### Check your progress

**Question 1: Trace the history of IHL in early period?**

**Question 2: What is the main motto of IHL?**

### 3.4 IHL and Conflict Reporting

To understand the conflict reporting, we need to see the definitions and scopes of armed conflicts. The reporters are to be ready with the various provisions in the IHL and other related laws in international level and need to be equipped with that for effective reporting in conflict situation.

**IHL classifies armed conflicts as either international armed conflict (IAC) or non-international armed conflict (NIAC).** The proper categorization of an armed conflict is necessary to determine which set of rules apply to the conflict: those for an IAC (found mainly in the four Geneva Conventions and Additional Protocol I) or those for a NIAC (found mainly in Article Three common to the four Geneva Conventions and Additional Protocol II). Situations of

occupation are regulated by IHL, namely the Fourth Geneva Convention and Additional Protocol I.

**Whether or not an armed conflict is an IAC or a NIAC has significant implications.** For instance, prisoner of war (POW) status, as well as combatant status, is found only in the rules applicable to IACs. The rules regulating the conduct of hostilities, as well as humanitarian access and assistance, are more detailed for IACs. All together the treaty rules applicable to IACs total close to 600; those applicable to NIACs number less than 30. This dearth of guidance can pose a challenge because the majority of contemporary conflicts are NIACs. To address this, one can look to customary international law, which includes a number of rules that have evolved to address both IAC and NIAC situations.

The **definition of an IAC** is found in Article Two common to the four Geneva Conventions. It states that the rules of IAC apply to “all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties . . . .” Thus, an IAC can only be between two or more States.

In Article Three common to the four Geneva Conventions a **NIAC is defined** in the negative, as “an armed conflict not of an international character.” Thus, if a non-State armed group is a party to the armed conflict, it will be categorized as a NIAC. This could be the case if, for instance, a State is fighting an armed group, or if two non-State armed groups are fighting each other. Common Article Three and customary international law would regulate both scenarios. For Additional Protocol II to apply, certain requirements must be satisfied. In the armed conflict, a State must be on one side, fighting against an armed group. That State must have signed Additional Protocol II for it to apply. Additionally, the non-State armed group must be organized, under a responsible command, and exercising control over part of the territory in such a manner that the group is able to carry out military operations.

The use of the phrase “**global war on terror**” resulted in some misunderstanding regarding the application of IHL to certain situations. The “global war on terror” is a political phrase, not a legal term of art. Thus, the “global war on terror” is not an armed conflict. The appropriate way to analyze conflicts that fall under this umbrella is to look at the conflict locations – Iraq, Afghanistan, Somalia, Yemen, etc. – and assess each one in terms of whether or not it is an IAC or a NIAC, regulated by the relevant framework.

There is some academic debate regarding cross-border NIACs, as well as at what point a NIAC might become an IAC, or an IAC might become a NIAC. These analyses are context and fact-dependent. Despite the theoretical debate, practitioners can often work around them by relying on customary international law to argue for protections owed to civilians.

### **Humanitarian law and human rights**

Article 3 common to the Geneva Conventions deals with internal armed conflicts, i.e. with matters pertaining to the internal affairs of States. As the regulation of internal affairs is basically the prerogative of the sovereign State, the decision taken in 1949 to include Article 3 in the four

Geneva Conventions was a great event. It must be remembered, however, that one year earlier, in 1948, the United Nations General Assembly had adopted the Universal Declaration of Human Rights. That document reflected growing international concern about an important aspect of the internal affairs of States. Indeed, international rules on the protection of human rights oblige States to recognize and respect a number of basic rights of the individual and to ensure that they are upheld. Humanitarian law does the same in times of armed conflict. It enjoins the parties to a conflict to respect and to preserve the lives and dignity of captured enemy soldiers or of civilians who are in their power. What, then, distinguishes humanitarian law from human rights law? Or are they the same?

The goals of human rights law and humanitarian law overlap. Both humanitarian law and human rights are designed to restrict the power of State authorities, with a view to safeguarding the fundamental rights of the individual. Human rights treaties (supported by customary law) achieve this objective in a comprehensive way insofar as they cover almost all aspects of life. Their rules must be applied to all persons and be respected in all circumstances (although a number of rights may be suspended in time of emergency). Humanitarian law, however, applies only in time of armed conflict. Its provisions are formulated in such a way as to take into account the special circumstances of warfare. They may not be abrogated under any circumstances. Usually they apply " across the front line " , i.e. the armed forces have to respect humanitarian law in their dealings with the enemy (and not in the relations with their own nationals). In internal armed conflicts, however, human rights law and international humanitarian law apply concurrently.

In other words, humanitarian law is a specialized body of human rights law, fine tuned for times of armed conflict. Some of its provisions have no equivalent in human rights law, in particular the rules on the conduct of hostilities or on the use of weapons. Conversely, human rights law covers several domains which are outside the scope of humanitarian law (e.g. the political rights of individual persons). Despite their overlapping, human rights law and humanitarian law remain distinct branches of public international law.

### Stop To Consider

There two types of conflict : Internal and International or among the states.

Journalist should know the basic provisions of Humanitarian and Human Rights laws to report in this situation..

#### 2. Check your progress

**Question 1: What are two types of IHL?**

**Question 2: What are provisions in IHL for Humanitarian and Human Rights during armed conflicts?**

## 1.6 Embedded Journalism

The course of the war is now a day used to play by big powers. In a multi polar world every nation is concerned about its image in world forum. In case of invasion and planned interference in the geopolitics of other nations embedded journalism is comprehensive tool. "Embedded journalism began during the Persian Gulf War. Journalists and media outlets were frustrated by their inability to provide news coverage of the conflict; they were often forced to cover events long after they were concluded. Some journalists asked to travel with military units and were granted permission to do so, although most of the resulting coverage had to be approved by the military before reaching the public in order to protect military assets and tactics. Thus, a very controlled amount of media coverage was attained, but the results were unsatisfactory." Iraq and Afghanistan were witness of widely used embedded journalism. "The larger troubles of the news business are complicated, but this problem is simple: We can't understand what we don't see; we can't explain a conflict if we hear from only one side." Embedded journalism is not a new phenomenon in ancient times the journalists with different nomenclature of their profession i.e. poet were accompanying the armies. Like in Indian context we can refer the case of Prithviraja III, popularly known as Prithviraj Chauhan was an Indian king from the Chahamanas dynasty and he always accompanied with his poet (now a day Journalist) in the battlefields and it was an ancient example of embedded journalism. Sometimes embedded journalism is the demand of circumstances. Many allegations against the system of "embedding" journalists, mainly with the American or British military, are unfair. Accompanying armies in the field is usually the only way of finding out what they are doing or think they are doing. Nor is there an obvious alternative way for correspondents to operate today. Given that al-Qa'ida and the Taliban target foreign journalists as potential hostages, it is impossible to roam around Iraq or Afghanistan without extreme danger. This research paper is an effort to find out various twists of embedded journalism and its recent approaches.

Embedded journalism started during the Gulf War. News channels were unable to flash news coverage of the war zone. Media persons instructed to travel with military units. Media was only in the role of observer as a deep and dump as all the command regarding publications of war zone events were in the hand of military units. Embedded with the military developed certain rules for embedded journalists. In due course of time it had been observed that only controlled media coverage was resulted and the result was totally unexpected. It was also observed that the nature and amount of news which was reaching near the target audience was inefficient, incomplete and unsatisfactory. We can also say that it was totally distorted in nature. The course of the war is now a day used to play by big powers. In a multi polar world every nation is concerned about its image in world forum. In case of invasion and planned interference in the geopolitics of other nations embedded journalism is comprehensive tool. "Embedded journalism began during the Persian Gulf War. Journalists and media outlets were frustrated by their inability to provide news coverage of the conflict; they were often forced to cover events long after they were concluded. Some journalists asked to travel with military units and were granted permission to do so, although most of the resulting coverage had to be approved by the military before reaching the public to protect military assets and tactics. Thus, a very controlled media coverage was attained, but the results were unsatisfactory.

Embedded Journalism provides controlled media coverage It has been also observed that the nature and amount of news which was reaching near the target audience was inefficient, incomplete and unsatisfactory. We can also say that it was totally distorted in nature. This idealistic profession is mainly based on certain journalistic values and philosophy and this new form of journalism is very dangerous for the profession as it provides only one sided story. In few cases, we can trust and treat some coverage as fair but in most of the cases it is monopolized and distorted. In embedded reporting life of a journalist is always in a risk. Media persons are bound to cover stories under military umbrella and this puts their life at risk on daily basis. When the life will be in a threat then there are

chances of loss of objectivity, loss of ethics, loss of values, loss of philosophies and loss of journalistic ideology.

#### Check your progress

1. What is Embedded Journalism?
2. What are its basic features of Embedded Journalism?

### 1.7 Paratute Reporting

Parachute journalism refers to *the practice of briefly dispatching journalists to cover a news story far from their home base*. For example, this might involve sending a journalist who regularly works out of New York into Venezuela to cover a political uprising, and then extracting them back to New York in a few days' time.

Parachute journalism has gained more attention as traditional news media have cut their budgets for international news, and consequently the number of full-time foreign correspondents and foreign news bureaus, due to economic constraints. Parachuting journalists in typically entails far lower costs as it does not require the outlet to pay for a permanent office, support staff, an apartment, and allowances for spouses and children. Instead, parachute journalists may simply be based at a journalistic outlet's headquarters or, as is often the case for television broadcasters, near transportation hubs like Atlanta, Dubai, Paris, and Tokyo.

Parachute journalism is often used pejoratively in connection to a broader critique of foreign correspondence that highlights its emphasis on sensational stories of coups and natural disasters that are lacking in context and deeper understanding. However, parachute journalism can be leveraged in positive ways.

#### Critiques of Parachute Journalism

Critics of parachute journalism contend that journalists who parachute into foreign news sites often lack a fundamental understanding of the culture and history of those places. Moreover, they often have a limited grasp of both the language skills and social customs of the places they cover, which forces them to rely extensively on intermediaries like translators and 'fixers.' Sometimes, the journalists parachuting in may have little experience working abroad. Finally, such journalists are typically not given the opportunity to stick around long enough to acquire the necessary background to deeply report out a story, or to follow up on its consequences.

The broader implication of this is that *parachute journalism can result in shallow stories that focus on episodes rather than themes*. Put another way, it can result in decontextualized coverage that is driven more by incidents than by a broader trend. In addition to an increased likelihood for making journalistic errors, critics also contend that parachute journalism can promote stereotypical and ethnocentric versions of events that present international affairs as ‘exotic’ things, promote ‘otherness,’ or focuses on clashes of cultures and an ‘us’ versus ‘them’ framework. Furthermore, the journalists’ lack of cultural understanding can result in the omission of nuance and important contradictions. Lastly, parachute journalists may feel less pressure to consider the impact of their reporting or to correct their mistakes, as they will typically quickly move on to another place after they have finished their reporting assignment.

These critiques are not just philosophical in nature. Scholars have found that parachute journalists tend to rely more on government sources and social elites since they are more readily available and such journalists have not had the time to establish a more diverse sourcing network. The consequence is that such accounts tend to reflect the perspectives of those in power — and, in some instances, result in the recirculation of propaganda. Moreover, scholars have found that stories by parachute journalists tend to offer less context and are more likely to mischaracterize events and misreport details while disproportionately making use of shallower, conflict-oriented news frames.

### Value of Parachute Journalism

However, parachute journalism also offers some benefits. The chief benefit is that it at least allows for *some* form of eyewitness journalism by professional journalists during a time of cutbacks to full-time, bureau-based foreign correspondents and to international news coverage more broadly.

For example, journalistic outlets in small and mid-sized markets can no longer afford to spend a quarter of a million dollars per year permanently stationing a foreign correspondent abroad. However, they can afford to fly a reporter (and production team, in the case of television) abroad to report on a few stories that are significant to their community but might not receive adequate coverage from global news agencies. This might include, as one example, a health program that a local community church is organizing abroad in response to a humanitarian crisis. While such stories may come with some shortcomings, they at least increase coverage where there might have been none. (That said, sometimes no news coverage is often better than poor news coverage.)

Moreover, while parachute journalism is typically associated with general assignment reporters — that is, reporters who do not specialize in a particular beat or topic — it can involve parachuting in subject experts. For example, a journalistic outlet may have a dedicated energy reporter or an environmental reporter who would be better able to cover the impacts of a nuclear power plant meltdown than the bureau-based correspondent assigned to that region. Similarly, an art critic may be able to offer greater depth in covering a new fashion trend in Mozambique than the bureau-based regional correspondent more used to covering politics.

Critics of traditional foreign correspondence have also argued that international journalism has always involved some form of parachuting. Indeed, a country like France has a number of local cultures, yet correspondents parachuting in to a small town from Paris may have little understanding of that town's culture. Moreover, many outlets have a single bureau and correspondent to cover regions made up of many countries, each with a different history and set of customs — such as by using Jerusalem as a hub for covering the Middle East. Put another way, those critics contend that some form of parachute journalism is inevitable even under good circumstances, and that it is therefore just part of international journalism.

Ultimately, parachute journalism has become a significant and growing aspect of international journalism. While the practice has evolved largely as a response to financial constraints, it has not fully substituted the value of full-time, bureau-based foreign correspondents that at minimum tend to have deeper understanding of the regions they cover. Nevertheless, amid those constraints, it does offer some coverage where there otherwise would be none.

### Key points

- Parachute journalism refers to the practice of briefly dispatching journalists to cover a news story far from their home base.
- Parachute journalism has been critiqued for producing shallower stories that focus on episodes and for being more likely to stereotype other countries and peoples. Scholars have also found that stories written by parachute journalists tend to rely more on official sources of information.
- In light of financial constraints, parachute journalism has served as something of a replacement for a dwindling corp of full-time, bureau-based foreign correspondents. This allows for at least some news coverage where there otherwise might be none.

### **1.8 Summing it up:**

IHL, conflict reporting and Embedded reporting are some of the terms often used in the conflict situation. As the world has lots of conflicts now a days, we need to be well informed about the various provisions on this situations to report every situations correctly and in effective way.

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### **1.9 Suggested readings:**

**1. [http://ijariie.com/AdminUploadPdf/%E2%80%98Embedded\\_Journalism\\_in\\_21st\\_Century\\_\\_\\_Torsion\\_and\\_Distortion\\_of\\_War\\_News%E2%80%99\\_ijariie3899.pdf](http://ijariie.com/AdminUploadPdf/%E2%80%98Embedded_Journalism_in_21st_Century___Torsion_and_Distortion_of_War_News%E2%80%99_ijariie3899.pdf)**