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Master of
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Paper XI
Media, Laws and Ethics

Contents :

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Unit 1
Constitution and The Media

Contents :

1.1 Introduction :

This is the first unit of the course on 'Media, Laws and Ethics'. In this unit, we will introduce you to the provisions in the Constitution of India that relate to the media and its functions as an integral part of the democratic structure.

Here, we will discuss the important provisions of the Constitution and also some of the important judgments by the Supreme Court that helped shape the extent and the scope of the freedom of the press in India. We will also discuss a few instances where the freedom of the press was restricted in the specific context of the national emergency between June 25, 1975 and March 21, 1977.

emergency between June 25, 1975 and March 21, 1977. After a thorough study of this unit, you will have developed an adequate understanding of the status of the media in India as found in the Indian constitution. This understanding is indeed very important for you as an aspiring media professional. A clear idea of the Constitutional guarantees in terms of the freedom of the press and also the reasonable restrictions are necessary in the day-to-day work of a journalist at all levels in the media organisation.

Moreover, a thorough knowledge of the Constitutional provisions is important to understand the other legal aspects such as the Indian Penal Code, the Law of Contempt and many such laws that impact the day-to-day functioning of the media organisations and the working journalists. These will be dealt with in the next unit of this course.

We hope that this unit will open up the constitution, its provisions relating to the media and enable you to see things in a new perspective. We will start with by listing out the various provisions in the Constitution that have a bearing on the life of a professional journalist.Kr.Goswami

1.2 Objectives

After going through this unit you should be able to

- *define* the status of the media in the constitutional scheme
- *identify* the Rights of the media and professional journalists
- *have* a clear idea about the reasonable restrictions placed on the media by the Constitution
- *discuss* the relationship between the Fundamental Rights and the Directive Principles of State Policy and its impact on the rights and the duties of the media persons
- *have* an overview of the history of the struggle for freedom of the press

1.3 Constitutional Provisions :

The significance of the constitution is that all laws, covering all other walks of life, are governed by its provisions. With the adoption of the Constitution on November 26, 1949, it became necessary that any law, enacted by Parliament of the Union or the Legislative Assembly of a State, is consistent with the provisions of the Constitution. And in case of those laws that existed even before the adoption of the Constitution, they shall remain as statutes only if it confirmed to the provisions of the Constitution. And, if some of the provisions did not conform to the Constitution, it was necessary that those sections were either deleted or amended suitably to conform to the Constitution.

In other words, the rule of the law, as established in India after independence is based entirely on the Constitution and its various provisions. The Constitution, divided into 22 parts and 12 Schedules, contains in its own description, the procedure for law making, distribution of powers between the union and the states, the balance of power between the legislature, executive and the judiciary and above all the procedure to make amendments to the Constitution itself. And in the 60 years of existence, the Constitution has also undergone significant amendments. It has also been established, with reasonable clarity, that there are some parts of the Constitution that can be amended in as extensive manner as the situation warrants, while there are some other aspects constituting the basic structure of the Constitution that cannot be amended at any cost.

In short, one can say that the Constitution is the source of all the laws and the powers that determine the day-to-day functioning of our society. And that is true of the media and the freedom of the media. Keeping this in mind, let us now look at some of the salient features of the Constitution and the provisions that impact the functioning of the media.

1.3.1 Fundamental Rights :

Fundamental Rights are listed in Part III of the Constitution. Articles 12 to 35 that form this part are distinguished from all other provisions of the Constitution in that the Fundamental Rights guaranteed to every citizen of the country are enforceable rights. In other words, a citizen of India can approach the higher judiciary (High Court or the Supreme Court) seeking a writ, whenever his/her rights are violated.

It will be appropriate in this context to cite Article 13 (2) of the Constitution before we proceed further with this discussion. It reads as follows: "The State shall not make any law, which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void".

As far as the media is concerned, the most relevant provision, from among the fundamental rights, is Article 19(1) (a). It says: *"All citizens shall have the right to freedom of speech and expression"*. The important point is that though Article 19(1)(a) of the Constitution does not specifically relate to the media as such and is a guarantee to all citizens of India, the Supreme Court has intervened in this regard to give a specific interpretation to the effect that Article 19(1)(a) can be made relevant directly to the freedom of the press. In a landmark case (Indian Express Newspapers vs Union of India), the Supreme Court made a specific reference to Article 19(1)(a) of the Constitution and said:

"The expression `freedom of the press' has not been used in Article 19 of the Constitution but it is comprehended within Article 19(1) (a). This expression means freedom from interference from authority which would have the effect of interference with the content and circulation of newspapers.

There cannot be any interference with that freedom in the name of public interest. The purpose of the press is to advance the public interest by publishing facts and pinions without

which a democratic electorate cannot make responsible judgments. Freedom of the press is the heart of social and political intercourse. It is the primary duty of the courts to uphold the freedom of the press and invalidate all laws or administrative actions which interfere with it contrary to the constitutional mandate".

This, along with subsequent judgments has ensured that the media in India is protected with constitutional guarantees and any attempt to interfere with its functioning is seen as an infringement of the fundamental right to freedom of speech and expression.

1.3.2 Directive Principles of State Policy :

Part IV of the Constitution, consisting of Articles 36 to 51, constitutes the Directive Principles of State Policy. Unlike the Fundamental Rights, the Directive Principles of State Policy are not enforceable by any court. However, the principles laid down in this part are meant to be the basic premises on which the laws are to be formulated and governance is to be carried out. It can be argued that these principles are not merely relevant to the Government but have set the broad framework within which the media should function. The principles in this part, which are based on the broad framework within which the nation should be built, also establish the responsibility of the media, while formulating the framework of its own content.

Of particular significance in this regard are Articles 38 and 39 of the Constitution. It will be appropriate to cite those two provisions here:

Article 38 of the Constitution states the following two points :

(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

And Article 39 of the Constitution states as follows :

The State shall, in particular, direct its policy towards securing-

(a) That the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) That the ownership and control of the material resources of the community are so distributed as best to serve the common good;

(c) That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) That there is equal pay for equal work for both men and women;

(e) That the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength

(f) That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

It is necessary that the media professionals, at all levels, internalise these aspects in the course of reporting the news so that the role of the media in the nation building process is carried out in perfect harmony within the mandate of the Constitution. In other words, the freedom of the press, as guaranteed by Article 19(1)(a), as we have

media takes up the responsibility to ensure that the principles laid out in the Directive Principles of State Policy are put in place. This perhaps makes media the watchdog of the democratic constitution. And more particularly, the provisions contained in the Directive Principles of State Policy are not enforceable by the courts and hence, the burden is upon the media to ensure that they are realised.

1.3.3 Emergency Provisions and The Media :

We have seen, in the previous sections that the media in India is enjoined with the right to free expression as guaranteed by Article 19(1)(a) of the Constitution. This right, being a part of the Fundamental Right guaranteed by the Constitution, cannot be taken away under the normal circumstances and it is the duty of the state – the Executive in particular – to ensure that the right is protected. In the event of an infringement of this right, the affected person can go to the court and seek a writ. There is, however, a provision in the Constitution itself that allows for curtailment of this right as well as some others guaranteed by the Constitution as Fundamental Rights.

Article 358 of the Constitution, for instance, states very specifically that

(1) While a Proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression is in operation, nothing in Article 19 shall restrict the power of the State as defined in Part III to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take, but any law so made shall, to the extent of the incompetency, cease to have effect as soon as the Proclamation ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect.

In the legal context, the meaning of Article 358 is that it guarantees against any law being enacted by the Parliament or the Legislature of a State or against an Ordinance that restricts the freedom of the citizen's right to express (as guaranteed by Article 19(1)(a) of the Constitution) will not apply in a situation when a national emergency is declared. It may also be noted that the Constitution provides for the declaration of a national emergency through Article 352. And this happened in India between June 25, 1975 and March 21, 1977.

The point is that with the proclamation of an emergency, the operation of Article 19(1)(a) is suspended and the media too can be gagged by way of imposing restrictions including pre-publication censorship:

It is important to note here that the imposition of an emergency can have a definite impact on the functioning of the media. Among them, the most important is available in the constitution itself. **Article 359**, for instance, provides for the suspension of the enforcement of the rights conferred by Part III of the Constitution during emergencies. It reads as follows:

(1) Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of the rights conferred by Part III (except articles 20 and 21) as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order.

(1A) While an order made under clause (1) mentioning any of the rights conferred by Part III (except articles 20 and 21)] is in operation, nothing in that Part conferring those rights shall restrict the power of the State as defined in the said Part to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take, but any law so made shall, to the extent of the incompetency, cease to have effect as soon as the order

aforesaid ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect:

1.3.4 Legislative/Parliamentary Privilege and The Media :

The Constitution, by way of **Article 361A** protects the right to publish reports on the proceedings of Parliament and State Legislatures. This protection, in fact, is perhaps the only instance where the Constitution recognizes, in a direct manner, the existence and the right of the media and specifies that in so many words. We have seen, in the earlier sections, that Article 19(1)(a) of the Constitution is a provision that guarantees freedom of expression to all the citizens and is not specific to the media; we have also seen that the scope of its application to the media was evolved by way of judgments by the higher judiciary. Article 361A, meanwhile, relates itself specifically to the media and its right to report the proceedings of Parliament and the State Legislative assemblies.

Section (1) of Article 361A is to the point. It says:

(1) No person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State, unless the publication is proved to have been made with malice:

It is important to note here that the Constitutional provision is not a blanket authority to the journalist by which they can write anything and everything about the Parliament or the Legislative assemblies. The Constitution restricts the rights in very clear terms that any report of the happenings in Parliament or assemblies shall not be with malicious intention. In other words, reports on the happenings on the floor of the house will have to be:

(a) a faithful account of the proceedings

(b) without malice

(c) shall not contain, in any manner, portions that the speaker had ordered to be expunged from the records
(d) shall not cast aspersions on the members or their character

And if a reporter is found to have done any of these, the law allows the Parliament or the concerned Legislative Assembly to charge the reporter of breach of the code, conduct a trial and impose punishment including imprisonment, fine or both. The most important fact is that these are within the powers of the Legislature and do not have to be sent to the judiciary.

Apart from this, Article 361A of the Constitution also prohibits publication of reports of the proceedings of a secret sitting of either House of the Parliament or the Legislative Assembly or the Legislative Council. The protection under Article 361A also extends to reports or matters broadcasted by means of wireless telegraphy and the proceedings in Parliament and State Legislative assemblies broadcasted on radio and TV channels.

1.3.5 Procedure for Amending the Constitution :

One of the salient features of our Constitution is that it delineates, in an elaborate manner, the procedure involved in making changes to the Constitution. While this is laid out in Article 368 of the Constitution, it is also important to note here that Article 13(2) lays down the extent to which the Constitution and its provisions are important in terns of the extent to which Parliament and the Legislative Assembly of the various States can go about making laws. Let us look at Article 13 (2) first.

This article, we may note, belongs to Part III of the Constitution and hence any violation of this can be taken up before the High Court or the Supreme Court as part of the Writ jurisdiction. Article 13(2) says:

"The State shall not make any law, which takes away or abridges the rights conferred by this Part and any law made

in contravention of this clause shall, to the extent of the contravention, be void."

This provision formed the basis of a number of cases that were taken to the Supreme Court over a period of time and it is now settled that any law, enacted by Parliament or a State Legislative Assembly, will have to be in conformity with the rights guaranteed in Part III of the Constitution (Fundamental Rights) to remain as law. It is also a settled matter now that the Constitution is the highest authority to declare whether the law conforms to the Constitution. It is also a settled law that Article 13(2) applies only to laws enacted and does not pertain to amendments to the Constitution itself. This was laid out by the Supreme Court in several cases and clinched in the famous Kesavananda Bharati case.

This case, in fact, settled the law insofar as Article 368 was concerned. Let us now look at what Article 368 is. It is titled Power of Parliament to amend the Constitution and procedure thereof.

Clause 1 of the Article states: Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power, amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.

Before we go to look at the procedure laid out for amendment of the Constitution, it is pertinent to look at some of the other clauses that clarify the extent to which the amendments can go.

Clause 3, for instance states: "Nothing in article 13 shall apply to any amendment made under this article."

This provision, in fact, was inserted by way of the Constitution's 24th amendment act of 1971, and was upheld by the Supreme Court in the Keshavananda Bharathi case. In this case, the apex court laid down that the amendments

to the Constitution will have to conform to the Basic Structure of the Constitution. The apex court also held that Constitutional amendments will be liable for scrutiny by the apex court and that any amendment that destroyed the Basic Structure will be declared ultra vires of the Constitution and hence void.

This law was sought to be changed by way of the Constitution 42nd amendment of 1976 by which two more insertions were made in Article 368.

Clause 4 that said: "No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article shall be called in question in any court on any ground; and Clause 5 that said: "For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article";

These two insertions, however, were struck down as ultra vires of the Constitution in the Minerwa Mills case (1980) when the Supreme Court clearly laid out that any amendment that tinkered with the Basic Structure of the Constitution will be declared void. This remains the settled law till date.

We shall now see the procedure laid out by the Constitution for its own amendment. And it is elaborate, detailing different parameters to different parts of the Constitution. All this are provided for in Clause 2 of Article 368.

It says: "An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of the Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it, shall be presented to the President who shall give his

consent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that if such amendment seeks to make any change in-

(a) Article 54, article 55, article 73, article 162 or article 241, or

(b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or

(c) Any of the Lists in the Seventh Schedule, or

(d) The representation of States in Parliament, or

(e) The provisions of this article, the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

1.3.6 Press Freedom in India – A Historical Overview :

The idea of a free press, in fact, gained currency even before independence. As we saw in the earlier parts of this unit, the giants who led the struggle for independence were as much focused on the importance of freedom of expression as much as they were with the ideal of securing a free India. The struggle against restrictions on the press reached its peak in the manner in which Lokmanya Tilak and Mahatma Gandhi defended their acts against the British rule. However, the formal expression of this came in the resolution of the Indian National Congress at its Karachi session wherein freedom or Swaraj was defined to mean the end the exploitation of the masses and that political freedom must include real economic freedom of the starving millions. The resolution also underlined the need for guaranteeing free speech, free assembly, freedom of association, equality before the law irrespective of caste, creed or sex, universal adult franchise, free and

compulsory primary education. It is important that we trace the origins of Article 19 of the Constitution to this legacy.

So much so, in free India, this Constitutional guarantee was interpreted in a way by the courts to widen its scope to distinctly include the freedom of the press and its importance to the idea of a democratic republic. In the sixty-two years after freedom, independent India has made giant strides insofar as establishing a free media is concerned. The most important fact is that this freedom and its scope have been expanded in a manner and keeping with the need for a free press to harness the gains of technological, scientific and economic freedom for the benefit of the masses. The idea of a free press, which was commended as the most important factor in the cause of a democratic polity by Nobel laureate Amartya Sen, has developed considerably in India. The evidence of this is in the fact that the political regime is rendered accountable and forced to address to crisis such as mass starvation and deprivation caused by man-made and natural disasters in the past few decades.

The press in India has had a glorious record for having exposed instances of corruption at high levels and also of administrative high handedness including acts of human rights violations by the state forces in many parts of the country. All this have been possible only because of the presence of certain set of Constitutional guarantees and also a conscientious press corps across thee country.

1.4 let us Sum up :

- The Constitution is the source of all the laws and the powers that determine the day-to- day functioning of our society. And that is true of the media and the freedom of the media. Keeping this in mind, let us now look at some of the salient features of the Constitution and the provisions that impact the functioning of the media.

- Fundamental Rights are listed in Part III of the Constitution. Articles 12 to 35 that form this part are distinguished from all other provisions of the Constitution in that the Fundamental Rights guaranteed to every citizen of the country are enforceable rights.
- Among these, Article 13 (2) of the Constitution lays down against any law which takes away or abridges any of the Fundamental Rights.
- As far as the media is concerned, the most relevant provision, from among the fundamental rights, is Article 19(1)(a) which guarantees to all the right to freedom of speech and expression.
- Though Article 19(1)(a) of the Constitution does not specifically relate to the media as such and is a guarantee to all citizens of India, the Supreme Court has intervened in this regard to give a specific interpretation to the effect that Article 19(1)(a) can be made relevant directly to the freedom of the press (Indian Express Newspapers vs Union of India) by the Supreme Court.
- This, along with subsequent judgments has ensured that the media in India is protected with constitutional guarantees and any attempt to interfere with its functioning is seen as an infringement of the fundamental right to freedom of speech and expression.
- Part IV of the Constitution, consisting of Articles 36 to 51, constitutes the Directive Principles of State Policy. Unlike the Fundamental Rights, the Directive Principles of State Policy are not enforceable by any court.
- However, the Directive Principles are meant to be the basic premises on which the laws are to be formulated and governance carried out. These principles are not merely relevant to the Government but also set the broad framework within which the media should function..

- Of particular significance in this regard are Articles 38 and 39 of the Constitution.
- Media professionals, at all levels, internalise these aspects in the course of reporting news so that the role of the media in the nation building process is carried out in perfect harmony with the mandate in the Constitution.
- Freedom of the press, as guaranteed by Article 19(1)(a), will be justified where the media takes up the responsibility to ensure that the principles laid out in the Directive Principles of State Policy are put in place.
- This makes the media as the watchdog of the democratic constitution.
- The Constitutional guarantees of such freedom, however, can be curtailed under the specific situations of a national emergency. Article 358 of the Constitution provides for this. By this, the guarantees under Article 19(1)(a) of the Constitution will not apply in a situation when a national emergency is declared.
- This happened in India between June 25, 1975 and March 21, 1977 when the media was gagged by way of imposing restrictions including pre-publication censorship: The imposition of an emergency has other implications for the media. Among them, the most important is provided for by Article 359; it provides for the suspension of the enforcement of the fundamental rights during emergencies. The Constitution, by way of **Article 361A** protects the right to publish reports on the proceedings of Parliament and State Legislatures.
- This, however, is not a blanket authority to the journalist to write anything and everything about Parliament or the Legislative assemblies. Such reports shall not be with malicious intention.
- In the event where a reporter is found to have done any of these, the law provides for the Parliament or the concerned Legislative Assembly to charge the

reporter of breach of the code, conduct a trial and impose punishment including imprisonment, fine or both.

- Article 361A of the Constitution also prohibits publication of reports, telecast or broadcast of the proceedings of a secret sitting of either House of Parliament or the Legislative Assembly or the Legislative Council.
- The Constitution itself delineates, in an elaborate manner, the procedure involved in making changes to the Constitution. Article 368 and 13(2) govern this.
- Article 13 (2) belongs to Part III of the Constitution and hence any violation of this can be taken up before the High Court or the Supreme Court as part of the Writ jurisdiction.
- This provision formed the basis of a number of cases that were taken to the Supreme Court over a period of time and it is now a settled law that any law, enacted by Parliament or a State Legislative Assembly, will have to be in conformity with the rights guaranteed in Part III of the Constitution (Fundamental Rights) to remain as law.
- The scope of Article 368 too has been set by the Supreme Court in the Keshavananda Bharathi case. In this case, the apex court laid down that amendments to the Constitution will have to confirm to the Basic Structure of the Constitution and that these will be liable for scrutiny by the apex court and that any amendment that destroyed the Basic Structure will be declared ultra vires of the Constitution.
- The procedure laid out by the Constitution for its own amendment is elaborate and this is different for different set of Constitutional provisions and all these are elaborately laid down in Article 368 of the Constitution.

1.5 Sample Questions :

1. Write a note on the freedom of press in the Pre Independence period.
2. What are the Fundamental Rights in Indian Constitution? Discuss the Freedom of Speech and Expression in relation to media.
3. Discuss the role of media on proper implementation of Directive principles in your state.
4. Write briefly about the parliamentary reporting in Assam press.
5. Critically examine the role and duty of media during Emergency period.

1.6 References/Suggested Readings

- The Constitution of India – P.M.Bakshi, *(Universal Law Publishing Company)*
- Shorter Constitution of India – Durga Das Basu, *(Wadhwa, Nagpur)*
- Mass Media Laws and Regulations in India – Venkat Iyer *(Published by Asian Media Information and Comunication Centre)*

Unit 2
Media Laws

Contents :

2.1 Introduction :

The origins or the roots of the laws relating to the media in India can be found in the context of the colonial rule and the struggle for freedom. Beginning with the Press

Regulations promulgated by Lord Wellesley's regime in 1799, the British rulers in India came up with a host of laws and orders in this area. The 1799, regulations imposed restrictions on the media in terms of the news published in them in the name of "prior restraint". However, these were in the nature of regulations and there was no specific prescription as to punishments in the event of violations. The press in India, by and large, was left free and without any regulations until 1857. The First War of Independence, however, changed the situation and the British rulers began to perceive the press as having played a role in spreading discontent and anti-British feelings that resulted in the upsurge in 1857.

On June 13, 1857, the British rulers passed a law by which it was necessary for those who ran a printing press to obtain a license. This enabled the authorities to control the activities of the press and even prohibit the printing, circulation and sale of newspapers that contained stories that were considered harmful for the rulers. The act, however, did not last for too long. The British authorities allowed it to die within a year. The validity of the Act expired within a year and the authorities allowed it to lapse after June 12, 1858.

The first ever legislation, so to say, insofar as the working of the media is concerned, was the Press and Registration of Books enacted in 1867. We shall look into that now.

2.2 Objectives :

After going through this unit, you will be able to

- *familiarize* yourself with the various laws and the specific provisions
- *discuss* the relevance of such provisions
- *discuss* how the legal restrictions can be maintained

2.3 Press and Registration of Books Act 1867 :

Enacted in 1867, the Press and Registration of Books Act, survives even to this day. It will be correct to say that this was the first ever legislation that put a system of registration of newspapers in place. The Act enabled the setting up of the office of the Registrar of Newspapers in India and made it compulsory for anyone who ran a newspaper or any such activities to register themselves with the Registrar. It also made it mandatory that such particulars as the name and address of those who owned the business, the name of the Editor of the newspaper/ publication and such particulars as to the place from which they are printed and published are declared in the publication itself. The Act, as it stands today, also requires the publications to identify its Editor who will be responsible for all the matter printed and published in the newspaper/magazine from the legal point of view. We will see this printed in one corner of the newspaper/ magazine and it is according to the provisions of the Press and Registration of Books Act, 1867. Although the Act has undergone several amendments in the several years after its enactment, it may be stressed that the basic feature of the Act remains what it was at the time of its enactment in 1867.

2.4 Indian Penal Code Provisions :

The Indian Penal Code, 1860, that specifies the various acts of crime and prescribes the punishment for such acts is as much applicable to the media and the media professionals as it is to the people in general. In this section, we shall look into some of the provisions of the code that are specifically relevant to the working of the press and thus have a bearing on the working condition of the journalist.

2.4.1 Sedition :

The most significant among the IPC's provisions is the law

on sedition. Interestingly, this provision, before it was incorporated into the IPC, came into existence as a separate law called the Law of Sedition in the year 1870, prohibiting incitement or attempts to incite disaffection against the Government by spoken or written words, signs, etc., and was incorporated into the Indian Penal Code subsequently in the form of Section 124 A.

The Section reads as follows: Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in 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.

It is important to note that the expression "disaffection" includes disloyalty and all feelings of enmity. However, comments expressing disapprobation of the measures of the attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section. Similarly, comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Interestingly, the punishment for offences under this law, until 1955, included prison terms of at least 18 months and even transportation for life or a shorter term. Lokmanya Bal Gangadhar Tilak was tried under this Section twice; in 1898 and 1906. In the second instance, Tilak was transported to Burma for a period of 6 years. Another important instance when this provision was used by the authorities was against Mahatma Gandhi in 1922. Gandhi was sentenced to 6 years imprisonment. While Tilak was accused of sedition for his articles in Kesri, a Marathi language newspaper, Gandhi was punished for his writings in Young India. It is important to note

here that the two leaders were charged of sedition for their writings that were, in fact, for freedom of the country.

2.4.2 Promoting Enmity between Different Groups :

Another important provision of the Indian Penal Code that is applicable to professional journalists with equal force is Section 153 A of the Code. This is a very clear provision that forbids expression that can create violence or such situations that are not conducive to the normal life of the society.

Section 153 A of the IPC prohibits an act by words, either spoken or written, or by signs or by visible representations or otherwise that promotes or attempts to promote, on grounds of religion, race, place or 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. The Section also prohibits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquility.

Those charged of any action under this section shall be punished with imprisonment which may extend to three years, or with fine, or with both.

2.4.3 Defamation :

The most important aspect, insofar as the law and the journalists' profession is concerned is defamation. The possibility of libel and being hauled for defamation is something that hangs like a sword over every working journalist's head. The law in this regard is the same as applicable to every citizen and is guided by Section 499 of

the Indian Penal Code. It lays down that whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes 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 expected, of defame that person.

A plain reading of this will lead us to know that in the case of defamation, the reporter, the editor, the printer and the publisher are liable to be hauled. In other words, where a reporter writes something that is defamatory, the responsibility is laid not only at the doors of him or her but the editor, the printer and the publisher of the newspaper.

A specific explanation to the law also lays down that to impute anything to a dead person, if the imputation would harm the reputation of that person if living, and is intended to be hurt the feelings of his family or other near relatives constitutes defamation and is punishable. In the same way, making an imputation concerning a company or an association or collection of persons as such is also treated as defamatory.

However, the law also lays down an acid test. It says: No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

There is another and in fact the most important exception under this law insofar as the journalist is concerned. It pertains to the public conduct of Public servants: It is not defamation to express, in a good faith, any opinion

whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Similarly, publication of reports of proceedings of courts is not defamation as long as the report published is a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings. This includes reporting on the merits of a case decided in Court or the conduct of witnesses and others concerned. It is not defamation to express, in good faith, any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

For example, if a reporter writes: "I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest". A is within this exception if he says this in good faith, inasmuch as the opinion which he express respects Z's character as it appears in Z's conduct as a witness, and no further. But then, where a reporter writes: "I do not believe what Z asserted at that trial because I know him to be a man without veracity" it is not covered by the exception and such a report is liable to action under the law of defamation.

Another important exception in this regard involves comments on the merits of public performance. It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance. For example, the author of a book, a person who makes a public speech, an actor or a singer cannot seek remedy under the law of defamation if a

reporter or a specialist writes a review of the book or the public programme in a newspaper.

Section 500 of the Indian Penal Code, meanwhile, specifies the extent of punishment for acts of violation under the defamation law. It lays down that whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Apart from this, there are provisions for civil claims for defamation where the affected person claims monetary compensation, by way of a specified amount, from the person who is charged of having defamed him/her. This, in real life, is a lengthy and time consuming process and is cumbersome as any other civil dispute.

Other provisions in the Indian Penal Code connected with defamation are:

Section 501 deals with printing or engraving any matter. Such an act, knowing or having good reason to believe that such matter is defamatory of any person, is punishable with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Section 502 deals with sale of such works that are dealt with under Section 501 and the punishment for such an offence is simple imprisonment for a term which may extend to two years, or with fine, or with both.

Section 505 deals with statements that can cause public mischief. Journalists will have to be concerned about this for reporting or carrying statements by men that can be construed as causing mischief is dealt with under this section of the Indian Penal Code. It says: Whoever makes, publishes or circulates any statement, rumour or report,

(a) With intent to cause, or which is likely to cause, any officer, soldier, in the Army, to mutiny or otherwise disregard or fail in his duty as such; or

(b) With intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or

(c) With intent to incite, or which is likely to incite, any class or community or persons to commit any offence against any other class or community; shall be punished with imprisonment which mayextend to three years, or with fine, or with both.

Similarly, whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

However, there is an important exception laid down to this section and it is important that working journalists keep this in mind whenever they come across such situations. It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report, has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it, in good faith and without any such intent as aforesaid.

2.4.4 Obscenity :

Section 292 of the Indian Penal Code deals with the

definition of obscenity and also the punishment to an offence committed under this section. It says that a printing, publishing and sale of a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, 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, is, if taken as a whole, 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.

The punishment (on first conviction is with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees).

The law, however, exempts from its operation

a. Any book, pamphlet, paper, writing, drawing, painting, representation or figure, 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 of learning or other objects of general concern or which is kept or used bona fide for religious purposes.

b. Any representation sculptured, engraved, painted or otherwise represented on or in any ancient monument or any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

2.5 Young Persons Harmful Publications Act, 1956 :

Enacted in 1956, this Act is intended to prevent the dissemination of certain publications harmful to children. Young persons include all those under the age of twenty.

Section 2 of the Act defines harmful publication as any book, magazine, pamphlet, leaflet, newspaper or other like publication which consists of stories told with the aid of pictures or without the aid of pictures or wholly in pictures, being stories portraying wholly or mainly-

(i) The commission of offences; or

(ii) Acts of violence or cruelty; or

(iii) Incidents of repulsive or horrible nature; in such 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.

The Act provides for the seizure and destruction of all the copies of such publications that are found to be harmful to the children and also to imprison those who print, publish and sell such publications. Like all laws in the criminal jurisprudence, this law is also implemented by the State Governments.

2.6 Official Secrets Act 1923 :

Another law that journalists must be aware of and always keep in mind while dealing with documents/official records is the Official Secrets Act, 1923. The object behind the legislation is to prevent spying and in defense of national interest.

Of relevance to us is Section 3(1)(c) of the Act. It says: Anyone who obtains, collects, records or publishes or communicates to any other person any secret official code or pass word, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly

relations with foreign States, he shall be punishable with imprisonment for a term which may extend between three years and a maximum of fourteen years.

It is also necessary to have Section 3(2) in mind in this context. It says: On a prosecution for an offence punishable under this section it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State. In other words, mere possession of such documents will be considered as the basis for prosecution.

The most important point to remember is that as journalists, we must be wary and careful about obtaining official records. It is important to impose upon ourselves a code of self restraint when it comes to obtaining documents instead of showing desperation for such papers and landing them in the hands of enemies of the nation. The Official Secrets Act, 1923, however, does not apply to documents gathered by resort to the Right to Information Act, 2005. We shall look into that in some detail in the following section.

2.7 Right to Information Act, 2005 :

Enacted in 2005, the Right to Information Act is indeed a great tool in the hands of a journalist as much as it is with any citizen. The Act specifically addresses to the need for transparency in governance and enables the citizen with the Right to Information on almost all aspects of public life. Even if it is true that there is nothing specific in the Act as for journalists, the fact is that it is an effective aid for a reporter to access news and publish them with authority. Of special significance in this context is Section

22 of the Act. It lays down 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. It is, thus possible, for a good journalist to make use of this Act to confirm something he or she had heard about the happenings in a Government department and put that out as news without having to be bothered by the Official Secrets Act.

There are, however, the following departments that are exempted under the RTI Act. The list, as provided in the Second Schedule to the RTI Act is exhaustive.

They are:

1. Intelligence Bureau
2. Research and Analysis Wing of the Cabinet Secretariat
3. Directorate of Revenue Intelligence
4. Central Economic Intelligence Bureau
5. Directorate of Enforcement
6. Narcotics Control Bureau
7. Aviation Research Centre
8. Special Frontier Force
9. Border Security Force
10. Central Reserve Police Force
11. Indo-Tibetan Border Police
12. Central Industrial Security Force
13. National Security Guards
14. Assam Rifles
15. Special Service Bureau
16. Special Branch (CID), Andaman and Nicobar
17. The Crime Branch - CID - CB, Dadra and Nagar Haveli
18. Special Branch, Lakshadweep Police

2.8 Contempt of Courts Act 1971 :

This is another important law that should be kept in mind always by a journalist. The law, as such, has two distinct aspects: Civil Contempt and Criminal Contempt. As journalists, one should be concerned of Criminal Contempt only. According to Section 2 (c) of the Act, criminal contempt means the publication (whether by words. spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which-

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court ; or
(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner ;

This aspect of the law may seem to infringe upon the liberty of free expression. But then, the argument is that such liberty is not to be conferred with a license to make unfounded, unwarranted and irresponsible aspersions against the judges or the courts in relation to judicial matters. The law helps ward off offensive, intimidatory or malicious attacks on the judges by way of wild allegations of corruption against the judges, imputing motives of corruption to the judicial officer/authority.

However, Section 3 of the Act exempts innocent publication and distribution of matter. A person shall not be guilty of contempt of court on the ground that he has published (whether by words spoken or written or by signs or by visible representations or otherwise) any matter which interferes or tends to interfere with, or obstructs or tends to obstruct, the course of justice in connection with any civil or criminal proceeding pending at the time of publication, if at that time he had no reasonable grounds

for believing that the proceeding was pending. Similarly, Section 4 of the Act exempts fair and accurate reporting of a proceeding in the court. In other words, it is safe to report a judicial proceeding, in a fair and honest manner and without attributing motives to the judge. Section 5 of the Act very clearly specifies a fair criticism of a judgment, as long as it does not attribute motives or slander the judge, does not amount to contempt. The bottom-line is that in a democracy fair criticism of the working of all the organs of State should be welcome and would in fact promote the interests of democratic functioning. It is also a settled law that in the case of issuance of mere notice of contempt, the right of hearing cannot be denied. Another important aspect of the law, particularly after it was amended in 2006, is that where the contemnor is able to prove the report hauled for contempt as true, it is a defense against the charge.

The important point is that the press reporter and the publisher of newspapers do not have any indefensible right to put his own gloss on the statements in court by selecting stray passages out of context which might have a tendency to convey to the reader to the prejudice of a party to the proceedings a cause different from what would appear when the statement is read in its own context.

2.9 Working Journalists' and other Newspaper Employees (Conditions of Services & Miscellaneous Provisions) Act 1955 :

This piece of legislation is indeed unique in the sense that it is an instance where the Government intends regulating the wages and the working conditions of employees in the newspaper industry. It is unique because the Government regulation of working condition and wages of an industry, which is owned and operated by private sector players, rather than leaving all that to be settled by way of bilateral negotiations between the journalists and the employers is by all means a special arrangement

and it reflects the unique or even the special status that the profession of journalism enjoys in the system that we live in.

Enacted in December 1955, the Act places journalists and others employed in the media industry at the same plane as a workman as defined in the Industrial Disputes Act, 1947. Thus, journalists are entitled to have their trade union, compensation in the event of retrenchment and closure of newspapers as is the case with factory workers and such other rights such as Provident Fund, Gratuity and other statutory rights as enjoyed by workmen under the Industrial Disputes Act. The Working Journalists Act also makes other specific provisions.

Section 6(1) of the Act, for instance, lays down that no working journalist shall be required or allowed to work in any newspaper establishment for more than one hundred and forty-four hours during any period of four consecutive weeks, exclusive of the time for meals. In other words, the average working hours of a journalist shall not exceed 6 hours a day. While this is invariably applied strictly in the case of sub-editors and other such positions in newspaper offices, the reporter's job being of a different nature, there is no way that it can be fixed at 6 hours a day! Similarly, Section 6(2) of the Act provides for a days off in a week.

Section 7 of the Act deals with leave entitled for journalists. In addition to casual leave, which will be up to 15 days in a year and the local holidays, every working journalist is entitled to—

(a) earned leave on full wages for not less than one eleventh of the period spent on duty ;

(b) leave on medical certificate on one-half of the wages for not less than one-eighteenth of the period of service.

The most important provision of the Working Journalists Act is Section 8 dealing with the fixation or revision of rates of wages of journalists and others working in a newspaper establishment. It lays down that the Central Government may, in the manner hereinafter provided –

(a) fix rates of wages in respect of working journalist ;

(b) revise, from time to time, at such intervals as it may think fit, the rates of wages fixed of working journalists and other employees in the newspapers. And Section 9 of the Act lays down the procedure for fixing and revising rates of wages. It says: For the purpose of fixing or revising rates of wages in respect of working journalists under this Act, the Central Government shall, as and when necessary, constitute a Wage Board which shall consist of –

(a) two persons representing employers in relation to newspaper establishments ;

(b) two persons representing working journalists ;

(c) three independent persons, one of whom shall be a person who is or has been a Judge of High Court or the Supreme Court and who shall be appointed by that Government as the Chairman thereof.

The Act also lays down that on receipt of the recommendations of the Board, the Central Government shall make an order in terms of the recommendations or subject to such modifications and such an order shall come into operation on the date of publication or on such date, whether prospectively or retrospectively, as may be specified in the order. In that event, every working journalist shall be entitled to be paid by his employer wages in the rate which shall, in no case, be less than the rate of wages specified in the order.

Having said this, it is also important to note here that all these are applicable only in cases of journalists who are appointed on regular terms. The system of contractual employment, now very popular in the media industry,

makes the application of most provisions of the Working Journalists Act redundant and even obsolete.

2.10 Let us Sum up :

- In addition to the various provisions of the law discussed in detail above, there are such other legal provisions such as the Cinematography Act 1953, the Prasar Bharati (Broadcasting Corporation of India) Act, 1990, the Copyright Act, 1957 and the Cable Television Network (Regulations) Act, 1995 that regulate, in some ways the media industry in a way. These laws, however, are of relevance to those owning and managing media houses more than to working journalists. The laws that affect those in the profession of journalism have been discussed in detail as such.
- The Press and Registration of Books Act, 1867 is in vogue even today. Even after several amendments in the subsequent years after its enactment, the basic feature of the Act remains what it was at the time of its enactment in 1867.
- The Indian Penal Code, 1860, that specifies the various acts of crime and prescribes the punishment for such acts is as much applicable to the media and the media professionals as it is to the people in general. Among the various aspects of this code, there are portions such as that dealing with sedition, causing enmity between groups of people, defamation and obscenity that have a direct bearing on the journalist.
- The Official Secrets Act, 1923 is another law that journalists must be aware of and always keep in mind while dealing with documents/official records. The object behind the legislation is to prevent spying and in defense of national interest.
- The most important point to remember is that as journalists, we must be wary and careful about obtaining official records. It is important to impose upon ourselves a code of self restraint when it comes to

obtaining documents instead of showing desperation for such papers and landing them in the hands of enemies of the nation.

- The Official Secrets Act, 1923, however, does not apply to documents gathered by resort to the Right to Information Act, 2005.
- The Right to Information Act, 2005 is indeed a great tool in the hands of a journalist as much as it is with any citizen. It lays down that the provisions of this Act which 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. It is, thus possible, for a good journalist to make use of this Act to confirm something he or she had heard about the happenings in a Government department and put that out as news without having to be bothered by the Official Secrets Act.
- There are, however, the following departments that are exempted under the RTI Act. The list, as provided in the Second Schedule to the RTI Act is exhaustive.
- The Contempt of Court Law is an important piece of legislation that must be remembered by the journalist. The law, as such, has two distinct aspects: Civil Contempt and Criminal Contempt. As journalists, one should be concerned of Criminal Contempt only. Faithful and honest reporting of judicial processes and criticism without attributing motives to the judges are not liable for contempt.
- The Working Journalists' and other Newspaper Employees (Conditions of Services & Miscellaneous provisions) Act 1955 is a unique piece of legislation that protects and regulates the employment, wages and other working condition of journalists and other employees in the newspapers. It accords to the journalist the status and protection of a workman under the Industrial Disputes Act, 1947.

- The provisions of this Act, however, are applicable only in cases of journalists who are appointed on regular terms. The system of contractual employment, now very popular in the media industry, makes the application of most provisions of the Working Journalists Act redundant and even obsolete.

2.11 Sample Questions :

1. Write a note on the importance and implementation of Press and Registration of Books Act in India.
2. Critically examine the effectiveness of the RTI Act in your state. Also give some examples.
3. Discuss the Official Secrets Act and its importance in the reporting.
4. "Most of the small and medium media houses in India do not follow the Working Journalist's and other Newspaper Employees Act 1955". Do you agree? Justify your comment.
5. "Defamation cases are common in Indian media context." Please put your views. How can it be minimized?

2.12 References/Suggested Readings :

1. Ratanlal & Dhirajlal, The Indian Penal Code, Wadhwa & Company, Nagpur.
2. Press and Registration of Books Act 1867, Universal Law Publishing Company, Delhi.
3. Young Persons Harmful Publications Act, 1956, Universal Law Publishing Company, Delhi.
4. Official Secrets Act 1923, Universal Law Publishing Company, Delhi.
5. Right to Information Act, 2005, Universal Law Publishing Company, Delhi.
6. Contempt of Courts Act 1971, Universal Law Publishing Company, Delhi.
7. Working Journalists' and other Newspaper Employees (Conditions of services & miscellaneous provisions) Act 1955, Universal Law Publishing Company, Delhi.

Unit 3
Ethical Aspects in Media

Contents :

3.1 Introduction :

Like it is with such other professions as medicine, law and teaching, journalism as a profession is guided by a set of ethics. It will make sense, for us, to briefly define what is meant by ethics before delving deeper into the subject. Ethics, as defined in the Oxford English dictionary, are the moral principles that control or influence a person's behaviour. From this, it is clear that ethics are more importantly to be found in the individual. It is also clear that ethics as such has to do with the moral side to a person than the legal. In other words, a society is bound by ethics because the people agree to on their own or are made to agree to live by a certain set of principles by way

of moral codes and not by way of legally enforceable principles.

Hence, it is necessary to see ethics as more to do with the individual at first and a society is bound by this only because the people, on their own volition, agree to follow the set of principles keeping the larger good in mind. For example, it is ethical not to exploit another person.

Following this, one may ask what happens if a person is exploited? In that event, the law will take its course. In this way, it is also important to note that ethics and ethical principles are indeed connected to the law and the legal principles. In that way, there is a close connection between ethics and the law.

But then, it is possible to define ethics as a set of principles that are moral in its core and based on notions of right and wrong and are held morally correct or acceptable. It then leads to a conclusion that all ethical concerns, in due course, could lead into legal principles. In other words, ethics can transform into the law as society begins to codify its own rules in due course of time and in response to the challenges faced by the people at a give point of time.

In this way, it is possible to identify and discuss some of the important ethical aspects in journalism. It is also important to do this because unlike any other occupation, the journalist is so closely associated with the life of a society by way of interfering and intervening in that day after day.

3.2 Objectives :

After going through this unit, you must be able to

- *define* Ethics in the world of communication and journalism.

- *find* out the distinction between the legal provisions that govern the work of a journalist
- *grasp* the ethical concerns/codes/principles that guide the world of journalism.

3.3 Privacy :

There is nothing specific in the legal framework in India that guarantees the right to privacy – to be left alone in other words – in the law. There are, however, such legal safeguards as the law of trespass, the law of defamation and protection against breach of trust that protect the citizen from his privacy being encroached upon by anyone.

However, as far as journalism is concerned, there are certain legal aspects that restrict the freedom of the press in very specific contexts. As for instance, the Code of Criminal Procedure specifically prohibits publishing the names and other identity of victims in the proceedings in a rape trial. Under Section 327(2) of the CrPC, such trials are conducted in camera and the press is forbidden from publishing reports on that by way of revealing the identity of the victim at least during the trial. This prohibition, though based on a legal provision is also rooted in an ethical concern.

In this way, privacy or the right to be left alone, has been brought within the scope of the right to life as guaranteed by the constitution by the Supreme Court. While passing the judgment in a case (R. Rajagopal Vs State of Tamil Nadu), the Supreme Court held that everyone has the right to privacy where it involves their family, marriage, procreation, motherhood, child bearing, education, etc., and that the journalist has no right to infringe upon these and publish matters relating to one's private life.

However, the Supreme Court, in the same judgment made it clear that there is no legal or ethical bar against

publishing anything, even if it involved the private activities of a person as long as the matter published is based on public records and involve the conduct of a public servant. The particular case that led to this judgment was that of the right of a journalist to publish details of some corrupt dealings by some public servants that were narrated (with documentary evidence) by a condemned prisoner. The supreme court held that there was no right to privacy that the public servants could claim against publishing such reports.

3.4 Right to Reply :

This, in the context of our concerns here, involves the right of a person/organisation aggrieved by an inaccurate report appearing in a newspaper or in any other media. Take for example, a report that says that a particular person or an organisation is involved in an act of corruption. And where the person/organisation named in the report would contend that the report is false and wants to reply to the charge in the same newspaper or media. The legal position is that there is no such thing as the right to reply in this context.

The Press Council of India, however, has made it a practice to instruct the newspaper concerned or the media in this context to publish the version of the aggrieved person too. And it is normally done by the newspaper/media with the Editor reserving the right to either make a mention (along with the version of the aggrieved person) that the paper stood by its report or recording its apologies for having carried an incorrect report. This, however, is only a convention and there is no rule to enforce the right to reply in our law.

This, however, does not mean that the person aggrieved in the wake of a report that is contended to be wrong has no legal remedy. The defamation law is indeed a useful remedy in such instances. The ethical practice, however,

is to carry a rejoinder by the aggrieved person and it is normal practice in most newspapers to ensure that the rejoinder is carried in almost the same space as the original report was published. This is only a moral code and there is nothing legal about it and hence not enforceable.

3.5 Communal Writing :

The problem of communalism has plagued our national culture for long. This had haunted our society even before independence. And after independence, it has been a concern with all those involved in the nation building process. It is, thus, obvious that the role of the media in accentuating communal tensions has been causing concern over the times. There are, no doubt, legal provisions including those in the Indian Penal Code (Section 153 in particular) that can be invoked in the event of newspapers of any other news media indulging in communal writing or reporting. But then, these are cumbersome processes and also involve lengthy procedures. Further, it is not in the larger interests of the media, in a democratic society, to let the criminal code determine the course of its functioning.

An important example of this was the controversy regarding a TV serial by Govind Nihalani called *Tamas*. The film dealt with the gory experience of the riots that rocked during the partition and was considered a great work both technically and in terms of its content. There was, however, opposition to telecasting it on Doordarshan on grounds that it would inflame communal passions. A private citizen took the case to the Bombay High Court and failing in his designs there he went on to appeal to the Supreme Court. In its verdict, which was indeed a landmark insofar as the balance between the Constitutional principles of freedom of expression and justice, the Supreme Court ordered telecast of *Tamas* on Doordarshan. The apex court held that any apprehension

of the outbreak of religious or communal violence must be judged by the standards of "reasonable, strong-minded, strong and courageous men, and not of weak and vacillating mind nor of those who smell danger in every hostile point of view". This has been the position of the highest judiciary since independence.

There have, however, been instances when the media had played along with some sectarian campaigns and thus failed in its responsibility for being a self-regulatory agency in the nation's life. The role of the media in such instances like the campaign towards the demolition of the Babri Masjid in Ayodhya, the communal violence that were organised in Gujarat and also the course of some such campaigns as that rocked Assam in the mid-eighties or the incidents in Bombay in 1992-93, were not ones that can be cited as good examples of such self restraint. And in those occasions, the media did receive a lot of criticism from the society as well as censure from the Press Council of India. We shall look at the Press Council in detail in the following unit. But before that, it makes sense to deal with another important aspect of media ethics and that is sensationalism and yellow journalism.

3.6 Sensationalism :

It is understandable and even usual practice for story tellers to exaggerate some parts of their narrative. And it is a fact that there are a lot of things that are common between a story teller and a reporter in particular. It is, after all, a fact that journalists call their reports as stories! It is also important that the reports are written or read out in a manner that it catches the attention of the reader/ viewer/listener and also retains the attention until the end. There is also the need, where there are too many forms of the media competing for space that the reporter who manages to tell the story in the most catchy fashion gathers more readers/viewers/listeners.

Given this imperative for the journalist, the usual tendency is to make the story a little sensational so that it catches the reader. This, in fact, is a serious challenge to journalism in recent times. With the proliferation of TV channels where the different channels are vying with each-other to garner viewers and enhance their TRP ratings (in order to gather more advertisement revenue), there is an increasing resort to sensationalise news. A recent instance of this was in the way the TV channels reported the attack by terrorists in Mumbai on November 26, 2008. It came to notice, even then and was pointed out subsequently, that some TV channels began beaming visuals of the movement by the security forces in the city and even showed some such movements into the buildings that were held by the terrorists. The intention in doing these was to retain the viewers glued to the channel. This, however, was an irresponsible act to say the least. It turned out that the terrorists were also able to see these visuals and thus managed to alter their own strategy.

Sensationalism is resorted to in the print media by way of giving provocative headlines to the news reports. While the art of writing headlines/headings to reports involves the ability of doing the same in such a way that the reader is attracted to read the report in full. It is also important to note that there is a thin but very important line between an interesting headline and a sensational headline. The moral responsibility of a journalist is to resist the temptation to chose the easy way out and sell a story by way of a sensational headline. While there is no law as such that guides the art of writing headlines and there is nothing that can be done where a journalist prefers to sensationalise the story by way of exaggeration and unsubstantiated information, there is a certain grammar of journalism that clearly prohibits this.

It is all the more important that sensational writing is avoided in such situations like a communal clash, caste

violence or natural disasters. It is also important that journalists resist the temptation of publishing scary pictures or such pictures that are vulgar or of crass commercial nature to attract readers. This is an area in which the lack of any legal restriction or regulation enables the journalists and the media proprietors to expand their readership/viewership and gain commercially out of that. While it may help them achieve their objective in the short run, such instances of abuse over a period of time is bound to lead to a demand for legal and punitive measures. That will be a difficult stage for the media to handle because a self-imposed code of ethics is a better option than a restrictive regime bound by penal measures. It is, hence, in the interest of the free press that the professional journalist strives to impose restrictions on an ethical foundation. The Press Council of India as well as such other bodies as the Editors Guild and the All India Newspaper Editors Conference have formulated definite codes for working journalists in this regard.

3.7 Yellow Journalism :

Among the different roles of the media the most important in a democracy is that of being the watchdog. In the course of performing this role, the media professional in general and the reporter in particular get to wield a certain kind of power or influence in the society he lives. It is also a fact that the journalist gets into contact with a variety of people and also gains access to different facts. While the day to day job of a journalist will involve reporting on press meets, incidents and other events only, it is very much possible that a journalist comes across facts that are not public yet. It could be the fact about a scandal in the process of executing a government scheme or about the illegal gratification of a public servant or about something unsavoury about a private entrepreneur. And it is in such contexts that the role of the media in a democracy comes into play.

In such contexts, it is possible for a journalist to resort to unethical practices and yellow journalism is one of them. Yellow journalism can be seen in two distinct ways. One is where the reporter gets hold of some information involving a public servant and turns it into a news report without caring to verify the truth. It might appear to be an act of irresponsibility. But then, beneath such reports is a scheme in which the reporter did everything deliberately in order to tarnish the image of the person concerned and send him into trouble. This is one way in which yellow journalism can manifests itself. Another manifestation of yellow journalism, which is prevalent in small towns across the country, is the existence of newspapers/magazines with a small circulation and published irregularly; these publications are run with an express purpose of blackmailing public persons in the town. The reporter in such a publication resorts to unethical means to make some money.

Apart from the penal actions that are possible against such practices by way of defamation suits and complaints, there are codes that have been formed by professional bodies in the media industry as well as by journalists associations that speak against such practices. Having said all these, yellow journalism is indeed a reality and the every aspiring journalist will have to watch out against such tendencies.

Meanwhile, it will be interesting to look at the origin of the phrase yellow journalism. It came from a comic strip called *The Yellow Kid* that was printed in yellow ink to attract readers' attention!

3.8 Biased Reporting :

The most important quality of a reporter is to be objective. And in that, the journalist shall consider his profession as one that involves a lot of trust and also strive to cause the good of the society. In this regard, it is important or

rather the rule that facts are to be treated as sacred while reporting. The thumb rule to be adopted is that, even while the facts suggest something diametrically opposed to the views held by the reporter must be reported as it is and shall not be altered or distorted to suit the needs or the views of the reporter.

It is possible, for example, that you support a particular political party or a leader. There is nothing wrong with being one. And you are in the field to cover a political rally or a meeting of the party that you support. But then, as a reporter, your job is to report the fact as you see it and it is necessary that you do not inflate the number of people who were there for the rally. In the same way, where you are reporting the rally of a particular party that you do not like or support, you shall not reduce the size of the crowd. The danger in doing so will be that your report will be inaccurate and the reality, as it is bound to play in due course, will render your story wrong. In this, it is not only you who will lose the credibility but it is also the paper/TV channel which will lose their credibility.

In the same way, it is important that as a reporter, you detach yourself from your own views on a particular subject. It is possible that as an individual you support a particular team in a football tournament. But then, the team you support may not have played properly and your favourite player may have indulged in foul practices in a particular match. It is necessary that you keep your personal preference aside and call a spade a spade while reporting the match. Or else you will be exposed to ridicule and the charge of being a biased reporter will stick to you for ever.

Moreover, it will constitute a breach of trust by you. It is important to remember, all the time, that the relationship between you as a reporter and the consumer of the news is that of mutual trust and a reporter cannot afford to lose that trust at any cost. News, after all, is based on

facts and there is no excuse when facts are presented in a distorted fashion.

This does not mean that there is no place for views in a journalists' profession. There is ample space in a newspaper/TV channel for views as much as news. But then, the slots are separate and must be treated that way. Thus it is important to stress that facts are sacred while presenting views as well. A bad game or a provocative speech by a leader in a public meeting will have to be pointed out while analyzing the event and presenting one's views. An honest presentation of facts, in fact, will enhance the credibility of the column than a distorted piece of reporting.

Though there are no specific rules or laws that are meant to prevent biased reporting, the newspaper establishments and news organisations have their own codes to ensure that reports are not biased. One of the principles that a news editor adopts and sticks to without compromise is to carry only such reports that present the different sides of the story. For example, where there is a charge leveled against a public person or an organisation involving some wrong doing, the reporter is expected to approach the person or someone responsible in the organisation against whom the charge is made for his reaction and include that as well in the report.

In doing so, it is also the job of the reporter to exercise his own judgment to decide whether the charge made is even remotely true or not. Wild allegations do not make news and this is a dictum that will have to be followed without fail. A recent example of such irresponsible and even biased reporting was when a section of the TV channels in Andhra Pradesh simply relayed a story suggesting a role for a corporate house in the accidental death of a former Chief Minister of the State. The reports were found unfounded and before they could be verified the damage

was done. It also led to the arrest of the top men in the news rooms of the TV channels.

Another source of biased reporting is journalists indulging in corrupt practices. It is not common but it happens everywhere when a journalist receives some reward from a vested interest and puts out a story in the form of news which has the potential to ruin another person or a company. This is outright corruption and cannot be tolerated by any newspaper or news organisation. Such acts cannot and will not be countenanced as constituting freedom of expression. It is, on the contrary, a violation or abuse of the freedom and not only blatantly illegal but unethical too.

3.9 Ethics Relating to Media Ownership :

Unlike in the days when newspapers were launched with a definite political or social purpose and an agenda, the media industry in modern times is owned by corporate houses. The nature of the industry too is not the same as it was. The huge investments as well as the large amount of money that is required for the day to day operation of the media in the present times makes its own dynamics. It is a fact, in India of the present times, that a good number of the newspapers and the other media houses are owned and run by corporate firms that are in various other business too. This is true of the situation in the Western countries too. In India, for instance, a corporate house engaged in the construction business owns a weekly magazine too. Or take the case of the House of Birlas. They own The Hindustan Times and also the Nav Bharat Times. Similarly, The Times of India is owned by a company that is also involved in various other business ventures. A Malayalam language daily called Malayala Manorama is owned by the same corporate group that owns the MRF tire company. The Telegu daily Eenadu is owned by a group that is also engaged in several other business activities including pickles and eateries.

This dimension of the media brings into play some serious concerns in so far as editorial freedom and the independence of the media are concerned. In other words, where the media turns into a business venture as much as any other business activity or where there are spaces for a conflict of interests between the various other business interest of the house that owns the media too, there are serious questions that arise.

For instance, where a certain media proprietor is also engaged in the business of construction, there is bound to be a vested agenda for the paper that is also run by the same group. Or, where the media house is also engaged in the business of aviation, there is bound to be a vested agenda for the newspaper. It is then most likely that the editorial freedom of the media, whether it is a newspaper or a TV channel or an Internet magazine, is affected and guided by the vested interests of the corporate house that owns and runs the media house.

It is also possible that such business houses are also vulnerable to be brought under pressure by the political establishment in a state or across the country. There have been instances, in the past, where a corporate house engaged in a variety of business including the media, begins to use its media house to campaign against a certain minister or a particular party in power because the policies of the Government had caused harm t its business. In such situations, any action by the government, even if legal, will soon be painted as an attack on the freedom of expression. This is squarely unethical and against all norms of editorial freedom that is enjoined upon the media in India by way of Article 19(f)(a) of the Constitution.

Similarly, it is also possible that the corporate house is brought under pressure by the Government or a dominant political party to sack the editor of its newspaper. This has also taken place in the world of journalism on several

occasions in the past. The point is that a corporate that runs several business establishments including the media is likely to use the office of the editor of a newspaper or channel it runs to buy peace with the Government or in exchange to some concession elsewhere. This is also unethical.

But then, in given reality where the media industry is so heavily dependent on investment and the ability of the investor to sustain losses, there is no escape from the situation where the corporate houses run the media business. Examples of cooperative enterprises of newspapers and other media being run by trusts are indeed available. There have been instances of such efforts failing to reach anywhere and there is no guarantee that similar pressures do not invade the editorial freedom in such cases too.

In this context, the All India Newspaper Editors' Conference (AINEC) has evolved a charter. It runs as follows:

The Editor shall enjoy complete freedom in respect of the implementation of the editorial policy and staffing and conduct of the paper.

The Board of Management of the newspaper shall prepare an annual budget of editorial expenses in consultation with the editor, providing for normal expenditure, development programme, contingencies and discretionary grant.

The editor's decision shall be final in all matters concerning the editorial staff and the contents of the paper.

The editor shall have direct access to the Board or to the proprietor for the discussion of matters relating to his department.

The editor shall have the power to grant special increment in recognition of special merit of a worker.

The code of obligations for the editor is to carry out the policies of the paper, to maintain high standards, to resist all pressures, to generate a co-operative spirit amongst members of his editorial department and to subserve impartially the interests of the society.

The editor vis a vis the Government and the proprietor is to be left free in the discharge of his responsibility, as far as editorial side of the newspaper is concerned.

In the event of disagreement between the Board of Management and the editor leading to the editor's resignation or removal, the editor shall be entitled to six months' pay, gratuity and pay in lieu of leave due to him at that time.

3.10 Let us Sum up :

- Ethics are to be found in the individual and have to do with the morality of a person. A society is bound by ethics because people are made to agree to live by certain set of principles based on moral codes and not on any legally enforceable principles.
- Privacy or the right to be left alone has been brought within the scope of the right to life as guaranteed by the Constitution and by the Supreme Court. While passing the judgment in a case (R.Rajagopal vs State of Tamil Nadu), the Supreme Court held that everyone has the right to maintain privacy where it involves their family, marriage, procreation, motherhood, child bearing, education, etc., and that the journalist has no right to infringe upon these and publish matters relating to one's private life.
- However, there is no legal or ethical bar against publishing anything, even if it involved the private activities of a person as long as the matter published is based on public records and involve the conduct of a public servant.

- There is no legal provision guaranteeing the right to reply. The Press Council of India, however, has made it a practice to instruct the concerned newspaper or the media to publish the version of the aggrieved person too. And it is normally done by the newspaper/media with the Editor reserving the right to either make a mention (along with the version of the aggrieved person) that the paper stood by its report or recording its apologies for having carried an incorrect report. This, however, is only a convention and there is no rule to enforce the right to reply in our law.

- This however does not mean that the person aggrieved in the wake of a report that is contended to be wrong has no legal remedy. The defamation law is indeed a useful remedy in such instances.

- The problem of communalism has plagued our national culture for long. This had haunted our society even before independence. And after independence, it has been a concern with all those involved in the nation building process. It is, thus, obvious that the role of the media in accentuating communal tensions has been causing concern over the times.

- The role of the media in some such instances like the campaign towards the demolition of the Babri Masjid in Ayodhya, the communal violence that were organised in Gujarat and also in the course of some such campaigns as that rocked Assam in the mid-eighties or in Bombay in 1992-93 were not ones that can be cited as good examples of such self restraint. And in those occasions, the media did receive a lot of criticism from the society as well as censure from the Press Council of India.

- Sensationalism is indeed posing a serious challenge to journalism. It is important that sensational writing is avoided in such situations like a communal clash, caste violence or natural disasters. It is also important that journalists resist the temptation of publishing

scary pictures or such pictures that are vulgar or of crass commercial nature to attract readers. This is an area in which the lack of any legal restriction or regulation is found to be a license by journalists as well as media proprietors with a view to expand their readership/viewership and gain commercially out of that.

- While it may help them achieve their objective in the short run, such instances of abuse over a period of time is bound to lead to a demand for legal and punitive measures. That will be a difficult stage for the media to handle because a self- imposed code of ethics is a better option than a restrictive regime bound by penal measures
- The same is true of yellow journalism and biased reporting. These are tendencies that are to be resisted by journalists in their own interests.
- The issue of media ownership and some ethical concerns that are of importance to editorial freedom have become important in recent times. But then, in given reality, where the media industry is so heavily dependent on investment and the ability of the investor to sustain losses until a point of time when things break even, there is no escape from the situation where the corporate houses run the media business.
- Such other options as a cooperative enterprise or newspapers and other media concerns being run by trusts are indeed available. But these are not the rule and it is not necessary that all such experiments succeed.

3.11 Sample Questions :

1. "Mass Media should be regulated by self. Discuss.
2. What do you mean by yellow journalism? Do you think that Assam press is practicing yellow

journalism in the recent years ? Justify.

3. Discuss the pattern of media ownership in India from ethical points of view.
4. Examine the role of All India Newspaper Editors' Conference in relation to media ethics.
5. "Most of the language newspapers of India played a propagandist role during election." Comment.

3.12 References/Suggested Readings :

Bandyopadhyay, P.K. & Arora, Kuldip Singh, *A practitioners Guide to Journalistic Ethics*, D.K.Publishers, Delhi, 1998.

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Unit 4
Media Freedom and Accountability

Contents :

4.1 Introduction :

A free press was indeed an integral part of the dream for a free India. So much so, the evolution of the newspapers in India was took place alongside the struggle for freedom. In a sense, almost all the icons of our freedom struggle had associated themselves with newspapers in their own way. Bal Gangadhar Tilak, for example, was the editor of *Kesri*; Mahatma Gandhi was not only a prolific writer in newspapers but also had edited newspapers such as *Young India* and *Harijan*. Jawaharlal Nehru too was involved with the *National Herald*. This close association between the struggle for freedom and the newspapers of the times was indeed a factor that guided the makers of our Constitution to put the idea of a free press at the core of the Constitution.

There was, however, the need to ensure that such freedom did help realize the objective of freedom rather than create the space for anarchy and lawlessness. The makers of our nation, insisted believed that the freedom of India could not be achieved by restricting the freedom of the press with censorship and other such means. That was the context in which the Press Council of India came into being.

In this unit, we shall discuss the scope and the limitations of the Press Council of India, the imperative for a legal framework that will bring the television, internet and radio into the scope of the Council as well as the need for an arrangement that will give more vent to the Council. We shall also discuss the institution of Press Ombudsman and the experience in this regard in various countries and in India as well.

4.2 Objectives :

After going through this unit you will be able to

- *discuss* in detail the various institutions in the newspaper industry
- *discuss* the ways freedom of expression and the accountability of the press is ensured
- *know* the limitations in institutions like the Press Council of India
- *have* a thorough knowledge about institutions like the Press Ombudsman

4.3 The Press Council of India :

The Press Council of India is a statutory, quasi-judicial body. It came into existence through an Act of Parliament in 1965. The Act was the outcome of the recommendation of the first Press Commission. Its objectives, to put it very briefly, are to preserve the freedom of the Press and to maintain and improve the standard of newspapers and news agencies in India. It is clear, by this definition, that the Press Council of India has relevance, only for the print

media and not for the others. Moreover, print happened to be the only media that existed at that stage. Even though Television had been there and the Radio was a powerful and influential media, both these were under the Government's direct control and hence guided directly by the Government of the day. The newspapers, however, were in the private domain and the Press Council was created in that context.

The product of the 1965 Act, however, did not last long. While the Council that came up lost any definite direction or sense of purpose, the overt pre-censorship, during the emergency, also lost its total relevance. The Council, as it existed, was formally wound up and the Act was rendered scrapped by the Indira Gandhi regime during the Emergency.

However, the Janata Party Government that came to power in March 1977 proclaimed the concerns of a free but responsible press and an Act of Parliament in 1978 revived the institution once again. Subsequently, the Council was ordained with the two distinct objectives; to preserve the freedom of the press and to improve the standards of the newspapers and the news agencies.

In so far as its composition is concerned, the Press Council comprises 28 members including the chairman who is a retired Supreme Court judge. Other members of the council are owners of big and small newspapers, editors, journalists, people of special knowledge, and one member each from the Bar Council of India, Sahitya Akademi and the University Grants Commission. Apart from these, there are three members from the Lok Sabha and two from the Rajya Sabha, nominated by the Speaker and the Chairman respectively.

Section 8 of the Act provides for the Council to constitute such committees as it may find necessary to conduct its affairs as well as to recommend measures and codes that will achieve the objectives of a free and responsible press. In the course of its existence since 1978, the Press Council

has formulated some broad norms which the print media personnel are expected to adhere to. This, in fact, is based on powers that Section 13 of the Act provides to the Council. They are pre-verification of a report, verification forms and basis of a report, not to publish defamatory reports or remarks and to carry the clarification issued by the person against whom the news report was made, to avoid any kind of intrusion into private lives, female and child victim of abduction and sexual harassment, and not to publish any vulgar material offensive to public, whether in newspaper reports or in advertisements. The PCI inquires into complaints of violations by the members of the public or authorities.

Whenever a violation has to be proved, the Press Council of India's ability to take action against an erring newspaper and the reporter concerned is limited and only gives warning, admonition or censure. This is dealt with in Section 14 of the Act. It provides the Council with the power to censure any publication as and when a complaint is made against a newspaper for violating any of the codes or where the papers caused damage to the social fabric through its reportage. In the event of a complaint, the Press Council has powers to summon evidence and call for explanation, records and even examine evidence as it is allowed to a civil court while trying a suit under the Civil Procedure Code. It is important to note here that the refusal to attend any inquiry after being summoned by the Commission is liable for action as it is in case of the Indian Penal Code. But then, the evidence taken by the Commission is not admissible under criminal law.

In reality, the Press Council of India is more or less restricted to playing an advisory role only. The Act as such does not provide for any mechanism to enforce the Council's decision vis-a-vis a newspaper. It is for the concerned newspaper to adhere to the warnings, admonitions or censure by the Press Council of India and refrain from repeating such violations. But unfortunately, our experience and history tells us that many newspapers,

including the major ones have ignored the Council's directives.

It is in this context, the government has been asked to take steps for making suitable amendments and give more teeth to the council. Justice P.B.Sawant, as Chairman of the Press Council of India, in fact, caused a ripple in 1998 when he said that the ownership pattern of the newspaper industry (private owners) is a cause for considerable worry and posed serious dangers to the freedom of the press. Justice Sawant also raised a storm by speaking against the employment of journalists on contractual basis and called that to be a scope for curbing the freedom of the journalist. His suggestion to have newspapers run by workers/journalists cooperatives and trusts provoked the press barons to attack him as well as deride the Press Council of India as having failed to live up to its expectations.

Subsequently, Justice Jayachandra Reddy, as Chairman of the Press Council of India, suggested that the Directorate of Advertising and Visual Publicity (DAVP) advertisements can be stopped for such newspapers and their registration can be cancelled in the case of chronic violation. But, nothing has been done so far. With this, it may be concluded that unless some far reaching changes are made on these lines, the Press Council of India cannot be effective and serves no real useful purpose.

4.4 The Proposed Media Council :

In the present times the electronic media has grown phenomenally and a large number of private players have established their presence in a big way. The Government's monopoly in this area is now a thing of the past. Hence, it is time that the Press Council were not merely given more teeth but its scope too were widened. The visual media, for instance, as well as the Internet are not regulated by any authority along the lines of print media. This happened, in spite of the fact that the electronic and print

media serve the same purpose. There are complaints against the electronic media with respect to many telecasts. But, there is none to stop the telecast, however gross the violation maybe. An authority such as the Media Council should be appointed to deal with activities of print as well as that of electronic media.

It could be that there is a provision to set up separate bodies with the Press Council of India (which will have to be re-named as the Media Council) that will deal with the different media separately and its decisions would be dovetailed into that of the larger council. Such smaller bodies will have to be representative in character, to lay down the policies.

These smaller bodies too could be vested with quasi-judicial authority to adjudicate the complaints and prescribe the nature of positive punishment to be imposed effectively.

The demand for such a council is now more vocal from among the working journalists than the media barons. And the specific context in which this demand has come up are the instances of reporting, particularly in Television, throwing ethical codes to the winds. Such reportage, apart from causing damage to the society, has also provoked a demand in the public sphere that the Government resorts to measures to curtail such acts by journalists. In other words, acts of irresponsibility, by a section of the media, is leading to a legitimization of the demand for curbing press freedom.

This is the context in which the unions of working journalists have made the demand, with more stridency than in the past, that the answer to the present crisis is not to curtail the freedom of the press by measures that clamp down on the media and instead put in order a Media Council with teeth to act without pressure from the government or other vested interests.

Such a Media Council can evolve its own protocol to restore

credibility in coverage in times of crises like the one witnessed in Mumbai and other such incidents that preceded it. The government should not take advantage of criticism of recent media coverage to curtail press freedom. It is also the demand that the Media Council should be a body primarily of media persons, jurists and experts from civil society besides M.Ps rather than a government controlled mechanism to browbeat the press which can be counterproductive. A Media Council in fact is the demand of a cross section of the professional journalists' unions such as the India Journalists' Union, the Confederation of Newspaper and News agencies Employees Organisations, the All India Newspaper Employees Federation, the National Union of Journalists India and the Indian Federation of Working Journalists.

The Media Council, once in place, can be responsible for drafting fresh guidelines on accurate, sensitive and ethical reporting in the print and Electronic Media and have adequate authority to enforce those guidelines. The Media Council could also be authorised to hear complaints, summon evidence and impose punishments for misconduct by media professionals and media houses.

4.5 Press Ombudsman :

An ombudsman is a person who acts as a trusted intermediary between an organization and some internal or external constituency while representing the broad scope of constituent interests. Usually appointed by the organization, but sometimes elected by the constituency, the ombudsman may, for example, investigate constituent complaints relating to the organization and attempt to resolve them, usually through recommendations (which may be binding or not) or mediation. In short, they are umpires who see through the disputes between two sections and are invariably appointed by one but act in a just manner.

The role of an ombudsman in a newspaper is best described

as one opening a window on the inner working of news organizations. As a concept, the institution of a news ombudsman began in America sometimes in 1913 when the *New York World* started a bureau of accuracy and fair play. But that remained as an idea only. The first ombudsman in a newspaper came only in 1967 with *Courier-Journal* of Louiseville, Kentucky. But then, the first large newspaper in the US to recognize the need for an ombudsman was the New York Times. And that happened only in 2003. In that year, the New York Times appointed its first Public Editor, Daniel Okrent. He is among the 38 other ombudsmen in the US print media. For the several thousands of newspapers in the world only 80 have public editors according to figures put out by the Organisation of News Ombudsmen.

As for the New York Times, the management decided to have a public editor, which is by far the only known institutional arrangement for self regulation and accountability only in the wake of the disastrous reports in its columns by Judith Miller of Weapons of Mass Destruction in Iraq and the revelation soon after that those were unsubstantiated lies that were printed in order to justify the US military invasion into Iraq.

A public editor or a news ombudsman helps build credibility for his newspaper. The ombudsman institution itself is a response to the perceptible disaffection among the people against an unaccountable press. The appointment of a public editor or an ombudsman improves the performance of the journalists while it is a way of showing respect to reader sentiment. The public editor mediates between his newspaper and its readers, telling the editors what the readers need and explaining to the readers why mistakes occur in a newspaper. It may be said that this institution has some stronger foundations in England than anywhere else.

In Britain, the *Guardian*, the *Observer*, the *Independent on Sunday*, the *Sun* and the *Daily Mirror* have appointed

ombudsmen who have devised ways in which to ensure transparency. All of them publish corrections while the two Sunday papers discuss issues raised by their readers. The *Daily Mirror* tells its readers how to contact the Press Complaints Commission, Britain's media watchdog, while the *Guardian* provides a low cost telephone line to its readers to convey complaints or comments. On its home page, the *Guardian* provides a link to corrections published by it.

Ian Mayes, Readers' Editor at the Guardian, incidentally has that as his fulltime job. And he has complete independence and has built a unique database of feedback from readers. The editor has no veto on what Mayes writes. Nor can Mayes be dismissed. It is the Scotts Trust, which owns the paper, that alone that can sack him. The terms of appointment for the public editor are on the *Guardian* website for all to see. If readers have any complaints against him, Mayes advises them on how to reach the Press Complaints Commission. He favours high visibility and easy accessibility to improve interaction with readers.

In India, the institution of the Ombudsman or the Readers' Editor is yet to emerge in a big way. Though the Times of India, in 1989, appointed a retired Supreme Court judge, Justice P.N.Bhagwati as its ombudsman, the institution did not develop into an integral part of the newspaper. It was announced that the ombudsman would act an arbitrator on complaints relating to the content of the newspaper and even settle disputes arising out of that between the readers and the editorial department, there was no visible presence of the ombudsman felt anywhere.

The only other newspaper that has followed the example of institutional self regulation and accountability is *The Hindu*. In 2005, the newspaper appointed its first Readers' Editor. The terms of his appointment, which are mostly the same as that of the Readers' Editor of *The Guardian*, will explain the extent of his independence.

4.5.1 Terms of Reference of Appointment of the Readers' Editor, The Hindu :

Preamble :

The Hindu believes it is the first newspaper in the history of Indian journalism to appoint a Readers' Editor. The Readers' Editor will be the independent, full-time internal ombudsman of *The Hindu*.

The key objectives of this appointment are to institutionalise the practice of self-regulation, accountability, and transparency; to create a new visible framework to improve accuracy, verification, and standards in the newspaper; and to strengthen bonds between the newspaper and its millions of print platform and online readers.

The Hindu wishes to acknowledge that it has been inspired to do this by the exemplary practice and experience of *The Guardian*, U.K., over the past decade in a crucial area of newspaper performance. It hereby adopts, with minor modifications, the terms of reference worked out for *The Guardian*'s Readers' Editor:

Terms of Reference :

- To seek to ensure the maintenance of high standards of accuracy, fairness, and balance in our reporting and writing.
- To create new channels of communication with and greater responsiveness to readers, whether by email, telephone, the Internet, surface mail, or through the columns of the paper.
- To seek the views and where appropriate, the written comments, of journalists whose work is the focus of readers' concerns: to take these views into account when responding to readers, and to make critical appraisals, if judged necessary, on an objective and fully-informed basis.
- To look for ways of improving the paper's work and performance, in the broadest sense, by collating and

analysing readers' concerns, ideas, and suggestions and identifying possible new or alternative courses of action and ways to develop the paper for the benefit of its readers and the paper itself.

- To write a regular column addressing one or several aspects of readers' concerns, suggestions, and complaints, the content to be determined independently and not subject to prior approval by the Editor-in-Chief or others on the staff, other than in respect of matters of fact and style.

- To use this column as a platform and forum for readers' views.

- To require of the Editor-in-Chief that he or she takes steps to ensure that his or her staff co-operate fully and promptly with the Readers' Editor should they be requested to provide assistance in responding to readers' concerns and complaints. Similarly, the management and marketing departments of the newspaper insofar as their activities relate to readers' concerns about editorial content.

In order to keep fully in touch with the workings of the paper, the Readers' Editor shall have an established right of access to the Editor-in-Chief, to heads of department meetings, to planning and review meetings, to daily editorial and news conferences, and to other relevant forums. The Readers' Editor should be available to report, on an *ad hoc* basis, to the Editor-in-Chief and to these other groupings. The existence of the Readers' Editor, and how to contact him or her, should be advertised fairly prominently on a daily basis in the paper.

The Readers' Editor can refer to the external ombudsman, should the newspaper decide to appoint one, any substantial grievances or matters whereby *The Hindu*'s journalistic integrity has been called into question.

The Readers' Editor will initially be appointed for two years, a term that can be renewed. He or she can be removed

from the post within two years only by the Board of Directors of Kasturi & Sons Ltd., the public limited company that publishes *The Hindu*.

4.6 Set us Sum up :

- The Press Council of India is a statutory, quasi judicial body. It came into existence by way of an Act of Parliament in 1965. Its objectives are to preserve the freedom of the Press and to maintain and improve the standard of newspapers and news agencies in India.
- The product of the 1965 Act, however, did not last long. The pre-censorship during the emergency also meant its total irrelevance. And the Council, as it existed, was formally wound up and the Act was rendered scrapped by the Indira Gandhi regime during the Emergency.
- With the Janata Party in Government, an Act of Parliament in 1978 revived the institution once again.
- The Press Council comprises 28 members including the chairman who is a retired Supreme Court judge. Other members of the council are owners of big and small newspapers, editors, journalists, people of special knowledge - one each from the Bar Council of India, Sahitya Akademi and the University Grants Commission. Apart from these, there are three members from the Lok Sabha and two from the Rajya Sabha, nominated by the Speaker and the Chairman respectively.
- The PCI makes inquiry regarding the complaints of violations by the members of the public or authorities. Whenever a violation has to be proved, the Press Council of India's ability to take action against an erring newspaper and the reporter concerned is limited and only consist of giving a warning, admonition or censure.
- In reality, the Press Council of India is more or less restricted to playing an advisory role only. The Act as such does not provide for any mechanism to enforce

the Council's decision vis a vis a newspaper. It is for the concerned newspaper to adhere to the warnings, admonitions or censure by the Press Council of India and refrain from repeating such violations. But unfortunately, our experience and history tells us that many newspapers, including the major ones have ignored the Council's directives.

- In the present times the electronic media has grown phenomenally and a large number of private players have established their presence in a big way. The Government's monopoly in this area is now a thing of the past. Hence, it is time that the Press Council is not merely given more teeth but its scope too is widened. The visual media like Internet, for instance, are not regulated by any authority along the lines of print media.

- A Media Council in fact is the demand of a cross section of the professional journalists' unions such as the India Journalists' Union, the Confederation of Newspaper and News agencies Employees Organisations, the All India Newspaper Employees Federation, the National Union of Journalists India and the Indian Federation of Working Journalists.

- The Media Council, once in place, can be responsible for drafting fresh guidelines on accurate, sensitive and ethical reporting in the print and Electronic Media and have adequate authority to enforce those guidelines. The Media Council could also be authorised to hear complaints, summon evidence and impose punishments for misconduct by media professionals and media houses.

- The role of an ombudsman in a newspaper is best described as one opening a window on the inner working of news organizations. A public editor or a news ombudsman helps build credibility for his newspaper. The ombudsman institution itself is a response to the perceptible disaffection among the people against an unaccountable press.

- In India, the institution of the Ombudsman or the Readers' Editor is yet to emerge in a big way. Though the Times of India, in 1989, appointed a retired Supreme Court judge, Justice P.N. Bhagwati as its ombudsman, the institution did not develop into an integral part of the newspaper.

- The only other newspaper that has followed the example of institutional self regulation and accountability is *The Hindu*. In 2005, the newspaper appointed its first Readers' Editor. The terms of his appointment, which are mostly the same as that of the Readers' Editor of *The Guardian*, will explain the extent of his independence.

4.7 Sample Questions :

1. Write about the structure and functions of Press Council of India.
2. Discuss the guidelines laid down by the Press Council of India.
3. Do you think that Indian Mass Communication Media needs a Council? Justify your answer.
4. What do you mean by the Press Ombudsman? Compare the role of PCI and Press Ombudsman.
5. Discuss the concept of public editor. Is it possible to appoint a public editor in language newspapers? Justify your answer.

4.8 References/Suggested Readings :

1. Press Council of India, *Crisis and Credibility*, Lancer International, New Delhi, 1991
2. Sarkaria, R.S., *A Guide to Journalistic Ethics*, Press Council of India, Delhi, 1993.
3. Sawant, P.B., *Mass Media in Contemporary Society*, Capital Foundation Society, Delhi, 1998.
4. The Press Council Act, 1978, Universal Law Publishing Company, Delhi.