



COURSE CODE: MAMCD 303

COURSE NAME: MEDIA LAW AND
ETHICS

**CENTRE FOR DISTANCE AND
ONLINE EDUCATION
TEZPUR UNIVERSITY**

MASTER OF ARTS

**MASS COMMUNICATION
AND JOURNALISM**

BLOCK I



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To grow to be a leading centre for human resource development through distance, open and universal learning system.

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To provide quality higher education at door step through barrier-less, flexible and open learning mode in conformity with national priority and societal need.

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- **To offer job oriented and vocational programmes in flexible terms in the line of the national and regional level demand of manpower.**
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- **To undertake various research and academic activities for furtherance of distance education in the region.**
- **To contribute to conserve and promote cultural heritage, literature, traditional knowledge and environment conducting short programmes, workshops, seminars and research in interdisciplinary field.**

MMC-303: MEDIA LAW AND ETHICS

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BLOCK I

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COURSE INTRODUCTION

This course, Media Law and Ethics (MMC 201) addresses the different aspects of judicial systems particularly in relation to Indian media. The basic objective of this course is to discuss the ethical issues in journalism in context to existing laws and policies. This course includes topics like legal system in India, media laws, media ethics, and issues in reporting, etc. This course is divided into two Blocks and each block includes of two modules.

The **Block I** includes **Module I** and **Module II** which deal with the topics of Legal system in India and Media Laws respectively. On the other hand the **Block II** consists of **Module III** and **Module IV** which further comprise topics such as Media Ethics and Issues in Reporting respectively.

The **Module I** of this course include four units based on the topic named as **Legal system in India**. This module introduces to legal system and gives an idea about the rights , rules and laws, judicial system in relation to media and constitutional obligation, etc. discussed within these four units.

The **Module II**, is named as **Media Laws** which contains five units including Laws Related to Media Profession (Unit 5) , Public Interest Litigation and Defamation (Unit 6), Media Laws relating to Women & Children (Unit 7) and Freedom and accountability of the Media (Unit 8) . This module is all about teaching the students to understand the different existing laws in relation to media for practicing journalistic duties and responsibilities.

Under **Block II** , the **Module III** and **Module IV** include **Media Ethics** and **Issues in Reporting** respectively. The third module discusses about ethics in journalism , social responsibilities of the journalists, and rights and duties of the journalists. On the other hand **Module IV** consists of different issues related to journalism such as Media and Conflict Reporting (Unit 12) , Cyber Laws (Unit 13) and Intellectual Property Rights (Unit 14). From these units you will know the exiting provisions to practice ethics in the media profession in order to maintain social equilibrium.

MODULE I: LEGAL SYSTEM IN INDIA

UNIT 1: INTRODUCTION TO LEGAL SYSTEM

UNIT STRUCTURE

1.1 Introduction

1.2 Objectives

1.3 Jurisprudence

1.3.1. Scope of Jurisprudence

1.4. Sources and Types of Law

1.5. History of Indian Media Law

1.6. Summing Up

1.7. Questions

1.8. Recommended Readings

1.1 INTRODUCTION

The unit introduces you to the basic concepts of jurisprudence. The purpose of this unit is to help understand the students about the source of law and types of law. We will also discuss the history of Indian media law.

1.2 OBJECTIVES

The objective of this unit is given below:

- To understand the concept of jurisprudence
- To understand about the sources of law and the types of law
- To know about the history of Indian media law

1.3 JURISPRUDENCE

The term 'Jurisprudence' is derived from its Latin word "Jurisprudentia" which means 'Knowledge of Law'. In the Latin language, 'Jure' or 'juris' means 'law' and 'prudentia' means 'skill' or 'knowledge'. Jurisprudence then signifies a practical 'knowledge of law and its application'. This meaning of the term is also given in dictionaries, for

instance, Murray's New English Dictionary lists as its first meaning 'Knowledge of or skill' in law. Under the French law it refers to the body of judicial precedent, as distinguished from Statutes, and expert opinions etc. in Germany it is termed as "rechts philosophic" that is the philosophy of rights, that is of law in an abstract sense.

Sometimes terms like 'medical jurisprudence', 'Architectural Engineering' and 'environmental jurisprudence' etc are used. When used in this sense, the phrase refers to treatise dealing with that part of knowledge which is used in applying legal doctrines or principles applicable to or useful for medico-legal cases or architectural or engineering or environmental cases.

John Austin defines 'jurisprudence' as 'science of law which deals with analysis of the concepts or its underlying principles'. For Austin, the appropriate subject of jurisprudence is positive law i.e., the law as it is (existing law). To him, jurisprudence is not a moral philosophy but it is a systematic study of actual law as distinguished from moral, ideal or natural law. Austin further divides jurisprudence into two classes viz., 'general jurisprudence' and 'particular jurisprudence'. According to him 'general jurisprudence' is the philosophy of positive law. It is concerned directly with principles and distinctions which are common to various systems of particular and positive law and which each of those various systems inevitably involves, let it be worthy of praise or blame or let it accord or not with an assured measure or test'. The concept of rights and duties, ownership, possession, personality, property etc. comes under the province of general jurisprudence. 'Particular jurisprudence' "is the science of any such system of positive law as now actually obtains or once actually obtained in a specifically determined nation or specifically determined nations".

Holland defines jurisprudence as 'the formal science of positive law'. According to Holland, formal science is that which deals with the various relations which are regulated by legal rules than with the rules themselves which regulate those relations. Thus, for Holland jurisprudence finally is a formal science as opposed to material. Material science supplies the facts, while the formal science of jurisprudence elucidates the meaning of the relations or prescriptions regulated by law.

According to Prof. Salmond jurisprudence can be defined in two senses first in the 'Generic Sense' jurisprudence can be defined as "Science of Civil Law" and in its 'specific sense' jurisprudence can be defined as "the Science of the first principle of Civil Law".

Sir C.K. Allen describes jurisprudence as the scientific synthesis of the essential principles of law.

Gray has defined jurisprudence as a science of law i.e., systematic arrangement of rules followed by courts and principles underlying them. For Gray, jurisprudence is of three kinds- first particular jurisprudence or the science of law of a particular community; second comparative jurisprudence or the comparison of the law of two or more communities; third, general jurisprudence or the comparison of all legal systems of the world.

Hindu Jurisprudence: Hindu jurisprudence is rooted in Hindu religion and custom. In Hindu jurisprudence, the prescribed rules that are supposed to regulate human relations are founded on religion. That which is wholesome for the community is not separable from what is supposed to be pleasing to the deity. Hindu jurisprudence concerns itself and embraces all activities of man from the moment he is conceived till he attains salvation. In Western Jurisprudence, positive prevails as against immemorial custom or revelation because it embraces a small portion of a man's life. One who did not commit a crime or have anything to do with a contract or tort or breach of trust or marriage or real or personal property did not have, till very recently, to worry about the law. But this was not so in India. The moment he was conceived, the law prescribed a ceremony. His advent into the world was celebrated by another ceremony, wherein gifts to fellowmen, whose society he joins, play a prominent part. Then comes the tonsure ceremony, and, after that, the *Upanayanam* (holy thread investiture), more important than the physical birth, as it is the admission into the world of God-knowledge, the beginning of *Brahmacharya*, the path of God (Brahm). Later on, after study, according to the choice of the individual, comes marriage which was wholly spiritual in its conception. Then, we get the *ritusanti*, the consummation of the marriage. After that, his son's conception ceremony comes, and so the circle

continues. When a man dies, prescribed rites are to be performed. The matter does not end there. The eldest son performs the *Shradh* so that deceased may attain *Moksha* or salvation. Early Hindu juristic thought and hence Hindu jurisprudence bears a distinct imprint of its own. “Hindu Law,” says Mayne, “has the oldest pedigree of any known system of jurisprudence”. Hindu Jurisprudence thus made no demarcation between ceremonial rites or rules, moral or religious information and strict legal precepts.

1.4 SCOPE OF JURISPRUDENCE

In the modern age, jurisprudence has been treated as a science of social control of human conduct. This idea invariably widened the scope of this subject. Hence for an integrated understanding of jurisprudence, it is essential to understand jurisprudence from all angles. There are mainly four views on this subject which are popularly known as the school of legal theory. These are:

- i. Philosophical,
- ii. Analytical,
- iii. Historical,
- iv. Sociological.

Philosophical Jurisprudence: Exponents of this school of jurisprudence were mainly concerned with the relations of law to some set of idea or ideals outside the law. Among such ideals are-“that the purpose of society is to make men virtuous and such is the purpose of law, which the end of the law is to maintain justice in society, and that legal restrictions can be justified only in so far as they promote the freedom of individuals in society (Kant), that the end of law is to promote the greatest happiness of the greatest number (Bentham)”. In short, this school is primarily concerned with principles of ultimate right and wrong.

Analytical Jurisprudence: Those thinkers of jurisprudence who regard the law as a command emanating from the government or from the state as the political organization of a society and who treat the relation of law to the State as its most important aspect, may be grouped in the analytical school of jurisprudence. They are mainly concerned with the definition of law. In

fact, the purpose of analytical jurisprudence is to analyse without reference either to their historical origin and development or to their ethical significance or validity of the first principles of the law. John Austin is the leading exponent of this school.

Historical Jurisprudence: Writers of Historical Jurisprudence take the social institutions at a time sequence with primacy given to the primitive legal institutions of the society. The German Historical School of Savigny and Puchta developed a conception of the origin and growth of law on the analogy of language. The historical school gave a theoretical justification for those vast studies of legal history which in Europe, England and even America was consummated during the nineteenth century.

Sociological Jurisprudence: the sociological jurisprudence is chiefly concerned with the relation of law to contemporary social institutions. It is still in the making. Jurists like, Pound, Ihering Enrich have adopted this method for the study of legal philosophy. According to these jurists, the essential characteristic of law is that it shall prevail, that it shall actually represent the common interactions of men in their daily life.

This classification of jurisprudence provides a rough classification of ideas and it is not proper to limit the scope of jurisprudence on the basis of this classification. With the changes in the social, political and economic outlook and with the changes in the conditions of individuals and nation life much may come under the province of this science of law, namely, jurisprudence. Thus, we can say that whatever the nature of law or the working of authority, or the analysis of legal concepts legal concepts, jurisprudence should nor confine itself to logic. Legal theory is concerned with law as it exists and functions in the society. The way in which law is created and enforced, the influence of social opinions, the effectiveness of law and the part played by sanctions, are all points where jurisprudence meets other disciplines such as sociology, psychology and so forth. One task of jurisprudence is to link law with other disciplines and to help to locate it within its wider social context.

1.5 SOURCES AND TYPES OF LAW

The sources of Laws are as given below:

- i. Custom
- ii. Religion and Morality
- iii. Legislation
- iv. Delegated Legislation
- v. Judicial Decisions
- vi. Equity
- vii. Scientific Commentaries

Types of Law: Law in general or universal sense includes different varieties or species. These are:

- a) **Law of Nature:** The law of nature consists of those ideals, abstract principles of universal justice and applicability which were considered to be based on Reasons or God for the guidance of all men for all times and for all places. According to Greeks, Romans and Hindus in ancient time to live according to reasons was to live according to nature itself.
- b) **Customary Law:** According to Keeton, customary law consists of those rules of human action, established by usage and regarded and legally binding by those to whom the rules are applicable, which are adopted by the court and applied as a source of law, because they are generally followed by the political society as a whole. Or by some part of it.
- c) **Physical Law:** Physical law which is also known as the scientific law is those which describe general nature and principles according to which the physical phenomena act and interact under given conditions.
- d) **Moral Law:** Moral laws are also termed as ethical rules which generally lay down an ideal standard for human behaviour. It includes rights conduct, right means and fair play etc.

- e) **Conventional Law:** Any rule which is voluntarily agreed by parties in their mutual relationship with each other is known as the conventional law.
- f) **Constitutional Law:** It is the basic and fundamental law of the state which governs or determines the structure and functions of its various organs.
- g) **Common Law:** Common law consists of all those principles, usages and rules of action applicable to the government and security of persons and of property which does not rest for their authority upon any express or positive declaration of the will of the legislation.
- h) **Equity Law:** It is that law which is based on 'fairness'. All legal systems of the world had developed equity law as corrective to the law of the land.
- i) **Administrative law:** It is the law relating to the organization and services performed by various administrative agencies of government. It deals with powers of all such bodies and determines their rights and duties.
- j) **By-Laws:** The legislation of subordinate law making bodies are known as by-laws.
- k) **Martial Law :** It means the suspension of the ordinary law and government of a country or part of it by Military Tribunals.

- l) **Military Law:** It is that law which controls the conduct of all those serving within the armed forces which are subject to the jurisdiction of Court Martial.
- m) **Public Law:** It is that part of the law which is applicable to State in relation to its subjects.
- n) **Private Law:** It is that part of the law which determines the relationship between individuals in their ordinary private capacities like the law of Contract, the law of property etc.
- o) **International Law:** The set of rules that are regulated by the civilized states as binding in their relationship with other states. It arises primarily in the form of treaties and conventions.

p) **Civil Law:** It means a legal system of a particular country.

1.6 HISTORY OF INDIAN MEDIA LAW

In the year 1780, the first newspaper of India namely The Bengal Gazette or Calcutta General Advertiser was started by James Augustus Hickey. But due to its outspoken criticism of the Government, it was seized in the year 1872. Until the year 1757, there was no press regulation. It was only after the British East India Company started ruling a part of India after the Battle of Plassey.

To control the press, censorship and licensing was a European institution. In Bengal, in the year 1823, it was introduced through Adam's regulations.

Metcalfe' Act replaced the Licensing regulations that were applicable to the whole territory of the East India Company. The location of the premises of its publication is required to be declared by the printer and publishers of every newspaper.

Lord Canning reintroduced Licensing in 1857. It was then applied to all form of publications. As a general law Indian Penal Code was passed in the year 1860. The offences of defamation and obscenity were laid down by it i.e. the offences which any writer, editor or publisher must avoid.

Registration of Books Act, 1867: The Press and Registration of Book Act, which continues to be in force was brought into effect in 1867. This was merely a regulatory law which enabled the government to regulate printing presses and newspapers by a system of registration and to preserve copies of books and other material printed in India. The idea was to prevent publication of anonymous literature.

The Vernacular Press Act, 1878: The Vernacular Press Act of 1878, enacted during the region of Viceroy Lytton was undoubtedly one of the most repressive of the press legislations passed during this period. This was the first of the press laws specifically directed against newspapers published in the Indian language. The Act which was aimed at suppressing seditious

writings required that all Indian owners of newspapers furnish a bond for Rs. 10,000 while registering their papers with the registrar and undertake not to publish any 'objectionable material'. The Act introduced the concept of a security deposit which could be forfeited if, in the opinion of the government, the undertaking was violated. To make it worse, a publisher did not have recourse to a court of law to challenge an order of forfeiture of deposit or confiscation of the 'objectionable material'. The act also empowered the government to issue search warrants and enter the premises of any press.

Criminal Procedure Code, 1898 :Although the Criminal Procedure Code was the general law laying down the procedure for criminal matters, it contained some matters of interest to the press. For instance, Section 108, particularly after the insertion of Section 99-A to 99-G in 1992 conferred powers upon the government to search and forfeit publications which offended the provisions of Section 124-A, 153-A or 295 of the Indian Penal Code.

The Official Secrets Act, 1889 :The Official Secrets Act was the first measure after the repeal of the Vernacular Press Act to affect the freedom of the press. It was a reaction to a number of official secrets being leaked to the press. The Act exposed the Indian owned press to further oppression as the government was to decide as to whether the material was confidential or not. In 1903, the Act came up for amendment. Under the Act, as it originally stood, a person who was in possession of military secrets could not be prosecuted unless the criminal intention was proved. In the amendment, both criminal and civil matters were covered and the government was spared the burden of proving the intention of the accused. The amendment became the subject matter of much criticism by the vernacular and Anglo-Saxon press. The Act was more drastically recast in 1923.

The Newspaper (Incitement to Offences) Act, 1908 : In 1908, The Newspaper (Incitement to Offences) Act was introduced along with the Explosive Substances Act. The Home Minister, Sir Harvey Adamson stated that the bill was designed to empower the government to confiscate the

printing press and to extinguish a newspaper which contains any incitement to murder or any offences under the companion bill on explosive substances. He considered that 'the public incitement to murder and acts of violence carried all through the medium of an infamous section of the press' was an equally serious menace as the 'actual making and use of bombs'.

Copyright Act : Copyright Act was passed by the British Parliament in 1911. Indian Copyright Act came into force in 1914 and it brought into force similar provisions like the Copyright Act of 1911 passed by the British Parliament. Later in the year 1957, it was replaced by the new Copyright Act, 1957.

Cinematograph Act : The Cinematography Act was passed by the government in the year 1918 to regulate the exhibitions by means of Cinematographs. This Act was later replaced by the Cinematography Act, 1952.

Indian Press Act, 1910 : The Act of 1910 empowered the government to require a deposit of security by the keeper of any press which contains matter inciting sedition, murder or any offence under the Explosive Substances Act, and also provided for the forfeiture of such deposit in specified contingencies. No forfeiture could be questioned except in the High Court. Between 1917 and 1919 coercive action was taken against 963 newspapers and printing presses. In addition, 173 new presses and 129 newspapers were stifled at birth by the demand for crippling securities. More than 500 publications were proscribed during that period. On October 6, 1921, *Young India* published the manifesto on freedom of opinion.

The Foreign Relations Act : The Foreign Relations Act came into force in 1932. The main objective of the Act was to provide against the publication of statements which are likely to be intolerant for the continuation of friendly relations between the British Government and the governments of certain foreign states.

The Newspaper (Prices and Pages) Act, 1956 :The Act authorizes the Central Government to control the price of newspapers in relation to the number of pages and size. The central Government is also entitled to set the allocation of space to for advertising matter.

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

This Act provides for delivery of books and newspapers to public libraries. Under Section 3-A of this Act, the publisher of every newspaper is required to deliver at his own expense, one free copy of each of the newspaper as soon as it is published to public libraries as notified by the Central Government. They are:

- i. National Library, Calcutta
- ii. Connemara Public Library, Madras
- iii. Central Library, Bombay

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

This Act regulated certain conditions of services of working Journalists and other persons employed in newspaper establishments

Press Council Act : After 1976 the Act was reconstituted in the year 1978 for maintaining and improving the standards of news agencies and newspapers in India.

ASSESS YOUR PROGRESS

1. Discuss Vernacular Press Act,1778._____
2. What are the types of law?_____

1.7 SUMMING UP

Jurisprudence is the philosophical interpretation of the nature and purpose of the law. It is thus a set of rules and regulations that regulate human behaviour in societies.

Jurisprudence has been treated as a science of social control of human conduct. For an integrated understanding of jurisprudence, it is essential to understand jurisprudence from all angles. There are mainly four views on this subject which are popularly known as the school of legal theory. These are- i) Philosophical ii) Analytical iii) Historical iv) Sociological.

1.8 QUESTIONS

1. Define Jurisprudence. Discuss the scope of Jurisprudence.
2. Discuss the sources of law.
3. Elaborate on the history of the Indian media law.

1.9 RECOMMENDED READINGS

1. JURISPRUDENCE (LEGAL THEORY) by Prof. Namita Aggarwal

UNIT 2: RIGHTS , RULES AND LAWS-JUSTICE AND LAW, LAWS AND SOCIETY

UNIT STRUCTURE

2.1 Introduction

2.2 Objectives

2.3 Concepts of Justice and Law

2.3.1 Characteristics of Justice

2.3.2 Various dimensions of Justice

2.3.3 Doctrines of Justice

2.4 Laws and Society

2.4.1 Why Laws are important in a society

2.4.2 Relationship between laws and society

2.5 Summing Up

2.6 Questions

2.7 Recommended Readings

2.1 INTRODUCTION

The unit introduces you to the basic concept of justice and law, and laws and society. Various dimensions of justice and the doctrines of justice have been discussed. The purpose of this unit is to help you understand the relationship between laws and society and the importance of laws in a society.

2.2 OBJECTIVES

After reading this unit you will be able to –

- Get a clear concept of justice and law
- Discuss the various dimensions of law and the doctrines of justice
- Discuss the concept of law and society
- Know the importance of law in a society
- Relationship between laws and society

2.3 CONCEPTS OF JUSTICE AND LAW

Term 'Justice' is originated from the Latin word 'Jus' that means bond or tie. This means that justice is a system in which men are tied in a close relationship. A man living in society is attached to another man in one way or the other. This relationship has few rights and duties attached to it. When a man while enjoying his rights also fulfils his duties and behaves in an appropriate manner with others, then he is said to be doing justice. It is the result of the fair and proper administration of law.

According to Salmond, "Justice means provide everyone his share"

According to Plato, 'Justice is a quality.' In simple words, the meaning of justice is to discharge one's duties honestly and not to interfere in other actions.

So justice is concerned with human welfare.

Broadly speaking, 'Law' is a national pattern of conduct to which actions do or ought to conform. Law is defined by John Salmond as "a body of principles recognized and applied by the state in the administration of justice."

Laws are sets of rules and regulations that are meant to be practiced and established by a form of government. Laws are meant to attempt to create equality throughout a community or society. For example, the freedom of the speech and expression, the freedom of the press, the freedom to assemble, the freedom to any religion etc is guaranteed by the Constitution of India. This law, upheld by the Indian constitution, is created to provide each citizen their individual rights. This is meant to develop equality for each individual to believe and express what they desire. However, laws often have defects. They may not clearly state the literal meaning, resulting in various interpretations of a single law. For example, in the **Tinker v. Des Moines** case, three students were sent home because they were protesting against the government's policy in Vietnam by wearing black armbands. In their

opinion, their right to the freedom of expression was being threatened. In this situation who is right? The administration or the students?

Laws are used to determine fair and appropriate sanctions for people in a society, this is known as justice. Justice is a formulated opinion on the fairness of how a conflict should be resolved. Influences from religion, economic background, and race are all factors that could potentially influence what an individual determines as just. What one social group defines as just may not be the same that another social group defines as just.

2.3.1 CHARACTERISTICS OF JUSTICE

- a) Human welfare
- b) Ethical concept
- c) Fulfilment of reasonable interest
- d) To provide everybody their own reasonable share without any discrimination
- e) Performance of duties
- f) Justice is related to values prevailing in society

2.3.2 VARIOUS DIMENSIONS OF JUSTICE

1. Legal Dimensions of Justice

Justice and laws have a close affinity with each other. The State makes laws and implements them in order to establish justice in the society.

Following conditions are necessary to ensure legal justice:-

- Just laws
- Equality before law

- Uniform legal system
- Impartial and independent judiciary
- Inexpensive and efficient justice
- Democratic organization of legislative bodies

2. Political dimensions of justice

Nobody should be denied political rights and to provide equal political rights is political justice.

Following conditions are necessary to ensure political justice:-

- Universal adult franchise
- Right to contest elections
- Right to criticize the government
- Right to form political parties
- Right to protest
- Right to petition
- Respect for human right
- Protection of the interests of minorities
- Political authority should be based on the consent of the people
- Democratic system
- Special provisions for the protection of the interests of Backward classes and backward tribes

3. Social Dimensions of Justice

Social justice means to give proper opportunities to every citizen, in every sphere of life, to develop his personality and to end all types of social inequalities.

Following conditions are necessary to ensure Social justice:

- Equality before law
- The absence of special rights
- Prohibitions of discrimination
- To end the caste system
- Just distribution of wealth
- Democratic government
- Just balance between freedom and social control
- Social security
- Provision of equal political rights
- Protection of interest of minorities
- Abolition of social values

4. Economic Dimensions of Justice

Economic justice means to provide equal opportunities to everybody to earn his livelihood. It also means to help such people who are not able to work and earn their livelihood. The basic needs of everybody such as food, cloth and shelter should be fulfilled and the unequal distribution of wealth needed to be stopped.

Following conditions are necessary to ensure economic justice:-

- Right to work for everybody

- Fulfilment of basic needs
- To reduce wide economic disparities
- Protection of the interest of workers
- From each according to his ability and to each according to his needs
- Just distribution of wealth
- End of economic exploitation
- Special protection of the interest of weaker section
- Limited right to property
- Question of state interference in economic needs
- Fixed economy is better
- Equal wages for the same job

2.3.3 DOCTRINES OF JUSTICE

- i. **Rule of Law:** It states that the state is governed, not only by the ruler or the nominated representatives of the people but by the law. The Indian Constitution intended the country to be a country governed by the rule of law. It provides that the Constitution is the superior power in the country. Legislative and the Executive derive their authority from the Constitution. It just laid to the principle that all people and institutions are subject to and accountable to the law that is fairly applied and enforced; the principle of government by law.
- ii. **Rule of Natural Justice:** The concept of natural justice implies that during a trial both the parties to the trial must be treated with fairness. Both the parties to the trial must have an equal chance to put their case forward and to put their points. It thus implies to be fair, reasonable and equality. In any judicial process, these are the procedural principles to be taken into account for protecting the rights of a private individual. Principles of natural justice are firmly grounded in Articles 14 and 21 of the Constitution. **Example:** The entire M.B.A. entrance examination was cancelled by the Osmania University because of mass-copying. The action of the University

was challenged on the Ground that it was taken without observing the principles of natural justice.

The two basic principles of natural justice are-

- a. **Nemo in Propria causa judex, esse, debet:** Rule against Bias.
- b. **Audi Alteram Partem:** Rule of fair hearing.

caution in interpreting them universally because different individuals, people and cultures vary in the range of use of nonverbal communication.

ASSESS YOUR PROGRESS

1. Discuss the political dimensions of justice. _____

2. What are the characteristics of justice? _____

2.4 LAWS AND SOCIETY

The term society is derived from the Latin word 'socius' that means associations or companionship- a large group of individuals who are associative with each other. Society is the system in which people live in organized communities. It may be defined as an organization of people with an interest or purpose. Human conduct is controlled through moral standards, religious doctrines, social traditions and legal rules.

Law plays a fundamental role in our lives and in our society. Law is used as one of the mode to control the society. The laws of society reflect the values and beliefs of the people living in that society. As society's values change, so does the law. Our laws reflect our accepted standards of right and wrong. Society cannot always agree with the same moral codes and standards the law applies equally to everyone without exception. No individual in the society has any rights to use any unrestrained ability to take away the rights of another person except in accordance with the land of the country.

Law being a social science, it grows and develops within the society. Thus, a social change in society brings about a change in the definition, scope and functions of law. For example, what is prohibited behaviour today may become a permissible conduct tomorrow and vice versa. Thus, abortion which was considered to be a heinous crime because of the immorality involved in it is no longer an offence after the enactment of the law legalizing abortion. The concept of law depends largely on the social values, accepted norms and behavioural patterns of a particular society at a given time.

The law of the land has the power and the authority to command and control misconduct, corruption, the inconstant and unfaithful behaviour of the human's beings, to sustain discipline and also to force limitations on some freedom. We are living in a disorganized and unresolved world. So without a proper and authoritative setting in the society, the normal livelihood of a person would be disorganized and in havoc. Law contributes a lot to the society we are living in. It helps the society in sorting out contention, disagreement and disputes. It protects the individual rights, properties and liberties of a person, ensuring equality and justice to all the people living in the society. It is important in society because it acts as a guideline as to what is accepted in society. Without it, there would be conflicts between social groups and communities. It is important that we follow them. The law allows for easy adoption to changes that occur in the society.

2.4.1 WHY LAWS ARE IMPORTANT IN A SOCIETY?

- i) It helps to regulate society
- ii) Law encourage the dignity, principle and integrity within us to protect the rights as human beings
- iii) Education and technologies are protected by law so that they can thrive and grow for the advancement of the society.
- iv) Law deters criminality with the punishment of imprisonment.

v) Law provides procedures for settling disputes which may arise between the people living in the society. It thus protects people from harming each other's and to live in the society with peace and harmony.

vi) Law can bring about change as laws influence social thinking.

vii) We all are equal law; it allows for just and fair treatment for all.

viii) Laws outline our rights and duties

ix) It identifies the values and believes of a society.

People should respect the law of the land, comprehend its importance and abide by it.

2.4.2 RELATIONSHIP BETWEEN LAWS AND SOCIETY

Law and society are interrelated to each other. Society would become a chaos without the law of the land. Law also needs to be changed according to the changes that the society faces because without the necessary changes law cannot keep step with society. Without the control of the law, the society became the mess or at brutal. So, to keep the society peacefully, we need to create a balanced relationship between law and society.

The legal system reflects all the vitality of life within any society. We can say that law is a social science characterized by movement and adaptation. Rules are neither created nor applied in a vacuum. On the other hand, they are created and used time to time and again for a purpose. Rules are intended to move us in a certain direction that we assume is good or prohibit movement in a direction that we believe is bad.

The social rules are made by the members of the society. Disobedience of the social rules is followed by punishment of social disapproval. There is no positive penalty associated with the violation of rules except ostracism.

Law is enforced by the state. The objective of the law is to bring order in the society so the members of society can progress and develop with some sort of security regarding the future. The state makes laws. Disobedience of state

laws invites penalty, which is enforced by the government by the power of the state. What is not enforceable is not Law.

The legal system of a country reflects the rules of society. If there is a change in social rules then we can say that a change in social law just occurs. Law can be changed due to the social condition by amending the law according to the circumstances and situation.

Laws are also used to manage various governmental public benefits such as educational centres. Through the concept of the welfare state law are being used to achieve social justice, social welfare, eradication of poverty and economic exploitations.

2.6 SUMMING UP

In this unit, we learned about law and justice, the various dimensions of justice i.e. legal, political, social and political. Further, we have also discussed about laws and society, the importance of law in a society and the relationship between laws and society.

From the above discussion, we have learned that the ultimate goal of the law is justice for all. To ensure justice the idea is to treat every person equally. We consider a law unjust if it discriminates against one person from the other on the basis of irrelevant characteristics. Justice is impartial irrespective of people's status. The law itself should conform to society's values and beliefs. Law thus plays an important role in the society. To live in peace and harmony in the society the individuals must identify and agree that the law of a country is obligatory and imperative to balance and control the society. Whether it is an individual, a worker or a business owner everyone is subject to or abide by the law of the land. It controls the behaviour of mankind, influences human rights, raises the standards of living, and allows us to determine the quality of our lives.

successful communication, apart from the elements of communication, body language and proxemics plays an important role.

2.7 QUESTIONS

1. What are the various dimensions of justice? Discuss.
2. Discuss the relationship between law and society.
3. Write short notes on :
 - a) Rule of Law
 - b) Rule of Natural Justice
 - d) Justice and Law
 - e) Law and Society

2.8 RECOMMENDED READINGS

- The Indian Constitution by P.K. Pandey
- Jurisprudence –Legal Theory by Prof. Nomita Aggarwal
- Principles of Political Sciences by R.C. Aggarwal

UNIT 3: JUDICIAL SYSTEM IN RELATION TO MEDIA UNIT STRUCTURE

- 3.1 Introduction
- 3.2 Objectives
- 3.3 Preamble of the Indian Constitution
- 3.4 Basic features of the Indian Constitution
- 3.5 Structure of Judicial system in India
- 3.4 Summing Up
- 3.5 Questions
- 3.6 Recommended Readings

3.1 INTRODUCTION

In this unit, we will discuss about the Preamble of the Indian constitution, basic features of the Indian constitution. We will also enumerate ant the structure of the judicial system in India.

A Constitution means a document having a special legal sanctity which sets out the framework and principal functions of the government, Constitution of a country gives an idea about the basic structure of the political system under which its people are to be governed. The Constitution deals with the powers of the principal organs of state, demarcates their responsibilities and regulates their relationships with each other's and with the people. It can also be termed as "Fundamental Law" of the country which reflects people's faith and aspirations. The Constitution of India is considered as the Superior Law of the land. It places down the structure describing the governmental principles, construct the structures, policy powers and responsibilities and obligations of executive, administrative and governmental establishments and organization, sets the basic rights and duties of every citizen.

3.2 OBJECTIVES

After reading this unit, you will be able to:

- Know the Preamble of the Indian Constitution
- Understand the Indian Constitution's basic features
- Know the structure of India's Judicial System

3.3 PREAMBLE OF THE CONSTITUTION OF INDIA

“WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE; social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all

FRATERNITY assuring the dignity of the individual and the [unity and integrity of the Nation];

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION”.

3.4 BASIC FEATURES OF THE INDIAN CONSTITUTION

Constituent Assembly drafted the Indian Constitution. The Constituent Assembly held its first sitting on the 9th December, 1946. It reassembled on the 14th August, 1947, as the sovereign Constituent Assembly for the Dominion of India. The Constituent Assembly passed it on 26th November 1949. It came into effect on 26th January 1950.

Every country has its own Constitution with special features because the historical background, social life, economic background and political conditions influence the making of the Constitution. All these factors have contributed to the making of the Constitution of India.

Prof. K.K. Ghai in his book, 'Indian Government and Politics' has given some important features of the Constitution of India. These are as follows:

1. Written and Detailed Constitution: The Constitution of India is a written document. It incorporates the constitutional law of India. It was enacted by the Constitution Assembly of India. It took the Assembly 2 years, 11 months and 18 days to write and enact the Constitution. Indian Constitution is a very detailed constitution. It consists of 395 Articles divided into 22 Parts with 12 Schedules and 94 constitutional amendments. It is a constitution of both the Centre and states of Indian Union.

2. Self-made and Enacted Constitution:

Indian Constitution is a constitution made by the people of India acting through their duly elected and representative body—the Constituent Assembly that was organized in December 1946. Its first session was held on 9th December, 1946. It passed the Objectives Resolution on 22 January, 1947.

3. The Preamble to the Constitution of India: It is a well draft document which states the philosophy of the constitution. The Preamble is the key to the Constitution. It constitutes India into a sovereign, socialist, secular and democratic republic and to secure to all its citizens-JUSTICE; social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the [unity and integrity of the Nation].

4. India is a Sovereign, Socialist, Secure, Democratic, Republic: The Preamble constitutes India into a Sovereign, Socialist, Secular and democratic republic. All these five terms signify five major features of the Indian policy:

- i) India is a sovereign State
- ii) India is a Socialist State
- iii) India is a Secure State
- iv) India is a Democratic State
- v) India is a Republic

5. India is a Union of States: Article I of the Constitution declares, that “India that is Bharat is a Union of States.”

6. Federal Structure and a Unitary Spirit: While describing India as a Union of States, the Constitution provides for a federal structure with a unitary spirit. Scholars describe India as a ‘Quasi-Federation’ or as ‘a federation with a unitary bias, or even as ‘a Unitarian federation.’

- i) **Mixture of Rigidity and Flexibility:** The Constitution of India is rigid in parts. Some of its provisions can be amended in a difficult way while others can be amended very easily.
- ii) **Fundamental Rights:** Under Part III, Articles 12-35), the Constitution of India grants and guarantees Fundamental Rights to its citizens.

7. Directive Principles of State Policy: The Directive Principles are instructions to the state for securing socio-economic developmental objectives through its policies. Part IV of the Constitution of India deals with the ‘Directive Principle of State Policy’.

8. Fundamental Duties: Part IVA- Article 51A (incorporated by the 42nd Amendment 1976) of the Constitution of India enumerates Fundamental Duties of the citizen. These are:

- To obey the Constitution and have regards to the ideas and institutions
- To respect the National Anthem and the National Flag

- To realize and follow the essential epitome of non-violence, democracy and secularism.
- It the duty of every citizen to preserve the rich heritage of our culture.
- To safeguard the sovereignty, unity and integrity of our nation.
- To safeguard public property.
- To defend our country even at the cost of lives.
- To protect natural resources.
- To avoid dowry, gambling and other social evils.
- To aim towards supremacy in their respective spheres of activity.
- Protect natural environment and have sympathy towards living beings.
- Advance scientific temper, humanism and spirit of inquiry and refine.
- By the 86th Amendment, it has been made a fundamental duty of the parents to provide education to their children.

9. Protection of the Human rights of the people: The protection of Human Rights Act, 1993 was passed by the Union Parliament for safeguarding the human rights of all the people. Under it, the National Human Right Commission was established. It was headed by a former Chief Justice of India. It acts as an independent commission with a status of civil court. It works for preventing the violations of human rights of the people.

10. Bi-Cameral Union Parliament: The Constitution provides for a Bicameral Legislature at the Union level and names it as the Union Parliament. The lower house is the Lok Sabha, popular, directly elected house of the Parliament. It represents the people of India. The Rajya Sabha is the upper and, indirectly elected second House of Parliament. It represents the states of the Indian union.

11. Parliamentary System: The Constitution of India provides for a parliamentary system of government at the Centre as well as in every state of the Union. The constitutional head of the State is the President of India with its nominal powers. The real executive is the Union Council of Minister headed by the Prime Minister.

12. **Universal Adult-Suffrage:** Another feature of the Constitution is that it provides for universal adult suffrage. All men and women enjoy an equal right to vote. Each adult man and woman above 18 years of age has the right to vote.

13. **Single Citizenship:** The integration of the Indian States with the rest of India is the basic features of the Indian Constitution. It allows only single citizenship to the Indians, unlike the USA. All citizens enjoy a common uniform citizenship. They are thus authorized to freedom and equal rights and uniform protection of the state.

14. **Single Integrated Judiciary:** The Constitution provides for a single integrated judicial system common for the Union and the states. The highest court of the land is the Supreme Court of India with the High Courts at its State level and other Courts working under the High Courts.

15. **Independence of Judiciary:** The Indian Constitution makes judiciary truly independent.

16. **Judicial Review power:** The Constitution is the supreme law of the land. The Supreme Court acts as the supervisor protector and interpreter of the Indian Constitution. It is also the guardian of the Fundamental Rights of the people. For this purpose, it exercises the power of judicial review. The constitutional validity of all laws made by the legislatures is determined by the Supreme Court. It can reject any law which is found to be unconstitutional.

17. **Judicial Activism:** Currently, Indian judiciary has been becoming more and more active towards the performance of its social obligations.

18. **Emergency Provisions:** The Constitution of India contains special provisions for dealing with emergencies. The Constitution stipulates three types of emergencies

- National Emergency (Article 352) an emergency resulting from war or external aggression or threat of external aggression against India or from armed rebellion within India or in any of its part;
- Constitutional Emergency in a State (Article 356) an emergency resulting from the failure of constitutional machinery in any state; or some states and
- Financial Emergency (Article 360) an emergency resulting from a threat to the financial stability of India.

The President of India has been empowered to take appropriate steps for dealing with these emergencies. During the period of an emergency, the powers of the President, actually of the PM and the Union Council of Ministers Cabinet increase tremendously. President can take all steps deemed essential for meeting an emergency.

19. Special Provisions relating to Scheduled Castes and Scheduled Tribes: The Constitution in its Part XVI specifies certain special provisions relating to Scheduled Caste and Scheduled Tribes to protect and safeguard the interests of the people belonging to these tribes.

20. Language Provisions: The Constitution lays down special provisions for defining the Language of the Union, Regional Languages. Hindi shall be the official language of the Union in Devnagri script. But along with this, it also provides for the continuance of the English language. A state legislature can adopt the language of the province as its official language. English continues to be the language of the Supreme Court and the High Courts. Twenty-two modern languages are recognized in the Eighth Schedule by the Indian Constitution.

ASSESS YOUR PROGRESS

1. Elaborate the characteristics of the Constitution of India. -

2. What are the fundamental duties stated in the Constitution of India. _____

3.5 STRUCTURE OF JUDICIAL SYSTEM IN INDIA

Judiciary is that branch of government which interprets the law, settles disputes and administers justice. Judiciary is the watchdog of democracy, guardian of the constitution as well as a champion of liberty.

The judiciary, in order to be fair and uniform, is structurally hierarchically organized. In India, the structure of the judiciary is like a pyramid. Supreme Court is at the Apex, at the state level it is the High Court, District level it is the District Court and in the village and Panchayat level it is the Lok Adalats.

The preservation of laws and orders of India is protected and safeguarded by the Judiciary. Problems and issues related to criminal and civil offences are solved by the Judiciary. The Indian Judiciary System follows the British Legal System.

The Supreme Court : In India, the foremost judiciary tribunal is the Supreme Court of India. There is one Chief Justice and other twenty-five Judges. The president of India appoints them. The term of office for a judge in the Supreme Court is 65 years. It has original, appellant, writ and advisory jurisdictions.

Original Jurisdiction: In any disputes between the Government of India and any State, Government of India and any State on one side and any other States on other side and two or more States inter se the absolute Original Jurisdiction lies with the Supreme Court of India.

Appellate Jurisdictions: An appeal lies to the Supreme Court of India when the matter is Constitutional. When the case involves a substantial question of law as certified by the High Court the Supreme Court has the Appellate Jurisdiction. An appeal lies to the Supreme Court in Civil cases when it is certified by the High Court that the matter necessitates a substantial question of law of common public significance. An appeal lies to the Supreme Court of India in criminal cases when the High Court reverses the acquittal order of the lower court and sentences him to death.

Writ Jurisdiction: The fundamental rights of the citizens are protected and defended by the Supreme Court of India. For the imposition and implementations of the rights and freedom of the people, the Supreme Court can issue the writ in the nature of habeas corpus, mandamus prohibition, certiorari and quo warrantor.

Advisory Jurisdiction: Any question of law or fact of public importance can be referred to the Supreme Court by the President of the Republic for its opinion under the Constitution of India. The Supreme Court may on being for the opinion report to the President its opinion thereon. The Constitution of India is protected and safeguarded by the Supreme Court of India. The unconstitutional laws and orders of the Union and the State Government can be annul by the Supreme Court.

The High Court : Each High Court consists of a Chief Justice and one other Judges as the President of India may decide from time to time. The President of India in discussion with the Chief Justice of India and the Governor of the Concerned State appoint the Judges of the High Courts. The High Court is also entitled as the court of fairness. For the violation of fundamental rights under Article 32 of the Constitution of India, the High Courts can be approached for writs. Under Article 226 of the Indian Constitution, the High Court can be approached for any other rights. And under Article 227 of the Indian Constitution, the High Court has the powers to supervise overall its subordinate court falling within the physical jurisdiction.

Subordinate courts : In each state, there are subordinate courts below the High Courts. The High Courts have the entire authority of the subordinate court. From the lower courts, appeals lie to the higher courts. The High Court accepts an appeal from the subordinate court against the decisions of the District Judge's court or the Session Judge's Court. The minor cases are deal by the lower courts i.e. the Nyaya Panchayat or Munsiffs Court and the higher court i.e. the Subordinate Judge's Court or District Judge's Court deals with the important issues and cases. City Civil Courts and Metropolitan Magistrates Courts are there in a Presidency town. The Governor in

consultation with the High Court of the concerned State appoints most of the Judges of the subordinate courts.

The key task of the judiciary is the administration of justice. Justice, which is the soul of the state, must be administered without fear or favour. The judicial branch should remain outside the influence of politics. While interpreting laws and deciding cases, the judges must be impartial and honest. Without independence, impartiality and integrity of the judges are endangering. The first condition for an efficient and impartial judiciary is independence. This independence broadly means the freedom of the judiciary from the control and influence of the executive, the legislature and the people at large. Secondly, impartiality in the administration of justice is as important as independence. Administration of justice should be always without consternation or favour, endearment or enmity.

3.4 SUMMING UP

- A Preamble means an introduction to the statute. The objectives before the Constituent Assembly were to comprise and compose India into a “sovereign democratic republic” for securing to all its citizens “justice liberty, equality and fraternity”. The Preamble is the key to the Constitution.
- Constitution of India is the unique constitution. The Indian Constitution is the largest written liberal democratic constitution of the world. It provides for a mixture of federalism and Unitarianism, and flexibility and with rigidity. Since its inauguration on 26th January 1950, the Constitution India has been successfully guiding the path and progress of India.
- Judiciary, as one of the pillars of democracy, holds great responsibilities to govern the justice and injustice in the society through its functioning. Therefore, the vacations of Indian courts play a major role in the better functioning of the Indian judiciary.

3.8. QUESTIONS

1. What is the preamble of the Indian Constitution?
 2. Discuss the structure of the Indian's Judicial System.
-

3.6 RECOMMENDED READINGS

- Constitution of India by P.K.Panday

UNIT 4 : CONSTITUTIONAL OBLIGATIONS

UNIT STRUCTURE

4.1. Objectives

4.2. Introduction

4.3. Freedom of Speech and Expression

4.3.1. Reasonable restriction on freedom of speech and expression

4.3.2. Feature of speech and expression

4.3.3. Some landmark judgement of the supreme court

4.4. Freedom of the Press

4.5. Right to Information Act, 2005

4.5.1. Objective of the Act

4.5.2. Commencement of the Act

4.5.3. Basic features of RTI Act, 2005

4.5 Summing Up

4.6 Questions

4.7 Recommended Readings

4.1 INTRODUCTION

The unit introduces you to the basic concept Article 19(1) (a) of the Constitution of India i.e. the freedom of speech and expression and we will also know about the Article 19(2) of the Constitution i.e. the reasonable restrictions related with it. We shall also discuss about the press freedom. And lastly, we will discuss the Right to Information Act, 2005.

4.2 OBJECTIVES

The objectives of this lesson are as follows:

- To know about the freedom of speech and expression
- To know about the press freedom
- To know about the Right to Information Act, 2005

4.3 FREEDOM OF SPEECH AND EXPRESSION

The way one expresses is a substance of freedom, right and virtuous. The sources of expression may include the liberty as to how one thinks and the right to know. Freedom to speech is a live lead of the democracy. It is fundamental to the enlargement, growth and fulfilment of individual identity. Freedom of speech and expression is more crucial in a parliamentary setup of the State where the sovereign rulers are the people of the State. It is an indivisible right, which forms the basis of all other human rights and measures the effectiveness of laws.

Freedom of speech and expression under Article 19(1)(a) of the Constitution of India is the fundamental right guaranteed to every citizen. Every person who is a citizen of India is entitled to enjoy this right. But this right is not available to a person who is not the citizen of India i.e. he resides in a foreign national. For a democratic polity, the freedom of speech and expression has been considered to be indivisible and fundamental.

The freedom of speech and expression means that every person has the right to express his or her own opinions or viewpoints. They can express by words of mouth, by printing, through photographs, by writing, through photographs or cartoons or through any other mode of expression. Thus the people can express their opinions through any medium of communication be it the representation of visuals like signs, symbols, gestures etc. It is the way to openly propagate, circulate or to exchange one's viewpoints or ideas. In a democratic government freedom of speech is the embankment and it connects substantial significance to this freedom because without the

freedom of speech plead to reason, which is the root of democracy, cannot be made. Freedom of speech and expression unlocked ways and provides a platform for free discussion of matter and issues. It thus plays a pivotal part in forming public opinions on political issues, social subjects and economic issues.

4.3.1. REASONABLE RESTRICTION ON FREEDOM OF SPEECH AND EXPRESSION

The Constitution of India under Article 19(2) provides reasonable restrictions on freedom of speech and expression. Under Article 19(1)(a), the freedom of speech and expression provided by the India Constitution is not absolute. There are certain reasonable restrictions provided under Article 19(2) of the Constitution in respect of the sovereignty and integrity of the country. These reasonable restrictions include- relation with the foreign states, contempt of court, sovereignty and integrity of India, public peace and safety i.e. public order, morality and decency, defamation, security of the State, obscenity, sedition, motivation to an offence.

4.3.2. FEATURES OF SPEECH AND EXPRESSION

Under Article 19(1)(a) of the Constitution of India the freedom of speech and expression is a notion with various characteristic, both in consideration to the contented of the freedom of speech and expression and in the manner in which communication and exchange of thoughts and ideas can take place between people. It is also a vital idea that has developed with the advancement of time and approach in technologies.

It is only through the freedom of speech and expression that a person has the right to express himself through the words of his mouth, or by writing, or by printing or through pictures or in any other means of communication. One can put forward one's own opinions and he also has the right to propagate. Any person can communicate with the other person his ideas or thoughts through any means be it be through magazines, books, newspapers, movies, it also includes the audio-visual media and the electronic media.

- Right to circulate
- Right to criticize
- Right to receive information
- Right of the press to conduct interviews
- Reporting court proceedings
- Reporting legislative proceedings
- Right to advertise (commercial speech)
- Right to rebuttal
- Right to broadcast
- Right to entertain and to be entertained
- Right to fly the National Flag

4.3.3. SOME LANDMARK JUDGEMENTS OF THE SUPREME COURT CONCERNING THE FREEDOM OF EXPRESSION

Romesh Thappar V. State of Madras, AIR 1950 SC124: From the earliest cases to be decided by the Supreme Court, involved a challenge against an order provided by the Government of Madras under Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949 striking a ban on the entry and circulation of the journal, Cross Roads, printed and published by the petitioner. The court struck down section 9 (1-A) holding that the rights to freedom of speech and expression was of supreme importance and that holding short of a danger to the foundations of the States or a threat to its overthrow could justify a retrenchment of the right to freedom of speech and expression. The challenge provision which permits the imposition of restrictions for the wide purpose of securing public safety and public order fell outside the scope of the reasonable restrictions permitted under Article 19(2) and was held to be unconstitutional.

Express Newspapers (P) Ltd. V. Union of India, AIR 1958 SC 578: The case arose out of a challenge to the Working Journalists and other Newspaper Employees (conditions and services) and Miscellaneous Provisions Act, 1955, on the ground that its provisions contravene Article 19(1)(a) of the Constitution i.e. freedom of speech and expression. In the facts of the case,

the court held that the impact of the legislation on the freedom of speech and expression was just too distant and no judicial interference was warranted.

Odyssey Communication (P) Ltd. V. Lokvidayan Sanghatana (1988) 3 SCC 410: In this case, the Supreme Court held that the right of a citizen to exhibit films on the state channel, Doordarshan is part of the fundamental right guaranteed under Article 19(1)(a). The court held that this right was alike to the right of a citizen to issue or produces his opinions through any other medium. This medium can be the book or the newspapers, magazines, through hoardings, by means of advertisements and any other medium. The petitioners challenged the exhibition of a serial name *HoniAnhoni* on the Doordarshan on the field that it motivated superstition and blind faith amongst the audiences. The petition was dismissed as the petitioner failed to show evidence of preconception to the public.

In Secretary, Ministry of Information and Broadcasting V. Cricket Association, Bengal, (1995) 2 SCC 161: The Supreme Court held that broadcasting is a method of communication and a means of expression and speech inside the structure of Article 19(1)(a). This case involved the rights of a cricket association to grant telecast rights to an agency of its choice. In this case, it was observed that the right to entertain other and the right to be entertained by means of broadcasting tools or medium is an important part of the freedom under Article 19(1)(a).

State of Bihar V. Shailabala Devi, AIR 1952 SC 329: while explaining Section 4(1)(a) of the Press (Emergency Power) Act, 1931 concern with words, signs or visual representations which encourage or motivate or encourage to inspire or encourage the doing of any offence of murder or violence, the Supreme Court held that any speech or expression which motivates or uplift the undertaking or doing of violent crime such as murder, erode the security of the state and falls inside the reach of Article 19(1)(a).

4.4 FREEDOM OF THE PRESS

Press Freedom is basically equitable to circulate opinions and viewpoints in the media by the journalist through various means of communication which include through newspapers, television, hoardings, or any other medium of communication without censorship by the government. While Article 19 of the Indian Constitution does not include the provision of the freedom of the press, the freedom of the Press is implied in the right the freedom of speech and expression.

The media obtain its rights from the right to freedom of speech and expression as provided by the Indian constitution to the citizens of India. Thus, the media enjoys the same rights to write, publish, to broadcast and to circulate like any other individual. It is not more or less than an individual.

In the pre-independent India there appears a case, where the Privy Council held that the freedom of the journalist is a customary part of the freedom of the subject and to whatever lengths the subject, in general, may go, so also may the journalist, apart from the statute law, his privilege is no other and no higher. No privilege attaches to his position. The framework for analysing media rights remains much the same in post-independence India.

Freedom of the Press means that there is an absent of statutory body and executive and administrative jurisdiction on circulation and distribution of plan or ideas or information. Press freedom is of outermost important as it acts as a monitor of the legislature, executive and the judiciary. But the press freedom is not absolute in nature. There are certain reasonable restrictions which are mentioned in Article 19(2) of the Indian Constitution. These restrictions include- the contempt of court, defamation, decency and morality, maintaining a friendly relationship with the Foreign States, integrity and sovereignty of India and the security of the States.

The freedom of the press is the soul and mind of the social and political intercourse. It is only through the press that people can express their opinion and viewpoints and speak out in the public regarding any issue or matter of concern. The press plays the role of a public educator by educating the people of the different sections of the society. It is only through the press that people came to know about what is going on in their surroundings. There the press must not break the trust of the common people and act for the welfare of the people. But while doing this the press must follow some reasonable restrictions which otherwise may violate the rights of the other parties. While publishing and circulating any news the press must take into account certain restrictions. It cannot circulate and write whatever it pleases without knowing the truth of the story. The freedom of the press is given by the constitution under Article 19(1) (a) but then the press cannot violate its rights by disseminating information, publishing news which is violative and defamatory in nature.

Discussed below are two case laws where the freedom of the press is subverted by the legislature:

- i. In **Sakal Papers V. Union of India AIR 1962 SC 305**, the Supreme Court held that the State could not make laws which directly affect the circulation of a newspaper for that would amount to a violation of the freedom of speech. The right under Article 19(1) (a) extends not only to the matter which the citizen is entitled to circulate but also to the volume of circulation. This case arises from a challenge to the newsprint policy of the government which restricted the number of pages a newspaper was entitled to print.
- ii. In **Bennett Coleman V. Co. V. Union of India, (1972) 2 SCC 788: AIR 1973 SC 106**, the Supreme Court held that newspapers should be set independent to control and decide their pages and their circulation. The case arises out of a constitutional challenge to the validity of the Newspaper (Price and Pages) Act, 1956 which

authorize the Government to control and manage the allotment of space for advertisements material. It was held by the court that the reduction of advertisements would fall repulsive of Article 19(1) (a) since it would have a straight effect on the dissemination of newspapers. The Court held that any limitation leading to a loss of advertising revenue would influence dissemination and thereby effect on the freedom of speech.

4.5 RIGHT TO INFORMATION ACT, 2005

The Right to Information Act is an Act to supply for setting out the empirical jurisdiction of the right to information for all the citizens to secure approach to the information under the authority of public authority, in order to encourage and advance transparency and responsibility in the working of every public authorities, the constitution of a Central Information Commission and State Information Commission and for matters attached therewith and subordinate thereto.

The RTI Act 2005 was enacted by permission and authority of His Excellency, President of India. On 15.06.2005 the RTI Act was enacted by the Parliament and it was notified in the official Gazette of India on 21.06.2005. The Act extends to the whole of India but it does not extend to the State of Jammu and Kashmir.

4.5.1. OBJECTIVES OF THE ACT:

- To set out a practical regime of RTI
- To firm the approach to information beneath the jurisdiction of public authorities
- To advance translucency and responsibility in the running and working of every public authority.
- To compose the State Information Commissions and the State Information Commission
- To preserve the confidentiality of sensitive information

- To uphold the democratic ideals with a knowledgeable citizen and clearness of the information.

4.5.2. COMMENCEMENT OF THE ACT

The Act consists of 31 sections, out of which 9 came into effect from 15th June, 2005. Section 4 fixes 120 days from that date as the date from which the rest of the provisions become effective. Therefore, the entire Act can be said to have been effective from 13th October, 2005.

4.5.3. BASIC FEATURES OF RTI ACT, 2005

- Maintenance of records:** Under the Act all public authorities are beneath a responsibility to preserve their records in a manner that enable access to information. Public authorities are needed to safeguard that all records are properly categorized, registered and to the extent possible, computerized within a reasonable time and are attached through a network all over the country on different systems so that access to such records is smooth. All public authorities are necessitating issuing specified information about their operating within a period of 120 days from the passing of the Act. There is a detailed listing of responsibility and duty imposed on public authorities in the maintenance of their records. This Act makes an attempt to safeguard and protect circulation and distribution of information through easily reachable and effective methods such as it can be means of notice boards, newspapers, public announcements, media, broadcasts, the internet and inspection of the offices of any public authority.
- Duty to publish:** Duty to publish is a principal improvement on the Act of 2005 on public authorities. Every public authority shall in persistent venture provide as such information *suo moto* to the public at regular intervals through various medium of communication which

also includes the internet so that the common people have the minimum resort to the use of this Act to acquire information.

- iii. **Establishment of Information Commissions:** This Act provides for the establishment of a State Information Commission and Central Information Commission. The Chief Information Commissioner Head both the commission. Persons of renown in public life with extensive comprehension and understanding and experience in law, science and technology, social service, management, journalism, mass media or administration and governance are appointed for the posts. Both the commissions give the power and the authority to an inquiry into complaints made by aggrieved persons. Aggrieved persons are those who have been refused to access to the information or those who have not received a response to a request for information or access to information in within the prescribed time period, those who have be given misleading information, incomplete or false information and who have been required to pay a fee which they consider unreasonable. When the commission is satisfied that there is a reasonable ground to inquire into the matter, it is authorized to initiate an inquiry into the matter.
- iv. **Request for information:** When a person is eager of acquiring information he may make a request in writing or through electronic means in Hindi, English or the official language of any area in which the application is made along with the prescribed fee. The application must be a label to the State or the Central Public Information officer of the Public authority or the Central or State Assistant Public Information Officer specifying the particulars of information sought.
- v. **Exemptions from disclosure:**
- The information which is preconception to the scientific or economic engrossment of the State cannot be disclosed.

- Any information which has been clearly prohibited to be produced or publicize by any court of law or tribunal or the revelation of which may represent contempt of court.
- That information the disclosure of which would harm the competitive position of a third person i.e. commercial confidence, trade secrets or intellectual property.
- That information which is accessible to a person in his beneficiary relationship, unless the authorized authority is content that the larger public interest warrants the disclosure of any such information.
- Confidence information received from Foreign Government.
- If any information that would endanger the life or the physical safety of any individual that information could not be disclosed.
- That information which hinders the procedure of investigation or disquiet or prosecution of offenders

4.5 SUMMING UP

- Freedom of speech and expression under Article 19(1) (a) of the Constitution of India is the fundamental right guaranteed to every citizen. Every person who is a citizen of India is entitled to enjoy this right. But this right is not available to a person who is not the citizen of India i.e. he resides in a foreign national. For a democratic polity, the freedom of speech and expression has been considered to be indivisible and fundamental.
- The media obtain its rights from the right to freedom of speech and expression as provided by the Indian constitution to the citizens of India. Thus, the media enjoys the same rights to write, publish, to broadcast and to circulate like any other individual. It is not more or less than an individual.
- RTI Act introduced in 2005 has shown that it is a powerful tool for safeguarding and protecting translucency in the governmental departments and accommodating corruption of the people. It is

generally claimed as one of the world's best law with an excellent implementation track record. In the post-Independent India it is one of the most advanced legislation passed.

4.6 QUESTIONS

1. What do you understand by freedom of speech and expression? What is the limitation associated with it? Explain

4.7 RECOMMENDED READINGS

- Facts of Media Law by Madhavi Goradia Divan

MODULE II: COMMUNICATION THEORIES

UNIT 5: LAWS RELATED TO MEDIA PROFESSION

UNIT STRUCTURE

5.1 Introduction

5.2 Objectives

5.3 Introduction to Indian Penal Code

5.4. Press Council of India

5.5. Press Council Act

5.5.1. Compositions of the Press Council

5.5.2. Objectives and Functions of Press council of India

5.5.3. Press Council's power

5.6. Cinematographic Act, 1952

5.6.1. PART I – Highlights

5.6.2. PART II – Certification of Films for public display highlights

5.6.3. Film Certification of CBFC

5.6.4. Censorship

15.6 Summing Up

5.7 Questions

5.8 Recommended Readings

5.1 INTRODUCTION

In this unit, we are going to study to discuss various media laws of India. So in this unit, we shall study the various norms to be followed while being in a profession of media is it in print media or digital media. In this unit, we will also understand about the Indian Penal code and the various sections of IPC. We will also enumerate about the PCI and the CBFC and film censorship in India.

5.2 OBJECTIVES

In this unit, we shall discuss about the Indian penal code and every section which defines the different category of crimes committed by persons of Indian origin. After studying this unit you should be able to –

- Enumerate the Press Council of India and the various powers and functions of the Press Council of India.
- Understand about the Cinematographic Act, film certification of CBFC and Censorship in India.

5.3 INTRODUCTION TO INDIAN PENAL CODE

The Indian Penal Code IPC is the main criminal code of India. It expands to the whole of India. But it does not apply to the State of Jammu and Kashmir. In the year 1860, the introductory draft of the Indian Penal Code was formulated. First Law Commission which was chaired by Lord Macaulay supervised the introductory draft.

The first Penal Code came into existence in the year 1862 and since then a number of amendments have been made in the code. The code covers all the substantive features of the criminal law, it is an inclusive code.

The Indian Penal Code in its basic structure is a document that consists of the list of all the punishments and cases that a person committing any kind of a crime is to be held. It includes all the Indian origin people. The exception to this document is that any kind of military or armed forces crimes cannot be charged on the basis of Indian Penal Code. They have a different dedicated list of laws and the Indian Penal Code cannot supersede any part of it.

The most significant feature of the document is that it promotes the impartial nature of judgments. The Indian Penal Code does not provide any relaxation to any specific person for his or her position of power. Thus, it has been able to stand with the aspirations of a common man and prevent all sorts of corruption and misuse of powers. The Indian Penal Code has reached greater

heights due to its impartial judiciary in the modern world. Indian Penal Code is a very important set of regulation which is very important for the system to be operated in a proper way. It is the main criminal code of India. This document majorly covers all the basic offences which are highlighted in the society.

There are XXIII chapters and the total numbers of sections enumerated in the Indian Penal Code are five hundred eleven. Every section defines the different category of crimes committed by persons of Indian origin.

The various sections deal with the crime and the punishment associated with it. It deals with the general exceptions to some crimes. The code also deals with the various sections namely Criminal Conspiracy, of Abetment, offences against the State, offences relating to Army, Navy and Air Force, offences against the public tranquillity, offences by or relating to public servants, offences relating to elections, Of contempt of the lawful authority of public servant, Of false evidence and offences against public justice, Of offences relating to coin and government stamps, offences relating to weights and measures, offences affecting the public health, safety, convenience, decency and morals, of offence relating to religion, offences which affect the human body, offences against property, offences relating to documents and to property marks, offences relating to marriages, cruelty by husband or relatives of husband, defamation, criminal intimidation, insult and annoyance, attempt to commit offences.

5.4 PRESS COUNCIL OF INDIA

On the guidance and direction of the First Press Commission, the Press Council was structured in the year 1966. Its main objective was to preserve the freedom of the press and of preserving and enhancing the quality and standards of the press in India. Under the Press Council Act, 1978 the presently available council function. It is thus a statutory, quasi-judicial body which proceeds as an observer and monitor of the press. It examines and arbitrates the complaints against the press and by the press for breach and contravention of ethics and for the breach of the press freedom.

The Press Council of India is an apparatus for the press to control and manage itself. The notion is established in the conception that in a representative and democratic society the press requires being independent and accountable immediately. To proceed as the watchdog of the public the press has to function effectively and it must have to assure freedom of expression, unrestricted and unhindered by an authority having jurisdiction, sorted bodies or person. If it is exercised with the required perception of responsibility only then the freedom of the press can have lawfulness. In order to maintain and preserve the highest standard and quality of professional conduct, the press must carefully and sedulous stick to the obtained and accepted norms of journalistic ethics. When the norms are violated and the freedom is degrading by unethical and improper conduct, there must be a way to examine and inspect and control it. The restraint and control by the government or official authorities may manifest devastating of this freedom.

The Press Council is controlled and lead by a Chairman and he has to be a retired judge of the Supreme Court of India. A committee existing of the Chairman of the Rajya Sabha, the speakers of the Lok Sabha and a person selected from among the members of the Press Council is appointed as a Chairman of the Press Council. The Press Council also exists of other twenty-eight associates of whom the press includes twenty which are elected by the news agencies or the press organizations identified and notified by the Press Council as all India body of classification as the – editors, working journalist and the managers and owners of the newspapers. From the two houses of the Parliament, five members are elected, as nominees of the Sahitya Academy there includes three representatives from the field of culture, literacy and legal, Bar Council of India and the University Grants Commissions. The members are elected to serve for a term of three years to serve the Council.

The Council has premier competence and power in consideration to the media safeguarding and ensuring the freedom of the speech is sustained and preserved. For sustaining democracy it is one of the supreme and principal

bodies. The council accepts complains against the press or by the press deliberately. It has the authority and the jurisdiction to hold an investigation and examine on the complaints received by the press or against the pressor otherwise against the affront newspapers and the news agencies. In every part of India, the Council has adequate powers to execute its functions and hold any investigation, as are entrusted in a civil court, while a suit is tried under the code of civil procedure in certain esteem. Summoning a person and imposing the appearance of persons and inspecting the persons on oath, necessitate discovery and examination of the documents, accepting evidence on affidavits, taking any record of the public and issue commissions for the inspection of witness or documents are the powers of the Press Council.

On discovering the journalist to be culpable and guilty the council may notify, alert, censure or condemn the offending journalist. In respect of the conduct of any authority including the Government, the council is authorized to make an observation upon them. If the council finds it mandatory, it can notify, censure or recommend the newspapers, news agencies, the editor or the journalist or refuse the conduct of the editor or the journalist. The Constitution of India protects the Press Council. The action of the Council is not to be questioned. It can be questioned only if the council is proved to be a violation of the Constitution which makes it an extremely stronger body. The council has entirely functional autonomy and it is self-governing of Government managing and supervising the discharge of its statutory responsibilities.

5.5 PRESS COUNCLI ACT

According to the Preamble of the Press Council of India Act, this Act is established for protecting the freedom of the press and maintaining and improving the standards of both newspapers and news agencies. Excluding the state of Jammu and Kashmir, it extends to the whole of India.

Press Council in India is statutory and an autonomous body which formulates guidelines or code of conduct for the press which is followed by members of the Press voluntarily it is an autonomous, non-official but statutory body. In

1965 the First Press Commission proposed the set up of a statutory Press Council to look after editorial independence, objectivity on news presentation and fairness of comments, etc. on the part of the newspaper. The council, according to the commission, was also to foster the development of the press, protecting it from external pressures and regulate its conduct in matters of offensive and unacceptable writing. In pursuance of this recommendation beneath the Press Council Act of 1965, the Press Council of India was composed by the Government of India in 1966, with the judge of the Supreme Court with Justice J.R. Mudholkar, as its chairman, which was later amended in 1970. In the year 1976, during the Emergency, Mrs. Gandhi's Government enforced the publication of Objectionable Matter Ordinance and even repealed the Act by the Press Council Repeal Act, 1976. The act was repealed on the plea that it was unable to fulfil the purpose of its formation. Ultimately, a fresh Press Council Act was passed in the Parliament and enacted by the Janata Party Government after the Emergency in 1978. After the first chairman, justice Mudholkar, the Press Council of India was headed by Justice N. Rajagopala Ayyangar and (after its revival) by Justice A.N. Grover, Justice A.N. Sen and Justice R.S. Sarkaria.

5.5.1. COMPOSITION OF THE PRESS COUNCIL

The Press Council of India having its permanent succession is an anatomy corporate. Sec. 5 (1) of the Press Council Act of 1978, states the composition of the Council. The council is composed of twenty-eight members and it has a chairman. Out of the total twenty-eight members working journalist includes thirteen in number, out of these thirteen- newspapers editors include six and the remaining seven are the working journalist other than the editors. Persons who have their business or carries on the business of management of newspapers include six persons. A person who manages news agencies includes one member. Persons possessing particular knowledge empirical experience in respect of education, science and law and culture and literature three persons are included. From the Members of Parliament i.e. the Lok Sabha includes three members and two members from the Rajya Sabha.

All members of the Council are in term for a period of three years, under Sec. 5 (2) of the Act of 1978.

5.5.2. OBJECT AND FUNCTIONS OF THE COUNCIL

Listed below are the functions of the Press Council of India in furtherance of its objectives:

- To help the newspapers in sustaining and preserving their autonomy
- For maintaining and retaining the highest standards of professionalism for journalist and newspapers a code of conduct should be built.
- The preservation and maintenance of the highest standards of the public flavour and savour by the newspapers and the journalists are to be ensured and encourage a required perception of the rights, accountability and responsibilities of the citizens.
- The magnification of a sense of responsibility is to be stimulated or encouraged and general people service among all those attached to the career of journalism.
- To retain beneath review any growth and development probable to limit the contributions and circulation and distribution of news of public interest and significance.
- Retain below review such cases of aid accepted by any news agencies or newspapers in India from foreign sources, as is introduced to it by the Central Government.
- To advance and assist the foundation of such usual service for the contribution and distribution of news to newspapers as may, from time to time arrive at it to be advantageous and prudent.
- The facilities for the genuine education and training of persons in the career of journalism are to be provided.
- To advance a real functional relationship between all the classes of the persons associated in the making or publishing of the newspapers.
- To assist technical or different research.

5.5.3. PRESS COUNCIL'S POWER

The Press Council does not have the power to impact or pressure any news agency, or newspapers, journalist or an editor to disclose the origin of any news or information.

- If any news breach or contravene the standards of journalistic ethics or taste of the general people the council is competent to delete or censure any such news.
- If the working journalist or an editor is established to be engaging or performing any professional misconduct the council can hold an inquiry against them.
- Inside the meaning of Section 193 and Section 228 of the Indian penal code every inquiry held by the Council shall be considered to be a judicial proceeding.

5.6 CINEMATOGRAPHIC ACT 1952

Any film which is to be displayed or exhibited publicly has to have a certificate from the proficient authority that the film is worthy of public exhibition. The Cinematographic Act applies to entire India. But it does not extend to the State of Jammu and Kashmir. Cinema was first introduced on 1896 in Bombay, now Mumbai in India when first Cinematographic Act 1909 of England was initialized. Indian Cinematographic Act was passed and came into force in 1920. Censor boards were then placed under cities like Chennai, Kolkata, Lahore (now in Pakistan), Rangoon (now in Burma) and Mumbai along with the regional censors. After independence, the autonomy of regional censors was abolished and brought under censor board of Mumbai with the implementation of Cinematograph Act, 1952.

The Cinematographic Act of 1952 was reviewed in 1983. Under the new Act, a Film Censors Board (at the present time known as the Central Board of Film Certification) was established. At the centres, there are advisory panels that are authorized to inspect every film and sanction the films for either unrestricted display or for display restricted to the adults. It can categories films under different certificates as 'UA', 'A', and 'U' according to the

contents and presentations. The CBFC also have the authority to decline to sanction a film for the public display if it thinks necessary. For the first time, a petitioner questioned the reasonableness of film censorship as the contravention of the freedom of speech and the expression. Under Article 19 (2) of the Indian Constitution i.e. the reasonable restrictions on freedom of speech and expression the Supreme Court observed that the pre-censorship of films were justified. It was because films have to be regarded differently from the other forms of expression and art since a moving image was capable to agitate more extremely and therefore certification of the same was tendered.

5.6.1. PART I – HIGHLIGHTS

- i. "Adult" – Any person who has completed his eighteenth years is an adult
- ii. "Board" – Under Section 3 of the Act Board means Board of Film Certification composed by the central Government.
- iii. "Certificate"- Under Section 5 of the Act Certificate which is allowed or permitted by the Board.
- iv. "Cinematograph" – It comprises any equipment for the portrayal of moving pictures or sequence of pictures.

5.6.2. PART II- CERTIFICATION OF FILMS FOR PUBLIC DISPLAY

HIGHLIGHTS

- Films Censors Board
- Examining the films.
- Advisory panels.
- Certification of films.

5.6.3. FILM CERTIFICATION OF CBFC

<u>Certificate</u>	<u>Name</u>	<u>Meaning</u>
U	Universal	May contain only mild themes and mild profanity or sexual references.
UA	Parental Guidance	May contain mature/strong themes and moderate sexual references, languages and undetailed sexual activity is also allowed.
A	Adults only	Nobody younger than 18 may rent or buy an A-rated or watch a film in the cinema with this rating
S	Restricted to any social class of people	Specialized audience, such as doctors.

5.6.4. CENSORSHIP

Censorship means the control of some objectionable or offensive matter and ideas from circulation in the society. The right to freedom of speech and expression is although provided by the Constitution it lays restrictions on some contents which can tend to increase the tension between communications and affect the harmony of the state. There are various types of censorship in India namely moral censorship which restricts obscene or immoral matters, military censorship restricting information of military intelligence from getting to the enemy, political censorship when the

government holds back some information from the citizens in case of rebellions, religious censorship which objects any religious faith and corporate censorship in corporate media outlets where the editors restricts the publication of information related to their business in a negative light. During the region of Indira Gandhi as the Prime Minister of our country in 1975, she imposed strict censorship upon the press and it was not allowed to publish any matter against the Government. This censorship lasted up to 1977 and was removed only after the sixth General Election of India.

The censor board with its consultative panels has taken the initiative of examining every film before permitting it for public viewing so that nothing offensive or obscene can get into the society, however certification are provided according to the contents and ideas showcased in the films. For instance, films containing obscene scenes or contents are restricted only for adults by providing an ‘A’ certificate which means only for adult viewers. Similarly, ‘UA’ is for children under parental guidance and ‘U’ means unrestricted. Many films are also allowed viewing after various cuts and changes in scenes.

ASSESS YOUR PROGRESS

1. Explain the maxim: “actus non facit reum nisi mens sit rea” with suitable case laws _____

2. Do we need a film sensor? How India’s censors are affecting the film industry? _____

5.6 SUMMING UP

- The Indian Penal Code in its basic structure is a document that consists of the list of all the punishments and cases that a person committing any kind of a crime is to be held responsible and imposed

with. It includes all the people living in India. Total numbers of sections enumerated in the Indian Penal Code are five hundred eleven.

- The Press Council of India was established to preserve the freedom of the press and of preserving and enhancing the quality and standards of the press in India. It is a statutory, quasi-judicial body which proceeds as an observer and monitor of the press. It examines and arbitrates the complaints against the press and by the press for breach and contravention of ethics and for the breach of the press freedom.
- CBFC is a Government Agency; its headquarters is in Mumbai. Pahlaj Nihalani is the Chairperson of CBFC. Any film which is to be displayed or exhibited publicly has to have a certificate from the proficient authority that the film is worthy of public exhibition. The Act applies to entire India.
- Censorship means the control of some objectionable or offensive matter and ideas from circulation in the society.

1.7 QUESTIONS

1. Explain the power and function of the Press Council of India.
2. Write short notes on:
 - a) CBFC
 - b) IPC

5.8 RECOMMENDED READINGS

Banan, Stanley J. (1999). *Introduction to Mass Communication*, Mayfield Publishing Company.

Emery E. et al., (1994). *Introduction to Mass Communication*, Harper Collins College.

Hartley, Peter. (1997). *Group Communication*. Routledge.

UNIT 6: PUBLIC INTEREST LITIGATION AND DEFAMATION

UNIT STRUCTURE

6.1 Introduction

6.2 Objectives

6.3 Civil and Criminal Law of Defamation

6.3.1. Distinction between Civil and Criminal Law relating to Defamation

6.3.2. Defamation: Key Elements

6.3.3. Defence to an action for defamation

6.3.4. Remedies for Defamation

6.3.5. Defamation's Punishment

6.3.6. Case Study

6.4. Libel and Slander

6.4.1. Elements of Libel and Slander

6.4.2. Defence against libel and slander

6.4.3. Libel and Slander : The distinction

6.4.4. Case study

6.5. Public interest litigation (PIL)

6.5.1. Cases in which PIL can be filed included

6.5.2. Method of filing s PIL – when and how

6.5.3. Case study

6.5 Summing Up

6.6 Questions

6.7 Recommended Readings

6.1 INTRODUCTION

This unit introduces you to the basic concept of defamation and the various laws relating to the law of defamation. It aims to help students learn about the Public Interest Litigation, who can file a PIL, when and how to file a PIL and the cases in which a PIL can be filed.

6.2 OBJECTIVES

Listed below are objectives of the unit:

- To understand the Law of Defamation- Civil and Criminal
- Discuss some case law related to Defamation
- To know about Libel and Slander
- To know about Public Interest Litigation (PIL)

6.3 CIVIL AND CRIMINAL LAW OF DEFAMATION

Section 499 of the Indian Penal Code defines Defamation and Section 500 of the Indian Penal Code deals with the punishment of defamation. If any person by remark, comment or words either spoken or intentional to be read, or by hint or signs or by visual portrayal or presentation issue, produce or create any imputation regarding any person expecting to harm the person, or if he knowingly or have possessed a ground to trust that such imputation will injure or harm the name or reputation of such persons, it is said to defame that person.

A person reputation or name is considered as his property. Defamation is an injury to the reputation or the name of a person.

- i) Defamation gives rise to the civil remedy for damages and thus compose an actionable wrong.
- ii) If all the conditions of Section 499 of the Indian Penal Code are contended it constitutes a criminal offence.

The right to reputation is an absolute right and anybody who touches the reputation of another is said to do so at his/her peril.

Defamation gives rise to both civil and criminal action. In our country, the civil law relating to defamation is not structured or codified and it is thus grounded on the English Common Law which is subject to statutory exceptions.

Section 499 to Section 502 of the India Penal Code deal with the Criminal Law of Defamation and is very comprehensive. There is no civil action if defamation is of the spoken word. The press, being a written and printed medium, is likely to commit an offence of libel only. Compensation is what differentiates between the civil suit and the criminal proceeding for defamation. To appropriately compensate the person who is being defamed for the loss of the name or the position by the injury or damages is the main objective of the civil action. The main object of the criminal prosecution is to penalize the offender, by punishing the offender with imprisonment or with fine or with both. The intention is irrelevant in civil liability for defamation. The truth of the statement is a complete defence to a civil action for defamation.

In criminal law, the intention is essential for liability. Good faith is a defence in criminal law. But truth as such is no defence in a criminal proceeding except below Section 499 of India Penal Code's first exception. It is necessary to prove further that the defamatory publication is for the public good.

How can someone be defamed?

A person is defamed when there is an incorrect, untrue or faulty printing or announcement to injury or hurt and libellous and defamatory statement about the person. The reputation and the image of the person are defamed when the statement has the tendency to harm or injure the person to whom it is said or passed. This statement is that which reveal the person to hate or to dislike, contempt or derision or which causes to be avoided or evaded or which has a tendency to harm the person in his workplace or career.

6.3.1. DISTINCTION BETWEEN CIVIL AND CRIMINAL LAW RELATING TO DEFAMATION

- A person's image or name is considered as his property and defamation is harming the reputation of the person. Defamation constitutes an actionable wrong and thus gives rise to the civil remedy of damages. Under Section 499 of the Indian Penal Code, 1860 defamation represent a criminal offence. The Civil law of defamation rest in the common law and the criminal law of defamation are organizing and systemize.
- The intention of the defendant is irrelevant in the civil activity and thus it has no protection to plead that the defendant did not have the intention of defaming the plaintiff. In a civil action, 'Good Faith' is not a good defence on the part of the defendant. On the other hand beneath the Section 499 of the Indian Penal Code, it is necessary that the plaintiff should manifest or show that the publication is planning to injure or the plaintiff has reasons to trust that such imputation will harm or injure. In a criminal prosecution, 'Good Faith' is a good defence on the part of the defendant.
- A mala fide intention to defame is not always necessary in a civil defamation while a Criminal defamation must contain some deliberate malice or mala fide intention, to cause damage to the reputation of someone.
- In civil defamation, Court fees are required to be paid as per the value of damages caused to reputation whereas court fees are not required at the level of a civil case in the case of criminal defamation.
- Court punishes the offender at the end of the case if defamation is proved in a criminal case while on the other hand in a case of civil

defamation court awards damages to compensate loss to reputation if defamation is proved.

6.3.2. DEFAMATION: KEY ELEMENTS

- The communication or the proclamation should be defamatory
- The proclamation or the statement must refer to the plaintiff
- The statement must be published by the defendant

6.3.3. DEFENSES TO AN ACTION FOR DEFAMATION

- Justification
- Fair comment
- Privilege
- Consent
- Apology

6.3.4. REMEDIES FOR DEFAMATION

- Injunction
- Damages
- Costs
- General and specific damages

6.3.5. DEFAMATION'S PUNISHMENT

The punishment for defamation is incorporated in Section 500 of the Indian Penal Code. Any person who defames the other person may be punished with a simple imprisonment of two years or he may be asked to pay fine or with both i.e. imprisonment and fine.

6.3.6. CASE STUDY

- **In Cook v. Ward 1830** where the plaintiff told some friends a funny story about himself and the defendant published it in his newspaper as a source of amusement to his readers in the belief that the plaintiff would not mind, the defendant was held liable.

- **In Hulton v. Jones 1910, the facts were these:** the appellants, published in their newspaper an article in which ‘Artemus Jones’, narrated as the warden of a church was charged with living in France accompanied by a mistress. The article is meant to be imaginary and the writer of the article was ignorant of the existence of any person by that name. The plaintiff, a barrister who bore the same name, brought an action for defamation against the newspaper. The House of Lord held that the defendant was liable, notwithstanding the absence of any intention to defame the plaintiff.
- **R S Lodha vs B K Birla 2006** Auditor R S Lodha, who had claimed that Priyamvada Birla had bequeathed her assets worth thousands of crores to him, sued industrialist B K Birla for damages of Rs 100 crores. He said Birla's statements in the media had tarnished his image.
- **Shah Rukh Khan v. State Of Rajasthan And others 2007**
- **Anil Ambani v. Mukesh Ambani 2008**
- **Veritas v. Indiabulls 2014**

6.4. LIBEL AND SLANDER

Defamation is categorized into two. These are- Libel and Slander.

Libel – The defamation which is in the written form is libel. It exists in the communicating, notifying and publishing of a defamatory assertion or statement conveyed or communicated in some everlasting form. It can be in the form of writing, by printing, through pictures, in statue, waxwork, sculpture etc. Libel exposes a person to hatred, shame, disgrace, contempt or ridicule. It injures a person’s reputation or causes the person to be shunned or avoided.

Examples might include accusing someone of having committed a heinous crime, or of having a disease that might cause them to be shunned.

Slander is a spoken form of defamation. It comprises the tort of slander when the defamation is verbal, or by signals or in some alternative form.

Examples of slander may include: telling someone that a certain person has a sexually transmitted disease, relating to someone that a husband is cheating on his wife, saying a doctor or a lawyer has fake diplomas on his wall, relating that someone is incompetent at their job, claiming the business owners participated in unethical and illegal activities

6.4.1. ELEMENTS OF LIBEL AND SLANDER

- Defamatory
- False
- Publication
- Identification
- Fault
- Harm (damages)

6.4.2. DEFENSES AGAINST LIBEL AND SLANDER

- Truth
- Privilege
- Fair comment and criticism
- Consent
- Privilege

6.4.3. LIBEL AND SLANDER: THE DISTINCTION

- Libel is addressed to the eye. It is a written form of defamation on the other hand slander is addressed to the ear. It is a spoken form of defamation.
- Slander is considered as a civil wrong on the other hand libel is a criminal wrongdoing as well as a civil incorrect.

6.4.4. CASE STUDY

Youssopoff V. Metro Goldwyn-Meyer Pictures Limited – The communication should also be observable in addition to the test of permanence and stability. There arises a question in this case as to whether it is aggregate to libel when film pictures are accompanied by speech. The court approach to the closure that the optical feature being enduring and lasting in nature would represent libel, the audio part would also be eligible as libel, not separately, but because it was part of one composite, common exhibition being auxiliary to the optical image.

6.5. PUBLIC INTEREST LITIGATION (PIL)

PIL is a judicial tool which allows a person, a class of people and group of people to dare and challenge an authority or government resolution and action in a court of law for the fulfilment of the public interest. It serves as a protection of the public interest, and which directly joints the public with the judiciary. It is a strong protection for the abused and oppressed people to restore and repair their issues and difficulty as it supply and issue huge and massive social benefits, where there is non-success or failure on the part of the execute.

PIL can be filed straight to the Supreme Court and it can also be filed in any High Court. In order to litigate it is not obligatory that the petitioner has to suffer some injury personally or in private or has had an individual grievance.

A community-minded or public-spirited NGO or a socially responsible member is allowed by the Constitution of India to take up a public cause by seeking judicial for redressed of public harm or injury. The general people involvement in the judicial administrative activity is assured through Public Interest Litigation. It has the consequence of making the judicial process more democratic and representative.

The Supreme Court of India has given the following mention guidelines through which any member of the general public having an adequate interest may maintain an action or petition by the process of PIL issued:

- i) When a person has suffered individual harm or injury or the injury is caused to a disadvantaged segment of the public whom access to the legal system is hard or strenuous.
- ii) When the person brings the action has abundant interest to preserve and continue an action of public harm.
- iii) When a harm or damage must have arisen because of the violation and contravention of the public responsibility or infringement of the Constitution of India.

6.5.1. CASES IN WHICH A PIL CAN BE FILED INCLUDED

- Environmental degradation;
- Violation of basic human rights of the poor;
- Performance of the policies of the government;
- When a municipal authorization is force or pressurizes to execute a public duty;
- When the primary fundamental rights are infringement or when there is a breach of any religious rights.

6.5.2. METHOD OF FILING A PIL-WHEN AND HOW

- i) Form an enlightened determination in order to file a case.
- ii) Need to ask all the pretentious interest groups class who are the possible allies
- iii) While filing a case of PIL it is required to be careful because
 - Lawsuit can be costly
 - Lawsuit can take a lot more time
 - The decision making ability/power from the communities can be taken off by litigation.

- The strength and the ability of the movement can be influenced by an adverse and unfavourable decision.
- The attention of the community can be diverted from the real issue when litigation is involved.

iv) When a decision is taken to file a PIL

- It is important to be cautious in assembling particulars for using it in the case.
- A proficient lawyer is needed to be engaged. If the person filing the PIL is handling the matter himself he must take good legal counsel on the drafting.
- Only registered organizations can file a PIL. When the organization is unregistered a PIL can be filed in the name of an office agent or a member in his or her individual capacity.
- Before filing a PIL a legal notice have to be issued to the concerned authorities or the parties. When a PIL is filed against the government it is required to issue a notice at least two months prior to the filing of the PIL. The notice is to be issued to the concerned Officer department.

6.5.3. CASE STUDY:

i. **Hussainara Khatoon V. State of Bihar**

In India, this case is regarded as the first case of PIL. In the case, the Court noticed and concentrated on the unbelievable situation of under-trial in Bihar who had been in custody unresolved trial for periods far in a surplus of the paramount sentence for their offences. The court not only acted to make the right to a speedy trial, but the court passed the order of general liberate of closed to 40,000 under-trials who had experience confinement afar such maximum period.

ii. M.C. Mehta v. Union of India

On 12th January, 1988 the judgment conveyed whip out at municipal authorities for permitting garbage from the Kanpur's tanneries to make its way to the Ganga. Three landmark judgments were passed by the court. More than 50,000 numbers of orders in the Ganga basin opposed to the industrial pollution from time to time. More than 250 towns and cities in this case had to set up garbage treatment plants apart from the industries. In the highly crowded residential area of Kolkata six hundred tanneries operated. The decision moved them out of the city and relocated them in West Bengal to an organized and planned leather complex. Several industries were closed down and they were permitted for reopening only after setting up sewage treatment plants and pollution control. Covering eight States in India millions of people escaped air and water pollution in the Ganga as a result of the decision in the case.

iii. Vellore, Citizens' Welfare Forum v. Union of India (1996)

The Supreme Court allowed standing to a public-spirited social organization for protecting the health of residents of Vellore. In Vellore, tanneries (the place where animal skins are made to leather) situated around a river were found discharging untreated effluents into the river, jeopardizing the health of the residents. The Court noticed that the leather industry was a major foreign exchange earner and Tamil Nadu's export of finished leather accounted for 80% of the country's export of that commodity. Nevertheless, the Court pointed out that the leather industry had no right to destroy the environment, devalue the ecology and create a danger to the health. The Court asked the tanneries to close their business.

iv. Parmanand Katara v. Union of India

A writ petition was filed in the Supreme Court by Parmanand Katara, a human right activist. His petition was for a newspaper report regarding the death of a scooterist after the scooterist has an accident with a running car. The scooterist was refused to attend by the

Doctors of the hospital. The doctors administered to the hospital which was 20km far that could handle medico-legal cases. The Supreme Court based on the petition held that-

- It is of supreme importance to protect the human life.
- There lies a professional duty and responsibility on the part of the doctors at any government hospital or a private hospital to expand and extend his or her services to protect human life.
- The attempt to save the human life should receive top priority and it does not only apply to the legal profession. It also includes the police and the other citizens part as well.

ASSESS YOUR PROGRESS

1. PIL is a case filed by an individual against any activity which can harm or damage the interest of the public or society. Explain_____

6.5 SUMMING UP

In this unit, we have discussed bat the law of defamation and the civil and the criminal law of defamation. The unit also provides us with an understanding of libel and slander defamation and the difference between them. We now also have a clear understanding of the concept of Public Interest Litigation. We have also discussed some case law related to defamation and the Public Interest Litigation.

6.7 RECOMMENDED READINGS

1. Indian penal code by S.N. Mishra
2. Facts of Media Law by Madhavi Garadia Divan

UNIT 7: MEDIA LAW RELATING TO WOMEN AND CHILDREN

UNIT STRUCTURE

7.1 Introduction

7.2 Objectives

7.3 Law relating to obscenity

7.3.1 Cases of obscenity

7.4. Indecent Representation of Women (Prohibition) Act, 1986

7.5. The Children Act, 1960

7.6 Summing Up

7.7 Questions

7.8 Recommended Readings

7.1 INTRODUCTION

The unit introduces you to the laws relating to obscenity. The purpose of this unit is to help understand the students about the Indecent Representation of Women (Prohibition) Act, 1986 and learn the Children Act, 1960.

7.2 OBJECTIVES

After reading this unit you will be able to:

- Know the law relating to obscenity
- Understand the Indecent Representation of Women (Prohibition) Act, 1986
- Enumerate the Children Act, 1960

7.3 LAW RELATING TO OBSCENITY

From country to country the idea and the conception of obscenity vary. It depends on the virtuous quality and the cultural and ethnic worthiness that have formed the society and the antiquity of the country. In the backdrop of

sexual behaviour, obscenity is generally examined. The Indian Penal Code defines the Indian law on Obscenity.

The 'Purity' of women in India has been stated maximum significance. To assist a family's social privilege and reputation it is like a social barometer. Whether the woman is an ordinary woman or a woman born in the royal family, the culture of India placed substantial significance on values such as loyalty. The portrayal of women in India concentrated on these features until advertising and new bohemian process of thinking alter the popular perception.

In Indian Law Obscenity is defined as -

- Any work that pleads mainly to salacious interest.
- Any work that portrays or narrate sexual behaviour or conduct in a patently insulting and objectionable process.
- Legally the expression 'obsenity' is mentioned obscene as utterance and assertion, which includes words, images and actions. Presentation of an obscene act that conducts a widespread corruption of moral aggregate to the breach and infringement of Indian Law.
- For instance: There were significant public indignation, fury and annoyance when the famous painter, M. F. Hussain painted Goddess Saraswati nude. The painting was contemplated as 'obscene' by many Hindus while many others who observed it from artistic discernment saw nothing incorrect with it.

SECTION 292, INDIAN PENAL CODE COVERS OBSCENITY

Section 292 of the Indian Penal Code deals with the offences of Obscenity in India. Freedom to expression is guaranteed by the Constitution of India and thus the section of Obscenity seems to come in dispute with the individual's right to freedom of expression. To limit a citizen's freedom of expression the Indian law on obscenity is frequently misused. Nevertheless, the right to freedom of expression can be limited to stop indecency in public interest as provided by Article 19 (2) of the Indian Constitution.

The sale of a book, pamphlet, paper, writings, drawing, painting, representation, figure or any object shall be contemplated as obscene, under section 292 of the IPC if it is licentious, salacious or if it inclines to dishonest persons, who are probable to get revealed to it.

The punishment of obscenity in India is 2 years or with fine which may extend up to Rs. 2000 if any person encourages or assists obscenity, such as vend, own, have, rent, lease, distributes, import, transport, makes gain from business or buy or acquire an obscene matter or substance. If the same person is found guilty for the second time he shall be responsible for an imprisonment for a term of 5 years or with a fine which may extend to 5000 rupees.

If any work is proved to be done in the public interest, such as work associated to science, literature, religious occasion or ancient monuments then the provisions of Section 292 of Indian Penal Code is not applicable.

7.3.1 CASES OF OBSCENITY

- Hicklin's Test R.v. Hicklin, (1868) LR 3 QB 360
- Amitabh Bachchan Corporation Ltd. V. Om Pal Singh Hoon on 26 March, 1996
- Ranjit D. Udeshiv. The State of Maharashtra. AIR 1965 SC 881
- K.A. Abbas v. Union of India (1970) 2 SCC 780
- FB has always been a hot spot for political discussions, opinionated fights, and social critique. In 2012, two girls were arrested because of a post that one of them wrote. The post questioned why the entire city had to be shut down on account of the death of Shiv Sena's Head, Bal Thackeray. The girls were arrested in Thane, under section 505(2) – statements generating or encouraging hostility, dislike, or enmity between classes. They did not stop there; one of the girl's uncles had his orthopaedic hospital vandalized as a group of 40 shoved their way inside. The girls were ultimately released on bail, but it did spark a social media conversation on our rights to examine and critique our country and its government.

7.4. INDECENT REPRESENTATION OF WOMEN (PROHIBITION) ACT, 1986

The preamble of the Act is to interdict obscene or indecent portrayal of the women through advertisements or in publishing, by writing, through paintings, figures or in any other form and for matter attached therewith or subsidiary thereto.

“Indecent Representation of Women”- Meaning of- Section 2(c) of the Act defines the term ‘Indecent Representation of Women’. It means the representation or portrayal in any manner of the figure of women, her body or any other part in such a way as to have the consequence of being dirty or vulgar or deprecatory to, or disparages, women or is likely to corrupt, degrade, injure or harm the public ethics or signification.

Advertisements which accommodate indecent presentation of women are to be forbidden or prohibited under Section 3 of the Act. Any advertisement which carries indecent portrayal of women in any form produce or issue, or causes to be produced, or arranges to take part in the distribution or presentation is not allowed to any person.

Section 4 of the Act prohibits the publishing or sending which accommodate indecent presentation of women by post of books, pamphlets, etc. this section does not allow any person to produce or cause to be produced, sell, hire, let to hire, issue, dispense, circulate, or send by post any books, paper, slide, films, writings, pamphlet, drawing, painting, photograph, portrayal or figures which hold indecent presentation of women.

This section shall not apply to such publication which is manifest to be justified as being for the wellbeing of the general people or any other objects of public importance or concern. If it is used for the interest of science, law, literature, learning or religious purposes. Any presentation carving, statue, inscribe, painted or represented on any ancient monument, any temple, and idols or kept for any religious proposes.

Under Section 5 of the Act, any Gazetted Officer approved or permitted by the State government may inside the local limits of the area are authorized to search seizure and examine.

- a) Search: If the Gazetted Officer appointed by the State Government has reasonable grounds to trust that an offence has been committed under this Act he is authorized to enter and search at any time with such help and support.
- b) Seizure: the competent authority can seize any advertisement or any book or paper or pamphlet, film, drawing, photographs etc which contain any indecent representation or portrayal of women or if the concerned authority has reasonable grounds to believe that such publication or portrayal breach any other provision of the Act.
- c) Examination: the competent authority is authorized to examine the records, the register, documents or any such other object found in the place and he can seize the material objects if he has reasonable grounds to believe that it may enhance evidence of the undertaking or commission of an offence which is punishable under this Act.

Without a warrant, no entry can be made into a private dwelling house. Under this act the provisions of the Code of Criminal Procedure, 1972 is applied for any search and seizure. Section 94 of the Code issue warrant to the competent authority for any search and seizure. Under the Act of 1986 when any person seizes anything he shall inform the nearest Magistrate and takes his order as to the custody.

Section 6 of the Act state that a person shall be punished for breaking the provisions of section 3 and 4 of the Act. On his first conviction, he shall be punished with confinement for a term which may extend to two years or with a fine of rupees two thousand. In the occurrence of the second succeeding

conviction, he shall be punished with an imprisonment for a term which is not less than six months but it may also extend to five years and also with fine which is not less than 10,000/- but it may be extended to rupees one lakh.

Under section 7 of the Act when any crime or misdemeanour has been performed or accomplished by a company, every person who at the time of enacting such crime was in charge of the company and was liable to the company for the performance of the company's business, as well as the company shall be considered to be culpable of the offence and shall be accountable to be proceeded against and penalize appropriately. The offences under the Act under Section 8 of the Act are considered to be Cognizable and Bailable.

7.5 THE CHILDREN ACT, 1960

The main objective of the Act is to contribute for the custody, care, preservation, protection, continuation, well-being, teaching, instruction and the rehabilitation or betterment of the abandon, neglected or criminal children and for the trial of the criminal children in the Union Territories.

‘Child’ means a boy or a girl who have attained the sixteen years of age in case of a boy and in case of a girl who has attained eighteen years of age according to Section 2(e) of the Act.

One or more Child Welfare Boards may be composed for any area by notifying in the Official Gazette for applying the powers and discharging the duties granted or trusted on such Boards in relation to the neglected children as included in the Act.

In any area, as may be specified in the Act one or more children court is to be formed for executing the ability and discharging the duties granted or imposed on the children's court in relation to the delinquent children.

A person who in the opinion of the Administrator has a remarkable knowledge of child psychology and child welfare shall be appointed in the Children's Court as a member of the Board or as a Magistrate.

When a Children's Court or a Board has been composed for any area, the Children court and the Board have the capability and the power to deal solely with all the proceedings relating to the delinquent or the neglected children. If the Board or the Children's Court in their opinion if they think it necessary having considered to the situation of the case they can transfer any proceedings to any Board or Children's Court.

For the acceptance of the neglected children under the Act, the Administrator may institute, sustain and maintain as many Children's home as required. Every neglected child who is dispatch to a Children's home shall be providing the child with maintenance, accommodation and education facilities. The child shall also be provided with the facilities for evolution and growth of his character and potential and he will also be given necessary instruction for safeguarding himself against moral hazard or ill-treatment. If the Administrator thinks it necessary he can also execute and discharge such other functions as may be prescribed. Special home can be established and maintain by the administrator for the acceptance of criminal children and it can also institute observation homes for the short-term acceptance of children during the pending of any inquiry.

If any person of any police officer appointed by the Administrator is of the belief that a person is evidently a neglected child such authorized persons or police officer can take the charge of bringing and producing the child before the Board. Within a period of twenty hours, the child should be produced before the Board debarring the time that was needed for the journey from the place from where the child is taken the charge of to the Board. The child taken charge of cannot be sent to a jail or a police station. He must be sent to an observation home until he is shown before the Board.

If an authorized person or a police officer is of the belief that a person is an abandoned child, but the neglected child has a guardian or a parent who has the genuine charge of the child or has a jurisdiction over the child, the authorized person or the police officer may make a report to the Board to begin an inquiry concerning the child instead of taking the charge of the child.

The board may make an order to place the child under the care and guidance of the parents or any other person who is suitable if the Board thinks it competent, instead of sending the child to the observation home. The person competent for or the parent taking the charge of the child is needed to accomplish a bond with or without surety to be accountable for the good behaviour or well-being of the child and the observance of such other conditions impose by the Board.

When the Board receives a complaint from the parents or the guardian that they are not able to take better control and care of the child. When the Board is pleased on inquiry that proceedings should be commenced concerning the child, the Board may send the child to an observation home or to a place of protection and make such further inquiry if it is necessary.

When any person is condemned of a bailable or non-bailable offence and evidently a child is apprehended or retarded or appears or is produced before a children's court, such person shall be free on bail with or without guarantor but he shall not be so freed if there arrive reasonable grounds for trusting that the freeing of such person is probable to involve him into alliance with any reputed culprit or offender or reveal him to virtuous danger or that releasing him would conquer the termination of justice such officer shall cause him to be retained in an observation home or a safe place in the manner as advised until he can be shown before a children's court. When such person is not freed on bail by the children's court, it shall in spite of accomplishing him to prison, prepare an order sending him to an observation home or a safe place

for such period during the pendency of the inquiry concerning him as may be described in the order.

The officer-in-charge of the police station to which the child is brought shall inform the parent or the guardian of the child as soon as the child is arrested if the parents or the guardian is found. The police officer can direct the parent or the guardian to be present in the Children's court in which the child will be appeared and the probation officer.

In conferring with the provisions of section 39 of this Act the Children's Court shall hold the inquiry. It can also make such orders in relation to the child as it thinks necessary where a child who is being charged with an offence appears or is brought before the children court. On enquire when the Children's Court contends that the child had enacted or performed an offence the Children's Court may-

- a. After advising or rebuke allow the child to go home;
- b. The child may be administered to be freed on probation of good behaviour and put under the care of any parent, guardian or other competent person accomplishing a bond, with or without surety as that court may need, for the good conduct and safety and protection of the child for any period not exceeding three years;
- c. Administering or directing the child to send to a special school.

No criminal child shall be convicted to death or confinement, or accomplish to prison in non- payment of fine or in supplying security. Where any child who is of fourteen years of age and the Children's Court is pleased that the offence which the child has committed is an offence of serious nature or that the behaviour of the child is not in the interest of the other children in the Special School to send him to the special school, or that no any other measures given under the Act is acceptable, satisfactory or adequate. The Children's Court may order the criminal child to be kept in a secure care or in such place as it deem fit and necessary. The case shall be reported to the Administrator for the orders.

No child shall be imposed with or endeavour for, any crime jointly with a person who is not a child. A child who has executed a crime and has been bestowed with under the provisions of this Act shall not suffer elimination, if any, connected to a sentence of a crime under such law.

Whenever the competent authority thinks fit or necessary the parent or the guardian having the authentic charge of or authority of the child should be present at any proceedings in respect of the child.

When the child brought before the competent authority is found to be suffering from disease which need lengthen medical treatment or physical or mental complaint that will respond to treatment, the authority may send the child to an approved place for such time periods as it is necessary and needed for the treatment.

A competent authority shall take into consideration the following listed situations while making any order related to the child:

- i. The child age;
- ii. The child living condition or the position
- iii. The probation officer's report
- iv. The child's religious coercion
- v. In the opinion of the competent authority if there are such other conditions which are required to be taken into account for the interest of the child.

The name of the child, the name of the school in which the child study and the address of the child or the image of the child or any other things which may lead to the identification of the child shall not be published in any report in any newspapers, magazines or any news sheet of any inquiry regarding a child.

Within 30 days from the date of passing of the order by the competent authority any aggrieved person can prefer an appeal to the Session court. The

High court may at its own motion or maybe after receiving an application in this behalf call the record of the proceeding in which an order has been passed by the session court or the competent authority to satisfy itself as to the lawfulness or decency or correctness of the order and it can also pass such order as it thinks fit and if necessary.

Any person who is having the actual charge of the child, or jurisdiction of the child, hit, strike, reveal or deliberately abandon the child or causes or acquire him to be hit or strike, expose or neglect in a way probable to cause the child unneeded mental and bodily suffering shall be punished with confinement which may extend to six months or with fine or with both.

If any person utilizes or engages the child for the motive of begging or causing any such child to beg shall be penalized with confinement for a term which may extend to one year, or with fine, or with both.

If any person apparently acquires a child for the cause of any engagement and take away or refuses to give the earnings to the child or if the person uses the earning of the child for his own motives he shall be penalized with a fine which may extend to one thousand rupees.

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7.6 SUMMING UP

- The 'Purity' of women in India has been stated maximum significance. To assist a family's social privilege and reputation it is like a social barometer. Whether the woman is an ordinary woman or a woman born in the royal family, the culture of India placed substantial significance on values such as loyalty.
- The Indecent Representation of Women Act is to interdict obscene or indecent portrayal of the women through advertisements or in publishing, by writing, through paintings, figures or in any other form and for matter attached therewith or subsidiary thereto.

- The Children Act, 1960 is an Act is to contribute for the custody, care, preservation, protection, continuation, well-being, teaching, instruction and the rehabilitation or betterment of the abandon, neglected or criminal children and for the trial of the criminal children in the Union Territories.

7.7 QUESTIONS

1. Discuss the law of obscenity
2. Critically analyse the Indecent Representation of Women (Prohibition) Act, 1986
3. Elaborate on the Children Act, 1960

7.8 RECOMMENDED READINGS

Dance Frank (1967). *Human Communication Theory: Original Essays*, US: Rinerhart & Winston.

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UNIT 8 --FREEDOM AND ACCOUNTABILITY OF THE MEDIA

UNIT STRUCTURE

8.1. Introduction

8.2. Objectives

8.3. Freedom and Responsibility

8.4. Contempt of Court 1971

8.4.1. Punishment for the Contempt of Court

8.4.2. Defences allowed in Contempt Proceeding

8.4.3 Norms to be followed by the media to avoid Contempt of Course cases

8.5. Protection of Civil Rights Act, 1955

8.5.1. Main Provisions of the Act

8.6. Parliamentary Proceeding Act, 1977

8.7. Summing Up

8.8. Questions

8.9. Recommended Readings

8.1. INTRODUCTION

The unit introduces you to the basic concept of freedom and responsibility. The purpose of this unit is to help students in understanding about the freedom and accountability of the media. Some important Acts like The Contempt of Court 1971, Protection of Civil Rights Act and Parliamentary Proceedings Act, 1977 has been discussed.

8.2. OBJECTIVES

The objective of this unit is to know about

- The freedom and responsibility
- The Contempt of Court, 1971
- The Protection of Civil Act
- The Parliamentary Proceedings Act, 1977

8.3. FREEDOM AND RESPONSIBILITY

The term “freedom” means many different things to people, for some it means doing exactly as they want without thinking of other people. To a person that lives in a country which is controlled by an oppressive regime, it can mean not living in fear. To a child, it can be the freedom to choose what to eat or when to brush his teeth. Freedom is the power or right to act, speak or think as one wants without hindrance or restraint. Freedom cannot be separated from responsibility. With freedom comes responsibility. It is common for many people to seek freedom while trying to avoid responsibility.

Responsibility- The word responsibility breaks down into two keywords: response and ability i.e., ability to respond. It is the ability to respond to our own self, to the situations and to the day to day interactions that we have with our selves, or with others or with things around us. Responsibility is thus a duty or obligation to satisfactorily perform or complete a task that one must fulfil, and which has a consequent penalty for failure.

Responsibility and freedom go together. If one doesn't want to take responsibility, he can't have freedom either. The two come together or they go together. It is a universal truth. Without responsibility freedom of any type cannot be acquired.

We naturally desire freedom and independence, since we know that we have this great prospective. But freedom comes with liability and influence. People feel fulfilling to say that they live in a free world. It is true that people

are given the consent and authorization to think in their own way, speak and act as they desire. But when such freedom is not carried by understanding and sagacity, a human being can act worst than animals. When there is an absence of wisdom the human being may frequently misapply their freedom and independence for the incorrect purposes even though the human beings are regarded as clever, brilliant and unique. They misuse their intelligence, speech and their ability to act.

Majority of the people wants to be independent but they do not want to take responsibility. But independence and freedom is indivisible from responsibility. If one is given the freedom or the independent to think he has the responsibility to think emphatically. If a person has the freedom to speech to speak correctly and significantly. If he has the independence to act, he also has the responsibility to act accurately. No person has the right to take the decisions for the other person. The world will be a superior and better place to live in if every person could sense responsibility in their own way. But many of the people do not take the responsibility as to what they speak, think and how they act. They always try to set the blame on another person or on the situation and find excuses for themselves.

Freedom is realizing this bondage; these chains with which our responsibility have been tied. Freedom is freeing it from the imprisonment of notions, views, biases and preformed impressions of everything. When our power of responding is in our own hands, solely controlled by us, by the views that we have formed after exploring and experimenting with things, then we allow ourselves to be free. And we allow ourselves to approach things in our own way. Then we have complete responsibility for what we do.

8.4. CONTEMPT OF COURT, 1971

In the twenty-second year of the republic the Contempt of Court Act, 1971 has been passed by the parliament of our country. It is a court order in the ambience of a court lawsuit or hearing, which proclaims an organization or

a person to have contravened, disobeyed or been discourteous of the court's authority. Contempt of Court means when there is a failure to perform, obey or discharge a lawful order of a court, presenting disrespect to the judges, or publishing of any material which can endanger or threaten the mind of a judge in discharging of his official duty. There are two contempt of courts such as civil contempt of court and the criminal contempt of court.

When there is an intentional breach, indiscipline or disobedience to any sentence, order, direction, decree, writ or other process of the court or intentional violation of a pledge, agreement or undertaking given to a court, it is termed as civil contempt of court. On the contrary criminal contempt of court means any publication which obstruct with or erode the administration of justice or which has a propensity to do so. It means the publication whether by words which are either written or spoken, or by signs or symbols, or by optical presentation or otherwise of any stuff or the performance of any act which-

1. Outrage or inclined to outrage or nether or incline to nether the authority of the court, or
2. When the required course of any judicial proceedings is prejudice or impede or incline to obstruct, or
3. When the administration of the justice is impede or incline to impede with, or clogs or tends to clog.

Though Press is entrusted with the liberty of expression, it should feel responsible for the publication of its matter so that it does not offend against the law. It should not influence or criticize any judicial decision unless the case is closed or the verdict declared. Otherwise, the press can easily be a powerful weapon of justice.

Section 4 of the Contempt of Court Act, 1971, states that no person should be held guilty of contempt of court for publishing fair and accurate report of judicial proceedings; or for publishing any fair comment on the merit of any case that has already been heard and finally decided (Sec. 5).

8.4.1. PUNISHMENT FOR THE CONTEMPT OF COURT

The ability to penalize for the Contempt of Court is granted to the Supreme Court and the High Court. Under Section 12 of Contempt of Court Act, 1971, the punishment for a contempt of court is simple confinement for a term of six months or with fine up to two thousand rupees, or maybe with both. If the contempt of court is committed by a company, then each person responsible for running of that company will be liable for punishment.

However, in civil cases if the court examine that a fine for the contempt will not be sufficient for meeting the end of the justice and that a sentence of confinement is necessary to meet the ends of the justice than the court can instead of convicting him to simple confinement, direct to retard the person in a civil prison for a period not exceeding six month.

The court is not supposed to impose a sentence for contempt of court in excess of what is prescribed under this section. If an apology is being made by the accused to the gratification and contentment of the court the accused may be discharged or the confinement awarded may be remitted by the court. An apology is not assumed to be a decline or refuse entirely on the ground that it is qualified or conditional if the accused makes it authentic or genuine.

8.4.2. DEFENSES ALLOWED IN CONTEMPT PROCEEDING

Clause (b) of Section 13 of Contempt of Court Act, 1971 that was introduced recently by 2006 amendment, allows the accused to raise the defence of justification by truth of such contempt, if the court is pleased and contended that the contempt is in the regard of the public and the appeal for invoking the said defence is legitimate.

Unless the court is satisfied that the contempt is of such a nature that it greatly hinder, or tends greatly to obstruct with the due course of justice no court shall impose a sentence for the contempt of court under the Act.

8.4.3 NORMS TO BE FOLLOWED BY THE MEDIA TO AVOID CONTEMPT OF COURT CASES

Following are the norms that are to be followed by the media in order to avoid Contempt of Court cases, in accordance with the Supreme Court of India.

- i. Press/electronic media are allowed to publish/broadcast/telecast fair and accurate report of the court proceedings.
- ii. The report about an order should only be made after acquiring the true copy of the order and the report's headline should not be misleading.
- iii. Any article/atter which is pending before the court for adjudication should not be published/broadcast/telecast by the press/electronic media.
- iv. No person should be interviewed by the electronic media in regard to the merit of the case.

8.5. PROTECTION OF CIVIL RIGHTS ACT, 1955

The Protection of Civil rights Act is to give punishment for the (spread, exercise and application of Untouchability) imposition of any disability arising there from and of matters attached therewith.

By Article 17 of the Indian Constitution any rights occurring to a person by cause of the abolition of 'untouchability' is the Civil rights.

Article 17 of the Constitution of India abolished the practice of untouchability. The Article reads as follows: "Untouchability" is eradicated and its exercise or execution in any other form is prohibited. In accordance with the law the imposition of any disability emerging out of "Untouchability" shall be an offence which will be punishable by the law.

8.5.1. MAIN PROVISIONS OF THE PROTECTION OF CIVIL RIGHTS ACT, 1955, ARE AS UNDER:

For imposing religious disabilities -- On the ground of 'untouchability' whoever stops or intercepts any person to enter into any public worship place which is open to other persons maintaining the same religion or any section. Or from worshipping or offering prayers or executing any religious services in any public worship place, or using the water or bathing, any holding tank, well, spring or water-course.

For imposing social disabilities –On the ground of 'untouchability' whoever stops any person –

- Entrance to any shop, hotels, inn, public restaurant, or a public entertainment place.
- Utilization of any utensils, and other articles which are placed in any hotel, inn, public restaurant, or Dharmshala.
- The exercise of any occupation or the carrying on of any profession, trade or work or engagement in any job.
- The utilization of, or entry to any river, stream, spring, well, tank, reservoir, water tap or other watering place or any ghat of bathing, burying or cremation ground, any hygienic convenience, any highway, or transit, or any other place of public retreat.
- Utilization of, or entry to, any place used for a beneficent purpose.
- Utilization of, or entry to, any public transportation.

- The denying to admitting a person to hospitals etc

- Declining to give admission to any person to any health centre clinic, hospital dispensary, educational organization or any inn or hostel.

- Execute any act which differentiates against any such person after admission to any of the forenamed organizations.

For refusing the sale or disposal of goods or services

- Whoever on the ground of “untouchability” decline to dispose of any goods or decline to provide service to any person but at the same time disposes of goods or provides services to any other persons in the usual course of business.

For the above said act, the person is punishable with an imprisonment which is of not less than 1 months and not more than 6 months and a fine of not less than Rs.100 and not more than Rs.500.

Unlawful compulsory labour – Any person who force or pressurize any other person, on the ground of “untouchability” to undertake or discharge any rummage or sweeping or to detach any corpse or to flay any animal or to detach the umbilical cord or to do any other job of a similar nature, shall be penalize with a confinement of not less than 3 months and not more than 6 months and a fine of not less than Rs.100 and not more than Rs.500.

Cancellation or suspension of licenses - When a person who is sentenced of a crime or misdemeanour beneath the above sections, holds any license any profession, trade, calling or employment the court trying the offence may cancel or suspend the license for time being.

Adjournment of grants made by government - Where the executive, administrator or the agent of a place of public worship or any educational organization or inn which is in reception of a grant of land or money from the Government is sentenced of a crime under this Act, the government can in a straight way suspend such grants.

No Civil Court shall amuse or pursue any suit or proceeding related to this act.

8.6. PARLIAMENTARY PROCEEDINGS ACT, 1977

The Act was enacted to protect the distribution, notification and dissemination of reports of proceedings of Parliament. The Act was enacted by the Parliament in the Twenty-eighth Year of the Republic of India.

The Act extends to entire India but it does not include the state of Jammu and Kashmir. The Act came into power on the 25th day of March, 1977.

In the Act, "newspaper" means any periodical work printed holding news of the public or remark or statement on the public news and comprises a news agency contributing or providing material for announcement or publishing in a newspaper.

1. Publication of reports of Parliamentary proceedings confidential

No person shall be responsible to any proceedings, either criminal or civil, in any court in respect of the announcement or publication in a newspaper of a significantly accurate report of any proceedings of either House of Parliament, unless the publication is manifest or demonstrate to have been made with hostility.

2. Act also apply to Parliamentary proceedings transmitted by wireless telegraphy

The Act shall apply in relation to reports or matters transmitted by way of wireless telegraphy as part of any programme or service provided by way of a transmitting station situate inside the territories to which this Act extends as it applies in relation to reports or matters published in a newspaper.

ASSESS YOUR PROGRESS

1. What are the norms to be followed by the media to avoid Contempt of court?

8.7. SUMMING UP

- Responsibility and freedom go together. If one doesn't want to take responsibility, he can't have freedom either. The two come together or they go together. It is a universal truth. Without responsibility freedom of any type cannot be acquired.
- Contempt of Court means when there is a failure to perform, obey or discharge a lawful order of a court, presenting disrespect to the judges, or publishing of any material which can endanger or threaten the mind of a judge in discharging of his official duty. There are two contempt of court such as civil contempt of court and the criminal contempt of court.
- The Protection of Civil rights Act is to give punishment for the (spread, exercise and application of Untouchability) imposition of any disability arising there from and of matters attached therewith.

8.8. QUESTIONS

1. Discuss the relationship between freedom and responsibility.
2. What is contempt of court? What are the two categories of contempt under the contempt of court act, 1971
3. Discuss the main provisions of the protection of the civil right act, 1955
4. Discuss the parliamentary proceedings act, 1977

8.9. RECOMMENDED READINGS

- Facets of Media Law by Madhavi Goradia Divan



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