



MEDIA LAW IN INDIA: AN OVERVIEW

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I. ABSTRACT:

At the time of the **French Revolution**, the press was described as the Fourth Estate in the political establishment. In our times the expanding reach of newspapers, television, radio and the internet have made the media an even stronger pillar of our political existence. With the coming into being of the television and cable-channels, the amount of publicity which any crime or suspect or accused gets in the media has reached alarming proportions. Freedom of press and Media is one of the basic guarantees provided by civil society. However in modern world the right is not limited to express ones' view through words but it also includes circulating one's views in writing or through audiovisual instrumentalities, through advertisements and through any other communication channel. It also comprises of right to information, freedom of press and Media etc. It is a right to express and self realization. In India freedom of speech and expression is mentioned in **Article 19(1)(a)**, which falls in fundamental right category. Freedom of the press is essentially an integral part of the freedom of expression and lies at the heart of right of freedom of speech and expression, and is rightly covered within the ambit of **Article 19(1)(a)** even without an express mention. The Constitution also lays down some restrictions in the form of **Article 19(2)**, which provides that the right to freedom of speech and expression shall not affect the operation of any existing law or prevent the state from making any law insofar as such law imposes reasonable restrictions on the exercise of that right in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public decency or morality or in relation to contempt of court, defamation or incitement to offence.

METHODOLOGY AND DATA COLLECTION:

In the present study the scholar has adopted the doctrinal methods. The data has been collected from books, journals, reports and new items published in papers and shown on television and scholar mostly follows various Law enacted by the Indian legislation relating to Press and Media in India. The present paper highlight the media freedom and interface between media and the law in India.

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KEY WORDS: Media freedom, Restriction, Public Welfare and Security of the State.

II. INTRODUCTION:

Media may be considered as the fourth limb of independent organization i.e. a democratic system, the other three being the legislature, executive and judiciary. The basic intent of the media is to serve the people with news, views, comments and information on matter of public interest in a fair, accurate, unbiased and decent manner and language.

The framers of the Indian constitution realised the central consequence of the 'Freedom of Press' and therefore incorporated provisions in the constitution to safeguard this 'Freedom of Press' as a fundamental right. Although, the Indian Constitution does not expressly mention the liberty of the press, it is evident that the liberty of the press is included in the freedom of speech and expression under Article 19(1) (a).² The freedom of the Press including media is not absolute.³ The media has to work within the framework of legal philosophy and statutes and is subject to the limitations under Article 19(2) in the interests of the public.

The word media, derived from the word medium, can take the form of a plural or singular verb, depending on the sense intended. Media as the plural form was first applied to newspapers two centuries ago. It is used as a collective noun for the press or news reporting agencies.

According to the Oxford Advanced Learners Dictionary "media" refers to the main ways that large numbers of people receive information and entertainment⁴. In general media means "an intervening agency, means, or instrument" for communicating like as Print Media, electric media and Social media i.e. newspaper, books, magazine, radio, dordarshan, different news channels, Whatsapp, Instagram, Facebook, internet etc. through which any bit of information or opinion is circulated amongst a large number of the people. According to business dictionary⁵ the definition of media is communication channels through which news, entertainment, education, data or promotional messages are disseminated.

III. NEED FOR LAW REGULATING THE MEDIA:

Media regulation is the control or guidance of mass media by governments and other bodies. Such regulation, via law, rules or procedures, can have various goals, such as intervention to protect a stated "public interest", or encouraging competition and an effective media market, or establishing common technical standards.

There is a contradiction intrinsic to the notion of regulating what are supposed to be the free means of expression and information in a modern society. Regulation by its very nature sets limits to freedom,

2 . Ramesh Thaper v State of Madras, A.I.R. 1950 SC 124,

3 . Harijai Singh v Bijoy Kumar (1996) 6 SCC 466.

4. Oxford Advanced Learners Dictionary, OUP, 7th Edition.

5. www.businessdictionary.com/definition/media.html.last visited on 7.12.2013

which is the most basic principle of democratic societies. The question whether media should be regulated continues to be a debatable topic, varying from country to country, depending upon the form and ideology of the government.

IV. ROLE OF PRESS COUNCIL OF INDIA:

The Press Council of India is an autonomous, statutory, quasi-judicial authority, The PTI is established under the **Press Council Act, 1978**, with the objectives of preserving the freedom of the Press and for maintaining and improving the standards of newspapers and news agencies in India. To achieve these objectives, it must “ensure on the part of newspapers, news agencies and journalists, the maintenance of high standards of public taste and foster a due sense of both the rights and responsibilities of citizenship” and “encourage the growth of a sense of responsibility and public service among all those engaged in the profession of journalism”. It preserves press freedom with responsibility in keeping with the constitutional objectives and strives to promote the standards of reporting through its advisory and adjudicatory jurisdiction. The Council also enjoys powers to censure. If someone believes that a news agency has committed any professional misconduct, the Council can, if they agree with the complainant, “warn, admonish or censure the newspaper”, or direct the newspaper to, “publish the contradiction of the complainant in its forthcoming issue” under **Section 14(1)** of the **Press Council Act, 1978**.

Object and Function of Press Council Under **Section 13** of the **Press Council Act, 1978**

13. (1) the objects of the Council shall be to preserve the freedom of the Press and to maintain and improve the standards of newspapers and news agencies in India.

(2) The Council may, in furtherance of its objects, perform the following functions, namely:

(a) to help newspapers and news agencies to maintain their independence;

(b) to build up a code of conduct for newspapers, news agencies and journalists in accordance with high professional standards;

(c) to ensure on the part of newspapers, news agencies and journalists, the maintenance of high standards of public taste and foster a due sense of both the rights and responsibilities of citizenship;

(d) to encourage the growth of a sense of responsibility and public service among all those engaged in the profession of journalism;

(e) to keep under review any development likely to restrict the supply and dissemination of news of public interest and importance;

(f) to keep under review cases of assistance received by any newspaper or news agency in India from any foreign source including such cases as are referred to it by the Central Government or are brought to its notice by an individual, association of persons or any other organization.

V. LAWS RELATING TO MEDIA IN INDIA:

There are many laws that regulate the performance of media in India. Many of the laws were enacted during the British Raj. In the post-Independence time, the various Governments have enacted many more media related laws. Media laws in India have a long history dating back to the early days of the British rule. The rules and regulations enacted were aimed at perpetuating British rule in India and at subduing dissent against the rulers. The laws enacted after independence aimed at benefitting society through recognizing press freedom. The post independence laws that regulate the performance of media in India are the provisions in the Constitutional and certain statutes. The Constitution provides for freedom of the press and the media but also imposes certain reasonable restrictions.

The freedom of the press/media is not provided separately in the Indian Constitution but is derived from **Article 19(1) (a)** which guarantees the fundamental right to freedom of speech and expression. **Dr. B. R. Ambedkar**, during the debates in the Constituent Assembly, while discussing the issue of freedom of the press, explained the position as follows: “The press (or the mass media) has no special rights which are not to be given to or which are not to be exercised by the citizen in his individual capacity. The editors of a Press or the manager are all citizens and, therefore, when they choose to represent any newspapers, they are merely exercising their right of expression and in my judgement no special mention is necessary of the freedom of Press at all.”

In accordance with **Article 19(2)**, this freedom can be restricted by law only in the “interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.” In addition, there are many laws that relate regulate different facets of press freedom. Some of these media related laws are:

- **First Press Regulations, 1799**
- **Gagging Act,**
- **Indian Press Emergency Act,1931**
- **The Foreign Regulations Act, 1932**
- **Vernacular Press Act,**
- **Official Secrets Act, 1923.**
- **Press and Registration of Books Act, 1867**
- **Sea Customs Act, 1878**
- **Contempt of Court Act,1971.**
- **Young Persons (Harmful Publications) Act, 1956**

- **Parliamentary Proceedings Act,**
- **Delivery of Books and Newspapers Act,1954**
- **Copyright Act,1957**
- **Defense of India Act,1962**
- **Press Council of India Act, 1951**
- **Police Act,1972**
- **Drugs and Magic Remedies Act,**
- **The Newspaper (Prices and Pages) Act, 1956:**
- **Cable Television Regulation Act, 1995**
- **The Cinematograph Act, 1952**
- **Cine Workers Welfare Cess Act, 1981 and the Cine Workers Welfare Fund Act 1981**
- **The Bombay Entertainments Duty Act, 1923**
- **Drug and Magic Remedies (Objectionable Advertisement) Act, 1954**
- **Monopolies and Restrictive Trade Practices Act, 1969**
- **Indian Penal Code, 1860**
- **The Criminal Law Amendment Act, 1961**
- **Right to Information Act,2005.**
- **Personal Law**

Some of these laws are directly related to mass media, while some are only indirectly related. Most of these laws are still prevalent, while a few of these laws have been abolished. Some laws have been changed to suit the changing times.

VI. LAWS LIMITING THE FREEDOM OF THE PRESS MEDIA IN INDIA

Media has right to published and telecast what are happened inside the country like in executive, legislature and judiciary but it should be proper, accurate and truthful manner. It is not an absolute right; this right is enjoyed within a reasonable restriction. The media is required to respect the rights of individuals and also to work within the framework of legal principles and statutes. These principles/statutes have been framed by way of minimum standards and do not intend to detract from higher standards of protection to the freedom of expression.⁶ The various Acts, which have to be taken into consideration when dealing with the regulations imposed upon the Print Media, the media person like reporter, publisher, editor and writer, has a right to publish ,telecast the matters but there is some rule and regulation to observer before doing above work. Many laws have formulated not for restriction of media freedom but for control and regulate the mass media. There is need regulation because in 21st century in this globalisation world there are heavy competitions between media to media. Media law are discussed bellow-:

6. Ray, G.N.; "Tablodization and syndrome: Unethical practices in media", Media Law Review Edn.2010, at page.1

A. THE INDIAN PRESS (EMERGENCY POWERS) ACT, 1931:

Under this Act, Government can require a printer or a publisher of a newspaper to deposit security and discretion forfeit it and the press. This act prohibit and restricted at the time of emergency to publish any secrete matter. Thereis total restriction at the time of emergency for the security of the state.

B. THE FOREIGN RELATIONS ACT, 1932:

This law protect against the publication of statement likely to prejudice friendly relations with a foreign State.

C. THE PRESS AND REGISTRATION OF BOOKS ACT, 1867⁷:

This Act was enacted with a view to evaluating the position of books, newspapers, and magazines in the country at any given time. The most important aspect of this Act is that every copy of a newspaper shall contain the names of the owner, publisher, and editor printed clearly on all the copies. The printer of every newspaper is required to deliver to the State Government free of expense two copies of each issue of the newspaper as soon as it is published. Failure to do so is treated as an offence. The Act makes registration with an appointed Authority compulsory for all printing presses.

D. SEA CUSTOMS ACT, 1878:

Section 18 (c) of the Act prohibits the bringing into India whether by land, or by sea “any obscene book, pamphlet, paper, drawing, painting, representation, figure or article.” These items can be confiscated.

E. THE OFFICIAL SECRETS ACT, 1923:

This Act consolidated the law relating to official secrets, and dealt with offences like spying and wrongful communication of secret information. It prohibits the disclosure, publication or communication by any one of the certain kinds of state-held information. **Section 3** of the Act made it an offence if any person for any purpose prejudiced to the public safety and the interests of the state:

- Approaches, inspects, passes over or is in the vicinity of or enters any prohibited place,
- Makes any sketch, plan, model or note which is calculated to be or-might be or is intended to be directly or indirectly useful to an enemy, or
- Obtains, collects, records or publishes or communicates to any person such sketch, etc.

The punishment for an offence under **Section 3(1)** of the Act, was imprisonment for a term extending to 14 years. The Official secret includes the wrongful communication of official information held by current and former Government employees under **Section 5**. Further it is an offence to retain any official documents where there is no right to do so under **Section 9**. Importantly in this context, the Court may exclude all or part of any proceedings under this Act from the public under Section 14.

7. The Bill having been passed by the Legislature came on the Statute Book on 22nd March, 1867. The nomenclature of the Act i.e. The Press and Registration of Book Act, 1867 (25 of 1867) has been given by the Indian Short Titles Act, 1897 (14 of 1897).

F. THE PRESS (OBJECTIONABLE MATTERS) ACT, 1951:

This enactment provides against the printing and publication of incitement to crime and other objectionable matters. **Section 11 of the press objectionable matters) Act 1951**, could not be held void imposing an unreasonable restriction on the fundamental rights of the freedom of speech and expression under article **19(1)(a)**⁸.

This act provides real and ample safeguards. The governor could not take any action under section 11 unless the principal law officer or the advocate general of the state as the case maybe, or the attorney general of India, Certified that the offending pamphlet or booklet contain objectionable matter. Again, the aggrieved person could move the high court against government order with sixty days. Consequently, the restrictions imposed on the fundamental rights were reasonable.

In **Ramesh Thapper v State of Madras**⁹, a law banning entry and circulation of journal in a State was held to be invalid. The Court said that there can be, no doubt, that freedom of speech and expression includes freedom of propagation of ideas, and that freedom is ensured by the freedom of circulation. Liberty of circulation is an essential to that freedom as the liberty of publication. Indeed, without circulation the publication would be of little value. Restrictions of freedom of speech and expression can only be imposed on grounds mentioned in **Article 19(2)** of the Constitution. A law which authorizes imposition of restrictions on grounds of ‘public safety’ or the ‘maintenance of public order’ falls outside the scope of authorized restrictions under **clause(2)** and therefore void and unconstitutional.

G. THE NEWSPAPER (PRICES AND PAGES) ACT, 1956:¹⁰

Under **Section 3** of this statute empowers the Central Government to regulate the price of newspapers in relation to the number of pages and size and also to regulate the allocation of space to be allowed for advertising matter.

In the case of **Sakal Papers Ltd. v. Union of India**¹¹, SC observed the Daily Newspapers (Price and Control) Order, 1960, which fixed a minimum price and number of pages, which a newspaper is entitled to publish, was challenged as unconstitutional. The State justified the law as a reasonable restriction on a business activity of a citizen. The Supreme Court struck down the Order rejecting the State’s argument. The Court opined that, the right of freedom of speech and expression couldn’t be taken away with the object of placing restrictions on the business activity of the citizens. Freedom of speech can be restricted only on the grounds mentioned in **clause (2) of Article 19**.

H. DELIVERY OF BOOKS AND NEWSPAPERS (PUBLIC LIBRARIES) ACT, 1954¹²:

8. Gopal Das v Assam (1954) 6 ASS 399(54), ASS 193. Also Shantilal Vadilal v Bombay (1954) Bom. 1245(54) A.B. 508,56 Bom. L.R. 709.

9 . A.I.R. 1950 SC 124.

10. This Act enacted by Parliament in the Seventh Year of the Republic of India(7thSeptember,1956).

11. *A.I.R 1962 SC 305*.

12 . The Delivery of Books (Public Libraries) Bill having been passed by both the Houses of Parliament received the assent of the President on 20th May, 1954. It came on the Statute Book as the Delivery Books (Public Libraries) Act, 1954 (27 of 1954).

According to this Act, the publishers of books and newspapers are required to deliver, free of cost, a copy of every published book to the National Library at Calcutta and one copy each to three other public libraries specified by the Central Government. According to Section 2 of the Delivery of Books (**Public Libraries**) **Amendment Act, 1956** (99 of 1956), the nomenclature of the Act of 1954 was amended by inserting the words “and Newspapers” after the words “Books” w.e.f. 29/12/1956. Now the Act stands as the Delivery of Books and Newspapers (**Public Libraries**) **Act, 1954** (27 of 1954).

I. THE WORKING JOURNALISTS AND OTHER NEWSPAPER EMPLOYEES (CONDITIONS OF SERVICE AND MISCELLANEOUS PROVISIONS) ACT, 1955.¹³

It lays down the minimum standards of service conditions for newspaper employees and journalists. In **Express Newspapers v Union of India**¹⁴, the Supreme Court held that a law which imposes pre-censorship or curtails the circulation or prevents newspapers from being started or require the Government to seek Government aid in order to survive was violative of **Article 19(1)(a)**. In this case the validity of the **Working Journalists Act, 1955** was challenged. The Act was enacted to regulate conditions of service persons employed in newspaper industry e.g. payment of gratuity, hour of work, leave, fixation of wages etc. The Court held that the Act is valid. It said that press was not immune from laws of general application or ordinary forms of taxation or laws of industrial relations. The Act was passed to ameliorate the service conditions of workmen in the newspaper industry and therefore, impose reasonable restriction on the right guaranteed by **Article 19(1)(a)**.

J. DEFENCE OF INDIA ACT, 1962:

This Act came into force during the Emergency proclaimed in 1962. This Act aimed at restricting the Freedom of the Press to a large extent keeping in mind the unrest prevailing in India during the war against China. The Act empowered the Central Government to issue rules with regard to prohibition of publication or communication prejudicial to the civil defence like military operations, prevention of prejudicial reports and prohibition of printing or publishing any matter in any newspaper.

According to Justice Mudholkar, “upon the declaration of emergency, the Parliament will be empowered to make laws affecting the freedom of the Press. It is as if the freedom of media disappears in a situation of emergency, any law made by the Parliament, under a situation of emergency, cannot be challenged on the ground of legislative incompetence for as long as emergency lasts. Citizens cannot claim any protection under **Article 19**. Further, **clause 7 of section 3** of the **Defence of India Act** deals with the entire gamut of printing and publishing of any newspaper or book and the imposition of Censorship.”

K. CIVIL DEFENCE ACT, 1968:

It allows the Government to make rules for the prohibition of printing and publication of any book, newspaper or other document prejudicial to the Civil Defence.

L. THE CRIMINAL LAW AMENDMENT ACT, 1961:

13 . The Working Journalists (Condition of Service) and Miscellaneous Provisions Bill having been passed by both the Houses of Parliament received the assent of President on 20th December, 1955. It came on the Statute Book as the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955).
14 . *A.I.R. 1958 SC 578*.

The **Criminal Law Amendment Act, 1961** provides punishment questioning by word, sign or any visible representation or otherwise, the territorial integrity or frontier of India which is likely to be prejudicial to the interest the safety or security of the country and matters.

M. INDIAN PENAL CODE, 1860:

There are several provisions of Indian Penal Code which affect the press. It is an offence to publish material that brings or attempts to bring the lawful Government into hatred or contempt or excites disaffection towards the same (**Section 124-A**). Further it is a public mischief to make or public statements that are likely to cause fear and harm to the public or that promote enmity between different classes of the community (**Section 505**). The identity of victims of certain types of sexual offences is protected from any form of publication. This has some exceptions, including for the purpose of an investigation (**Section 228A**). The law relating to defamation (**Section 499 and 502**) are an attempt to balance the right of free expression with the private right to reputation. As such, it is a complex body of law that requires more attention than possible in this summary. Sufficient for our purposes, **Section 499** defines defamation as any imputation (either written or verbal) concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm the reputation of such person.

N. INDIAN POST OFFICE ACT, 1898 :

This Act gives the state or its representative the right to intercept, detain, or not to send any indecent or obscene publications or representations. **Under section 20 of the Indian Post office Act, 1898** no person shall send by post:-any indecent or obscene printing, painting, photography, lithograph, engraving, book or card, or any other indecent or obscene article or any postal article having thereon, or on the cover thereof, any words, marks or designs of an indecent, obscene, seditious, scurrilous, threatening or grossly offensive character.

O. CONTEMPT OF COURT ACT 1971:

Contempt of Court is one of the reasonable restrictions under **Article 19(2)** of the Indian Constitution. **Contempt of Courts Act, 1971** relates to the wilful disobedience of judicial orders and the like, and to any publication, which interferes with or undermines the administration of justice.

This Act was enacted for the first time in the year 1952. Under the **Contempt of Courts Act of 1952**, there was no specific definition of 'civil' or 'criminal' contempt. Further, the common law principles were applied to treat prejudicial publications made even before the 'arrest' of a person as contempt. In fact, some Courts were treating as 'criminal contempt', prejudicial publications even if they were made after the filing of a First Information Report (FIR). The Supreme Court, in **Surendra Mohanty v. State of Orissa** however, held that filing of an FIR could not be the starting point of pendency of a criminal case. Because of that judgement, a prejudicial publication made after the filing of the FIR gained immunity from law of contempt.

Section 3(2) of the Contempt of Courts Act, 1971 read with the Explanation below it, grants full immunity to publications even if they prejudicially interfere with the course of justice in a criminal

case, if by the date of publication, a charge sheet or challan is not filed or if summons or warrant are not issued. Such publications would be contempt only if a criminal proceeding is actually pending i.e. if charge sheet or challan is filed or summons or warrant are issued by the Court by the date of publication.

P. INDIAN POLICE OFFICE TO DISAFFECTION ACT, 1922:

The Act forbids the incitement to, or the spreading of, disaffection among members of the police force through spoken or written words or action.

Q. YOUNG PERSON'S (HARMFUL PUBLICATIONS) ACT, 1956:

The Young Persons (Harmful Publications) Act, 1956 prohibits advertisements relating to any harmful publication i.e., any publication that tends to corrupt a young person (person under the age of 18 years) by inciting or encouraging him or her to commit offenses or acts of violence or cruelty or in any other manner whatsoever. "Harmful Publication "means any book, magazine, pamphlet, leaflet, newspaper or other like publication which consists of stories told with the aid of pictures or without the aid of pictures or wholly in pictures, being stories portraying wholly or mainly:-

- i. The commission of offences; or
 - ii. Acts of violence or cruelty; or
 - iii. Incidents of a repulsive or horrible nature;
- b. in such a way that the publication as a whole would tend to corrupt a young person into whose hands it might fall, whether by inciting or encouraging him to commit offences or acts of violence or cruelty or in any other manner whatsoever;

R. NATIONAL SECURITY ACT 1980:

This Act empowers the appropriate government to make an order of preventive detention to prevent any person from acting in any manner prejudicial to inter alia the security of India and the maintenance of public order (Section 3). Similarly to the Penal Code, this includes creating any kind of public insecurity.

S. PARLIAMENTARY PROCEEDINGS (PROTECTION OF PUBLICATION) ACT, 1956 :

This Act was enacted with a view to protecting the publications of reports of proceedings of Parliament except in newspapers. **Section 3** of the Act states that no person shall be liable to any proceedings, civil or criminal in any court, in respect of the publication in a newspaper of substantially true report of any proceedings of either House of Parliament, unless the publication is proved to have made with malice.

The opinion of the People Forms the basis of a democratic government. It is therefore of utmost importance that proceedings in Parliament should be communicated to the public. For this purpose newspapers and other mass publicity media must be afforded the privilege of publishing substantially true reports of proceedings in Parliament without being exposed to any civil or criminal action. The press and other publicity media were deprived of this privilege during the emergency when the **Parliamentary Proceeding (Protection of Publication) Act 1956** was replaced. This provision gives protection to newspapers and broadcasting agencies only, provided that publication is made for public good and without malice.

T. POLICE (INCITEMENT TO DISAFFECTION) ACT, 1972:

This Act penalizes any act, which causes or is likely to cause disaffection toward the Government among the member of the police force or which induces or attempts to induce any member of the police force to withhold his services or to commit a breach of discipline.

U. THE PRENATAL DIAGNOSTIC TECHNIQUES (REGULATION AND PREVENTION OF MISUSE) ACT, 1994:

This act prohibits advertisements relating to pre-natal determination of sex. Advertisements related to sexuality are allowed with the provision that there should not be any indecent representation of women under the **Indecent Representation of Women (Prohibition) Act 1986**. Products must comply with the **Drugs and Cosmetic Act 1940** and other certification rules under the **Cable Television Network Rules 1994**.

V. JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015:

The JJ Act, 2015 places a strong emphasis on the protection and rehabilitation of child victims and witnesses. It ensures their privacy, dignity, and safety throughout the legal process. The Act also prohibits the disclosure of the identity of the child in media or public domain.

W. RIGHT TO INFORMATION ACT 2005 :

Noted political analyst James Michael has pointed out in his pioneering book *The Politics of Secrecy* that, “freedom of information” and “right to information” are two different concepts. “Freedom” implies the absence of restraint, particularly of legal penalties. Thus, “freedom of information” means a citizen is free to receive and impart information without fear of punishment. However, there is no obligation on the State to provide any information to the citizen. The right to information is indispensable for free flow of information. But there was a massive wall in the shape of the Official Secrets Act in India. The official Secrets Act was a hindrance to the flow of information.

In *Secretary General, Supreme Court of India v Subhash Chandra Agarwal*, the High Court of Delhi held : “The source of right to information does not emanate from Right to Information Act. It is a right that emerges from Constitutional guarantee under Article 19(1)(a) as held by the Supreme Court in a catena of decisions. The Right to Information Act is not the repository of the right to information. Its repository is the Constitution Right guaranteed under Article 19(1)(a).

X. PERSONAL LAWS AND THE MEDIA:

Publicity of proceedings is not an absolute rule. A number of statutes restrict, empower or require the Court to restrict admission to certain court proceedings and the publication of such proceedings. For instance:

i. The Indian Divorce Act, 1869 which pertains to matrimonial cases between persons professing the Christian faith, provides that the whole or any part of the proceedings under the Act may be heard behind closed doors in certain circumstances.

ii. Section 33 of the Special Marriages Act, 1954 provides that proceedings under the Act shall be conducted in camera, if either party desires or if the district court so thinks fit to direct.

- iii. **Section 43 of the Parsi Marriage and Divorce Act, 1936** provides that a suit preferred under the Act shall be tried within closed doors should either of the parties so desire.
- iv. **Section 22 of the Hindu Marriage Act, 1955** provides that a proceeding under the Act shall be conducted in camera if either party so desire or if the court thinks fit, and prohibits the printing or publication of any matter relating to such a proceedings without the previous permission of the court.

Y. LAWS RELATING TO THE BROADCAST MEDIA AND CABLE NETWORK:

The broadcast media was under complete monopoly of the Government of India. Private organizations were involved only in commercial advertising and sponsorships of programmes. However, in *Secretary, Ministry of I&B v. CAB*¹⁵, the Supreme Court clearly differed from the aforementioned monopolistic approach and emphasized that, every citizen has a right to telecast and broadcast to the viewers/listeners any important event through electronic media, television or radio and also provided that the Government had no monopoly over such electronic media as such monopolistic power of the Government was not mentioned anywhere in the Constitution or in any other law prevailing in the country.

This judgment, thus, brought about a great change in the position prevailing in the broadcast media, and such sector became open to the citizens.

The Broadcasting Code, adopted by the Fourth Asian Broadcasting Conference in 1962 listing certain cardinal principles to be followed by the electronic media, is of prime importance so far as laws governing broadcast medium are concerned. Although, the Broadcast Code was chiefly set up to govern the All India Radio, the following cardinal principles have ideally been practiced by all Broadcasting and Television Organization; viz:

- i. To ensure the objective presentation of news and fair and unbiased comment.
- ii. To promote the advancement of education and culture.
- iii. To raise and maintain high standards of decency and decorum in all programmes.
- iv. To provide programmes for the young which, by variety and content, will inculcate the principles of good citizenship.
- v. To promote communal harmony, religious tolerance and international understanding.
- vi. To treat controversial public issues in an impartial and dispassionate manner.
- vii. To respect human rights and dignity

A. CABLE TELEVISION REGULATION ACT, 1995¹⁶:

15. (1995) 2 SCC 161.

16 . The Cable Television Networks (Regulation) Bill having been passed by both the Houses of Parliament received the assent of the President on 25th March, 1995. It came on the Statute Book as the Cable Television Networks Regulation Act, 1995 (7 of 1995)

The Cable Television Networks (Regulation) Act, 1995 basically regulates the operation of Cable Television in the territory of India and regulates the subscription rates and the total number of total subscribers receiving programmes transmitted in the basic tier. In pursuance of the **Cable Television Network (Regulation) (Amendment) Bill, 2002**, the Central Government may make it obligatory for every cable operator to transmit or retransmit programme of any pay channel through an addressable system as and when the Central Government so notifies. Such notification may also specify the number of free to air channels to be included in the package of channels forming the basic service tier.

According to this Act:

- No person shall operate a cable television network unless he is registered as a cable operator under this Act¹⁷.
- No person shall transmit or re-transmit through a cable service any programme unless such programme is in conformity with the prescribed programme code.¹⁸
- Every cable operator shall maintain a register in the prescribed form indicating therein in brief the programmes transmitted or re-transmitted through the cable service during a month and such register shall be maintained by the cable operator for a period of one year after the actual transmission or re-transmission of the said programmes.¹⁹
- Every cable operator shall, from the commencement of this Act, re-transmit at least two Doordarshan Channels of his choice through the cable service. Moreover, the Doordarshan Channels referred to in sub section (1) shall be retransmitted without any deletion or alteration of any programme transmitted on such channels.²⁰

Whoever contravenes any of the provisions of this Act shall be punishable²¹ as under:

- For the first offence, with imprisonment for a term, which may extend to two years or with fine, which may extend to one thousand rupees or with both.
- For every subsequent offence, with imprisonment for a term, which may extend to five years and with fine, which may extend to five thousand rupees.

In **Union of India v Cinema Art Foundation**²², the Managing trustee of the respondent's trust had produced a documentary film on Bhopal Gas Disaster titled "Beyond Genocide". This film was awarded the Golden Lotus being the best non-feature film of 1987. At the time of the presentation of awards the

¹⁷ .Section 4 of Cable Television Network Act, 1995, Subs. by s. 4, ibid.,for section 4 (w.e.f. 25-10-2011).

¹⁸ .Section 5 of Cable Television Network Act, 1995.

¹⁹ . Section 7 of Cable Television Network Act, 1995.

²⁰Section 8 of Cable Television Network Act, 1995. Subs. by Act 21 of 2011, s. 6, for section 8 (w.e.f. 25-10-2011).

²¹ .Section 16 of Cable television network Act,1995. Section 16 numbered as sub-section (1) thereof by Act 2 of 2003, s. 5 (w.e.f. 31-12-2002).

²² . (1992) 3 SCC 637.

Minister for Information and Broadcasting had made a declaration that the award winning short films would be telecast on Doordarshan. The respondent submitted for telecast his film to Doordarshan but it refused to telecast the film on the ground that its contents were outdated and did not have relevance for the telecast. The respondent then filed a writ petition challenging the refusal on the ground of violation of his fundamental right under **Article 19(1)(a)** of the Constitution and for a mandamus to Doordarshan to telecast the same. The High Court held that the respondent's right under Article 19(1)(a) obligated Doordarshan to telecast the film since the refusal was based purely on an executive order and not law within the meaning of Article 19(2) and directed the Doordarshan to telecast the film

In *Odyssey Communication Pvt. Ltd v Lokvidayan Sanghatana*²³, the respondents, a registered social organization of Pune, filed a public interest litigation under **Article 226** to restrain the Union of India, Ministry of Information and Broadcasting and the State of Maharashtra from telecasting the serial "Hony Anthoni" on the ground that it was likely to spread false or blind beliefs and superstition amongst the members of the public. It was, however, held that the rights of a citizen to exhibit films on the Doordarshan, on the terms and conditions imposed by the Doordarshan is a part of the fundamental right of freedom of expression guaranteed under **Article 19(1)(a)** which can be curtailed only on the ground mentioned in **Article 19(2)**.

B. THE CABLE TELEVISION NETWORKS RULES 1994:

Under Advertising Codes of Doordarshan & All India Radio and Norms for Journalist Conduct issued by the Press Council of India, advertisement based on religion or to hurt religious sentiments are not allowed. Also, such advertisement may be punishable under Indian Penal Code 1860.

C. DIRECT-TO-HOME BROADCASTING :

Direct-to-Home (DTH) Broadcasting Service, refers to distribution of multi-channel TV programmes in Ku Band by using a satellite system and by providing TV signals directly to the subscribers' premises without passing through an intermediary such as a cable operator. The Union Government has permitted Direct-to-Home TV service in Ku band in India.

D. THE FILM MEDIA IN INDIA:

India is one of the largest producers of motion pictures in the world. Encompassing three major spheres of activity – production, distribution and exhibition, the industry has an all-India spread, employing thousands of people and entertaining millions each year. The various laws in force regulating the making and screening of films are: -

23 . (1988) 3 SCC 410.

E. THE CINEMATOGRAPH ACT, 1952²⁴:

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

In *K. A. Abbas v. Union of India*²⁵, the petitioner for the first time challenged the validity of censorship as violative of his fundamental right of speech and expression. The Supreme Court however observed that, pre-censorship of films under the Cinematograph Act was justified under **Article 19(2)** on the ground that films have to be treated separately from other forms of art and expression because a motion picture was able to stir up emotion more deeply and thus, classification of films between two categories 'A' (for adults only) and 'U' (for all) was brought about²⁶.

F. THE COPYRIGHT ACT, 1957:

According to this Act, 'copyright' means the exclusive right to commercially exploit the original literary, dramatic, artistic, musical work, sound recordings or cinematographic films as per the wishes of the owner of copyright subject to the restrictions imposed in the Act.

Although this Act is applicable to all the branches of media, in some areas it is specific to this particular genre. In the case of a Cinematographed film, to do or to authorise the doing of any of the following acts would lead to the infringement of copyright. Those acts are namely: -

To make a copy of the film

- To cause the film, in so far, as it consists of visual images, to be seen in public and in so far as it consists of sounds to be heard in public.
- To make any record embodying the recording in any part of the soundtrack associated with the film by utilizing such sound track.
- To communicate the film by radio-diffusion.

The Act also makes it a cognizable offence for anyone to sell, hire, distribute, exhibit, possess or view any unauthorised recordings and prescribes severe penalties, including imprisonment, fines as well as

24 . The Cinematograph Bill having been passed by both the Houses of Parliament received the assent of President on 21st March 1952. It came on the statute book as the Cinematograph Act, 1952 (37 of 1952).

25. *A.I.R 1971 SC 481*.

26. This view was re-iterated in *Life Insurance Corporation of India v. Manu Bhai D. Shah*, (1992) 3 SCC 637.

confiscation of the equipment used for the purpose of such recording and exhibition. The Amendments to The Copyright Act also prohibit unauthorized transmission of films on the cable television²⁷.

G. CINE WORKERS AND CINEMA THEATRE WORKERS (REGULATION OF EMPLOYMENT) ACT, 1981²⁸:

This legislation affords a measure of protection to those employed in the industry by imposing certain obligations on motion picture producers and theatre owners concerning the former's condition of service. Whoever contravenes the provisions of section 3 shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees: Provided that the Court may, for any adequate and special reasons to be mentioned in the judgment, impose a fine of less than ten thousand rupees. (2) Where any person convicted of an offence under sub-section (1) is again convicted of an offence under the same provision, he shall be punishable with fine which shall not be less than twenty thousand rupees but which may extend to one lakh rupees: Provided that the Court may, for any adequate and special reasons to be mentioned in the judgment, impose a fine of less than twenty thousand rupees.²⁹

H. CINE WORKERS WELFARE CESS ACT, 1981 AND THE CINE WORKERS WELFARE FUND ACT 1981³⁰:

They seek to create means of financial support to cine employees, the seasonal and unpredictable nature of whose employment often leaves them im-poverished and helpless. Besides these, there are also a few local legislations, which affect the film medium.

Z. ADVERTISING:

Advertising communication is a mix of arts and facts subservient to ethical principles. In order to be consumer-oriented, advertisement will have to be truthful and ethical. It should not mislead the consumer. If it so happens, the credibility is lost.

In order to enforce an ethical regulating code, the Advertising Standards Council of India was set up. Inspired by a similar code of the Advertising Standards Authority (ASA) UK, ASCI follow the following basic guidelines in order to achieve the acceptance of fair advertising practices in the interest of the consumer:

- To ensure the truthfulness and honesty of representations and claims made by advertisements and to safe guard against misleading advertising;

27. Section 37 of the Copyright Act, 1957.

28 . The Cine-Workers and Cinema Theater Workers (Regulation of Employment) Bill having been passed by both the Houses of Parliament received the assent of the President on 24th December, 1981. It came on the Statute Book as the Cine-Workers and Cinema Theater Workers (Regulation of Employment) Act, 1981 (50 of 1981)

²⁹ .Section 17 Of The Cine-Workers And Cinema Theatre Workers (Regulation Of Employment) Act, 1981

30 . The Cine-Workers Welfare Cess Bill having been passed by both the Houses of Parliament received the assent of the President on 11th September, 1981. It came on the Statute Book as the Cine-Workers Welfare Cess Act, 1981 (30 of 1981).

- To ensure that advertisement are not offensive to generally accepted standards of public decency;
- To safeguard against indiscriminate use of advertising for promotion of products which are regarded as hazardous to society or to individuals to a degree or of a type which is unacceptable to society at large; and
- To ensure that advertisements observe fairness in competition so that the consumers need to be informed on choices in the market places and canons of generally accepted competitive behaviour in business are both served.

A. COMMERCIAL ADVERTISEMENT- PART OF FREEDOM OF SPEECH AND EXPRESSION:

In *Tata Press Ltd v Mahanagar Telephone Nigam Ltd*³¹, a three Judge Bench (Kuldip Singh, B.L.Hansuria and S.B. Majumdar, JJ) has held that commercial speech (advertisement) is a part of the freedom of speech and expression granted under **Article 19(1)(a)** of the Constitution. It can only be restricted on the grounds specified in **clause (2) of Article 19**, such as, in the interest of the security of State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court' defamation or incitement to an offence. The Court, however, made it clear that the commercial advertisements which are deceptive, unfair, misleading and untruthful could be regulated by the Government.

The Supreme Court held that the Union Government and the Nigam have no right to restrain the appellant Tata Press Ltd from publishing "Tata Yellow Pages" comprising paid advertisements from businessmen, traders and professionals. The Court said that the advertisement as a "Commercial Speech" has two facts.

In a democratic economy, free flow of commercial information is indispensable. There cannot be honest and economical marketing by the public at large without being educated by the information disseminated through advertisements. The economic system in a democracy would be handicapped without there being freedom of "Commercial Speech".

Examined from another angle the Court said that the public at large has a right to receive the "Commercial Speech". **Article 19(1)(a)** of the Constitution not only guaranteed freedom of speech and expression, it also protects the rights of an individual to listen, read and receive the said speech..

Referring to the Supreme Court's judgment in **Hamdard Dawakhana's case** the Court said that the holding was a limited one prohibiting an obnoxious advertisement and cannot be accepted in view of the wider importance of the advertisement. All commercial advertisements cannot be denied the protection of **Article 19(1)(a)** of the Constitution merely because the same has not been issued by businessmen.

31 . (1995) 5 SCC 139.

The right under **Article 19(1)(a)** cannot be denied by creating a monopoly in favour of the Government, it can only be restricted on grounds mentioned in the **Article 19(2)** of the Constitution.

Advertisement is undoubtedly a form of speech. But every form of advertisement is not a form of speech or expression of ideas. Advertisement when it takes the form of commercial advertisement no longer falls within the concept of freedom of speech for the object of such advertisement is not the propagation of ideas- social, political or economic or furtherance of literature or human thought. An advertisement of 'commercial nature' is not protected under **Article 19(1)(a)**. In view of the Supreme Court decision in *Tata Press Ltd v Mahanagar Telephone Nigam Ltd the ruling in Hamdard Dwakhana* case has not a limited application that is, prohibiting an obnoxious advertisement and cannot be applied to general advertisement as such. In this case the Court has held that commercial speech is a part of the freedom of speech and expression guaranteed under **Article 19(1)(a)** of the Constitution. Commercial speech cannot be denied the protection of **Article 19(1)(a)** of the Constitution merely because the same are issued by businessmen. Describing the advertising as the cornerstone of Indian economic system, the Judges said that low prices for consumers are dependent upon mass production, mass production is dependent upon volume of sales, and volume of sales are dependent upon advertising.

The other legislations affecting the area of advertising are: -

B. DRUG AND MAGIC REMEDIES (OBJECTIONABLE ADVERTISEMENT) ACT, 1954³²:

The **Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954** was enacted to control wrong practices in the advertisement of drugs. In certain cases, this Act is meant to prohibit the advertisement for certain drugs for matters connected therewith. In recent years there has been a great increase in the number of objectionable advertisements published in news papers or magazines or otherwise relating to alleged cures for venereal diseases, sexual stimulants and alleged cures for diseases and conditions peculiar to women. These advertisements tend to cause the ignorant and the unwary to resort to self-medication with harmful drugs and appliances or to resort to a quack who indulges in such advertisements for treatments which cause great harm. It is necessary in the public interest to put a stop such undesirable advertisement.

In *Hamdard Dawakhana v. Union of India*³³ the Supreme Court was faced with the question as to whether the Drug and Magic Remedies Act, which put restrictions on the advertisements of drugs in certain cases and prohibited advertisements of drugs having magic qualities for curing diseases, was valid as it curbed the freedom of speech and expression of a person by imposing restrictions on advertisements. The Supreme Court held that, an advertisement is no doubt a form of speech and expression but every

32 . The Drug and Magic Remedies (Objectionable Advertisements) Bill having been passed by both the Houses of Parliament received the assent of the President on 30th April, 1954. It came on the Statute Book as the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 (21 of 1954).

33.A.I.R 1960 SC 554.

advertisement is not a matter dealing with the expression of ideas and hence advertisement of a commercial nature cannot fall within the concept of **Article 19(1) (a)**.

However, in *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd*³⁴, a three judge bench of the Supreme Court differed from the view expressed in the Dawakhana case and held that 'commercial advertisement' was definitely a part of **Article 19(1)(a)** as it aimed at the dissemination of information regarding the product. The Court, however, made it clear that the government could regulate commercial advertisements, which are deceptive, unfair, misleading and untruthful.

Any person who contravenes any of the provisions of the **Drugs and Magic Remedies Act** is punishable by the Act. It takes two forms such as:

- In the case of a first conviction, with imprisonment may extend up to six months or with fine or with both.
- In the case of a subsequent conviction, with imprisonment may extend to one year or with fine or with both (**Section 7 of the Act**).

C. **MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT, 1969:**

Section 36 A of the Act deals with 5 major Unfair Trade Practices:

First, any misleading, false, and wrong representation either in writing (i.e. in advertisements, warranty, guarantee etc.) or oral (at the time of sale) actual or intended, even if actual injury or loss is not caused to the consumer/buyer constitutes as unfair trade practices;

- Second, sales, where there is element of deception;
- Third, all business promotion schemes announcing 'free gifts', 'contests', etc. where any element of deception is involved;
- Fourth, violation of laws existing for protection of consumers; and
- Fifth, manipulating sales with a view to raising prices.

In *Sakal Paper Ltd v Union of India*³⁵, the **Daily Newspapers (Price and Control) Order, 1960** which fixed a minimum price and number of pages which a newspaper was entitled to publish was challenged as unconstitutional by the petitioner on the ground that it infringed the liberty of the press. The State justified the law as a reasonable restriction on a business activity of a newspaper in the interests of the general public. The Court struck down the order rejecting the State's argument. It said that the right of freedom of speech and expression cannot be taken away with the object of placing restrictions on the business activity of a citizen. Freedom of speech can only be restricted on the grounds mentioned in

34(1995) 5 SCC 139.

35 . A.I.R. 1950 SC 124.

clause(2) of Article 19. It cannot, like the freedom to carry on business, be curtailed in the interest of the general public.

In *Bennet Coleman and Co v Union of India*³⁶, the validity of the Newsprint Control Order which fixed the maximum number of pages (10 pages) which a newspaper could publish was challenged as violative of fundamental rights guaranteed in **Article 19(1)(a)** and Article 14 of the Constitution. The Government defended the measure on the ground that it would help small newspapers to grow and to prevent a monopolistic combination of big newspapers. The Court held that the newsprint policy was not reasonable restriction within the ambit of **Article 19(2)**. The newsprint policy abridges petitioner's right of the freedom of speech and expression. Freedom of press is both quantitative and qualitative. Freedom lies both in circulation and in content. The newsprint policy which permits newspapers to increase circulation by reducing the number of pages, page area and periodicity, prohibits them to increase the number of pages, page area and periodicity by reducing circulation. These restrictions restrict the newspapers in adjusting their page number and circulation. The Court held that the fixation of page limit will not only deprive the petitioners of their economic viability but also restrict the freedom of expression by compulsive reduction of page level entailing reduction of circulation and the area of coverage for news and views. If as a result of reduction in pages the newspaper will have to depend on advertisement as their main source of income they will be denied dissemination of news and views. That will also deprive them of their freedom of speech and expression.

IX. CONCLUSION:

If the press is such a useful or rather an indispensable instrument for information and exchange of views and opinions in a modern democracy, the question immediately arises, why should there be any need for regulating or controlling this freedom by law? The reason is that in an orderly society, freedom cannot mean licence, and no individual right, even if guaranteed by the Constitution, in absolute terms, can be absolute. Rights are dependent upon the existence of the State and the maintenance of order so that the rights may be ensured and enforced. Hence, no right or freedom can be allowed to be exercised in such manner as would jeopardize the very existence of the State or the maintenance of public order, or undermine public morality, or a fair and impartial administration of justice, which are essential for a civilized existence. Again, since a pre-condition of the enforcement of individual rights is that the corresponding rights of other persons should be similarly safeguarded, the freedom of expression cannot be so exercised as to undermine the reputation of any member of the public. Together with the freedom of the press and of the media, regulations curtailing or regulating it also has deep roots in national histories and cultures. William Blackstone, an 18th-century jurist, wrote: "The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no previous restraints upon publications, and not in freedom from censure for criminal matter when published." Because of this, and because of the close connection between the media and vital social functions, each nation state has its own distinctive pattern of

³⁶ . A.I.R. 1973 SC 106.

freedom and regulation. In dictatorships and authoritative states the media is muzzled and gagged. The regulations and restraints are many. In democracies the regulations are limited and the media enjoy more freedom.

