SYLLABI-BOOK MAPPING TABLE

Indian Constitution and Press Laws

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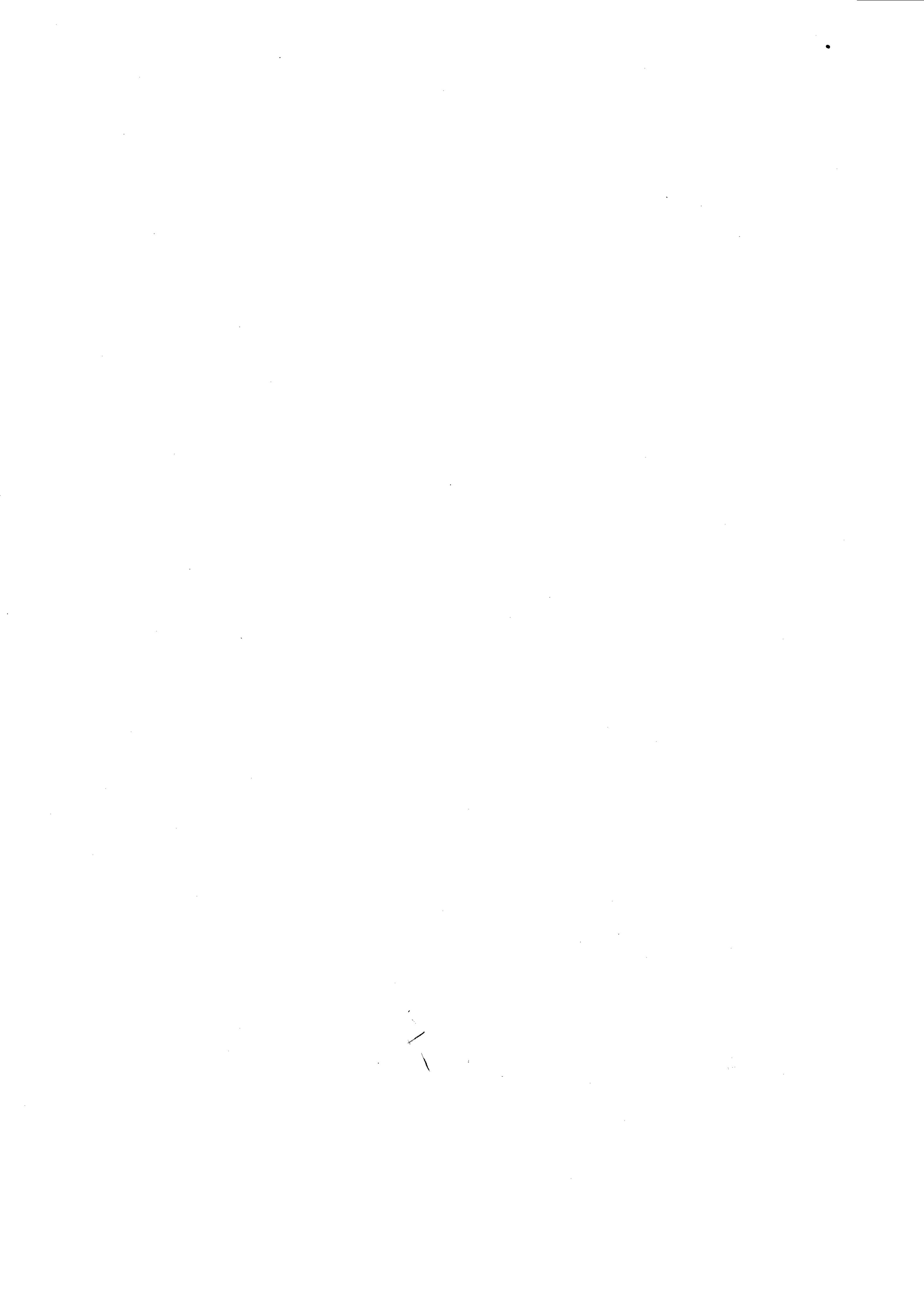

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INTRODUCTION

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This book is designed to serve as an introductory text on the topic of '*Indian Constitution and Press Law*'. It comprises vital information on various media laws and Acts including the relevant provisions in the Indian Constitution related to media in general and the press in particular. It provides a thorough knowledge of the salient features of the Indian Constitution which have a direct bearing on media functioning. The concept of the freedom of press has been analysed deeply to understand the inherent powers provided by the Indian Constitution to different forms of media. During the Emergency period, this concept was put on hold and given its criticality in the Indian media history we have discussed it in detail. Also discussed is the concept of press as the 'fourth estate'.

It is very important to know important media laws related to slander, libel, sedition, obscenity, censorship and contempt of court. Any unawareness on these issues might land the media men and media houses in trouble. Hence an attempt has been made to capture the details in this regard in a lucid and straight-forward manner.

The text also includes important media Acts like the Official Secrets Act, Working Journalists Act, the Press and Registration of Books Act, and Parliamentary Proceedings and Privileges. These are very significant Acts because they define the nature and scope of freedom and responsibility enjoyed and bound upon the media in India.

Press Council of India is the self-regulatory body meant to facilitate the functioning of press as an important tool of nation building. The book includes a complete discussion on the nature, scope, powers and criticism regarding the Press Council of India. The two Press Commissions and their recommendations and consequences thereof are also given in detail. The Right to Information Act has acquired a vital status in the functioning of Indian democracy during the 21st century. It has a big bearing on the press in India. The book captures the background against which this law took shape. Further, the Information Technology Act, 2000 stands as the attempt to control the informational blast let loose by the Internet. The Act includes the controlling measures to ensure lawful and ethical functioning of the 'new media'. The book incorporates important features of this very significant Act.

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UNIT 1 INTRODUCTION TO THE CONSTITUTION OF INDIA

Structure

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1.1 Unit Objectives
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1.0 INTRODUCTION

Constitution is the fundamental law of the state. It contains the principles upon which the government is founded and regulates the divisions of the sovereign powers, directing to such persons to whom these powers are to be confided and the manner in which these are to be exercised. It is the supreme or basic law of the land. All other laws and judicial decisions are subject to its mandates. The Constitution therefore has higher authority than all other laws. Unlike other laws, the Constitution may be changed, or amended, only in special ways.

The Constitution of India was framed by a Constituent Assembly. The Constituent Assembly of India was set up as a result of the negotiations between the Indian leaders and members of the British Cabinet Mission on 19 February 1946. Lord Pethick-Lawrence, the Secretary of State for India, announced the decision of the British Government to send a special mission to India to resolve the constitutional deadlock. This Mission consisted of Lord Pethick-Lawrence, Sir Stafford Cripps and A.V. Alexander, the First Lord of the Admiralty.

1.1 UNIT OBJECTIVES

After going through this unit, you will be able to:

- Discuss the basic nature of the Constitution of India
- Explain the historical background to the setting up of the Constituent Assembly

- Critically examine the salient features of Indian Constitution
- Gain a comprehensive grasp over the fundamental rights, fundamental duties and directive principles of state policy in the Indian Constitution

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1.2 PRELUDE TO THE CONSTITUTION OF INDIA

The Constitution of India is not an abstract entity. It stands on the solid platform provided by the aspirations and resolutions passed by the freedom fighters, various measures adopted by the British government to appease the nationalists and scores of contemporary developments going in the world. Following were the main recommendations of the Cabinet Mission Plan announced on 16 May 1946:

(i) Paramountcy of the British Crown shouid cease in India.

(ii) A Union of British India and Indian States should be established.

(iii) A Constituent Assembly should be elected for framing the Constitution of India.

(iv) With the exception of certain reserved subjects, all departments were to be retained by the States.

(v) The members of the Constituent Assembly were to be elected by the Provincial Assemblies which were to be split up into Muslim and non-Muslim on the basis of population of each community in the province.

(vi) An interim government was to be set up having the support of the main political parties.

The Constituent Assembly was elected indirectly by the members of the Provincial Legislative Assemblies in July 1946. Members were chosen by indirect election by the members of the Provincial Legislative Assemblies, according to the scheme recommended by the Cabinet Mission. The arrangement was: (i) 292 members were elected through the Provincial Legislative Assemblies; (ii) 93 members represented the Indian Princely States; and (iii) 4 members represented the Chief Commissioners' Provinces. The total membership of the Assembly thus was to be 389.

The Congress secured an overwhelming majority in the general seats while the Muslim League managed to sweep almost all the seats reserved for Muslims. The Congress had a majority of 69 per cent. There were also members from smaller parties like the Scheduled Caste Federation, the Communist Party of India and the Unionist Party.

The Constituent Assembly first met on 9 December 1946 in Delhi, while India was still under British rule. It included representatives from the provinces that are now in Pakistan and Bangladesh. The princely states of India were also represented.

On 20 February 1947, Mr Clement Attlee, Prime Minister of England, declared that by June 1948 the British Government will transfer power to the

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representatives of the Indians. However later on, this date was advanced to 15 August 1947 as per the Mountbatten Plan announced on 3 June 1947 on the basis of which the Indian Independence Act, 1947 was passed and the British India was partitioned into two dominions of India and Pakistan.

In June 1947, the delegations from the provinces of Sindh, East Bengal, Baluchistan, West Punjab and the North West Frontier Province formed the Constituent Assembly of Pakistan in Karachi. As a result, the number of members of the Indian Constituent Assembly was reduced to 299. On 15 August 1947, India became an independent nation, and the Constituent Assembly also became the Provisional Parliament of India, until the first elections under the new Constitution took place in 1952.

In the first meeting of India's Constituent Assembly held on 9 December 1946, 207 representatives including 9 women were present. Dr Sachchidananda Sinha, who chaired the first session, pointed out that the first definite reference to a Constituent Assembly (though not under those words or under that particular name) is found in a statement of Mahatma Gandhi, made as far back as 1922:

> Swaraj will not be a free gift of the British Parliament. It will be a declaration of India's full self-expression, expressed through an Act of Parliament. But it will be merely a courteous ratification of the declared wish of the people of India. The ratification will be a treaty to which Britain will be a party. The British Parliament, when the settlement comes, will ratify the wishes of the people of India as expressed through the freely chosen representatives.

The demand made by Mahatma Gandhi for a Constituent Assembly—composed of the 'freely chosen representatives' of the people of India—was affirmed from time to time. In May 1934, the Swaraj Party, which was formed at Ranchi, formulated and the resolution included was, 'This Conference claims for India the right of self-determination, and the only method of applying that principle is to convene a Constituent Assembly, representative of all sections of the Indian people, to frame an acceptable constitution.'

The All India Congress Committee, which met at Patna few days later, also approved it. The above resolution was confirmed at the Congress session held at Faizpur in December 1936. The confirming resolution declared that:

> The Congress stands for a genuine democratic State in India where political power has been transferred to the people, as a whole, and the Government is under their effective control. Such a State can only come into existence through a Constituent Assembly having the power to determine finally the constitution of the country.

In November 1939, the Congress Working Committee adopted a resolution which declared that 'Recognition of India's independence and the right of her people to frame their constitution through a Constituent Assembly is essential'.

Dr Rajendra Prasad was elected as the Chairman of Constituent Assembly on 11 December 1946 and on 21 December 1946 the Rules Committee proposed that the Chairman should be styled, 'President'.

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On 13 December 1946, Pandit Jawaharlal Nehru moved the Objectives Resolution:

1. This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution;
2. WHEREIN the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all;
3. WHEREIN the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the Constitution, shall possess and retain the status of autonomous Units, together with residuary powers and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting there from;
4. WHEREIN all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people;
5. WHEREIN shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality;
6. WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes;
7. WHEREBY shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea and air according to justice and the law of civilized nations; and
8. This ancient land attains its rightful and honoured placed in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind.

This Resolution was unanimously adopted by the Constituent Assembly on 22 January 1947.

Late in the evening of 14 August 1947, the Assembly met in the Constitution Hall and at the stroke of midnight took over as the Legislative Assembly of an Independent India.

On 29 August 1947, the Constituent Assembly set up a Drafting Committee under the Chairmanship of Dr B.R. Ambedkar to prepare a Draft Constitution for India. While deliberating upon the Draft Constitution, the Assembly moved, discussed and disposed of as many as 2,473 amendments out of a total of 7,635 tabled.

The Constituent Assembly took almost three years to complete its historic task of drafting the Constitution for Independent India. During this period, it held eleven sessions covering a total of 165 days. Of these, 114 days were spent on the consideration of the Draft Constitution.

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The Constitution of India was adopted on 26 November 1949 and the honourble members appended their signatures to it on 24 January 1950. In all, 284 members actually signed the Constitution. The Constitution was promulgated on 26 January 1950 because on this date in 1929, the Indian National Congress had passed a resolution under the Presidentship of Pandit Jawaharlal Nehru at its Lahore Session demanding 'Purna Swarajya' from the British Government. Since that day, 26 January has been celebrated every year as a 'Purna Swarajya' day. To coincide with this day, it was decided to promulgate the Indian Constitution on 26 January 1950 in spite of the fact that our Constitution was ready on 26 November 1949. Thus 26 January is celebrated as the Republic Day every year.

1.3 THE PREAMBLE

The preamble to the Constitution of India is a brief introductory statement that sets out its purpose and guiding principles. It reflects the basic spirit of the Constitution. It lays down fundamental values and philosophical ideas. The Preamble to a Constitution serves two purposes: (i) it indicates the source from which the Constitution derives its authority, and (ii) it states the objectives, which the Constitution seeks to establish and promote.

Following is the Preamble of Indian Constitution originally passed by the Constituent Assembly:

> WE THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a Sovereign 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 of the Nation. IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November 1949, do HEREBY ADOPT- ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

The Constitution (Forty-second Amendment) Act, 1976, substituted 'SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC' for 'SOVEREIGN DEMOCRATIC REPUBLIC' and 'unity and integrity of the Nation' for 'unity of the Nation' with effect from 3 January 1977.

The present official version of the Preamble reads:

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a

[1][SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC]

and to secure to all its citizens:

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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 [2][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.

[1]Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 2, for 'SOVEREIGN DEMOCRATIC REPUBLIC' (w.e.f. 3-1-1977).

[2]Subs. by s. 2, *ibid.*, for 'unity of the Nation' (w.e.f. 3-1-1977).

The enacting words, 'We, the people of India ...in our constituent assembly ...do hereby adopt, enact and give to ourselves this constitution', signify the democratic principle that power is ultimately vested in the hands of the people. It also emphasizes that the Constitution is made by and for the people of India and not given to them by any outside power. The wording is close to the preamble to the Constitution of Ireland adopted in 1937, which reads, 'We, the people of Éire [Ireland] ...Do hereby adopt, enact, and give to ourselves this Constitution.'

Sovereign

The word sovereign means supreme or independent. India is internally and externally sovereign, i.e., externally it is free from the control of any foreign power and internally, it has a free government which is directly elected by the people and makes laws that govern them.

Socialist

The word socialist was added to the Preamble by the Forty-second Amendment Act, 1976. It implies social and economic equality. Social equality in this context means the absence of discrimination on the grounds of caste, colour, creed, language, religion or sex. Under social equality, everyone has equal status and opportunities. Economic equality in this context means that the government will endeavour to make the distribution of wealth more equal and provide a decent standard of living for all. This in effect emphasizes a commitment towards the formation of a welfare state. India has adopted a socialistic and mixed economy and the government has framed many laws to achieve the aim.

Secular

The word 'secular' was also inserted into the preamble by the Forty-second Amendment Act, 1976. It implies equality of all religions and religious tolerance. India does not have an official state religion. Every person has the right to practice,

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preach and propagate any religion. The government must not favour or discriminate against any religion. It must treat all religions with equal respect.

All citizens, irrespective of their religious beliefs, are equal in the eyes of law. No religious instruction is imparted by the government or government-aided schools. Nevertheless, the general information about all the established world religions is imparted as part of the course without giving any importance to any one religion or the other. It involves the basic/fundamental information with regard to the fundamental beliefs, social values and main practices and festivals of the established world religions. The Supreme Court in *S.R. Bommai Vs. Union of India* case held that secularism was an integral part of the basic structure of the Constitution.

Democratic

The first part of the preamble 'We, the people of India' and its last part 'give to ourselves this Constitution' clearly indicate the democratic spirit involved in the Constitution. India is a democracy. The people of India elect their governments at Union, State and local level by a system of universal adult suffrage. Every citizen of India, who is 18 years of age and above and not otherwise debarred by law, is entitled to vote. Every citizen enjoys this right without any discrimination on the basis of caste, colour, creed, language, religion, sex or education.

Republic

A democratic republic is a state in which the head of state is elected, directly or indirectly, for a fixed tenure. The President of India is elected by an electoral college for a term of five years. The post of the President of India is not hereditary as in Monarchies. All citizens of India can contest election to become the President of the country.

The Preamble highlights fundamental values and guiding principles on which the Constitution of India is based. It serves as the guiding post for the Parliament in making laws and judiciary in interpreting the Constitution. The opening words of the Preamble—'We, the people'—signify that the power is vested in the hands of the people of India.

The preamble is not enforceable in a court of law. However, the Supreme Court of India in *Keshvanand Bharti* case has recognized that the preamble may be used to interpret ambiguous areas of the Constitution where contradictory interpretations present themselves. Thus the preamble is useful as an interpretive tool, but should not be considered as that part of the Constitution which gives legally enforceable rights to the citizens.

Commemorating the 50th anniversary of the first sitting of the Constituent Assembly of India on 9 December 1996, President Dr Shankar Dayal Sharma said, 'The values of our ethos and their own experiences during the Freedom Struggle spurred the constant striving of our people for the ideals of liberty, equality, justice, respect for human dignity and democracy. These ideals, the goals and

values of the Freedom Struggle form the real essence, the life-breath of our Constitution and are enshrined in the Preamble.'

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CHECK YOUR PROGRESS

1. What do you mean by the word 'constitution'?
2. Who framed the Indian Constitution?
3. What were the main recommendations of the Cabinet Mission Plan?
4. How was the Constituent Assembly chosen to draft the Indian Constitution?

1.4 SALIENT FEATURES

The Indian Constitution represents the vision and values of its founding fathers and is the basis of the faith and aspiration of Indian people. When the Indian Constitution was formally ratified on 26 November 1949, it concluded a process that resulted in a remarkably forward-looking document that enshrined individual liberty, equality of opportunity, social justice and secularism. As per this Constitution, the Republic of India was inaugurated on 26 January 1950. Salient features of the Constitution of the Republic of India are as follows:

1. Living Document

The Constitution is a living document, an instrument which makes the governmental system work. Unlike many other developing countries that became Independent after the World War II, it has survived as a living document with necessary amendments.

2. Written Constitution

The Constitution of the Republic of India is written. As originally passed, it had 395 Articles and 8 Schedules. The written Constitution is very essential for a federal state so that whenever there is any dispute between the federal government and the federating units, it becomes the basis to resolve these disputes. In sheer physical terms, Indian Constitution is definitely the largest and most detailed Constitution in the world. The Constitution of USA contains only 7 Articles, Canada's 147 Articles and Australia's 128 Articles.

Dr Bhim Rao Ambedkar was the chairman of the Drafting Committee. The Draft Constitution, as prepared by the Constitutional Adviser Sir B.N. Rau as a text for the Draft Committee to work upon, consisted of 243 Articles and 13 Schedules. The first Draft Constitution as presented by the Drafting Committee to the Constituent Assembly contained 315 Articles and 8 Schedules. At the end of the consideration stage, the number of articles in the Draft Constitution increased to 386. In its final form, the Draft Constitution contains 395 Articles and 8 Schedules. The total number of amendments to the Draft Constitution tabled was

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approximately 7,635. Of them, the total number of amendments actually moved in the House was 2,473. 'Much greater share of the credit must go to Mr S.N. Mukherjee, the Chief Draftsman of the Constitution. His ability to put the most intricate proposals in the simplest and clearest legal form can rarely be equaled,' said Dr Ambedkar.

The framers of the Constitution tried to provide the solution of all the possible problems of administration and governance of the country. Even those matters which are taken as conventions in other countries have been put to writing in the Indian Constitution.

3. Sovereign Democratic Republic

The Indian Independence Act, 1947 declared India a dominion with the Queen of England as the Head of the State. The Governor-General was appointed by the Queen and acted as her representative in India. The authors of the Constitution decided that Dominion status was not in conformity with the dignity of the Indian nation. The preamble of the Constitution, therefore, declared India as a Sovereign Democratic Republic. It means that India as a nation does not owe allegiance to any foreign power, is independent in her dealings with foreign countries and enjoys equal status in the world community with other independent sovereign states.

India is a democracy. It means that sovereignty rests with the people of India. They govern themselves through their representatives elected on the basis of universal adult franchise. Besides, the Constitution confers on Indian citizens some fundamental rights which are considered to be the essence of a democratic system.

India is a republic as unlike Britain there is no hereditary element in the Indian Governmental system. The President, the highest official of the State, is elective. The institution of monarchy which was prevailing in the States before Independence has been abolished.

4. Parliamentary Form of Government

The Constitution provides for a Parliamentary form of government which is federal in structure with certain unitary features. The constitutional head of the Executive of the Union is the President. As per Article 79 of the Constitution of India, the council of the Parliament of the Union consists of the President and two Houses known as the Council of States (Rajya Sabha) and the House of the People (Lok Sabha). Article 74(1) of the Constitution provides that there shall be a Council of Ministers with the Prime Minister as its head to aid and advise the President, who shall exercise his functions in accordance with the Prime Minister's advice. The real executive power is thus vested in the Council of Ministers with the Prime Minister as its head.

The Council of Ministers is collectively responsible to the House of the People (Lok Sabha). Every State has a Legislative Assembly. Certain States have an upper House also called State Legislative Council. There is a Governor for

each State who is appointed by the President. Governor is the head of the State and the executive power of the State is vested in him. The Council of Ministers with the Chief Minister as its head advises the Governor in the discharge of executive functions. The Council of Ministers of a State is collectively responsible to the Legislative Assembly of the State.

The Constitution distributes legislative powers between Parliament and State legislatures as per the lists of entries in the Seventh Schedule to the Constitution. The residuary powers are vested in the Parliament. The centrally administered territories are called Union Territories.

5. A Federal System with Unitary Bias

The Constitution is federal in nature but the term 'Federation' has not been used in our Constitution. India has been described as a Union of States according to Article 1 of the Constitution. There are twenty-eight states in the union, each one with a separate Executive, Legislature and Judiciary. Powers have been divided between the Union Government on the one hand and the States on the other by the Constitution itself. The Constitution is sovereign and there is provision for judicial review.

The most remarkable feature of the Indian Constitution is to confer upon a federal system the strength of a unitary government. Though normally the system of government is federal, during an emergency the Constitution enables the federation to transform into a unitary State.

Dr Ambedkar said:

> The basic principle of Federalism is that the Legislative and Executive authority is partitioned between the Centre and the States not by any law to be made by the Centre but by the Constitution itself. This is what Constitution does. The States under our Constitution are in no way dependent upon the Centre for their legislative or executive authority. The Centre and the States are co-equal in this matter.

The Indian Constitution has a unitary bias, for instance, after distributing the legislative powers in three lists the residual subjects are left with the union. Even regarding the matters in the concurrent list, the union Government has the final say. The Parliament in India has a right to change the boundaries of the State. The Centre can at any time declare emergency in the States. The Governors are appointed by the President.

In the words of Dr Ambedkar:

> There can be no doubt that in the opinion of the vast majority of the people, the residual loyalty of the citizen in an emergency must be to the Centre and not to the Constituent States. For it is only the Centre which can work for a common end and for the general interests of the country as a whole. Herein lies the justification for giving to the Centre certain overriding powers to be used in an emergency. And after all what is the obligation imposed upon the Constituent States by these emergency powers? No more than this – that in an emergency, they should take into consideration alongside their own local interests, the opinions and interests of the nation as a whole.

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6. Adult Franchise

At the time when the Constitution was made, the vast majority of Indian people were illiterate. The framers of the Constitution took the bold step of conferring the right to vote on every adult citizen of India irrespective of the differences of education, property or sex. Every citizen who was 21 years of age was given the right to vote. It has been reduced to 18 years now. This makes the Constitution democratic in the real sense of the term.

The Constitution proclaims the sovereignty of the people in its opening words. The preamble begins with the words, 'We the people of India, having solemnly resolved to constitute India into a sovereign socialist secular democratic Republic'. The idea is reaffirmed in several places in the Constitution, particularly in the chapter dealing with elections. Article 326 declares that 'the election to the House of people and to the Legislative Assembly of every State shall be on the basis of adult suffrage'.

As a result, governments at the Centre and in the States derive their authority from the people who choose their representatives for Parliament and the State legislatures at regular intervals. Those who wield the executive power of the government are responsible for the legislature and through them to the people.

7. Rigid and Flexible

The Constitution is rigid in the sense that most of its parts cannot be amended by the ordinary law-making process. However, it provided for amendments and therefore it is flexible. The Indian Constituent Assembly has not only refrained from putting a seal of finality and infallibility upon this Constitution as in Canada or by making the amendment of the Constitution subject to the fulfillment of extraordinary terms and conditions as in America or Australia. In its place, it has provided a most facile procedure for amending the Constitution.

'If those who are dissatisfied with the Constitution have only to obtain a two-thirds majority and if they cannot obtain even a two-thirds majority in the parliament elected on adult franchise in their favour, their dissatisfaction with the Constitution cannot be deemed to be shared by the general public,' Dr Ambedkar said while presenting the final draft of the Constitution.

It is only the amendment of few of the provisions of the Constitution that requires ratification by the State legislatures and even then ratification by only half of them is sufficient.

The rest of the Constitution can be amended by the special majority of the union Parliament, i.e., a majority of not less than two-thirds of the members of each House present and voting, which again must be a majority of the total membership of the House.

Within a period of less than 60 years, the Constitution has been amended 94 times. It proves that the Constitution is flexible. The procedure laid down by the Constitution for its amendment is neither very easy, as in England, nor very rigid as in the United States.

8. Independence of Judiciary

The framers of the Constitution were aware that democratic freedoms were meaningless in the absence of an independent machinery to safeguard them. No subordinate or agent of the government could be trusted to be just and impartial in judging the merits of a conflict in which the Government itself was a party. Similarly, a judiciary subordinates either to the Centre or the States could not be trusted as an impartial arbiter of conflicts and controversies between the Centre and the States.

These were the compelling reasons for the creation of an independent judiciary as an integral part of the Constitution and for the adoption of judicial independence as a basic principle of the Constitution.

9. Supreme Court and Judicial Review

Supreme Court is a necessary element in a federal polity. Accordingly, the Indian Constitution has established a Supreme Court of India. The Court has both original and appellate jurisdiction. It has the power of judicial review. It can declare any Legislative enactment or administrative act as unconstitutional if it is deemed to be in conflict with the provisions of the Constitution. Besides, the Supreme Court is a court of record.

10. Single Citizenship

The Constitution of India grants only one citizenship to all the citizens. In a federation sometimes a citizen gets double citizenship, one of the Union and the other of State in which that person lives.

11. Detailed Administrative Provisions

As Dr B.R. Ambedkar observed, it is perfectly possible to pervert the Constitution without changing the form of administration. To prevent such subversion of the Constitution, detailed administrative provisions were included in it.

We have in the Indian Constitution detailed provisions about the organization of the judiciary, the services, the Public Service Commission, Election and about the division of powers between the Union and the States.

12. Constitution of the Units

The Constitution of a federal State usually deals only with the federal Government and leaves the federating units to draw their own constitutions. This practice was followed in the framing of the constitutions of the USA, USSR, Canada and other Federal States. However, the Indian Constitution provides the Constitutions of both the Union and the States. This has contributed to the bulk of the Indian Constitution.

13. Secular State

India is a secular State. It means that the State does not recognize, establish or endow any church or religious organization. It is not guided in the discharge of its functions by the considerations of secular or the worldly welfare of the people. It

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does not seek to promote the spiritual or religious welfare of the people. It allows freedom of religion. The Constitution guarantees freedom of worship, faith and conscience. It does not discriminate in matters of government employment on the basis of religion. The term 'Secular' did not occur in any part of the original Constitution. It was incorporated in the preamble by the Forty-second Constitutional Amendment in 1976.

14. Socialist State

India is a socialist State. The term 'Socialist' was added to the preamble of the Constitution by the Forty-second Constitutional Amendment Act of 1976. However, it is to be noted that the 'Socialism' envisaged by the Constitution is not the usual State socialism of Russian or Chinese variety which involves nationalization of all the means of production, distribution, communication, etc. Indira Gandhi explained the nature of Indian Socialism: 'We have always said that we have our own brand of socialism. We will nationalize the sectors where we feel the necessity. Just nationalization is not our type of socialism.'

15. Fundamental Rights

Like the Constitution of the USA and the USSR, the Indian Constitution contains a comprehensive Bill of Rights. Right to freedom, right to equality, right to religion, right against exploitation and cultural rights have been guaranteed to the citizens of India.

These rights are enforceable in the courts. The Constitution guarantees the right to move the Supreme Court and the High Courts by appropriate proceedings for the enforcement of the rights mentioned above. The remedies for enforcing the rights, namely, the writs of *habeas corpus*, *mandamus*, *prohibition* and *certiorari* are also guaranteed by the Constitution under Article 32.

16. Fundamental Duties

Part IVA on fundamental duties was incorporated in the Constitution by the Forty-second Amendment Act. Article 51A of the Constitution enumerates ten fundamental duties of the citizens of India: to respect and abide by the Constitution and the laws; to uphold the sovereignty of the nation; to respect the democratic institutions enshrined in the Constitution; to abjure communalism and violence, etc. However, unlike the fundamental rights, the fundamental duties are not enforceable in the courts.

17. Directive Principles of State Policy

A distinctive feature of the Constitution is that it contains Chapter IV on the Directive Principles of State Policy. These Directives relate mostly to social and economic justice, such as adequate means of livelihood for all, distribution of wealth so as to serve the common good, equal pay for equal work, protection of adult and child labour, free and compulsory primary education, etc. These are the guiding principles of State policy. The authors of the Constitution did not make the Directive Principles justiciable.

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The Directive Principles are not enforceable by the courts, i.e., if the government of the day fails to carry out these objects no court can make the government ensure them. Still the principles have been declared to be fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

18. Drawn from Different Sources

A distinguishing feature of the Indian Constitution is that it was prepared after carefully looking at all the known constitutions of the world at that time. The first meeting of the Constituent Assembly of India took place in the Constitution Hall, New Delhi. On 9 December 1946, it was chaired by Dr Sachchidananda Sinha. In his address Dr Sinha referred to several constitutions that were in existence at that time and said:

> As a matter of fact, the French constitution-makers, who met in 1789 at the first Constituent Assembly of their country, were themselves largely influenced by the work done but a couple of years earlier in 1787, by the historic Constitutional Convention held at Philadelphia by the American constitution-makers, for their country. Having thrown off their allegiance to the British King in Parliament, they met and drew up what had been regarded, and justly so, as the soundest, and most practical and workable republican constitution in existence. It is this great constitution, which had been naturally taken as the model for all subsequent constitutions not only of France, but also of the self-governing Dominions of the British Commonwealth, like Canada, Australia, and South Africa; and I have no doubt that you will also, in the nature of things, pay in the course of your work, greater attention to the provisions of the American Constitution than to those of any other.

The parliamentary system has been borrowed from England, the concept of independent judiciary and judicial review and fundamental rights from the US Constitution, the federal features from Canada and the Directive Principles from Ireland. Many provisions related to administration have been taken from the Government of India Act, 1935.

These borrowings were not blind as the framers of the Constitution modified them with a view to avoid the faults that have emerged in practice and adapted to the existing conditions and needs of the country. India's astonishing religious and ethnic diversity, caste inequalities and widespread illiteracy and poverty demanded unique provisions. The Constituent Assembly members were equal to this task, debating and discussing the clauses of the Draft Constitution threadbare.

Many distinguished members of Constituent Assembly had studied abroad. Dr Ambedkar, who had degrees from both Colombia and London admitted during the debates: 'The only new thing, if there can be any, in a Constitution framed so late in the day are the variations, made to remove the failures and accommodate it to the needs of the country.'

19. Reservation in Legislatures and Services for Backward Classes

A distinctive feature of the Indian Constitution is that there is reservation of seats for the Scheduled Castes and Scheduled Tribes in the House of the People and in

the State Assemblies. The Constitution also lays down that the claims of the Scheduled Castes and Scheduled Tribes shall be taken into consideration in making appointments to services in connection with the affairs of the Union or a State.

There is also reservation of the seats for Anglo-Indian community in the House of the People and in some State Assemblies.

20. Official Language of India

A provision was made in the Constitution to declare Hindi in the Devanagiri script as the official language of India. Till that time English was to continue as the official language.

21. Basic Structure

Article 368 of the Constitution gives the impression that Parliament's amending powers are absolute and encompass all parts of the document. However, the Supreme Court has acted as an arbiter to the legislative enthusiasm of Parliament ever since Independence. With the intention of preserving the original ideals envisioned by the constitution-makers, the apex court pronounced that Parliament could not distort, damage or alter the basic features of the Constitution under the pretext of amending it.

Though the phrase 'basic structure' itself is not found in the Constitution, the Supreme Court recognized this concept for the first time in the historic *Kesavananda Bharati* case in 1973. Since then the Supreme Court has been the interpreter of the Constitution and the arbiter of all amendments made by the Parliament. However, the final word on the issue of the basic structure of the Constitution has not been pronounced by the Supreme Court yet. The sovereign, democratic and secular character of the polity, rule of law, independence of the judiciary, fundamental rights of citizens are some of the essential features of the Constitution that have appeared time and again in the apex court's pronouncements.

1.5 FUNDAMENTAL RIGHTS

The *Fundamental Rights* are defined as the basic human rights of all citizens. These rights form Part III of the Indian Constitution and are enforceable by the courts, subject to specific reasonable restrictions. The final draft of the Constitution included the Fundamental Rights and Directive Principles promulgated on 26 November 1949, while the Forty-second Amendment Act added the Fundamental Duties to the Constitution in 1976. Changes in Fundamental Rights, Directive Principles and Fundamental Duties require a constitutional amendment that must be passed by a two-thirds majority in both houses of Parliament.

In 1928, an All Parties Conference appointed a committee, led by Motilal Nehru, to frame constitutional demands. Its report popularly known as Nehru Report put emphasis on fundamental rights arguing that 'certain safeguards and guarantees are necessary to create and establish a sense of security among those

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who look upon each other with suspicion'. The fundamental rights of Nehru report were according to Granville Austin, 'reminiscent of those of American or post-war European constitutions'. The Karachi Session of the Indian National Congress held in March 1931 adopted the famous Resolution moved by Mahatma Gandhi which contained a charter on Fundamental Rights. It came to serve as a blueprint for constitution making after India's independence in 1947. The resolution was only slightly amended by the All India Congress Committee meeting later in the same year, from 6–8 August 1931.

One among the many significant observations this resolution made was this: '*In order to end the exploitation of the masses, political freedom must include real economic freedom of the starving millions.*' The resolution gave a list of the things that any future 'constitution... agreed to on its behalf should provide or enable the Swaraj government to provide'.

When the Constituent Assembly was working on framing our Constitution, the UN General Assembly adopted the Universal Declaration of Human Rights on 10 December 1948. The declaration called upon all the member States to adopt those rights in their respective constitutions.

Fundamental Rights in the Indian Constitution guarantee that all Indian citizens have individual rights common to most liberal democracies, such as equality before the law, freedom of speech and expression, freedom of association and peaceful assembly, freedom of religion and the right to constitutional remedies for the protection of civil rights. In addition, it also aimed at overturning the inequities of past social practices by abolishing untouchability, prohibiting discrimination on the grounds of religion, race, caste, sex, or place of birth; and forbidding trafficking in human beings and abolishing forced labour. They go beyond conventional civil liberties in protecting cultural and educational rights of minorities by ensuring that the minorities may preserve their distinctive languages and establish and administer their own educational institutions.

The right to property constituted a Fundamental Right under Article 32 before it was revoked by the Forty-fourth Amendment Act of 1978. A new article, Article 300A, was added to the Constitution, providing the protection of a person's property from confiscation, except by the authority of law. Thus, the right to property has been removed as a fundamental right, though it is still a constitutional right. If the government appears to have acted unfairly, the action can be challenged in a court of law.

The six fundamental rights include the right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights and right to constitutional remedies.

Right to equality before law is granted by Article 14. Discrimination on the grounds of religion, race, caste, sex or place of birth has been prohibited by Article 15 of the Constitution. Equality of opportunity in matters of public employment is ensured by Article 16. The Constitution abolishes untouchability by Article 17.

Article 18 abolishes titles granted by the British Colonial Government such as *Rai Bahadurs* and *Khan Bahadurs*.

Right to Freedom

Articles 19, 20, 21 and 22 provide the right to freedom with the view of guaranteeing individual rights considered vital by the framers of the Constitution. The right to freedom encompasses the freedom of expression, the freedom to assemble peacefully without arms, the freedom to form associations and unions, the freedom to move freely and settle in any part of the territory of India and the freedom to practice any profession. Restrictions can be imposed on all these rights in the interest of security, decency and morality (Article 19). The Constitution guarantees the following rights: the right to life and personal liberty (Article 21); protection with respect to conviction for offences (Article 20); protection against arrest and detention in certain cases (Article 22). Article 21A provides right to education.

Right Against Exploitation

Article 23 prohibits traffic in human beings and forced labour and Article 24 provides for prohibition of employment of children in factories, etc.

Right to Freedom of Religion

Article 25 provides for freedom of conscience and free profession, practice and propagation of religion. Article 26 gives freedom to manage religious affairs. Article 27 grants freedom as to the payment of taxes for promotion of any particular religion. Article 28 provides for freedom to get religious instruction or religious worship in certain educational institutions.

Cultural and Educational Rights

Article 29 protects the interests of minorities and Article 30 provides them the right to establish and administer educational institutions.

Right to Constitutional Remedies

Article 32 provides remedies for the enforcement of Fundamental Rights. Article 33 gives power to the Parliament to modify the rights in their application to uniformed forces, intelligence organizations, etc. Article 34 provides for restriction on rights conferred by this Part while martial law is in force in any area.

Fundamental Rights primarily protect the individuals from any arbitrary State action, but individuals may have legal action taken against them for the violation of fundamental rights. For instance, the Constitution abolishes untouchability and prohibits *begar*. These provisions act as a check both on the State action and the actions of private individuals.

Fundamental Rights have a relative nature, and are subject to reasonable restrictions as necessary for the protection of national interest. In the *Kesavananda Bharati* case, the Supreme Court ruled that all provisions of the Constitution, including Fundamental Rights can be amended. The Parliament must preserve the

basic structure of the Constitution like secularism, democracy, federalism, separation of powers, etc. often called the 'Basic structure doctrine'. This decision has come to be widely regarded as a milestone in the Indian constitutional history.

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The Fundamental Rights can only be altered by a constitutional amendment, hence their inclusion serves as a check on the executive branch, the Parliament and State legislatures. The imposition of a state of emergency may lead to a temporary suspension of the rights conferred by Article 19 (including freedoms of speech, assembly and movement, etc.) to preserve national security and public order. The President can, by order, suspend the right to constitutional remedies as well. Defending the Draft Constitution on 4 November 1948, Dr Ambedkar said:

> The most criticized part of the Draft Constitution is that which relates to Fundamental Rights. It is said that Article 13 which defines fundamental rights is riddled with so many exceptions that the exceptions have eaten up the rights altogether. It is condemned as a kind of deception. In the opinion of the critics fundamental rights are not fundamental rights unless they are also absolute rights. The critics rely on the Constitution of the United States and to the Bill of Rights embodied in the first ten Amendments to that Constitution in support of their contention. It is said that the fundamental rights in the American Bill of Rights are real because they are not subjected to limitations or exceptions.
>
> I am sorry to say that the whole of the criticism about fundamental rights is based upon a misconception. In the first place, the criticism in so far as it seeks to distinguish fundamental rights from non-fundamental rights is not sound. It is incorrect to say that fundamental rights are absolute while non-fundamental rights are not absolute. The real distinction between the two is that non-fundamental rights are created by agreement between parties while fundamental rights are the gift of the law. Because fundamental rights are the gift of the State it does not follow that the State cannot qualify them.

What the Draft Constitution has done is that instead of formulating Fundamental Rights in absolute terms and depending upon our Supreme Court to come to the rescue of Parliament by inventing the doctrine of police power, it permits the State directly to impose limitations upon the Fundamental Rights. There is really no difference in the result. What one does directly the other does indirectly. In both cases, the Fundamental Rights are not absolute.

Following is the text of Part III of the Constitution of Republic of India:

PART III

FUNDAMENTAL RIGHTS

General

12. In this Part, unless the context otherwise requires, 'the State' includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

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13. (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires,—

(*a*) 'law' includes any ordinance, order, bye-law, rule, regulation, notification, custom or usage having, in the territory of India, the force of law;

(*b*) 'laws in force' includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

[1](4) Nothing in this article shall apply to any amendment of this Constitution made under article 368].

[1] Ins. by the Constitution (Twenty-fourth Amendment) Act, 1971, s. 2.

14. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

15. (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

(*a*) access to shops, public restaurants, hotels and places of public entertainment; or

(*b*) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

[2](4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

[2]Added by the Constitution (First Amendment) Act, 1951, s. 2.

[3][(5) Nothing in this article or in sub-clause (*g*) of clause (1) of Article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.

[3]Ins. by the Constitution (Ninety-third Amendment) Act, 2005, s. 2 (w.e.f. 20-1-2006).

16. (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office.

[1][under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.

[1]Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch., for 'under any State specified in the First Schedule or any local or other authority within its territory, any requirement as to residence within that State'.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

[2][(4A) Nothing in this article shall prevent the State from making any provision for reservation.

[2]Ins. by the Constitution (Seventy-seventh Amendment) Act, 1995, s. 2.

[3][in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.]

[3]Subs. by the Constitution (Eighty-fifth Amendment) Act, 2001, s. 2, for certain words (w.e.f. 17-6-1995).

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[4][(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of 50 per cent reservation on total number of vacancies of that year.]

[4]Ins. by the Constitution (Eighty-first Amendment) Act, 2000, s. 2 (w.e.f. 9-6-2000).

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

17. 'Untouchability' is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of 'Untouchability' shall be an offence punishable in accordance with law.

18. (1) No title, not being a military or academic distinction, shall be conferred by the State.

(2) No citizen of India shall accept any title from any foreign State.

(3) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.

(4) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.

19. (1) All citizens shall have the right—

(*a*) to freedom of speech and expression;

(*b*) to assemble peaceably and without arms;

(*c*) to form associations or unions;

(*d*) to move freely throughout the territory of India;

(*e*) to reside and settle in any part of the territory of India; [1][and] [2](f);

(*g*) to practise any profession, or to carry on any occupation, trade or business.

[3][(2) Nothing in sub-clause (*a*) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of [4][the sovereignty

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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.]

(3) Nothing in sub-clause (*b*) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of [4][the sovereignty and integrity of India or] public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (*c*) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of [4][the sovereignty and integrity of India or] public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

[1]Ins. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 2 (w.e.f. 20-6-1979).

[2]Sub-clause (*f*) omitted by s. 2, *ibid.* (w.e.f. 20-6-1979).

[3]Subs. by the Constitution (First Amendment) Act, 1951, s. 3, for cl. (2) (with retrospective effect).

[4]Ins. by the Constitution (Sixteenth Amendment) Act, 1963, s. 2.

(5) Nothing in [1][sub-clauses (*d*) and (*e*)] of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub-clause (*g*) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, [2][nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—

(*i*) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(*ii*) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise].

20. (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an

offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

21. No person shall be deprived of his life or personal liberty except according to procedure established by law.

[1]Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 2, for 'sub-clauses (*d*), (*e*) and (*f*)' (w.e.f. 20-6-1979).

[2]Subs. by the Constitution (First Amendment) Act, 1951, s. 3, for certain words.

*[**21A.** The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.]

22. (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply—

(*a*) to any person who for the time being is an enemy alien; or

(*b*) to any person who is arrested or detained under any law providing for preventive detention.

**(4) No law providing for preventive detention shall authorize the detention of a person for a longer period than three months unless—

(*a*) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed.

*Ins by the Constitution (Eighty-sixth Amendment) Act, 2002, s. 2 (which is not yet in force, date to be notified later on).

**Cl. (4) shall stand substituted by the Constitution (Forty-fourth Amendment) Act, 1978, s. 3 (which is yet not in force, date to be notified later on) as—

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'(4) No law providing for preventive detention shall authorize the detention of a person for a longer period than two months unless an Advisory Board constituted in accordance with the recommendations of the Chief Justice of the appropriate High Court has reported before the expiration of the said period of two months that there is in its opinion sufficient cause for such detention:

Provided that an Advisory Board shall consist of a Chairman and not less than two other members, and the Chairman shall be a serving Judge of the appropriate High Court and the other members shall be serving or retired Judges of any High Court:

Provided further that nothing in this clause shall authorize the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (*a*) of clause (7).

Explanation.—In this clause, 'appropriate High Court' means,—

(*i*) in the case of the detention of a person in pursuance of an order of detention made by the Government of India or an officer or authority subordinate to that Government, the High Court for the Union territory of Delhi;

(*ii*) in the case of the detention of a person in pursuance of an order of detention made by the Government of any State (other than a Union territory), the High Court for the State; and

(*iii*) in the case of the detention of a person in pursuance of an order of detention made by the administrator of a Union territory or an officer or authority subordinate to such administrator, such High Court as may be specified by or under any law made by Parliament in this behalf.

Provided that nothing in this sub-clause shall authorize the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (*b*) of clause (7); or (*b*) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (*a*) and (*b*) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe—
*(a) the circumstances under which, and the class or classes of cases

(7) Parliament may by law prescribe—

*(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (*a*) of clause (4);

**(*b*) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(*c*) the procedure to be followed by an Advisory Board in an inquiry under ***[sub-clause (*a*) of clause (4)].

*Sub-clause (*a*) shall stand omitted by the Constitution (Forty-fourth Amendment) Act, 1978, s. 3 (which is yet not in force, date to be notified later on).

**Sub-clause (*b*) shall stand relettered as sub-clause (*a*) by s. 3, *ibid.* (which is yet not in force, date to be notified later on).

***The words, letter and figure in brackets shall stand substituted as 'clause (4)' by s. 3, *ibid.* (which is yet not in force, date to be notified later on).

Right against Exploitation

23. (1) Traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

24. No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Right to Freedom of Religion

25. (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(*a*) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(*b*) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

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Explanation I.—The wearing and carrying of *kirpans* shall be deemed to be included in the profession of the Sikh religion.

Explanation II.—In sub-clause (*b*) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

26. Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

(*a*) to establish and maintain institutions for religious and charitable purposes;

(*b*) to manage its own affairs in matters of religion;

(*c*) to own and acquire movable and immovable property; and

(*d*) to administer such property in accordance with law.

27. No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

28. (1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognized by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

Cultural and Educational Rights

29. (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

30. (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

[1][(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the

amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.]

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

31. [1][*Compulsory acquisition of property.*] *Rep. by the Constitution (Forty-fourth Amendment) Act,* 1978, *s.* 6 (*w.e.f.* 20-6-1979).

[2][*Saving of Certain Laws*]

[3][**31A.** [4][(1) Notwithstanding anything contained in Article 13, no law providing for—

(*a*) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or

(*b*) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or

(*c*) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or

(*d*) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or

[1]The sub-heading '*Right to Property*' omitted by the Constitution (Forty-fourth Amendment) Act, 1978, s. 5 (w.e.f. 20-6-1979).

[2]Ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 3 (w.e.f. 3-1-1977).

[3]Ins. by the Constitution (First Amendment) Act, 1951, s. 4 (with retrospective effect).

[4]Subs. by the Constitution (Fourth Amendment) Act, 1955, s. 3, for cl. (1) (with retrospective effect).

(*e*) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence, shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by [1][Article 14 or Article 19]:

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such

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law, having been reserved for the consideration of the President, has received his assent:]

[2][Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.]

(2) In this article,—

[3][(a) the expression 'estate' shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include—

(*i*) any *jagir, inam* or *muafi* or other similar grant and in the States of [4][Tamil Nadu] and Kerala, any *janmam* right;

[1]Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 7, for 'Article 14, Article 19 or Article 31' (w.e.f. 20-6-1979).

[2]Ins. by the Constitution (Seventeenth Amendment) Act, 1964, s. 2.

[3]Subs. by s. 2, *ibid.*, for sub-clause (*a*) (with retrospective effect).

[4]Subs. by the Madras State (Alteration of Name) Act, 1968 (53 of 1968), s. 4, for 'Madras'. (w.e..f. 14-1-1969).

(*ii*) any land held under ryotwari settlement;

(*iii*) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;]

(*b*) the expression 'rights', in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, [1][*raiyat, under-raiyat*] or other intermediary and any rights or privileges in respect of land revenue.]

[2][**31B.** Without prejudice to the generality of the provisions contained in Article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any court or Tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.]

[3][**31C.** Notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing [4][all or any of the principles laid down in Part [IV] shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by [5][Article 14 or Article 19]; [6]*and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy: Provided that where such law is made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.]*

[1]Ins. by the Constitution (Fourth Amendment) Act, 1955, s. 3 (with retrospective effect).

[2]Ins. by the Constitution (First Amendment) Act, 1951, s. 5.

[3]Ins. by the Constitution (Twenty-fifth Amendment) Act, 1971, s. 3 (w.e.f. 20-4-1972).

[4]Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 4, for 'the principles specified in clause (*b*) or clause (*c*) of Article 39' (w.e.f. 3-1-1977). Section 4 has been declared invalid by the Supreme Court in *Minerva Mills Ltd. and others vs. Union of India and others* (1980) 2. S.C.C. 591.

[5]Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 8, for 'Article 14, Article 19 or Article 31' (w.e.f. 20-6-1979).

[6]In *Kesavananda Bharati vs. The State of Kerala,* (1973) Supp. S.C.R. 1, the Supreme Court held the provisions in italics to be invalid.

[1]**31D.** [*Saving of laws in respect of anti-national activities.*]

Rep. by the Constitution (Forty-third Amendment) Act, 1977, *s.* 2 (*w.e.f.* 13-4-1978).

Right to Constitutional Remedies

32. (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus, mandamus, prohibition, quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

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(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

[2]**32A.** [*Constitutional validity of State laws not to be considered in proceedings under Article* 32.] *Rep. by the Constitution (Forty-third Amendment) Act,* 1977, *s.* 3 (*w.e.f.* 13-4-1978).

[1]Ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 5 (w.e.f. 3-1-1977).

[2]Ins. by s. 6, *ibid.* (w.e.f. 1-2-1977).

[1][**33.** Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,—

(*a*) the members of the Armed Forces; or

(*b*) the members of the Forces charged with the maintenance of public order; or

(*c*) persons employed in any bureau or other organization established by the State for purposes of intelligence or counter intelligence; or

(*d*) person employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organization referred to in clauses (*a*) to (*c*), be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.]

34. Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.

35. Notwithstanding anything in this Constitution,—

(*a*) Parliament shall have, and the Legislature of a State shall not have, power to make laws—

(*i*) with respect to any of the matters which under clause (3) of Article 16, clause (3) of Article 32, Article 33 and Article 34 may be provided for by law made by Parliament; and

(*ii*) for prescribing punishment for those acts which are declared to be offences under this Part;

[1]Subs. by the Constitution (Fiftieth Amendment) Act, 1984, s. 2, for Article 33; and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub-clause (*ii*);

(*b*) any law in force immediately before the commencement of this Constitution in the territory of India with respect to any of the matters referred to in sub-clause (*i*) of clause (*a*) or providing for punishment for any act referred to in sub-clause (*ii*) of that clause shall, subject to the terms thereof and to any adaptations and modifications that may be made therein under Article 372, continue in force until altered or repealed or amended by Parliament.

Explanation.—In this article, the expression 'law in force' has the same meaning as in Article 372.

CHECK YOUR PROGRESS

5. When was the Indian Constitution promulgated?
6. What do you understand by the Preamble to the Indian Constitution?
7. Define the term 'sovereign' as meant in the Constitution of India?
8. When was the word 'socialist' added to the Indian Constitution? What does it imply?

1.6 FUNDAMENTAL DUTIES

The Forty-second Amendment Act added the Fundamental Duties of citizens in 1976. The ten Fundamental Duties (given in Article 51A of the Constitution) can be classified as the duties towards the self, duties concerning the environment, duties towards the State and duties towards the nation. The eighty-sixth constitutional amendment added the eleventh Fundamental Duty, which states that every citizen 'who is a parent or guardian, to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years' in 2002.

Citizens have a moral obligation under the Constitution to perform these duties, although non-justifiable, incorporated only with the purpose of promoting patriotism among citizens. These obligations apply not just to the citizens; even international instruments such as the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights make reference to such duties. The Fundamental Duties obligate all citizens to respect the national symbols of India (including the Constitution), to cherish its heritage and assist in its defense. It aims to promote the equality of all individuals, protect the environment and public property, to develop 'scientific temper', to abjure violence, to strive towards excellence and to provide free and compulsory education.

The text of the part—Part IVA—comprising Fundamental Duties is given as follows:

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[1]PART IVA

FUNDAMENTAL DUTIES

51A. It shall be the duty of every citizen of India—

(*a*) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

(*b*) to cherish and follow the noble ideals which inspired our national struggle for freedom;

(*c*) to uphold and protect the sovereignty, unity and integrity of India;

(*d*) to defend the country and render national service when called upon to do so;

(*e*) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

(*f*) to value and preserve the rich heritage of our composite culture;

(*g*) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

(*h*) to develop the scientific temper, humanism and the spirit of inquiry and reform;

(*i*) to safeguard public property and to abjure violence;

(*j*) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;

[*][(*k*) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.]

[1]Ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 11 (w.e.f. 3-1-1977).

[*]Ins. by the Constitution (Eighty-sixth Amendment) Act, 2002, s. 4 (which is yet not in force, date to be notified later on).

1.7 DIRECTIVE PRINCIPLES OF STATE POLICY

The Directive Principles of State Policy, Part IV of the Constitution of India, constitute directions given to the Central and state governments for the establishment of a just society. They commit the State to promote the welfare of the people by affirming social, economic and political justice, as well as to fight economic inequality. The State must continually work towards providing adequate means of livelihood for all citizens, equal pay for equal work for men and women, proper working conditions, protection against exploitation and reduce the concentration of wealth and means of production in the hands of a few.

The State must provide free legal aid to ensure that opportunities for securing justice remain intact for all citizens in spite of economic or other disabilities. The State should work for organizing village Panchayats; provide the right to work, education and public assistance in certain cases; provide the provision of just and humane conditions of work and maternity relief; facilitate the sources of livelihood; ensure safe working conditions for citizens and facilitate workers' participation in the management of industries. The State has a responsibility to secure a uniform civil code for all citizens, provide free and compulsory education to children, and to work for the economic improvement of scheduled castes, scheduled tribes and other backward classes.

The Directive Principles commit the State to raise the standard of living and improve public health, and organize agriculture and animal husbandry on modern and scientific lines. The State must safeguard the environment and wildlife of the country. The State must ensure the preservation of monuments and objects of national importance and separation of judiciary from executive. It must also work for international peace.

Article 31C, added by the Twenty-fifth Amendment Act of 1971, upgrades the Directive Principles so that if the government makes laws to give effect to the Directive Principles over Fundamental Rights, they shall remain valid. In case of a conflict between Fundamental Rights and Directive Principles, if the latter aim at promoting larger interest of the society, the courts will have to uphold the case in favour of Directive Principles.

The Directive Principles have been amended to raise the bar of welfare state. Article 45, which ensures provisions for free and compulsory education for children, was added by the Eighty-sixth Amendment Act, 2002. Article 48A, which ensures protection of the environment and wildlife, was added by the Forty-second Amendment Act, 1976.

It has been clearly stated in Article 37 that the provisions contained in this Part shall not be enforceable in any court of law, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

The Article 38 originally stated, 'The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.' The Forty-fourth Amendment Act, 1978 added 38(1) and 38 (2) to this article which stated: 'The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.'

Articles 39–50 are given as follows:

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39. The State shall, in particular, direct its policy towards securing—

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

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

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

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

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

To this following (f) and 39A, have been added by the Constitution (Forty-second Amendment) Act, 1976:

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

39A. The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

40The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

Several rights and issues which found place in pre-independence discussions but could not find place in the Fundamental Rights for lack of resources appear as Directive Principles:

41. The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases as such that might be considered necessary.

42. The State shall make provision for securing just and humane conditions of work and for maternity relief.

43. The State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

Here the Constitution (Forty-second Amendment) Act, 1976, added Article 43A:

43A. The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organizations engaged in any industry.

A directive principle which has suffered serious set-back after Shah Bano case is:

44. The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

There was a time-bound direction in Article 45:

45. The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

This shall stand substituted by the Constitution (Eighty-sixth Amendment) Act, 2002, s. 3 (which is yet not in force, date to be notified later on) as—

'**Provision for early childhood care and education to children below the age of six years.**—The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.'

Some Gandhian directives are as follows:

46. The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

47. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

For animal welfare following clauses are provided:

48. The State shall endeavour to organize agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.

To this the Constitution (Forty-second Amendment) Act, 1976 added:

48A. The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

49. It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

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50. The State shall take steps to separate the judiciary from the executive in the public services of the State.

51. The State shall endeavour to—

(*a*) promote international peace and security;

(*b*) maintain just and honourable relations between nations;

(*c*) foster respect for international law and treaty obligations in the dealings of organized peoples with one another; and

(*d*) encourage settlement of international disputes by arbitration.

Defending the draft Constitution on 4 November 1948, Dr Ambedkar explained:

> In the Draft Constitution the Fundamental Rights are followed by what are called 'Directive Principles'. It is a novel feature in a Constitution framed for Parliamentary Democracy. The only other constitution framed for Parliamentary Democracy which embodies such principles is that of the Irish Free State. These Directive Principles have also come up for criticism. It is said that they are only pious declarations. They have no binding force. This criticism is of course superfluous. The Constitution itself says so in so many words. If it is said that the Directive Principle have no legal force behind them, I am prepared to admit it. But I am not prepared to admit that they have no sort of binding force at all. Nor am I prepared to concede that they are useless because they have no binding force in law.

CHECK YOUR PROGRESS

9. By which Amendment Act the word 'secular' was introduced in the Indian Constitution?
10. State whether the Preamble to the Indian Constitution is justiciable or not?
11. How does the Constitution sets up a federal system in India with a unitary bias?
12. How is the Indian Constitution is both rigid and flexible?

1.8 SUMMARY

- We can say that the Indian Constitution is not an end but a means to an end. It does not intend to set-up just democracy as a political project, rather it envisions a socio-juridical process that evolves through a humanist socio-economic order to unfold the full personhood of every individual.
- The Indian Federalism is distinctive in nature and is structured according to the distinctive needs of the nation.
- The Constitution of India was framed by a Constituent Assembly. The Constituent Assembly of India was set up as a result of the negotiations

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between the Indian leaders and members of the British Cabinet Mission on 19 February 1946.

- The Preamble to the Constitution of India is a brief introductory statement that sets out its purpose and guiding principles. It reflects the basic spirit of the Constitution.
- The Preamble lays down fundamental values and philosophical ideas. In very clear terms, the Constitution declares India to be a sovereign, socialist, secular, democratic republic.
- The Constitution is a living document, an instrument which makes the governmental system work.
- Unlike many other developing countries that became Independent after the World War II, it has survived as a living document with necessary amendments.
- The Constitution of the Republic of India is written. As originally passed, it had 395 Articles and 8 schedules.
- The written Constitution is very essential for a federal State so that whenever there is any dispute between the federal government and the federating units, it becomes the basis to resolve these disputes.
- The Constitution provides for a Parliamentary form of government which is federal in structure with certain unitary features.
- The Constitutional head of the Executive of the Union is the President. The Constitution is federal in nature but the term 'Federation' has not been used in our Constitution.

1.9 KEY TERMS

- **Constitution:** A body of established precedents and fundamental principles according to which a state or other organization is recognized to be governed
- **Sovereign state:** State having a governing body of its own people that decides and implements policies without any external control
- **Paramountcy:** The condition or fact of being dominant signifying supremacy over various political units
- **Preamble:** A preliminary statement, especially the introduction to a formal document that serves to explain its purpose
- **Secular state:** A concept of secularism, wherein a state or country purports to be officially neutral in matters of religion, supporting neither religion nor irreligion
- **Socialist state:** A state promoting social and economic equality
- **Democratic republic:** A state in which the head of state is elected, directly or indirectly, for a fixed tenure

- **Judicial review:** The doctrine under which legislative and executive actions are subject to review, and possible invalidation, by the judiciary
- **Federal system:** A system wherein the country comprises internally self-governing political divisions, subject to the authority of a central government in the matters that affect the whole country
- **Fundamental rights:** Set of entitlements in the context of a legal system, wherein such system is itself supposed to be based upon the very same set of basic, fundamental or inalienable entitlements or 'rights'

1.10 ANSWERS TO 'CHECK YOUR PROGRESS'

1. Constitution is the fundamental law of the state. It contains the principles upon which the government is founded and regulates the divisions of the sovereign powers, directing to such persons to whom these powers are to be confided and the manner these are to be exercised. It is the supreme or basic law of the land. All other laws and judicial decisions are subject to its mandates.
2. The Constitution of India was framed by a Constituent Assembly. The Constituent Assembly of India was set up as a result of the negotiations between the Indian leaders and members of the British Cabinet Mission on 19 February 1946.
3. Following were the main recommendations of the Cabinet Mission Plan announced on 16 May 1946:
   (i) Paramountcy of the British Crown should cease in India.
   (ii) A Union of British India and Indian States should be established.
   (iii) A Constituent Assembly should be elected for framing the Constitution of India.
   (iv) With the exception of certain reserved subjects, all departments were to be retained by the states.
   (v) The members of the Constituent Assembly were to be elected by the Provincial Assemblies which were to be split up into Muslim and non-Muslim on the basis of population of each community in the province.
   (vi) An interim government was to be set up having the support of the main political parties.
4. The Constituent Assembly was elected indirectly by the members of the Provincial Legislative Assemblies in July 1946. Members were chosen by indirect election by the members of the Provincial Legislative Assemblies, according to the scheme recommended by the Cabinet Mission. The arrangement was: (i) 292 members were elected through the Provincial Legislative Assemblies; (ii) 93 members represented the Indian Princely States; and (iii) 4 members represented the Chief Commissioners' Provinces. The total membership of the Assembly thus was to be 389.

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5. The Constitution was promulgated on 26 January 1950 because on this day in 1929, the Indian National Congress had passed a resolution under the Presidentship of Pandit Jawaharlal Nehru at its Lahore Session demanding 'Purna Swarajya' from the British Government.
6. The preamble to the Constitution of India is a brief introductory statement that sets out its purpose and guiding principles. It reflects the basic spirit of the Constitution. It lays down fundamental values and philosophical ideas. The Preamble to a Constitution serves two purposes: (1) It indicates the source from which the Constitution derives its authority and (2) it states the objectives, which the Constitution seeks to establish and promote.
7. The word sovereign means supreme or independent. India is internally and externally sovereign, i.e., externally it is free from the control of any foreign power and internally, it has a free government which is directly elected by the people and makes laws that govern them.
8. The word socialist was added to the Preamble by the Forty-second Amendment Act, 1976. It implies social and economic equality. Social equality in this context means the absence of discrimination on the grounds of caste, colour, creed, language, religion or sex. Under social equality, everyone has equal status and opportunities.
9. The word secular was also inserted into the preamble by the Forty-second Amendment Act, 1976. It implies equality of all religions and religious tolerance. India does not have an official state religion.
10. The preamble is not enforceable in a court of law. However, the Supreme Court of India in *Keshvanand Bharti* case has recognized that the preamble may be used to interpret ambiguous areas of the Constitution where contradictory interpretations present themselves.
11. The Constitution is federal in nature but the term 'Federation' has not been used in our Constitution. India has been described as a Union of States according to the Article 1 of the Constitution. There are twenty-eight States in the union, each one with a separate Executive, Legislature and Judiciary. Powers have been divided between the Union Government on the one hand and the States on the other by the Constitution itself. The Constitution is sovereign and there is provision for judicial review.
12. The Constitution is rigid in the sense that most of its parts cannot be amended by the ordinary law-making process. However, it provided for amendments and therefore it is flexible. The Indian Constituent Assembly has not only refrained from putting a seal of finality and infallibility upon this Constitution as in Canada or by making the amendment of the Constitution subject to the fulfillment of extraordinary terms and conditions as in America or Australia. In its place, it has provided a most facile procedure for amending the Constitution.

1.11 QUESTIONS AND EXERCISES

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Short-Answer Questions

1. Write a brief note on the basic nature of Indian Constitution.
2. Give a brief sketch of the events leading to the drafting of the Indian Constitution.
3. Write a note on the structure of the Constituent Assembly.
4. 'Preamble is not just a document; it is the very soul of Indian Constitution.' Critically evaluate this statement.
5. 'Indian Constitution is a living document.' Give your opinions on this statement.

Long-Answer Questions

1. What were the main features of the Objectives Resolution moved by Pandit Jawaharlal Nehru?
2. Critically evaluate the basics of Indian Constitution as mention in the Preamble.
3. Describe in detail the salient features of Indian Constitution.
4. What are the fundamental rights provided by the Constitution of India?
5. Discuss the directive principles of state policy enshrined in the Indian Constitution.

1.12 FURTHER READING

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UNIT 2 FREEDOM OF SPEECH AND EXPRESSION

Structure

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2.11 Further Reading

2.0 INTRODUCTION

For the healthy and vibrant functioning of a democracy, the citizens must enjoy the right to freedom of speech and expression. The Universal Declaration of Human Rights accepts that everyone has the right to freedom of expression and opinion. In fact, a nation can grow strong and move ahead on the path of development if the citizens possess the freedom to express opinions without any unwarranted interference. Growth and development are facilitated if the citizens are able to seek, receive and impart information using any media regardless of frontiers. In the Indian context, Article 19(1)(a) provides for the freedom of speech and expression. However, this freedom is not limitless; rather, it is put to some reasonable restrictions under Article 19(2). As a young nation coming out of the folds of colonialism, the Constituent Assembly had a long debate on the issue and ultimately provided a decent standard of liberty to the media in the country. The framers of our Constitution were well aware of the facts that a free press is the cornerstone of liberal democracy. Overall, the Indian media has enjoyed a great degree of freedom—except during the brief interval of censorship during the Emergency—during the six decades of our freedom.

2.1 UNIT OBJECTIVES

After going through this unit, you will be able to:

- Understand the concept of the freedom of speech and expression
- Learn the provisions in the Universal Declaration of Human Rights regarding 'freedom of speech and expression'

- Know the provisions of freedom of speech and expression in the Indian Constitution
- Discuss the evolution of the concept of 'the fourth estate'
- Critically evaluate the Government's actions during the Emergency that gagged Indian media for a brief interval

2.2 THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

On 10 December 1948, the General Assembly of the United Nations proclaimed and adopted the Universal Declaration of Human Rights. Preamble to this declaration stated:

'Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

'Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

'Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

'Whereas it is essential to promote the development of friendly relations between nations,

'Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

'Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

'Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

The General Assembly of the United Nations proclaimed that, 'This Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.'

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Article 19 of this declaration states:

'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.'

This recognition was the culmination of a long journey spanning several centuries for the concept of freedom of press and freedom of speech and expression.

2.3 ARTICLES 19(1)(a) AND 19(2) OF INDIAN CONSTITUTION

The Fundamental Rights embodied in Part III of the Indian Constitution guarantee civil liberties common to liberal democracies. Article 19(1)(a) provides freedom of speech and expression.

Article 19(1): All citizens shall have the right—

(*a*) to freedom of speech and expression;

Article 19(2) provides for reasonable restrictions on this freedom. After two amendments it stands as:

Article 19(2): 'Nothing in sub-clause (*a*) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause 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.'

Before Indian Independence, there was no constitutional or statutory provision to protect the freedom of press. The Privy Council observed in *Channing Arnold Vs. King Emperor*: 'The freedom of the journalist is an ordinary part of the freedom of the subject and to whatever length, the subject in general may go, so also may the journalist, but apart from statute law his privilege is no other and no higher. The range of his assertions, his criticisms or his comments is as wide as, and no wider than that of any other subject.'

Within the Constituent Assembly as well as outside it, there was much disapproval and criticism of the exclusion of an explicit reference to the 'freedom of press' and the failure to ensure it along with the 'freedom of speech'. The protagonists of a 'free press' as a separate right, considered it a very serious lapse on the part of the Drafting Committee.

The Drafting Committee's Chairman Dr B.R. Ambedkar stated that the Press was just another mode of denoting an individual or a citizen. He observed:

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> The Press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual capacity. The editor of a press or the manager of a press are all citizens and therefore when they choose to write in newspapers they are merely exercising their right of expression and in my judgment therefore, no special mention is necessary of the Freedom of the Press at all. The word expression that is used in Article 19(1) is comprehensive enough to cover the Press.

Thus Indian Constitution does not mention freedom of press separately. It is part of the freedom of speech and expression. The Constituent Assembly of India discussed this issue several times.

On 29 April 1947, Sardar Vallabhbhai Patel, Chairman, Advisory Committee on Minorities, Fundamental Rights, etc. moved, 'That the Constituent Assembly do proceed to take into consideration the interim report on the subject of Fundamental Rights submitted by the Advisory Committee appointed by the resolution of the Assembly of the 24th January, 1947.'

In this report Clause 8 was:

'There shall be liberty for the exercise of the following rights subject to public order and morality or to the existence of grave emergency declared to be such by the Government of the Union or the Unit concerned whereby the security of the Union or the Unit, as the case may be, is threatened:—

(a) The right of every citizen to freedom of speech and expression.'

Participating in this debate Mr Somnath Lahiri said, 'One vital thing which our people have been suffering from in the past has been the curtailment of the liberty of the press by means of securities and by other methods. The press has been crushed completely. This is a thing against which every patriotic Indian is up in arms, including every congressman, and, therefore, in his heart of hearts every Indian feels that in a free India in order that people may feel freedom and act up to it, there should not be such drastic curtailment of liberties of the press. But what do we find? There is not even a mention of the liberty of the press in this whole list of fundamental rights submitted by the Committee, except a solitary mention made at one place that there will be liberty of expression. Sir, this is something which goes against our experience and must be protected.'

Somnath Lahiri moved an amendment on Wednesday, 30 April 1947:

(a) Liberty of the press shall be guaranteed subject to such restrictions as may be imposed by law in the interests of public order or morality.

(b) The Press shall not be subject to censorship and shall not be subsidised. No security shall be demanded for the keeping of a Press or the publication of any book or other printed matter.

Prof. N.G. Ranga clarified, 'A reference has been made to the absence of any reference in this particular document to the freedom of press. However, if a little care had been exercised, it would have been found that this has been provided for in the very first clause [sub-clause 8(a)]:

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'The right of every citizen to freedom of speech and expression.' The expression includes freedom of the press.'

Again on Tuesday, 9 November 1948, while debating the Draft Constitution, Shri S.V. Krishnamurthy Rao said:

> I find certain conspicuous omissions here. In most of the democratic constitutions, the freedom of the press is guaranteed, but in our Constitution I find it is not there. Of course there is freedom of expression. But I feel in a country with 87 per cent illiteracy, our press has to play a very important role both in the political and democratic spheres in the education of the masses. I feel that a specific provision should be made in the Fundamental Principles guaranteeing freedom of the press. In fact in the Constitution of the United States of America it is enacted that the State shall not pass a law restricting the freedom of the press.

On 1 December 1948, the issue of freedom of expression was again discussed as Article 13 of the Draft Constitution which became Article 19 in the Constitution. Vice-President Dr H.C. Mookherjee was in the Chair. Shri Damodar Swarup Seth moved an amendment.

Another member Prof. K.T. Shah moved:

'That in sub-clause (a) of clause (1) of Article 13, after the word "expression"; the words "of thought and worship; of press and publication" be added, so that the article as amended would read:

Subject to the other provisions of this article, all citizens shall have the right—

(a) to freedom of speech and expression; of thought and worship; of press and publication.'

Replying to the debate on 2 December 1948, Dr Ambedkar said:

> Now, the only point which I had noted down to which I had thought of making some reference in the course of my reply was the point made by my friend, Professor K.T. Shah, that the fundamental rights do not speak of the freedom of the press. The reply given by my friend, Mr. Ananthasayanam Ayyangar, in my judgment is a complete reply. The press is merely another way of stating an individual or a citizen. The press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual capacity. The editor of a press or the manager are all citizens and therefore when they choose to write in newspapers, they are merely exercising their right of expression, and in my judgment therefore no special mention is necessary of the freedom of the press at all.

Article 19(2)

This fundamental right under Article 19(1)(a) was, however, limited by Article 19(2), which said: 'Nothing in sub-clause (a) of clause 1 shall affect the operation of any existing law insofar as it relates to or prevents the state from making any law relating to libel, slander, defamation, contempt of court or any matter which offend against decency, or morality or which undermines the security of the state or tends to overthrow the state.' This formulation emerged after a great debate and acceptance of some amendments to the Article 13(2) of Draft Constitution prepared by the Drafting Committee, chaired by Dr B.R. Ambedkar.

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There were many members of the Constituent Assembly like Mahboob Ali Baig Sahib Bahadur and Sardar Hukum Singh who just did not want this restrictive provision. Sardar Hukum Singh moved an amendment to this effect. Commending his amendment to the Constituent Assembly Sardar Hukum Singh said:

> The very object of a Bill of Rights is to place these rights out of the influence of the ordinary legislature, and if, as under clauses (2) to (6) of Article 13, we leave it to this very body, which in a democracy, is nothing beyond one political party, to finally judge when these rights, so sacred on paper and glorified as Fundamentals, are to be extinguished, we are certainly making these freedoms illusory. If the other countries like the U.S.A. have placed full confidence in their Judiciary and by their long experience it has been found that the confidence was not misplaced, why should we not depend upon similar guardians to protect the individual liberties and the State interests, instead of hedging round freedom by so many exceptions under these sub-clauses?

Shri Alladi Krishnaswami Ayyar answered this question in the following way:

> The criticism regarding the fundamental rights was that they are hedged in by so many restrictions that no value can be attached to the rights guaranteed under the constitution. The great problem in providing for and guaranteeing fundamental rights in any constitution is where to draw the line between personal liberty and social control. True liberty can flourish only in a well ordered state and when the foundations of the state are not imperilled. The Supreme Court of the U.S.A. in the course of its long history has read a number of restrictions and limitations based upon the above principle into the rights expressed in wide and general terms. The Draft Constitution, in place of leaving it to the discretion of courts to read the required restrictions and exceptions, looks to express in a compendious form the exceptions and limitations recognized in any well-organized state. It cannot be denied that there is a risk in leaving it upon the courts, by judicial legislation so as to say, to read the needed limitations, according to the prejudices and idiosyncrasies of individual judges.

In the original clause of this article as drafted the words were—'libel, slander, defamation, sedition or any other matter which offends against decency or morality or undermines the authority or foundations of the State.' The Constituent Assembly omitted the word 'sedition'.

Shri K.M. Munshi explained:

> I was pointing out that the word 'sedition' has been a word of varying import and has created considerable doubt in the minds of not only the members of this House but of Courts of Law all over the world. Its definition has been very simple and given so far back in 1868. It says 'sedition embraces all those practices whether by word or deed or writing which are calculated to disturb the tranquility of the State and lead ignorant persons to subvert the Government'. But in practice it has had a curious fortune. A hundred and fifty years ago in England, in holding a meeting or conducting a procession was considered sedition. Even holding an opinion against, which will bring ill-will towards Government, was considered sedition once. Our notorious Section 124-A of Penal Code was sometimes construed so widely that I remember in a case a criticism of a District Magistrate was urged to be covered by Section 124-A. But the public opinion has changed considerably since and now that we have a democratic Government a line must be drawn between criticism of Government which should be welcome and

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incitement which would undermine the security or order on which civilized life is based, or which is calculated to overthrow the State. Therefore the word 'sedition' has been omitted. As a matter of fact the essence of democracy is Criticism of Government. The party system which necessarily involves an advocacy of the replacement of one Government by another is its only bulwark; the advocacy of a different system of Government should be welcome because that gives vitality to a democracy. The object therefore of this amendment is to make a distinction between the two positions. Our Federal Court also in the case of Niharendu Dutt Majumdar Vs. King, in III and IV Federal Court Reports, has made a distinction between what 'Sedition' meant when the Indian Penal Code was enacted and 'Sedition' as understood in 1942. A passage from the judgement of the Chief Justice of India would make the position, as to what is an offence against the State at present, clear. It says at page 50:

'This (sedition) is not made an offence in order to minister to the wounded vanity of Governments but because where Government and the law ceases to be obeyed because no respect is felt any longer for them, only anarchy can follow. Public disorder, or the reasonable anticipation or likelihood of public disorder is thus the gist of the offence. The acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency.'

This amendment therefore seeks to use words which properly answer the implication of the word 'sedition' as understood by the present generation in a democracy and therefore there is no substantial change; the equivocal word 'sedition' only is sought to be deleted from the article. Otherwise an erroneous impression would be created that we want to perpetuate 124-A of the I.P.C. or its meaning which was considered good law in earlier days.

The word 'sedition' was deleted by the amendment moved by Shri K.M. Munshi. In its place he used a much preferable phraseology, viz. 'which undermines the security of, or tends to overthrow, the State.' The goal was to take out the word 'sedition' having a doubtful and varying import and include words that are now considered in essence an offence against the State.

Shri Munshi further elaborated on why the word 'other' was deleted along with 'sedition'. According to him, defamation and slander are not be necessarily related to a violation of morality or decency. They also do not undercut the authority of the State. The words 'any matter' signify independent category. Libel, slander and defamation comprise one category. The other category comprises 'any matter' that offends against the State. The term 'other' hence was considered inappropriate.

On this issue Shri M. Ananthasayanam Ayyangar said on 2 December 1948:

Regarding freedom of speech we have improved upon the restriction that has been imposed in clause (2). The word 'sedition' has been removed. If we find that the government for the time being has a knack of entrenching itself, however had its administration might be it must be the fundamental right of every citizen in the country to overthrow that government without violence, by persuading the people, by exposing its faults in the administration, its method of working and so on. The word 'sedition' has become obnoxious in the previous regime. We had therefore approved of the amendment that the word 'sedition' ought to be removed, except in cases where the entire state itself is sought to be overthrown

> or undermined by force or otherwise, leading to public disorder; but any attack on the government itself ought not to be made an offence under the law. We have gained that freedom and we have ensured that no government could possibly entrench itself, unless the speeches lead to an overthrow of the State altogether.

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There were some fears regarding anti-press laws of the British period and therefore many members objected to 'existing laws' in the formulation. Dr B.R. Ambedkar said:

> From the speeches which have been made on Article 13 and Article 8 and the words 'existing law' which occur in some of the provisons to Article 13, it seems to me that there is a good deal of misunderstanding about what is exactly intended to be done with regard to existing law. Now the fundamental article is Article 8 which specifically, without any kind of reservation, says that any existing law which is inconsistent with the Fundamental Rights as enacted in this part of the Constitution is void. That is a fundamental proposition and I have no doubt about it that any trained lawyer, if he was asked to interpret the words 'existing law' occurring in the sub-clauses to Article 13, would read 'existing law' in so far as it is not inconsistent with the fundamental rights. There is no doubt that is the way in which the pharse 'existing law' in the sub-clauses would be interpreted. It is unnecessary to repeat the proposition stated in Article 8 every time the phrase 'existing law' occurs, because it is a rule of interpretation that for interpreting any law, all relevant sections shall be taken into account and read in such a way that one section is reconciled with another. Therefore the Drafting Committee felt that they have laid down in Article 8 the full and complete proposition that any existing law, in so far as it is inconsistent with the Fundamental Rights, will stand abrogated. The Drafting Committee did not feel it necessary to incorporate some such qualification in using the phrase 'existing law' in the various clauses where these words occur. As I see, many people have not been able to read the clause in that way. In reading 'existing law', they seem to forget what has already been stated in Article 8.

The First Amendment to the Indian Constitution was to the provision to Article 19(1)(a), namely Article 19(2), and after the amendment the provision read as follows:

'Nothing in sub-clause (a) of clause 1 shall affect the operation of any existing law insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the sub-clause in the interests of 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.'

The following were the three significant additions brought about by the amendment:

(1) addition of the word 'reasonable' before 'restrictions'

(2) addition of 'friendly relations with foreign states' as one of the grounds for restricting freedom of speech and expression, and finally,

(3) the addition of 'public order'.

In the Statement of Objects and Reasons appended to the Constitution (First Amendment) Bill, 1951 (10 May 1951) which was enacted as the Constitution (First Amendment) Act, 1951 (18 June 1951) it was stated:

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> During the last fifteen months of the working of the Constitution, certain difficulties have been brought to light by judicial decisions and pronouncements specially in regard to the chapter on fundamental rights. The citizen's right to freedom of speech and expression guaranteed by Article 19(1)(a) has been held by some courts to be so comprehensive as not to render a person culpable even if he advocates murder and other crimes of violence. In other countries with written constitutions, freedom of speech and of the press is not regarded as debarring the State from punishing or preventing abuse of this freedom.

The requirement for this amendment arose from three judicial decisions: one given by the Patna High Court and the two by the Supreme Court. These judgements were concerned about the views on what constituted the freedom of speech and expression in a democracy and the powers of the State to enforce restrictions on the exercise of these rights.

In the *Romesh Thapar Vs. State of Madras* case (AIR 1950 SC 124), the printer, publisher and editor of an English journal *Cross Roads* constituted the petitioner. It was printed and published in Bombay and was considered a left-leaning journal, highly critical of a number of the policies adopted by the Nehru government. The communist parties had already been declared illegal by the Government of Madras. Exercising its powers under Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949, it issued an order No. MS.1333, dated 1 March 1950. It imposed a ban on the circulation and entry of the journal in the State. Romesh Thapar took the issue to the Supreme Court of India alleging that this ban violated his freedom of speech and expression provided by Article 19(1)(a). The court observed that the ban will prima facie comprise a clear violation of the fundamental right of freedom of speech and expression unless it was proven that the constraint was saved by the exceptions mentioned in Article 19(2) of the Constitution. Hence the question was whether Section 9(1-A) of the Madras Maintenance of Public Order Act could be saved by Article 19(2).

Section 9(1-A) allowed the Provincial Government 'for the purpose of securing the public safety or the maintenance of public order, to prohibit or regulate the entry into or the circulation, sale or distribution in the Province of Madras or any part thereof of any document or class of documents'. Since Article 19(2) did not enclose the phrase 'public safety' or 'public order', the issue was whether it fell under the language of Article 19(2) and be considered a 'law relating to any matter which undermines the security of or tends to overthrow the State'.

The government held that the term 'public safety' in the Act, which is a statute concerning the law and order, connotes the security of the Province and, hence, 'the security of the State'. As per Article 19(2), 'the State' has been defined in Article 12 as including, among other things, the Government and the Legislature of each of the erstwhile Provinces. The court, however, held that the expression 'public safety' had a more comprehensive connotation than 'security of the State', because the former comprised a number of inconsequential matters not essentially that much serious like the matter of state security. It summarized that 'unless a law restricting freedom of speech and expression is directed solely against the

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undermining of the security of the State or the overthrow of it, such law cannot fall within the reservation under clause (2) of Article 19, although the restrictions which it seeks to impose may have been conceived generally in the interests of public order. It follows that Section 9(1-A) that sanctions the imposition of limitations for the bigger goal of ensuring public safety or the maintenance of public order, is beyond the reach of authorized limitations under clause (2), and is therefore "void and unconstitutional".

In the second case, *Brij Bhushan Vs. State of Bihar (AIR 1950 SC 129)*, Delhi's Chief Commissioner gave an order under Section 7(1)(c) of the East Punjab Public Safety Act, 1949, against a Delhi English weekly named *The Organizer*. In the *Romesh Thapar* case, the order was issued against the far left; in this case, it was issued against the far right because *The Organizer* was considered as the RSS mouthpiece. The commissioner issued the order against *The Organizer* because of printing provocative materials regarding the partition. According to the order, the editor of *The Organizer* was required to put forward for scrutiny, before publication, all the material related to the communal issues, and news and views on the subject of Pakistan including cartoons and photographs except those taken from the official sources or provided by the news agencies, viz. Press Trust of India, United Press of India and United Press of America.

The question was whether this order of pre-censorship was constitutionally valid or not. The decision was delivered on the very same day as the *Romesh Thapar* case. Further, the majority in this case mentioned their decision in Thapar's case and agreed with the findings of Thapar case. The major factor in both the decisions was the fact that the expression 'public order' was not included in Article 19(2). Further, the courts interpreted the limits on freedom of speech and expression as lawful only if they pertained to 'undermining the security of the state or overthrowing the state'. Just the criticism of the government may not be counted as speech that could be restricted to meet the ends of Article 19(2). Interestingly, Justice Fazl Ali gave a dissenting decision in both the cases. His argument was that a literal construction of the phrase 'public order' would justify restrictions even in the case of trivial offences. Nonetheless, in the background of the two legislations, it could only be related to grave offences that affect public order. These two decisions by the Supreme Court uncovered the intrinsic tensions between the tasks of harmonizing freedom of speech and expression and promoting national security and sovereignty.

The Home Minister, Sardar Patel, held the view that the Cross Roads decision 'knocked the bottom out of most of our penal laws for the control and regulation of the press'. Nehru sent a message to Ambedkar expressing the opinion that the Constitution's provisions regarding the law and order and seditious activities have to be amended. Expressing the controversial issues the government was having with the courts regarding the fundamental rights, Nehru expressed that the clauses affecting the abolition of zamindari and nationalization of road transport also required amendment. In February 1951, Nehru constituted a cabinet committee

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to scrutinize the proposed amendment. The home ministry sent a recommendation to the cabinet committee that 'incitement to a crime' and 'public order' need to be included among the exceptions to the right of freedom of speech. It preferred changing 'to overthrow the state' in favour of a wider expression 'in the interests of the security of the state'.

It is worth noting that the original Article 19(2) did not contain the word 'reasonable' before the word 'restrictions'. The law ministry held the view that the word 'reasonable' as found in Article 19 must be retained and even included in Article 19(2). Nonetheless, the cabinet committee stoutly disagreed with Ambedkar. It felt that while, on the one hand, it was rational to keep the word 'reasonable' in the other provisions of Article 19, checks on the freedom of speech and expression, on the other hand, must not be qualified in any way. This somewhat conflicting logic was justified on the basis that they apprehended the political consequences of removing the protection that 'reasonable' provided to the other freedoms found in the article. However, they were really apprehensive of the risks to the national security, friendly relations with foreign states, public order, etc. Hence they realized that possible restrictions on free speech need not be reasonable. After reading the Supreme Court decision, President Rajendra Prasad, did not find it necessary to amend the Constitution and was of the opinion that, 'Amendments should only come if it was found impossible to bring the impugned provisions of law 'in conformity with the constitution'.

On 12 May 1951, the draft amendment was introduced. It had not the word 'reasonable' but the expression 'public order' was added. In defense of the amendment, Nehru stated that it met the needs of the times. Regarding the statement made by the judge of the Patna high court, he stated, 'It was an extraordinary state of affairs that a High Court had held that even murder or like offences can be preached.' Justice Sarjoo Prasad of Patna High Court expressed that 'if a person were to go on inciting murder or other cognizable offences either through the press or by word of mouth, he would be free to do so with impunity, because he could claim freedom of speech and expression'.

H.N. Kunzru was one of the critics of the bill. He had the opinion that it was not an amendment but a revocation of Article 19(1)(a). Shayama Prasad Mookerjee of the Hindu Mahasabha was also a fierce critique of the proposed amendment. As an answer to the apprehensions expressed and also as a compromise formula, Nehru suggested the addition of the word 'reasonable' to qualify the limitations and checks on freedom of speech and expression. The Cabinet approved the recommendation to avoid a split and achieved a two-thirds majority. On 1 June 1951, the Parliament passed the bill by a vote of 228 to 20.

The First Amendment gave an indication of the types of battles expected to take place due to the friction between the project of nation building and the domain of media. It signified the task of promoting national security and sovereignty ahead of promoting the democratic institutions. It introduced the discourse of public

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order into constitutional checks and balances on the freedom of speech and expression. In addition, it introduced the idea of 'reasonable restriction' as well.

However, these restrictions should be reasonable. Or we can say, these should not be unwarranted, disproportionate or excessive in nature. The process and the mode of imposing the restrictions also should be fair, just, straightforward and reasonable. The legality of these restrictions may be defined by the judiciary, i.e., they are justiciable. In India, the courts in exercising their power of judicial review may nullify laws, legislations and measures that do not conform to the above requirements.

In *Kishori Mohan Vs. State of West Bengal* case, the Supreme Court elaborated on the distinctness of three concepts: public order, law and order, and security of State. Anything which disturbs public peace or spoils public tranquility is considered to be tampering with the public order. However, just the criticism of government does not essentially disturb the public order. A law purported to punish the utterances intentionally meant to hurt the religious sentiments of a particular class has been held valid because it qualifies as a reasonable restriction meant to maintain the public order. It is also essential that there should be a rational correlation between the imposed restrictions and the realization of public order. In *Superintendent, Central Prison Vs. Ram Manohar Lohiya case (AIR 1960 SC 633)*, the Court upheld Section 3 of U.P. Special Powers Act, 1932 that punished an individual if he provoked even a single person not to pay or delay the payment of Government dues, since it did not find any logical nexus between the speech and public order. Likewise, the court also upheld the legality of the provision that empowered a Magistrate to issue directions meant to protect and preserve the public order and peace.

In *Union of India Vs. Association for Democratic Reforms*, the Supreme Court observed: 'One-sided information, disinformation, misinformation and non-information, all equally create an uninformed citizenry which makes democracy a farce. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions.'

In *Indian Express Vs. Union of India* case, it was held that the press fulfils a very noteworthy role in the functioning of democratic machinery. It is the courts' responsibility to uphold and protect the freedom of press and nullify all such laws, measures and administrative actions that compromise that freedom. Freedom of press comprises three key elements. These are as follows:

1. Freedom of access to all sources of information
2. Freedom of publication
3. Freedom of circulation

In *Sakal Papers Ltd. Vs. Union of India* case, the Daily Newspapers (Price and Page) Order, 1960 was held to be violative of the freedom of press. This order fixed the number of pages and size that a newspaper could publish at a given price. It was not found to be a reasonable restriction under Article 19(2).

In the same way, in *Bennet Coleman and Co. Vs. Union of India* case, the legality of the Newsprint Control Order that fixed the maximum number of pages, was not upheld by the Court which found it to be violative of the provision of Article 19(1)(a). Further, it was not found to be a logical restriction under Article 19(2). The Court also did not heed the Government's plea that it will help small newspapers to grow and prosper.

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CHECK YOUR PROGRESS

1. When was the Universal Declaration of Human Rights issued?
2. Which article of the Universal Declaration of Human Rights comprises the right to freedom of opinion and expression?
3. Why certain members of the Constituent Assembly had certain reservations regarding the issue of freedom of expression?
4. What is the problem in providing for and guaranteeing fundamental rights in any constitution?

2.4 THE CONCEPT OF THE FREEDOM OF PRESS

Presently, there is a general understanding that democracy and press freedom have a very strong connection and are mutually reinforcing in nature. Mass media plays an indispensable role in democracy by functioning as a link between the masses and their political representatives. This 'information and representation' role of media is supposedly best performed if it is allowed to function in an environment of freedom. Press freedom and democracy are the expressions having a very high positive emotional value. Amartya Sen has the opinion that while democracy is yet to be universally practiced and accepted, still in the overall opinion of the world, democratic form of governance has now acquired the status of being the best option. In fact, a free press is the foundation stone of liberal democracy. It is indispensable for holding the government accountable. Its role cannot be downplayed for the citizens to get information, communicate their wishes and participate in the political decision-making process. The press freedom, in principle as the strong arm of democratic governance, has been worldwide accepted as the norm and convention.

However, since the dawn of civilization and emergence of the institutions with authority, there has been a universal impulse to control 'expression'. Greek philosopher Plato idealized the aristocratic form of government. He was convinced that the nature of man, including his material interests and selfish passions, would tend to degrade government from an aristocracy to timocracy, to oligarchy, to democracy and finally to tyranny. He thought the state was safe in the hands of wise men, the magistrates, who are governed by the moral authority and who use this authority to keep the baser elements in the society in line. Just as the wise man

disciplines himself by keeping the impulses of his heart and the greed of his stomach under control by his intellect, similarly in society the magistrate keeps other classes of members from degenerating into a confused chaos. According to Plato, once the authority in a state is equally distributed degeneration sets in. This idea meant rigorous control of opinion and discussion. [1]Plato wanted to 'co-ordinate the life of the citizens under a strict cultural code that banned all modes of art and even of opinion not in accord with his own gospel'. In the *Republic*, he would 'send to another city' all the offenders against the rigid rules prescribed for the artists, philosophers and poets. In the *Laws*, he would require poets first to submit their works to the magistrates, who should decide whether they were good for the spiritual health of the citizens. Even Plato's famous teacher, Socrates, could not devise a satisfactory answer to the conflicting demands of lawful authority and the freedom of the individual. While insisting on his individual right to deviate from the cultural life of Athens, Socrates recognized the philosophical necessity of obedience to the authority. The German philosopher Hegel has been considered the principal exponent of the political theory of authoritarianism in modern times and to him has been attributed the genesis of both modern Communism and Fascism. [2]Hegel wrote:

> The State is embodied Morality. It is the ethical spirit which has clarified itself and has taken substantial shape as Will, a Will which is manifest before the world, which is self-conscious and knows its purposes and carries through that which it knows to the extent of its knowledge. Custom and Morality are the outward or visible form of the inner essence of the State; the self-consciousness of the individual citizen. His knowledge and activity are the outward and visible form of the indirect existence of the State. The self-consciousness of the individual finds the substance of its freedom in the attitude of the citizen, which is the essence, purpose and achievement of its self-consciousness.
>
> The State is Mind per se. This is due to the fact that it is the embodiment of the substantial will, which is nothing else than the individual self-consciousness conceived in its abstract form and raised to the universal plain. The substantial and massive unity is an absolute and fixed end in itself. In it freedom attains to the maximum of its rights: but at the same time the State, being an end in itself, is provided with the maximum of rights over against the individual citizens, whose highest duty it is to be members of the State.

The belief that true freedom is freedom within the State instead of the freedom from the State was developed and propagated more comprehensively by the German political philosopher and historian, Heinrich von Treitschke. He developed these ideas through his little pamphlet *Freedom* and the colossal work *Politics*. Doing a critical analysis of democracies in general and the democracies of Switzerland and the United States in particular, Treitschke summarized that the rule of the majority held no guarantee that either political freedom or social liberty will sustain.

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[1] Siebert, Fred S., Theodore Peterson and Wilbur Schramm. 1963. *Four Theories of the Press*. Illinois: Illini Books.

[2] ibid

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Johannes Gutenberg (1397–1468) invented movable type in 1450s in Germany. However, the Church and Kings tried to keep control over printing and publishing. Initially, it was used by the Church to print Bible. Undoubtedly, the nation states of Western Europe were influenced by the tradition and philosophical principles of authoritarianism of the Roman Church. The fundamental principles of the Church forced protective measures in the domain of opinion and belief. The Church was supposedly divinely founded and taught the truth. It was held tht the other interpretations of the truth were just the attempts to debase its principles and to seduce its membership from the sole path of perpetual salvation.

Till 17th century, the concept of freedom of press or freedom of speech and expression was not really in the shape as it is during the modern times. The first problem for any system of the society is to determine who has the right to use media. The British Tudors in the 16th century answered the problem by granting exclusive patents of monopoly to selected, well disposed individuals who were permitted to profit from these monopolies so long as they refrained from rocking the ship of the State. In England, the patent system flourished for about 200 years. The system of exclusive grants in printing broke down towards the end of 17th century largely because of its own inherent defects and because of the development of private enterprise in all areas of production.

Licensing of individual printed works came to be known as censorship. The system was developed under secular auspices in the 16th century, when even the monopolistic or state printers were frequently unable or unwilling to follow the lines of government policies. Publishers usually were not privy to State affairs and therefore were unable to make accurate judgements on the controversial issues which found their way into print. To rectify this defect, the state required published works in specific areas like religion and politics to be submitted for examination by its representatives who presumably were acquainted with what the State was attempting to do. In England the system died towards the end of 17th century because of its cumbersomeness and most of all because by then political parties were being formed in the democratic tradition. These parties were unwilling to trust one another with the direction and exclusive control of such an important instrument for achieving and maintaining political power.

A general method of press control which the authoritarian states employed was prosecution before the courts. 'Treason' and 'sedition' were the two conventional areas of law that were used as the basis for prosecuting the persons suspected or accused of spreading information or opinions opposed to the authorities.

As the attempts to suppress expression grew, intellectual voices began challenging that accepted wisdom. The benefits—to both societies and individuals—of writing and the speech free of restraints were reasoned, usually in writing. Among the positive outcomes of free press that were articulated was the notion that people cannot fully develop as individuals in the absence of the ability to express themselves. Societal benefits focused on self-governance where people need to openly discuss

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issues, including criticism of government policies and government officials, in order to exercise their votes wisely.

This principle was really set forth in unmistakable language in this oft-quoted passage from the *Areopagitica* of famous English poet John Milton (1644):

> And though all the winds of doctrine were let loose to play upon the earth, so truth be in the field, we do injuriously by licensing and prohibiting to misdoubt her strength. Let her and falsehood grapple: who ever knew truth put to the worse in a free and open encounter...
>
> For who knows not that truth is strong, next to the Almighty? She needs no policies, nor stratagems, nor licensing to make her victorious: those are the shifts and defences that error uses against her power. Give her but room and do not bind her when she sleeps.

In fact, John Milton (1608–1674) wrote *Areopagitica* before his best-known epic poem *Paradise Lost* (1667). *Areopagitica* was published on 23 November 1644. Its title is inspired by a speech written by the 5th century Athenian orator Isocrates. Areopagus is a hill in Athens and the location of legendary tribunals. It was the name of a council whose power Isocrates wished to re-establish. Akin to Isocrates, Milton too had no purpose of orally delivering his speech. In its place, it was distributed via pamphlet because he meant to defy censorship. Milton argued vehemently against the Licensing Order of 1643, observing that such censorship was alien to the classical Greek and Roman society.

Areopagitica is one of the history's most significant, impassioned and potent philosophical defences of the theory of right to freedom of speech and expression. It has numerous biblical and classical references that Milton uses to validate his argument. The concept of 'free marketplace of ideas' is derived from *Areopagitica*. However, it was not before 1919 that this specific amalgamation of the words made its appearance. Justice Oliver Wendell Holmes Jr., of the United States Supreme Court, gave a dissenting vote in *Abrams Vs. The United States*, 'The ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market.'

Nonetheless, the concept that 'truth' will conquest 'falsehood' in a free and open clash is an idea that delighted the great experimenters following Milton. John Locke (1632–1704) gave his opinions on government through his work *Two Treatises of Government*. In this book, he favoured the proposition that government stands and survives on popular consent and revolt is acceptable if the government undermines the ends (protecting life, liberty and property) that are meant to be achieved by it.

Jean-Jacques Rousseau wrote that citizens enter into a sort of social contract with their government that requires sacrificing some liberties in exchange for the security government can provide. In turn, however, this contract places limits on the State, requiring it to provide not only protection, but also freedom. Voltaire also advocated individual freedom, but added that it was freedom of expression

that enables citizens to participate in their government. Another prominent influence was a group of essays published in the 1720s under the pseudonym Cato. Written by two Englishmen, *Cato's Letters* denounced tyranny and specifically advanced free expression as a means of criticizing government to make it more responsive to the will of the people. 'Cato' asserted that freedom of speech was 'the great bulwark of liberty,' protecting the people against tyranny by preventing and exposing abuses of power.

The importance of a free press to a democratic society is highlighted by the label the 'fourth estate' a term attributed to 18th century British philosopher and politician Edmund Burke. Unlike the American Founding Fathers who followed him, Burke recognized the significance of the checking power of a free press, consequently bestowing on the press an unofficial status as a branch of government.

The expression and circulation of these ideas were influential in governments' granting of various forms of rights protection, including England's *Bill of Rights* in 1689. Though different in substance and scope, the document was a predecessor to the Bill of Rights, passed a century later, as the First Amendment to the United States Constitution. The French passed the Declaration of the Rights of Man and of the Citizen in 1789. Like the US rights, the French Declaration specifically included freedom of speech and of the press. In fact, in the original *US Constitution* the rights that protected individual liberties, such as speech and press freedom were absent. Thomas Jefferson voiced concern that merely outlining the structure of the federal government, as the body of the Constitution did, was inadequate. The anti-federalists also wanted protection for individuals from the power of the government. Specifically, Jefferson was a passionate advocate of a press free from government control or influence. Only when the press is free, he believed, can the people be well informed, and 'whenever the people are well-informed, they can be trusted with their own government'. In 1787, years before he took office as the president of the United States, Jefferson wrote: 'The basis of our government being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the later.'

Throughout the 18th century, authoritarianism was on defensive and libertarian principles were on the march. Other means had to be found for protecting the authority of the state. The methods devised were less obvious in their purposes and more devious in their operations. Instead of the official journals managed by the government appointees, privately owned newspapers were purchased or subsidized with state funds. During Walpole's long regime as the first minister in England, political writers were secretly put on the payroll, newspapers were tied to the government through funds from secret service account and opposition editors were threatened with prosecution and seduced with bribes.

Another indirect method of control which was popular in the 18th and 19th centuries was special taxes designed to limit both the circulation and profit in

printed matter, especially newspapers seeking mass audience. The British 'taxes of knowledge' became a violent political issue during the first half of the 19th century. They were finally abolished by the year 1861.

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John Stuart Mill (1806–1873) picked up this torch in the 19th century, *On Liberty*, published in 1869, being his exemplary work. He wrote:

> The time, it is to be hoped, is gone by, when any defence would be necessary of the 'liberty of the press' as one of the securities against corrupt or tyrannical government. No argument, we may suppose, can now be needed, against permitting a legislature or an executive, not identified in interest with the people, to prescribe opinions to them, and determine what doctrines or what arguments they shall be allowed to hear.

On the issue of freedom of expression, J.S. Mill observed[3]:

> Human beings should be free to form opinions, and to express their opinions without reserve; and such the baneful consequences to the intellectual, and *through that to the moral nature of man, unless this liberty is either conceded, or* asserted in spite of prohibition.
>
> The worth of a State, in the long run, is the worth of the individuals composing it; and a State which postpones the interests of *their* mental expansion and elevation, to a little more of administrative skill, or that semblance of it which practice gives, in the details of business; a State which dwarfs its men, in order that they may be more docile instruments in its hands even for beneficial purposes—will find that with small men no great thing can really be accomplished; and that the perfection of machinery to which it has sacrificed everything, will in the end avail it nothing, for want of the vital power ·.hich, in order that the machine might work more smoothly, it has preferred to banish.

This marketplace of ideas model and the attainment of truth is one of several rationales for free press and speech that have been articulated over time. Other perspectives include individual self-fulfillment, participation in decision-making, the ability to maintain a balance between stability and change, and the checking value that free expression can have in limiting the abuse of official power. Encompassing many of these models is one that recognizes the contribution that a free press makes to a self-governing democracy. This system of government assumes a citizenry that is informed and that considers issues rationally. A press that operates independently of government influence serves as a significant provider of the information required to make reasoned decisions.

In the absence of such a press system, citizens are likely to be uninformed because of a lack of information or, perhaps even worse, misinformed by information that is distorted through the lens of the government or other institutions. Without a full range of information supplied by a free press, decision-making is weakened and often unsound. Moreover, when the suppression of ideas is permitted, it is possible that the truth will be among those censored.

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[3] Mill, J.S. 1869. 'Of Individuality, as One of the Elements of Well-Being,' *On Liberty*. London: Longman, Roberts & Green.

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Any analysis of the freedom of press has to put these questions: Freedom from whom? Freedom for what? These questions bring to mind the concepts of negative and positive freedom. Conventionally, the freedom of press is negatively supposed to be the freedom from external restraint. However, some perspectives suggest that this negative approach is not adequate. A positive point of view advocates that freedom must also mean the liberty to attain goals. In the case of press, this is generally summarized as the ability to inform, educate and entertain. This positive perspective, which is more widely accepted in many nations in Europe, Asia, Africa and Latin America, moreover, asserts that press freedom is not a passive activity, but must be actively promoted, i.e., through regulations that enable the press to attain its goals.

In fact, Marxist political theories were derived from early authoritarians and were modified to take into account the industrial revolution and problems it created. However, the soviet system differed from other authoritarian systems in two respects. First, the communists place a greater emphasis on the positive use of mass media as part of agitation for the accomplishment of a world revolution. Under communism the state is not content to restrict the mass media from interfering with the state policies, it actively employs the media for the accomplishment of its objectives. A second difference is that under communism the State holds a monopoly over all avenues of reaching the masses.

The Soviet mass media enjoyed 'real freedom', unlike 'bourgeois' mass media. As a result, media was freed from the compulsion to be profitable. Freedom of the press was interpreted to mean freedom from private ownership, i.e. free from the profit motive, so that it was free to fulfill its duties as the instrument of the State and the Party. The communist model included the conception of the so called 'positive freedom', namely the freedom *to*; while according to the liberal view, prevalent in the West, the conception of 'negative freedom' or freedom from, was popular: freedom from external goals, e.g. forming a communist society, class homogenization, etc. and external control and pressures, e.g. government, parties, industry.

The authoritarian system is most divergent from the libertarian principles of freedom of press. The whole philosophical foundation of the free exchange of ideas is alien to authoritarian beliefs. Since authority lies with the state and the accountability for solving the public issues follows authority, the first and foremost duty of the press is to stay away from interfering in the State objectives. These objectives are determined by a ruler or an elite rather than in 'the market place of ideas', as prescribed by libertarians. The idea that the press constitutes a check on the government does not make sense to the authoritarian who immediately asks the question: Who checks the press?

The authoritarian theory has a number of elements in common with the social responsibility theory of the press which emerged from Hutchins Commission bankrolled by Harry Luce of Time Magazine. Both agree that the press should not be permitted to degrade the culture of a nation, and both postulate that when the

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definite goals of a society are determined (by different methods, nonetheless) the mass media should not be permitted to interfere irresponsibly with the accomplishment of these objectives. Both systems recognize that there is relationship between responsibility and action, but they tend to approach the problem from opposite points of view. The authoritarian system denies that the press has the responsibility for determining either objectives or the method of achieving them, and because of the lack of such responsibility the press should refrain from assuming a duty which is reserved for central authority. The advocates of the theory of social responsibility, however, retain the democratic tradition that the public ultimately makes the decisions, and they charge the press with the duty of informing and guiding the public in an intelligent discussion. The press has the duty to keep public alert and not to divert its attention or its energies to the irrelevant and the meaningless issues. The authoritarians and the communists are convinced that the State must control this process. The libertarians hold that lesser the political authority has to do with the process, the better it is. The advocates of the theory of social responsibility maintain that, although the libertarian philosophy might be essentially sound, their application in the complex of modern society requires some form of control, if possible by the media itself with a benign government in background modestly examining the ground rules.

A free press means an autonomous press, i.e., free to decide its own actions and policies. According to this opinion of freedom, the conventional free press theory lacks a prescriptive nature. In its simple and most fundamental form, it does not say anything about what the press has to do. Media autonomy or independence means that the media is distinctly separated from the State and political institutions, and free from/of the restrictive elements of political, economic or any other form of dependency.

Three levels of media independence are as follows:

1. External independence of the media organizations, i.e. freedom to set up and manage media outlets without political, legal or administrative restraint or interference.
2. Internal independence of editorial department, i.e. editorial autonomy, followed by the owners, publishers and managers.
3. Personal and professional independence of the media practitioners. It includes both the journalists and the management, which connotes their neutrality and objectivity in social, political and economic issues while performing their journalistic duties as well as a sense of high professionalism and commitment to journalistic ethics and values.

The codes, laws and institutions may contribute much to the first two levels of independence, i.e. media institutions and editorial staff. One may speak of a 'formal press freedom' according to the concept of 'formal democracy'. The third level, i.e. the individual level, is positioned more on the field (political) of culture (norms, attitudes, values). The first two levels can be perhaps realized without the third. However, the absence of the third level turns internal and external

independence to a great extent meaningless. In democracy, press freedom is not considered as dichotomic in nature, rather it is taken as a continuous variable. It is not the question of choosing between no press freedom or press freedom, but between less or more press freedom. In all countries and all systems, one can differentiate among the factors that encourage press freedom and the ones that restrict press freedom.

The following are the external factors which imperil press autonomy as the most assessable criteria: regulations, laws and administrative measures which control media content, controls and political pressures on media content, economic pressures over media content and oppressive actions (physical violence, censorship, arrests and killing of journalists).

Usually, the matter of 'press freedom' is connected to the issue of 'social responsibility' or 'press responsibility'. The demand for 'freedom' must be above the demand for responsibility. So, the question of 'press responsibility' is usually utilized to justify the governmental control of the press. It is related more to the notion of 'positive freedom' than to the idea of freedom ('negative freedom').

Even a libertarian perspective, however, can be illusory. First, professed freedom guarantees can mask authoritarian practices, both covert and overt. For example, in the US, questions were raised regarding whether its news media were free in the wake of the terrorist attacks of 11 September 2001. Were they pressurized to refrain from any questioning of government policy rather than voicing a healthy skepticism? The potential for repressive government influence was evident when, two weeks after the attacks, the White House press secretary responded to the words of a television commentator by saying that all Americans 'need to watch what they say, watch what they do. This is not a time for remarks like that; there never is'.

Second, and less subtly, governments may place limitations on press freedom through laws and regulations enacted by assemblies or agencies, approved by an executive, and upheld by courts when challenged. These laws are meant to balance press freedom against other interests, many of which revolve around protection of individuals, other institutions, or society. For example, nearly every society makes the press liable, whether civilly or criminally, for libel and slander, privacy, and other personal harms. More often than not, the balancing process reflects the socio-political and cultural traditions of a country. In the US, libel law is exceedingly media friendly, whereas in the UK, it is far less so.

From an international and *comparative law perspective*, press freedom is still evolving. The journalist's privilege to protect confidential sources as a right to free press is a case in point. While a growing number of democratic countries recognize the journalist's privilege, the US backtracks on its actual or perceived protection of journalistic sources. As communication technology evolved beyond the publication and distribution of the printed word, freedoms and privileges granted to the press have often been extended to these newer mass media. However, it is not uncommon that those freedoms are established at a lower level than those

granted to printed publications. For example, in the US, the UK and many other countries, the owners of broadcast stations must obtain a license from the government in order to operate in the public interest.

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Pressure on the press can even originate from the non-governmental sources as well. In some environments, the *economic marketplace* may serve to constrain press freedom as much as anything. In the press systems that are advertiser-supported, the power to withhold or withdraw monetary sustenance can be significant. Similarly, the press may be inclined to self-censor for the fear of alienating advertisers or audiences.

It might be suggested that if freedom carries with it an obligation to be responsible, by definition, the acknowledgment and implementation of that obligation (e.g. codes of ethics) obstruct freedom. There is another usual association of press freedom with 'freedom of information' and the 'right to know'. This feature is very crucial and harmonizing for press freedom because it relates to the viewpoint of the citizen.

Mohandas Karamchand Gandhi, India's father of nation started his career in journalism in South Africa. Henry Noel Brailsford (1873–1958), socialist writer and political journalist wrote on Mohandas Karamchand Gandhi (1869–1948), 'This ascetic, whom Indians have trusted and revered because of purity of his life, is at the same time a shrewd tactician and organizer. Gandhi will rank in history as a remarkable teacher of morals.' This is perhaps the best description of Gandhi by one who was his contemporary.

Popularly known as Mahatma Gandhi, he was one of the main leaders of non-violent part of the India's struggle for freedom. He started using journalism as a means to communicate his ideas and involved people in the struggle on the basis of issues raised by him. Gandhi's newspapers played a major role in educating masses since his days in South Africa. He used newspapers to educate masses about public causes for which he led mass movements.

Gandhi was associated with six journals. Even while struggling against injustice he insisted that the means should be morally right and therefore it is interesting in this age of cyber media to look at his journalism as he practiced and preached.

Gandhi wrote in his autobiography:

> In the very first month of *Indian Opinion*, I realized that the sole aim of journalism should be service. The newspaper Press is a great power, but just as an unchained torrent of water submerges whole countryside and devastates crops, even so uncontrolled pen serves but to destroy. If the control is from without, it proves more poisonous than want of control. It can be profitable only when exercised from within.

About the kind of care he took as a journalist during his days in South Africa, he wrote:

> During 10 years, that is until 1914, excepting the intervals of my enforced rest in prison there was hardly an issue of *Indian Opinion* without an article from me. I

> cannot recall a word in these articles set down without thought or deliberation or a word of conscious exaggeration or anything merely to please.

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Gandhi was against irresponsible journalism but committed to the freedom of press. Speaking against the Press Act of 1910 which was put on statute by the British to control Indian Press on 24 June 1916, Gandhi said:

> I am not disputing the fact that some restraint is necessary to be exercised on newspapers, but there is this to be remembered that this in the exercise of such a restraint, discretion and limit should not be lost sight of. It is only with unwarranted restraint that I quarrel. For flimsy reasons, Government officials ought not to exercise restraint on the people's right to express their views. Restraint means inducement to indulge in fallacious or misleading thoughts.
>
> To my newspaper writer brethren I say, 'Say openly whatever you have to say.' That is our duty. We would rely on ourselves to expatiate on our grievances, but we must not forget that we have to do that under certain restrictions born out of politeness and sobriety. Whenever we are face to face with a political catastrophe, we should never hesitate to say in as clear terms as possible what we feel and desire to say. For such plain speaking and honest pleading of our cause if we were punished by the Government let them do so. What can they do if the worst comes to worst? They will take our bodies at best. Very well, if our bodies are taken away, our souls will become free.

On 5 March 1920, in another speech on Press Act, Gandhi said, 'The question which I keep on asking myself is this: If there were no newspapers to give expression to public opinion, how the Government ever know it?... The Government's condition at present is like that of the meteorologist who has smashed his barometer and would yet measure the atmospheric pressure.'

Speaking in the holy city of Varanasi on 8 January 1925, Gandhi said:

> I am a journalist myself—an old and seasoned at that, I have been doing that work since 1904 and I believe I know it well enough because when I am full of a subject it is my nature to write as little as I can on it. I say to politicians and writers: Pull up your pen and give the reins to the light within. Be miserly in the use of words, but let there be no enough in self-development. Do not indulge in flattery or loose your temper. While self-restraint in speech is by no mean flattery, an outburst of anger, caustic language, is worse than flattery. Flattery and anger are two sides of the same thing—weakness. Anger is rough side of it. A week man may either flatter somebody or get angry with him in order to hide his weakness. Let no man given to anger imagine that he thereby displays his strength.

Gandhi wrote (in Diwali number of Gujarati daily *Hindustan* published from Bombay) referring to his experience in South Africa:

> In my humble opinion, it is wrong to use a newspaper as a means of earning a living. There are certain spheres of work which are of such consequences and have such bearing on welfare that to undertake them for earning one's livelihood will defeat the primary aim behind them. When further a newspaper is treated as a means of making profits, the result is likely to be serious malpractices. It is not necessary to prove to those who have some experience in journalism that such malpractices do prevail on a large scale...Newspapers are meant primarily to educate the people. They make the latter familiar with contemporary history. This is work of no mean responsibility.

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In a speech delivered on 22 March 1925 at office of *The Hindu* Gandhi said:

> I know that journalism will play a most important part in shaping the destinies of our country. I have, therefore, never been tired of reiterating to journalists whom I know that journalism should never be prostituted for selfish ends or for the sake of merely earning a livelihood, or worse still, for amassing money. Journalism, to be useful and serviceable to the country, will take its definite place only when it becomes unselfish and when it devotes its best for the service of the country and whatever happens to the editors or to the journal itself, editors would express the views of the country irrespective of consequences.

In his speech at a prayer meeting on 8 October 1947, Gandhi put forth his views on the press in these words:

> The Press has become a very powerful medium in the world today. When a country becomes independent the Press becomes all the more powerful. When there is freedom, there can be no restrictions on the Press regarding the reports and the news to be published. But public opinion can be very useful at such times...Today all correspondents, editors and owners of newspapers must become truthful and serve the people. No false information should appear in the newspapers nor should they publish anything that would incite the people. Today when we have become independent, it is the duty of the public not to read dirty papers but to throw them away. When nobody buys those papers they will automatically follow the right path. I feel ashamed at the face that today people have got into the habit of reading dirty and undesirable things. Such newspapers are widely circulated...The Government cannot keep a watchful eye on the Press today. You and I should keep a watch on the newspapers...Let us purify our hearts and show no inclination to take in dirty things. Let us give up reading dirty things. If we do this the newspapers will do their duty properly.

Gandhi's remedy to the ills of media was healthy public opinion and self regulation. He wrote in Young India of 28 May 1931:

> The real remedy is healthy public opinion that will refuse to patronize poisonous journals. We have our journalists Association. Why it should not create a department whose business it would be to study the various journals and find objectionable articles and bring them to the notice of the respective editors? The function of the department will be confined to the establishment of contact with the offending journals and public criticism of the offending articles where the contact fails to bring about the desired reform. Freedom of the Press is a precious privilege that no country can forego. But if there is, as there should be, no legislative check save that of the mildest character, an internal check such as I have suggested should not be impossible and not to be resented.

Jawaharlal Nehru, the first Prime Minister of India, was emphatic in his speech at the Newspaper Editor's Conference on 3 December 1950:

> I have no doubt that even if the Government dislikes the liberties taken by the Press and considers them dangerous, it is wrong to interfere with the freedom of Press. By imposing restrictions you don't change anything you merely suppress the public manifestation of certain things, thereby causing the idea and thought underlying them spread further. I would rather have a completely free press with all dangers involved in the wrong use of that freedom than a suppressed or a regulated press.
>
> Freedom of the Press usually means non-interference by government, but there is such a thing as interference by private interests. I am unable to understand

> how a small group represents the freedom of the Press. The fact of a big industry by itself owning a newspaper and owning chains of newspapers cannot be said to give the press the kind of freedom which the public should expect of it.

The debate over how and where to place the boundaries that divide acceptable and unacceptable uses of the media is ongoing. Gandhi's contribution to this is still relevant, though he was assassinated much before the era of television and Internet.

2.5 THE FOURTH ESTATE

The term 'Fourth Estate' was initially used as a synonym for newspapers. However, with the arrival of radio, news magazines, television and Internet, its meaning has acquired a broader shape to mean all that is called 'mass media'. The expression 'journalism' usually referred to as 'news business' comprises the gathering, processing and delivery of essential and vital information regarding the current affairs through the print media (newspapers and news magazines) and electronic media (TV, radio, Internet, etc). This integrated entity is also termed as 'media'. There are different ways to communicate news and entertainment by using diverse media forms. The term 'media' is usually used to mean the communication of news. In this context, it connotes the same thing as 'news media'. Generally, we use media and mass media while discussing the power and affectivity of modern communication.

The origin of the expression 'fourth estate' is most suitably explained in the framework of the medieval phrase 'estates of the realm.' Three 'estates' were officially recognized during the medieval times: the nobility, the clergy and the commoners. Each of them played a very discrete social role due to which a specific level of power and the concept of the 'estates of the realm' came to be deeply ingrained in the European society.

According to the German sociologist and philosopher Jürgen Habermas, the wider availability of printing facilities and the resultant reduction in production costs of newspapers stimulated debate in 18th century Britain. It led to the emergence of a 'bourgeois Public Sphere', an arena that was independent of the State and the church. It was dedicated to rational debate, and accessible and accountable to the citizenry, in which public opinion is formed. During the 19th century, greater freedom of press was fought for and achieved in parallel with struggles for parliamentary reforms.

Although the phrase 'fourth estate' was initially used as a synonym for newspapers, but with the arrival of radio, television, news magazines, Internet, etc. its meaning has acquired more comprehensivity to include all that is meant by 'the mass media'. Its origin, in its current meaning, is attributed to Edmund Burke (1729–1797), a British politician who used it for the first time in a parliamentary debate in 1787 on the occasion of starting the press reporting of the House of Commons in the UK.

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It is available from a quote in Thomas Carlyle's book, *Heros and Hero Worship in History* (1841):

> Burke said there were Three Estates in Parliament; but, in the Reporters' Gallery yonder, there sat a *Fourth Estate* more important far than they all. It is not a figure of speech, or a witty saying; it is a literal fact,—very momentous to us in these times. Literature is our Parliament too. Printing, which comes necessarily out of Writing, I say often, is equivalent to Democracy: invent Writing, Democracy is inevitable. Writing brings Printing; brings universal everyday extempore Printing, as we see at present. Whoever can speak, speaking now to the whole nation, becomes a power, a branch of government, with inalienable weight in law-making, in all acts of authority. It matters not what rank he has, what revenues or garnitures. The requisite thing is, that he have a tongue which others will listen to; this and nothing more is requisite. The nation is governed by all that has tongue in the nation: Democracy is virtually there. Add only, that whatsoever power exists will have itself, by and by, organized; working secretly under bandages, obscurations, obstructions, it will never rest till it get to work free, unencumbered, visible to all. Democracy virtually extant will insist on becoming palpably extant...

In Burke's 1787 coining he would have been making reference to the traditional three estates of Parliament: The Lords Spiritual, the Lords Temporal and the Commons. Carlyle's also wrote in his *French Revolution* (1837), 'A Fourth Estate, of Able Editors, springs up; increases and multiplies, irrepressible, incalculable.' In this context, the other three estates are those of the French States-General: the church, the nobility and the townsmen.

Others early users of this term are Henry Brougham (1778–1868) speaking in Parliament in 1823 or 1824 and Thomas Macaulay (1800–1859) in an essay of 1828 reviewing *Hallam's Constitutional History*: 'The gallery in which the reporters sit has become a fourth estate of the realm.'

Author Oscar Wilde[4] (1854–1900) wrote the following in his essay 'The Soul of Man under Socialism' in 1891:

> In old days men had the rack. Now they have the press. That is an improvement certainly. But still it is very bad, and wrong, and demoralising. Somebody—was it Burke?—called journalism the fourth estate. That was true at the time, no doubt. But at the present moment it really is the only estate. It has eaten up the other three. The Lords Temporal say nothing, the Lords Spiritual have nothing to say, and the House of Commons has nothing to say and says it. We are dominated by Journalism. In America the President reigns for four years, and Journalism governs forever and ever. Fortunately, in America journalism has carried its authority to the grossest and most brutal extreme. As a natural consequence it has begun to create a spirit of revolt. People are amused by it, or disgusted by it, according to their temperaments. But it is no longer the real force it was. It is not seriously treated. In England, Journalism, not, except in a few well-known instances, having been carried to such excesses of brutality, is still a great factor, a really remarkable power. The tyranny that it proposes to exercise over people's private lives seems to me to be quite extraordinary. *The fact is, that the public have an insatiable curiosity to know everything, except what is worth knowing.* Journalism, conscious of this, and having tradesman like habits, supplies their demands.

[4] Available at http://flag.blackened.net/revolt/hist_texts/wilde_soul.html, access data 14.01.2011.

Many will find that what Oscar Wilde said in 1891 through his essay *The Soul of Man under Socialism* sounds relevant even today. Nonetheless, most of the people normally agree that the fourth estate holds enormous political and social power. It is because of the fact that the press possesses the capability to change societies while providing important news and commentary on the issues of public interest. Since the fourth estate is accepted as such a significant body, many countries have formulated laws that protect the press rights to ensure that the citizens get access to all the news, views and information on the issues of common as well as individual interest. Some journalists try to nurture an air of neutrality, concentrating on reporting of the issues in such a manner that the people can themselves judge the facts for themselves. On the other hand, some journalists provide commentary, discussion and analysis from a certain angle to change the public opinion. On the whole, the journalists should be careful to guard the integrity of the press, protect the sources, information verification before publication and using scores of other tools and techniques to impart responsible information to the public. All this is meant to encourage people to consolidate their faith in the press. It is necessary for the notion of the 'fourth estate' to survive.

As per the American usage, the expression 'fourth estate' is usually put in contrast with the 'fourth branch of government'. Here, 'fourth estate' is used to stress the independence of the press; while 'fourth branch' connotes that the press is 'not independent of the government'. The fourth estate means the public press, comprising a collective whole of photographers, journalists, television broadcasters, radio announcers, etc. Presently, Internet has further enhanced the scope of this usage.

However, the informed press is still to go a long way to nurture healthy inquiring spirit among the citizens. If the press is somehow conditioned to provide merely the tailored information, democracy will become just a mask worn by the dictatorial governments. The Indian Constitution does not specially talk about the freedom of press. Freedom of press is derived from Article 19(1)(a). Justice M. Patanjali Shastri, the Chief Justice of India from 16 November 1951 to 3 January 1954, stated, 'Freedom of speech and press lay at the foundation of all democratic organizations for without political discussion, no political education, so essential for the proper functioning of the government is possible.' The press is a watchdog so a free press should be embraced by all. Supreme Court of India in *Indian Express Vs. Union of India (1985) 1 SCC 641* clearly observed, 'Growth and development of representative democracy is so much intertwined with growth of press that the press has come to be recognized as an *institutional limb of modern democracy.*'

Though the 'original estates' referred by Burke are not so significant today, the press (now media) has maintained its importance. It has emerged as an indispensable element in the working of a modern nation. Press is considered *'the fourth estate'* or '*the fourth pillar*' of democracy other three now are: Legislature, Executive and Judiciary.

For the media to be rightfully called the fourth estate, it needs to prove its independent power and status within the political system. In practice, occasionally, the media functions not just to influence government policy, but in reality dictates its will onto the government. In practice, it is not that simple to quantify the effects of media coverage on the policy makers. There is no new research on this issue, but it must be noticed that the policy makers themselves might be accountable for passing over most of the political information appearing in the mass media. A sole media outlet portraying a particular viewpoint very convincingly might be ignored by the policy makers if other media channels put the same issues less articulately. Presently, the policy makers have an easy access to databases concerning all the media output. Hence, they can evaluate for themselves if the observation of a journalist or media source is widely prevalent or exclusive to him or her. It is also debatable whether the mass media, even as a united voice, is more powerful in influencing the policy makers than all other collective pressures, measures and influences brought to bear on it. Pressure groups, considered by many to solely rely on the media for their power and influence, very often function within the domain of already established political and economic institutions. In this case, even very favourable mass media coverage might not facilitate their causes to a large extent.

'The power of the press is very great, but not so great as the power of suppress', press baron Lord Northcliffe said. Mark Twain observed, 'There are laws to protect the freedom of the press's speech, but none that are worth anything to protect the people from the press.' The American President Theodore Roosevelt believed that 'the men with the muck-rakes are often indispensable to the well-being of society; but only if they know when to stop raking the muck'. A warning from the Hungarian-born American newspaper proprietor and editor Joseph Pulitzer is inscribed on the gateway to the Columbia School of Journalism in New York: 'A cynical, mercenary, demagogic, corrupt press will produce in time a people as base as itself.'

CHECK YOUR PROGRESS

5. Define the term 'State' as given in Article 19(2).
6. What was the court's opinion on 'public safety' in the *Romesh Thapar Vs. State of Madras* case?
7. What was the significance of the First Amendment to the Indian Constitution?

2.6 INDIAN PRESS DURING EMERGENCY

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The first Proclamation of Emergency under clause (1) of Article 352 of the Indian Constitution was done on 26 October 1962. This period of Emergency ended on 10 January 1968. It covered the period of the aggression of China in 1962 and the war with Pakistan in 1965. Another Emergency was declared on 3 December 1971 when the war with Pakistan broke out that resulted in the birth of Bangladesh. However, the Emergency that effected media most was from 25 June 1975 to 21 March 1977. It was also proclaimed under Article 352 of the Constitution on the ground that 'a grave emergency exists whereby the security of India is threatened by internal disturbances'. As a sequel, the various freedoms guaranteed to the citizens by Article 19—such as the freedom of speech and expression—were suspended. The Emergency proclamation also suspended the right of any person to move any court for the enforcement of the right to life and personal liberty guaranteed by Article 21. Other important legal measures taken during the Emergency were as follows:

- Imposition of censorship: The press could not make public any news or views without getting them cleared by the censors. The Press Council was also dissolved.
- The term of the Lok Sabha was extended from five years to six years, leading to the postponement of the elections from 1976–1977.
- The detention laws—such as the Maintenance of Internal Security Act (MISA) and the Defence of India Act—were made more draconian. For instance, under MISA, the grounds of detention were made confidential and the period of detention extended from twelve months to twenty-four months. The detenues were not allowed to seek bail.

The days that preceded the fateful 25 June had witnessed various incidents which threatened the authority of Indira Gandhi after her success in 1971 war with Pakistan that resulted in the creation of Bangladesh and 7 September 1974 detonation of an indigenously designed nuclear device.

Here is a chronology of the events leading to the declaration of Internal Emergency:

1974

26 January :

Students of Gujarat formulate Nav Nirman Samati to protest against the Congress Government's failure to bring down prices, shortage of commodities, unemployment and corruption.

7 February: Forty-three persons shot dead, 108 wounded in police firing and 6,155 persons arrested in Gujarat protests. Governor of Gujarat State dismisses the ministers seeking Chief Minister's resignation.

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9 February: President's Rule imposed in Gujarat following Chief Minister Chimanbhai Patel's resignation.

10 February: Army opens fire on 'food rioters' in Ahmedabad.

3 March: Four demonstrators killed in Gujarat in police firing. Morarji Desai declares fast unto death (11 March).

15 March: Gujarat Legislature dissolved following large-scale resignations.

18 March: Two killed on the opening day of Bihar State Legislative Assembly.

19 March: Trouble spreads throughout Bihar; ten killed, thirty-one injured in police firing.

8 April: In Patna, Jayaprakash Narayan (JP) leads silent protest march of 1,000 volunteers (mouths taped, hands tied) selected from Shanti Sena Sangharsha Samiti and Bihar Sarvodaya Mandal.

12 April: Eight killed and twelve injured in police firing on students at Gaya, Bihar.

14 April: JP forms Civil Liberties Union to 'save democracy'.

23 April: JP announces five-week agitation for the resignation of Congress Ministry of Bihar and the dissolution of Bihar Legislative Assembly.

30 April: Three hundred women fast before Bihar Legislative Assembly.

7 May: Twenty-four members of Bihar Legislative Assembly resign.

18 May: Railway strike; 20,000 arrested, 25,000 dismissed.

2 June: Massive demonstration staged in Patna for the dissolution of Legislative Assembly.

1 August: JP launches 'No-tax Campaign' in Bihar.

4–5 November: JP and others are lathi-charged by Patna police, leading to massive marches and complete strike throughout Bihar.

1975

6 March: Millions from all over country join JP's 'People's March' to Parliament to present alternative programme: price stabilization; need-based wages and maintenance of income; effective land reforms; assurance of full employment; creation of the regimen of national austerity; education and civil liberties; eradicating political corruption.

18 March: JP leads 'People's March' to the Bihar Legislative Assembly.

12 June: 1971 election of Indira Gandhi to Parliament from Rae Bareilli (UP) set aside when Allahabad High Court finds her guilty on two counts of corrupt electoral practices and debars her from elective offices for six years. The judge called Indira Gandhi an unreliable witness for contradictory oral statements to Court, but the disqualification over-stayed for twenty days.

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13 June: All opposition MP's—except those of the CPI—stage 'dharna' in front of the President's office demanding the dismissal of Prime Minister. Congress party ousted in Gujarat State elections and 'Janata Aghadi'—United Front of all Opposition parties—gets majority.

18 June: Janata Aghadi forms the Government.

21 June: 'Remove Indira' movement launched by JP.

24 June: The Supreme Court rules Indira Gandhi's powers and privileges as Prime Minister would be unaffected during her appeal against the Allahabad High Court judgment.

25 June: JP addresses a mass meeting in Delhi, announces nationwide week-long satyagraha from 29 June, asking Indira Gandhi to resign and calling on police and military to obey conscience.

26 June: President declares Emergency to meet 'internal threat to security'. JP, Morarji Desai and others arrested under MISA. Censorship order (secretly) issued by the Central Government for the first time in free India.

At 7 am, Indira Gandhi was on the All India Radio announcing that she had imposed an internal Emergency because of threat from dangerous forces out to destroy the country.

Recalling 25 June 1975, Nayar said: 'That was a dark night, when we nearly lost our hard-earned freedom. Mrs Gandhi became a law unto herself. The press was gagged. One lakh people —from top political leaders to ordinary people—were detained without trial. A chapter of authoritarian and extra-constitutional rule began with Mrs Gandhi and her son Sanjay Gandhi calling the shots.'

Nirmala Lakshman[5], who was then on the staff of *The National Herald*, recalls that night:

> I remember that 'power cut' in Delhi's 'press lane'; so called because four of the Delhi newspapers—the *Indian Express*, *The Times of India*, the *Herald* and the *Patriot*—were all located on the same lane along Bahadurshah Zafar Marg. The power supply, switched off late in the night of 25 June 1975, wasn't resumed until two days later...Irony was, *The Statesman* and *Hindustan Times*, located in Connaught Circus, were switched off an hour or two after the 'press lane' shutdown. It appeared switch-operators at Delhi Electricity Supply Undertaking (DESU) forgot about the CC papers. The delay, presumably, helped these papers. I heard the subsequent morning that *Hindustan Times* managed to print an early edition, and the van carrying copies for distribution was blocked at the gate by the police that had arrived on the scene by then.

Coffee-house rumor had it that a few hundred copies of the paper were tossed out by the press employees through a ventilator to be picked up by waiting hawkers outside the *Hindustan Times* building. Where DESU bungled was in the case of *The Motherland*, a Jana Sangh daily with its office at Jandewalan area.

[5] Lakshman, Nirmala. 2007. *Writing A Nation—An Anthology of Indian Journalism*. New Delhi: Rupa Publications.

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It was said *The Motherland* was the only Delhi daily that hit news-stands, to be promptly confiscated, on the day they declared Emergency—26 June 1975.

The evening before, there was a public rally at Delhi's Ramlila Grounds where Jaya Prakash Narayan leading a movement for social transformation *Sampoorna kranthi* ('total revolution'), urged the police force not to obey the 'illegal' and verbal orders of their superiors. Later that evening the *Herald* crime reporter, D.K. Issar, who had extensive contacts in the police department, found out officers in charge of all city police stations were summoned to a strategy meeting with their seniors.

> Alerted by such unusual development Mr. Issar and I tried to tap our contacts, only to be stonewalled by senior police and home department officials. Even officials with whom we had a personal equation evaded us; they wouldn't answer phone calls that night. This confirmed our suspicion that the authorities were upto something that they didn't wish to share with the media.
>
> At *The National Herald* we were blissfully unaware that the so-called 'anti-social' elements the cop referred to were, in fact, political leaders of the stature of JP, Mr. L.K. Advani, Mr. Vajpayee, and Mr. Charan Singh. Scores of other lesser politicians, and, presumably, some anti-social elements were also rounded up that night. I came to know the next morning our colleagues in some other papers had known about the late-night round up of political leaders. In most cases, those close to the arrested leaders had phoned up other papers. A disadvantage in working for the *Herald*, dubbed Nehru's paper, was that we didn't get alerted by the opposition; and, those in the know, in the ruling Congress wouldn't talk to us that night. We didn't get any mileage for being pro-establishment. Officials either ignored or stonewalled us at the time of a major news-break. Anyway, Mr Issar and I pieced together a story based on sketchy information. As our story was sent down to the press for printing the power supply got cut off.

Coomi Kapur[6], then a young reporter with *The Indian Express* and sister-in-law of Subramanian Swamy, then a Jana Sangh Member of Parliament recalls:

> The *Indian Express* did not appear that morning. We learnt later that just past midnight, Sanjay Gandhi had given instructions to switch off the power to Delhi's Fleet Street, Bahadur Shah Zafar Marg. The next morning, with the power briefly restored, we were in the midst of producing a special afternoon edition, when the wire services flashed the news that censorship had been imposed and nothing could be printed without clearance from the censors first.

Editor-in-Chief S. Mulgaokar, who rarely mingled with his staff, sat slumped in the crowded newsroom with a dazed look on his face. So it was only on 28 June that the newspaper finally came out. There was a tell-all blank space where there should have been the first editorial but otherwise there was little in the news content to indicate the dramatic upheavals of the last two days.

Kuldip Nayar, the editor of the *Express News Service*, suggested that all of us who felt strongly about censorship should sign a petition at the Press Club where a protest meet against censorship was to be organized. 'To our dismay, we

[6] Kapoor, Coomi. 2000. 'Night of the Long Knives,' *The Indian Express*, June 25, 2000.

found that most senior journalists from other newspapers stayed away. The attendance was quite thin. Almost immediately, Nayar was arrested under MISA and we had no doubt that the informer who ratted on him came from our own tribe.'

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According to Soli Sorabji[7], former Attorney General of India:

> India's worst brush with censorship occurred during the spurious emergency declared by the government of Prime Minister Indira Gandhi on 25 June 1975. Censorship of the Press was imposed for the first time in independent India by the promulgation of a Central Censorship Order, dated 26 June 1975. No censorship was imposed during two previous declarations of emergency, in 1962 and in 1971, when the nation was fighting a war. Under the Indian Constitution during an emergency, fundamental rights, including freedom of speech and expression and the freedom of the press, stand suspended.

A unique feature of the Emergency was the stringent censorship imposed on newspapers and periodicals by the State. V.C. Shukla, then Minister for Information and Broadcasting, was in charge of implementing it. And he enforced it so meticulously that the articles which discussed the word 'Freedom' were rendered suspect in the eyes of the censor. Shukla even objected to quotations from Rabindranath Tagore and Mahatma Gandhi. His defence—later—was these quotations which were made with reference to the British Raj were now taken out of context and would create misunderstandings and therefore they should be avoided.

Newspapers were classified as A (friendly), B (hostile), etc. Among those under the category A included *Hindustan Times*, *Times of India* and *The Hindu*. Those classified as hostile included *Indian Express* and *Statesman*.

Newspapers—and the public—thought of crazy ways to cock a snook at the State. Little items appeared in the letters columns, as advertisements, news items, out-of-context quotes and even in obituaries. Here are a few samples:

On and from 1 January 1976, newspapers will be found in the fiction section—notification issued in a newspaper by a Calcutta library.

No other developing country really has as open a society as we have. Most of them have one party systems. And very much one-centred systems—Indira Gandhi.

WE MARCH TO A BITTER TOMORROW—a slogan found on a truck.

'Our Constitution is above everything'—Chief Justice AN Ray.

O'Cracy: D.E.M. O'Cracy, beloved husband of T. Ruth, Father of L.I. Berty, father of Faith, Hope and Justice, on June 26—this appeared as an 'obituary' in a Bombay newspaper soon after the Emergency was declared.

[7] Sorabjee, Soli J. 2000. 'Freedom of the Media in India—Constitution and Courts,' available on http://forum.onestopias.com/forum_posts.asp?TID=845, access date 15.01.2011.

It was not possible for the media-persons to sustain their stand against the Emergency, Kuldip Nayar[8] said. One hundred and three journalists attended a meeting on June 28 at the Press Club of India in New Delhi to condemn the press censorship.

'I was arrested a couple of days later as I wrote a letter to the President of India and other authorities conveying the sentiments of the media. But, when I returned home from Tihar Jail after three months, I found the mood in the media entirely changed,' Kuldip Nayar recalled. He said the media-persons had 'imaginary fear of losing jobs and demotions'.

'Terror was unleashed on media organisations too. In Delhi, newspapers could not come out for a few days because of a government-engineered power failure. Censorship was imposed. The managements of newspapers who did not blindly support the government, like *Indian Express*, were handed over to pliable persons. Still, its owner Ramnath Goenka took a courageous stand and tried to reflect the sentiments of the people in the paper,' Nayar, then a senior journalist with *Indian Express*, said.

Here are some examples as the Shah Commission of Enquiry pointed out:

> The guidelines issued by the Chief Censor even exceeded the scope of the Rule 48 of the Defence and Internal Security of India Rules insofar as they prevented editors leaving editorial columns blank or filling them with quotations from great works of literature or from national leaders like Mahatma Gandhi, or Rabindranath Tagore. The I&B ministry did not attempt to find out whether these guidelines were within the scope of Defence and Internal Security of India Rules or not. Parliament and court proceedings were also subject to censorship.

Soli J. Sorabjee[9] points out:

> Not merely publication of court judgments was censored, but directions were also given as to how judgments should be published.
>
> In practice, censorship was utilised for suppressing news unfavourable to the government, to play up news favourable to the government and to suppress news unfavourable to the supporters of the Congress Party.
>
> Censorship, which in normal times would be struck down, becomes immune from constitutional challenge. Taking advantage of the emergency, numerous repressive measures were adopted in the form of executive non-statutory guidelines, and instructions were issued by the censor to the press. One of the instructions of the censor was that 'nothing is to be published that is likely to convey the impression of a protest or disapproval of a government measure'.
>
> Consequently anything that smacked of criticism of governmental measures or action was almost invariably banned, even if the criticism was sober and moderate. The censor's scissors were applied arbitrarily and in a few cases its decisions bordered on the farcical. Quotations from Mahatma Gandhi, Tagore and Nehru were banned. A statement by the Chairman of the Monopolies and Restrictive

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[8] Nayar, Kuldip. 2010. 'Emergency a sad period in Indian history,' available on http://www.punjabnewsline.com/content/emergency-sad-period-indian-history-kuldip-nayar-june-25-marks-35th-anniversary-emergency/21?cpage=2, access date 15.01.2011.

[9] Sorabjee, Soli J. 2007. 'Freedom of the Media in India—Constitution and Courts,' available at http://forum.onestopias.com/forum_posts.asp?TID=845, access date 15.01.2011.

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Trade Practices Commission criticising the working of public sector undertakings was blacked out. Other ludicrous instances are the bans imposed on news about a member of a former royal family, Begum Vilayat Mahal, squatting at New Delhi railway station; a report about junior lawyers marching to the Delhi High Court; a London report of the arrest of a famous Indian actress for shoplifting; and the news about a meeting of the Wild Life Board, which considered the grant of a hunting licence to a certain *Maharajah's* brother.

...The Indian judiciary, especially the State High Courts, displayed commendable courage in striking down the censor's orders and upheld the right of dissent even during the emergency. The High Court of Bombay in its landmark judgment in *Binod Rao Vs. Masani* delivered on 10 February 1976, declared:

'It is not the function of the censor acting under the Censorship Order to make all newspapers and periodicals trim their sails to one wind or to tow along in a single file or to speak in chorus with one voice. It is not for him to exercise his statutory powers to force public opinion in a single mould or to turn the press into an instrument for brainwashing the public. Under the Censorship Order the censor is appointed the nursemaid of democracy and not its gravedigger. Merely because dissent, disapproval or criticism is expressed in strong language is no ground for banning its publication.'

...These judgments were delivered at a time when 'inconvenient' judges during the emergency were transferred from one State to another in India. Notwithstanding this, the High Courts rose to the occasion. Indeed it was their finest hours. In *R. Rajagopal Vs. State of TN* the Supreme Court held that neither the government nor the officials who apprehend that they may be defamed, had the right to impose a prior restraint upon the publication of the autobiography of Auto Shankar, a convict serving sentence of death in jail, which was likely to reveal a nexus between criminals and high ups in the police. The Court held that the remedy of public officials/public figures, if any, will arise only after the publication.

The Emergency was endorsed by Vinoba Bhave (who called it *Anushasan parva* or *Time for discipline*), Mother Teresa, industrialist J.R.D. Tata and writer Khushwant Singh, though Tata regretted later that he spoke in favor of emergency as cited in his biography *Beyond the Last Blue Mountain* by R.M. Lala.

Avneesh Arputham[10] has the opinion:

Many argue that the emergency was the inevitable outcome of social, economic and political crises resulting in 'systematic failure'. One of them is Prof. P.N. Dhar, Secretary to the Prime Minister and her chief official advisor during this period. In his book *Indira Gandhi, the Emergency and Indian Democracy*, he says, 'Even before she could file her appeal, to which she was entitled, a delegation of opposition leaders from the Congress (O), JS, BLD, SP and Akali Dal called on the president and presented a memorandum to him saying that 'a grave constitutional crisis had arisen as a result of Mrs. Gandhi continuing to occupy the of office of the prime minister despite a clear and categorical judicial verdict'. Prominent writer Khushwant Singh, who at the time was the editor of *The Illustrated Weekly of India* in Mumbai says, 'By May 1975 public protests against Mrs. Gandhi's government had assumed nationwide dimensions and often turned violent. With my own eyes I saw slogan-chanting processions go

[10] Arputham, Avneesh. 2009. 'Emergency: The Darkest Period in Indian Democracy,' available on http://thevie wspaper.net/emergency-the-darkest-period-in-indian-democracy/, access date 15.01.2011.

down Bombay thoroughfares smashing cars parked on the roadsides and breaking shop-windows as they went along. Leaders of opposition parties watched the country sliding into chaos as bemused spectators hoping that the mounting chaos would force Mrs. Gandhi to resign.'

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Writing on the occasion of the 25th anniversary of the Emergency, Sukumar Muralidharan[11] observed:

> H.Y. Sharada Prasad, who served as Information Advisor to Indira Gandhi for much of her prime ministerial tenures, has perhaps written as candid an expiation as any insider of the regime could attempt. Sharada Prasad disavows the 'post-retirement radicalism' that is in vogue, motivating administrators in the autumn of their lives to repudiate all that they did when they were vested with executive powers. He admits to a sense of disquiet after the Union Cabinet had with himself and P.N. Dhar, Principal Secretary to the Prime Minister in attendance, endorsed the declaration of the Emergency. He also reveals that P.N. Dhar had in confidence told him immediately afterwards that they had been 'party to an evil act'.

Siddhartha Shankar Ray who 'mooted' the idea of an internal emergency in January 1975 was categorical 25 years later in an interview, 'I want to be clear on this: I think the Emergency was perfect. But the excesses were bad and nobody could stop it.'

Control of media led to failure of Mrs Indira Gandhi in monitoring the situation and public opinion in the country. On 18 January 1977, she dissolved Lok Sabha and went for fresh mandate of the people. In the general elections that took place in March 1977 she lost. On 21 March 1977, she ended Internal Emergency and on the next day she resigned as Janata Party got absolute majority in Lok Sabha.

The new Government amended the Constitution in 1978. In the Statement of Objects and Reasons appended to the Constitution (Forty-fifth Amendment) Bill, 1978 (Bill No. 88 of 1978) which was enacted as the constitution (Forty-fourth Amendment) Act, 1978, it was stated[12]:

> Recent experience has shown that the fundamental rights, including those of life and liberty, granted to citizens by the Constitution are capable of being taken away by a transient majority. It is, therefore, necessary to provide adequate safeguards against the recurrence of such a contingency in the future and to ensure to the people themselves an effective voice in determining the form of government under which they are to live. This is one of the primary objects of this Bill.
>
> A Proclamation of Emergency under Article 352 has virtually the effect of amending the Constitution by converting it for the duration into that of a Unitary State and enabling the rights of the citizen to move the courts for the enforcement of fundamental rights—including the right to life and liberty—to be suspended. Adequate safeguards are, therefore, necessary to ensure that this power is

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[11] Muralidharan, Sukumar. 'The legacy of the Emergency,' Frontline, Vol. 17, No. 14, 2000, July 8—12, 2000.

[12] 'The Constitution Forty-fourth Amendment Act,' available at http://indiacode.nic.in/coiweb/amend/amend44.htm , date of access 15.01.2011.

properly exercised and is not abused. It is, therefore, proposed that a Proclamation of Emergency can be issued only when the security of India or any part of its territory is threatened by war or external aggression or by armed rebellion. Internal disturbance not amounting to armed rebellion would not be a ground for the issue of a Proclamation.

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It provided for the amendment of Article 352. In Article 352 of the Constitution,–

(a) in clause (1), –

(i) for the words 'internal disturbance', the words 'armed rebellion' shall be substituted;

(ii) the following Explanation shall be inserted at the end, namely: –

'Explanation—A Proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression or by armed rebellion may be made before the actual occurrence of war or of any such aggression or rebellion, if the President is satisfied that there is imminent danger thereof';

A special provision was made guaranteeing the right of the media to report freely and without censorship the proceedings in Parliament and the State Legislatures. The provision with regard to the breakdown of the constitutional machinery in the States is being amended so as to provide that a Proclamation issued under Article 356 would be in force only for a period of six months in the first instance and that it cannot exceed one year ordinarily. However, if a Proclamation of Emergency is in operation and the Election Commission certifies that the extension of the President's rule beyond a period of one year is necessary on account of difficulties in holding elections to the Legislative Assembly of the State concerned, the period of operation of the Proclamation can be extended beyond one year. This is subject to the existing limit of three years. These changes would ensure that democratic rule is restored to a State after the minimum period which will be necessary for holding elections.

Insertion of new Article 361A—After Article 361 of the Constitution, the following article shall be inserted, namely:—

361A—Protection of publication of proceedings of Parliament and State Legislatures.

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

Provided that nothing in this clause shall apply to the publication of any report of the proceedings of a secret sitting of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State.

(2) Clause (1) shall apply in relation to reports or matters broadcast by means of wireless telegraphy as part of any programme or service provided by means of a broadcasting station as it applies in relation to reports or matters published in a newspaper.

Explanation—In this article, 'newspaper' includes a news agency report containing material for publication in a newspaper.

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2.6.1 Samachar

Another significant media event during Emergency was the formation of Samachar. The four agencies, PTI, UNI, Hindustan Samachar and Samachar Bharti merged their separate identities into what came to be known as 'Samachar' in February 1976.

The decision to 'restructure' the four teleprinter news agencies had been taken by Prime Minister Indira Gandhi at a meeting held in her office on 26 July 1975. Minister (Information & Broadcasting), V.C. Shukla, had several times discussed with the heads and representatives of the four agencies about his proposal for merging all the agencies to form a single agency.

While efforts were made to 'persuade' the heads of the agencies to agree to the merger, several other steps were taken by the Government. All India Radio, then a Government department, on 2 January 1976, served notices on PTI and UNI that the subscription would cease with effect from 1 February 1976. The formal agreements had expired as far back as 1973 and thus there was no legal problem in serving such notices. The teleprinter services being taken by different Government departments and at the residence of ministers were terminated. The type of response from the agencies varied although under the circumstances each one had to fall in line.

The employees' unions of the four agencies passed resolutions accepting the idea of a single national news agency. The employees legitimately believed that belonging to a larger size all India body could in no way be disadvantageous to them. Indeed, there was a section of opinion which held that the country should have only one major news agency; such an evidence was laid before them by several eminent journalists, including some who had themselves suffered during the Emergency as a result of the creation of Samachar.

On 21 January 1976, V.C Shukla made a statement in the Lok Sabha saying that the Government welcomed the initiatives taken by the news agencies towards merger. As against the proposal for a statutory corporation owned by the Government, which had been considered in December 1975, a Society registered under the Societies Registration Act, 1860, on an application signed by seven persons on 24 January, 1976. The applicants were: G. Kasturi, P.C. Gupta, Dr Ram S. Tarneja, Abid Ali Khan, Dr L.M. Singhvi, N. Rajan and B.K. Joshi.

The credit line of Samachar had started appearing from 1 February 1976, following an agreement signed by the four Agencies on 29 January 1976. Thereafter, the Agencies gave the power of attorney to the Samachar Managing Committee to transact all business on their behalf; their General Bodies approved this in due course. With effect from 1 April 1976, the Managing Committee of the Samachar started functioning and carrying on business, which had belonged to the four Agencies.

Non-Aligned News Agencies Pool (NANAP) came into existence in 1976. Samachar was Indian partner in the arrangement. Before the initiation of the Non-

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aligned Pool idea, the Samachar relied for the bulk of its international news on Reuters (UK), AP (USA) and AFP (France). In addition, it had bilateral agreements with the following: TASS (Soviet Union), PAP (Poland), ADN (GDR), CETEKA (Czechoslovakia), KYODO (Japan), AGERPRESS (Romania), ANSA (Italy), PRENSA LATINA (Cuba), ANTARA (Indonesia), VNA (Vietnam), TANJUG (Yugoslavia) and BSS (Bangladesh), the last five being national agencies of non-aligned countries.

After the New Delhi Conference in July 1976 and the acceptance of the News Agencies Pool Scheme, the Samachar started arrangements for exchange of news with the following nine news agencies from the non-aligned world: QNA (Qatar), INA (Iraq), SUNA (Sudan), ALPRESS (Algeria), MAPRESS (Morocco), KNA (Kenya), ENA (Ethiopia), ZANA (Zambia) and BERNAMA (Malaysia). In the course of year 1976–77, 'arrangements' were started with another seven news Agencies of non-aligned countries: MENA (Egypt), ARNA (Libya), GNA (Ghana), SHIHATA (Tanzania), NOTIMEX (Mexico), RSS (Nepal) and SLBC (Sri Lanka).

Samachar reorganized the Hindi Wing and recruited more staff for this purpose and started offering a complete service to the subscribers and many Hindi papers which were earlier taking the English service switched over to the Hindi service. A Marathi service was also launched. Samachar became a major election issue in 1977 elections and after the defeat of Indira Gandhi the fate of this entity was sealed.

The Committee to examine the structure of Samachar as news agency and suggest its reorganization was appointed by the Government of India, Ministry of Information and Broadcasting through Resolution Number 30/14/77-Press dated 19 April 1977. Kuldip Nayar chaired the Committee. Its members were: D.R. Mankekar, C.R. Irani, A.K. Sarkar, K.R. Malkani, Rahul Barpute, Ishrat Ali Siddiqui, K. Chathunni Master, Nikhil Chakravartty, S.G. Munagekar, R. Rajagopalan and L. Dayal (Member Secretary). The Committee submitted its report in August 1977.

It recommended the restructuring of Samachar into two agencies, one to provide services in English and other in Indian languages and both to organize jointly an international agency. 'We recommend that the Samachar should be dissolved and in its place there should be two news agencies: VARTA and SANDESH. They in turn should set up jointly an organisation for international services, which may be called NEWS INDIA. The new arrangement, according to our recommendations should be brought about by Parliament through a charter which should be reviewed after 10 years.'[13]

The committee said the purpose of creating the news agency set-up under a statutory charter from the Parliament is three-fold: (1) to provide safeguards for the qualitative attributes of objectivity, adequacy and independence, (2) to preserve

[13] Shrivastava, K.M. 2007. *News agencies from Pigeon to Internet.* New Delhi: New Dawn Press.

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the structure of the Agencies, (3) to extend statutory protection to the process of conversion of existing agencies into the new set-up. 'We recommend that in the Act of Parliament provisions should be made to the effect that the collection and dissemination of news would be free from any slant, pressure or interference exerted either by Government authorities or by any other source and that the news coverage would be fully impartial, objective and independent.'

In effect, the Committee retained the basic structure of SAMACHAR, giving different names to its English, Hindi and foreign services and making them separate entities.

The report was examined by a Cabinet sub-committee, which favoured a return to the position as it obtained before the formation of Samachar. L.K. Advani as minister for information and broadcasting in a statement made in both the houses of Parliament announced this decision of the Government on 14 November 1977:

> The former Government had not only actively assisted the formation of Samachar but had also guided the managing committee of Samachar in their policy decisions. Samachar was in this sense, a product and symbol of Emergency and indeed, an aberration arising out of Emergency. Government have therefore, come to the conclusion that at the moment Government's role in the matter should be limited simply to the setting right of this aberration. News agencies forced to merge under pressure and against their will during the Emergency should be allowed to function independently as they were earlier. It would then be open to them if they were to cooperate or come together in order to ensure that they are able to play more effectively the pivotal role expected of them in the press set up. Government feels that having created a climate of freedom they should leave the development and expansion of news agencies to the Press and the agencies themselves.

The *status quo ante* was restored and the four agencies resumed functioning separately like before Samachar from 14 April 1978. At the time of breakup of Samachar, the Government offered them financial assistance on a tapering basis for six years, besides non-recurring rehabilitation grant and development loans to restart separate operations once again. India Desk of Non-Aligned News Agencies Pool is operated by PTI. Hindustan Samachar and Samachar Bharti were once again in financial trouble within a decade and closed down. UNI also declined and PTI remained viable as a national news agency. If Samachar was not dismantled it might have grown into an International News Agency.

CHECK YOUR PROGRESS

8. Which form of government was preferred by Plato?
9. Who developed the idea that 'true freedom is within the state'?
10. What was the general method of press control employed by the authoritarian states?
11. Who is credited with coining the usage 'the fourth estate'?
12. Name the external factors that imperil press autonomy.

2.7 SUMMARY

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- The freedom of speech and expression is must for the full development of individual personalities which ultimately lays the foundation for a progressive nation. Before Indian Independence, there was no constitutional or statutory provision to protect the freedom of press.
- The Privy *Council observed in Channing Arnold Vs. King Emperor*: 'The freedom of the journalist is an ordinary part of the freedom of the subject and to whatever length, the subject in general may go, so also may the journalist, but apart from statute law his privilege is no other and no higher. The range of his assertions, his criticisms or his comments is as wide as, and no wider than that of any other subject.'
- After Independence this basic right was ensured through Article 19(1)(a). It laid a solid footing for the emergence of an impartial, competitive and technically developing media industry in the country.
- It can not be denied that democracy and press freedom are strongly related to each other. Mass media plays an indispensable role in democracy by functioning as a link between the masses and their political representatives. This 'information and representation' role of media is supposedly best performed if it is allowed to function in an environment of freedom. Press freedom and democracy are the expressions having a very high positive emotional value.
- The term 'Fourth Estate' was initially used as a synonym for newspapers. However, with the arrival of radio, news magazines, television and Internet, its meaning has acquired a broader shape to mean all that is called 'mass media'.
- The expression 'journalism' usually referred to as 'news business' comprises the gathering, processing and delivery of essential and vital information regarding the current affairs through the print media (newspapers and news magazines) and electronic media (TV, radio, Internet, etc).

2.8 KEY TERMS

- **Human rights:** Fundamental rights that humans get by the fact of being human. These are neither created nor can be abrogated by the government
- **Rule of law:** Refers to the complete predominance or supremacy of the common law of the land over all citizens, no matter how powerful or influential
- **Social justice:** The practice of fair and appropriate administration of laws in compliance with the natural law that all individuals, irrespective of gender, ethnic origin, race, possessions, religion, etc. are treated equally without any prejudice

- **Freedom of expression:** Right to express one's opinions and ideas freely in the form of speech, writing and other kinds of communication but without intentionally hurting others' character and/or reputation through misleading or false statements
- **Freedom of press:** Directly related to the 'freedom of expression', it includes the use of media for the same
- **Civil rights:** Personal rights obtained by a person due to his/her status of being a resident or citizen or regular entitlements to certain freedoms provided by law or custom
- **Libel:** Intentional or negligent publication or broadcast of a statement that is defamatory, thus exposing an individual to disrespect, contempt, hatred or ridicule
- **Defamation:** The practice of making false and derogatory statement(s) in public or private about an individual's character, business practices, financial status, reputation or morals
- **Slander:** Comprises defamatory, base, untrue words said aloud and explicitly, and intended to prejudice another individual in business, source of livelihood or reputation
- **Edition:** Comprises all the copies of a publication published in one or more impressions, but in one format, from the same typeset master, bound and issued at the same time

2.9 ANSWERS TO 'CHECK YOUR PROGRESS'

1. The General Assembly of the United Nations proclaimed and adopted the Universal Declaration of Human Rights on 10 December 1948.
2. Article 19 of the Universal Declaration of Human Rights comprises the right to freedom of opinion and expression stating:

   'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.'
3. Within the Constituent Assembly as well as outside it, there was much disapproval and criticism of the exclusion of an explicit reference to the 'freedom of press' and the failure to ensure it along with the 'freedom of speech'. The protagonists of a 'free press' as a separate right considered it a very serious lapse on the part of the Drafting Committee.
4. The great problem in providing for and guaranteeing fundamental rights in any constitution is where to draw the line between personal liberty and social control. True liberty can flourish only in a well-ordered state and when the foundations of the state are not imperiled.

5. As per Article 19(2), 'the State' has been defined in Article 12 as including, among other things, the Government and the Legislature of each of the erstwhile Provinces'.
6. The court held that the expression 'public safety' had a more comprehensive connotation than 'security of the State', because the former comprised a number of inconsequential matters not essentially that much serious like the matter of state security. It summarized that 'unless a law restricting freedom of speech and expression is directed solely against the undermining of the security of the State or the overthrow of it, such law cannot fall within the reservation under clause (2) of Article 19, although the restrictions which it seeks to impose may have been conceived generally in the interests of public order is beyond the reach of authorized limitations under clause (2), and is therefore, "void and unconstitutional".
7. The First Amendment gave an indication of the types of battles expected to take place due to the friction between the project of nation building and the domain of media. It signified the task of promoting national security and sovereignty ahead of promoting the democratic institutions. It introduced the discourse of public order into constitutional checks and balances on the freedom of speech and expression. In addition, it introduced the idea of 'reasonable restriction' as well.
8. Greek philosopher Plato idealized the aristocratic form of government. He was convinced that the nature of man, including his material interests and selfish passions, would tend to degrade government from an aristocracy to timocracy, to oligarchy, to democracy and finally to tyranny.
9. The belief that true freedom is freedom within the State instead of the freedom from the State was developed and propagated more comprehensively by the German political philosopher and historian, Heinrich von Treitschke. He developed these ideas through his little pamphlet Freedom and the colossal work Politics. Doing a critical analysis of democracies in general and the democracies of Switzerland and the United States in particular, Treitschke summarized that the rule of the majority held no guarantee that either political freedom or social liberty will sustain.
10. A general method of press control which the authoritarian states employed was prosecution before the courts. 'Treason' and 'sedition' were the two conventional areas of law that were used as the basis for prosecuting the persons suspected or accused of spreading information or opinions opposed to the authorities.
11. The importance of a free press to a democratic society is highlighted by the label the 'fourth estate' a term attributed to 18th century British philosopher and politician Edmund Burke. Unlike the American Founding Fathers who followed him, Burke recognized the significance of the checking power of a free press, consequently bestowing on the press an unofficial status as a branch of government.

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12. The following are the external factors which imperil press autonomy as the most assessable criteria: regulations, laws and administrative measures which control media content, controls and political pressures on media content, economic pressures over media content and oppressive actions (physical violence, censorship, arrests and killing of journalists).

2.10 QUESTIONS AND EXERCISES

Short-Answer Questions

1. In what manner the Universal Declaration of Human Rights intends to ensure the right of freedom and expression to the individuals.
2. Which article of the Indian Constitution provides the freedom of expression to the citizens?
3. How is the right to the freedom of expression put under reasonable restrictions?
4. What was the first amendment to the Indian Constitution?

Long-Answer Questions

1. What were the three judicial decisions that emphasize the need of certain restrictions on the right to freedom of expression in India? Discuss them in detail.
2. Discuss the evolution of the concept of the freedom of press.
3. What do you understand by free press? Explain three levels of independence enjoyed by the media.
4. Discuss Mahatma Gandhi's views on journalism and press.

2.11 FURTHER READING

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UNIT 3 MEDIA LAWS

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Structure

3.0 Introduction
3.1 Unit Objectives
3.2 Defamation: Libel and Slander
3.3 Sedition
3.4 Obscenity
3.4.1 Tests of Obscenity
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3.0 INTRODUCTION

Mass Media systems in the world differ from each other on the basis of polity, economy, culture and religion of different societies. In the Indian scenario and its Parliamentary Democracy, the media is free but subject to some reasonable restrictions provided by the Indian Constitution. Before the onset of globalization on the Indian scene, the mass media was under governmental control to a large extent. It allowed the media to project only that image, things and happenings which the Government wanted the public to see. Nonetheless, with the beginning of privatization and globalization, the situation has undergone a big change.

Before the era of communication satellites, communication was mostly in the form of national media—public and private—in India as well as abroad. Afterwards, 'transnational media' arrived with a bang along with the evolution of communication technologies like Satellite delivery and ISDN (Integrated Services Digital Network). Consequently, local TV, global films and global information systems made the national and international media scene very complex and sophisticated. Due to this unprecedented media upsurge, it becomes unavoidable to put certain legal checks and balances on the transmission and communication of public content. In the due course of this unit, we will discuss various aspects of media control and the relevant legal checks and balances defining them in the form of slander, libel, sedition, obscenity, censorship and the contempt of court.

3.1 UNIT OBJECTIVES

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After going through this unit, you will be able to:

- Learn the state of press control during the colonial period in India
- Discuss the evolution and growth of media control in the world
- Critically evaluate the changing shape of media laws after Independence in the country
- Know the forms of media control like slander, libel, defamation, sedition, obscenity and censorship
- Examine various court rulings in the country related to media laws.

3.2 DEFAMATION: LIBEL AND SLANDER

Defamation means a public communication which is intended to harm the reputation of an individual. It comprises both slander (oral ones) and libel (written defamatory statements). In practice, the definition and meaning of defamation differs from jurisdiction to jurisdiction. However, there is common consensus that a communication that is just unflattering, irksome, annoying or embarrassing or for that matter hurts only the plaintiff's feelings and sentiments, does not strictly qualify as defamation. According to the U.S. Restatement (Second) of Torts, defamation is a communication that 'tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him'.

In England a court puts the inquiry whether 'what has been published would tend in the minds of people of ordinary sense to bring the plaintiff into contempt, hatred, or ridicule or to injure his character'. 'Other common tests include: "lowering the plaintiff in the estimation of right-thinking people generally", "injuring the plaintiff's reputation by exposing him to hatred, contempt or ridicule" and "tending to make the plaintiff be shunned and avoided".' The elements found common in the majority of jurisdictions include a statement, publication to a third party or parties and the possibility to damage the plaintiff's status.

Section 499 of Indian Penal Code[1] provides that:

> Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, do defame that person.
>
> **Explanation 1:** It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

[1] *Indian Penal Code*, available at http://mynation.net/di/law.htm, access date 18.01.2011.

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Explanation 2: It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3: An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4: No imputation is said to harm a person's reputations, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations:

1. A says: 'Z is an honest man; he never stole B's watch'; intending to cause it to be believed that Z did steal B's watch. This is defamation unless it falls within one of the exceptions.

2. A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it falls within one of the exceptions.

3. A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it falls within one of the exceptions.

Exceptions:

Imputation of truth public which good requires be making or publishing: It is not defamation to impute anything, which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Public conduct of public servants: It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Conduct of any person touching any public question: It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Publication of reports of proceedings of Courts: It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings. A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice is a Court within the meaning of the above section.

Merits of case decided in Court or conduct of witnesses and others concerned: It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that, and no further.

1. A says, 'I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest.' A is within this exception if he says this in good faith, in as much as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

2. But if A says, 'I do not believe what Z asserted at that trial because I know him to be man without veracity'; A is not within this exception, inasmuch as the opinion which he expresses of Z's character, is an opinion not founded on Z's conduct as a witness.

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Section 500 of IPC provides punishment for defamation: 'Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.'

The origin of the law of defamation can be drawn to ancient times. Although it has evolved significantly, the contemporary themes are quite noticeable in its origins. The concept of civil law evolved from the Roman *acto injuriarum*, which concentrated more on the 'intentional and unjustified hurting of another's feelings' than harm to public status. In fact, the Roman law heavily influenced the evolution of the common-law slander and libel. During the time of Henry III (1216–1272) in England, libel got defined as 'the use of abusive language addressed to a man publicly or the act of inciting a crowd to beset a man's house or to mob the man himself'. Civil and criminal punishments for defamation were decided by the Court of Star Chamber in England.

The common law action developed from the English ecclesiastical courts' inability to adequately deal with the problem of defamation. The church courts had the powers to order the offenders to apologize; however, the victims usually found such actions insufficient and took to duels for revenge or satisfaction. The *Scandalum Magnatum* was passed in 1275 to check this violence. It introduced the following two grounds of justifications for the defamation law which remains relevant even today:

1. The Parliament was eager to stop insults targeting the nation's 'best men' as it was apprehending threats to the feudal order. This thought developed into a concern that unchecked criticism will throw out qualified people out of public service.
2. The government, at that time the Crown, wanted to suppress the critics who were threatening its legitimacy. During that time, the challenge was put up by those who did not believe in the idea that the king was ordained by God to rule over them. By 1676, the common law came to incorporate the *Scandalum Magnatum* and its successors.

Presently, almost all the states in the world possess a set of civil or criminal law to guard the individual and institutional reputation. Modern jurisprudence is yet to take a clearly defined stand on the issue of criminal defamation. Some of the courts think that this kind of prosecution is inappropriate. Others put the argument that the criminal defamation laws intrinsically infringe upon the freedom of expression and hence must be abolished entirely. Despite these divergent opinions, various cases and commentaries suggest a trend towards discouraging criminal prosecutions for defamation.

Once the incident reaches trial, the common law has conventionally provided three defenses to defamation: truth, fair comment and privilege. Truth, or say

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justification, is a total defense for the statements of the fact. If the defendants are able to prove the truth and substance of a defamatory statement, they are not held liable for damages. In Britain, the defendant is just required to show that the concerned statement is 'substantially correct'. This defense of reasonable and fair comment provides protection to express the opinions. The court is not required to agree with the viewpoint; in its place, it has to determine 'whether the views could honestly have been held by a fair-minded person on facts known at the time'. Although it might be easier to argue and defend fair comments than to justify facts, the defense does not cover all the opinions and viewpoints. It is bound upon the defendants to prove their opinions to be based upon facts made in the public interest; it is really hard to meet the latter requirement unless the defamation involves the private life of an individual who is not a public personality. The defendants are not required to substantiate that they honestly hold the opinion. They just have to prove that a reasonable individual may hold such an opinion. Fair comment, unlike justification, may be defeated if the plaintiff is able to prove that the defamer acted maliciously.

Privilege—qualified or absolute—is designed in a manner to protect the expression made for the common good. Absolute privilege provides a total defense for the people 'with a public duty to speak out'. For example, the elected officials can speak freely in Parliament; lawyers, judges and witnesses cannot be prosecuted for what they say in the court; certain government officials cannot be held accountable for reports about state matters. In the absence of such a defense, defamation threat deters these people from speaking freely, independently and in the public interest. However, the qualified privilege offers protection to the expression made in public interest except when the statements are made in malice. It needs 'reciprocity of interest' between the individual who makes the comment and the one who is the object of it. The defense is applicable to the individuals bound with a social or moral responsibility to report information, like the incidence of a crime, and to the authorities having a responsibility 'to receive and act upon' complaints and communications.

In English common law, certain statements like accusing somebody of lying, doing a crime or suffering from a despicable disease were considered libelous *per se*. It meant these could not be considered innocent in meaning and needed no extra information for the defamatory meaning to be apparent. On the other hand, libel *per quod* needed extrinsic evidence, i.e., saying that a woman is pregnant will not damage her reputation unless supplementary facts (for example, her husband is out of the country for the last 1 year) is made known. In practice, modern-day sanctions make no difference between libel *per se* and libel *per quod*.

In case of falsity, the English common law needed just considerable truth, which in practice meant that small inconsistencies were excused. The substantial truth principle is still prevalent in the United States; however, England and other Western countries put the onus of substantiating truth on the communicator himself.

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Many countries do recognize the risk of providing the government the right to take legal action against its critics for defamation. In *Derbyshire County Council Vs. Times Newspapers Ltd.* (1993), the English House of Lords made a ruling that the common law does not permit a local authority to entertain an action for libel. In this case, the County Council made an attempt to prosecute the *Sunday Times* and its staff for two articles that questioned the management of a superannuation fund and council investments. Since the council is elected, Lord Keith of Kinkel stated that it 'should be open to uninhibited public criticism and the threat of a civil action for defamation must inevitably have an inhibiting effect on freedom of speech'. One year later, following the *Derbyshire*'s lead, the Supreme Court of India, in *R. Rajagopal Vs. State of T.N.* (1994) found that 'the Government, local authority and other organs and institutions exercising power' cannot exercise a defamation suit for damages. Taking a step further, the Court also ruled that since the public officials do not possess the right to privacy, they cannot ask for damages for statements which discuss their official conduct and behaviour.

The US Supreme Court provided a path-breaking test to secure the freedom of expression. Realizing the limits of the customary truth defense, *New York Times Co. Vs. Sullivan* (1964) concentrated on the defendant's intention and instituted a malice and hatred requirement for defamation. This test applies particularly to public officials and moves the burden of proof onto the plaintiff. Contrary to the conventional common law defenses, the case was regarding an advertisement appearing in the *New York Times* and signed by, among others, four African American clergymen who were also among the defendants. An elected police commissioner, Sullivan, from Montgomery, Alabama, made an allegation that the accusations included in the advertisement about police violence against civil rights protestors hurt his reputation. Although the advertisement included some factual errors, Justice Brennan discarded the obligation that the defendant prove the truth and argued that an 'erroneous statement is inevitable in free debate'. The court held the opinion that a public official may demand compensation only if he or she proves that 'the statement was made with 'actual malice', i.e., 'with knowledge that it was false or with reckless disregard for whether it was false or not'. Addressing the issue of maintaining a balance between reputation and free expression, Justice Brennan stated that the plaintiff might have suffered 'injury to official reputation' but it did not rationalize 'repressing speech that would otherwise be free'. By transferring the burden and altering the *mens rea* for defamation, this case spared innocent mistakes while protecting political criticism born of good faith. The Indian Supreme Court mentioned and dwelt upon *Sullivan* at a great length in *Rajagopal Vs. State of T.N.* (1994). This case comprised the publication of the autobiography of a person convicted of murder which alleged criminal links with prison officials. Accepting that the Indian Constitution might not guard as much expression as the First Amendment of the United States, the court held the opinion that the media plays a significant role in the form of a government watchdog.

Not mentioning the term 'malice' explicitly, it observed that the public officials do not possess the right to take judicial remedy for damages regarding official duties except when they prove that the defendant published information with 'reckless disregard for the truth'.

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The present-day problems of libel and slander comprise jurisdictional and other matters born of Internet communication. In the landmark 2002 case *Dow Jones and Co. Vs. Gutnick*, the High Court of Australia held that an Australian could sue an American publisher in Australia for defamation, based on the publication of online statements. In other words, the defamation occurred at the place of reception and not just at the place of publication.

Another problem involves the effect of Internet on the 'common law rule' that a re-publisher of libel or slander was just as culpable as the originator. The US Congress in 1996 adopted a provision protecting Internet service providers from liability for libels propagated by users in electronic mail messages or on electronic bulletin boards. However, few countries have gone that far in immunizing the service providers to that extent.

CHECK YOUR PROGRESS

1. What are the two forms of defamation?
2. Give the origin of the law of defamation.
3. Why modern law is yet to adopt a clearly defined stand on 'criminal defamation'?
4. What is the difference between libel *per se* and libel *per quod* in the English common law?

3.3 SEDITION

Sedition means a crime against the State. Though sedition might result in the same eventual effect as treason; it is, however, usually limited to the misdemeanor of supporting, organizing or encouraging opposition to government (e.g., in speech or writing) that in a manner falls short of the still more dangerous offenses that comprise treason.

Indian Penal Code in Section 124A deals with sedition. The section corresponding to Section 124A was originally Section 113 of Macaulay's Draft Penal Code of 1837–39. However, the section was omitted from the Indian Penal Code as it was enacted in 1860. Section 124A was included in the Statute Book by the Act XXVII of 1870. The section as then enacted ran as follows[2]:

[2] *The Indian Penal Code*, available at http://www.indiankanoon.org/doc/334102/, access date 19.01.2011.

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124A. Exciting Disaffection—

Whoever by words, either spoken or intended to be read, or by signs, or by visible representation, or otherwise, excites, or attempts to excite, feelings of disaffection to the Government established by law in British India, shall be punished with transportation for life or for any term, to which, fine may be added, or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine.

Explanation—Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, is not disaffection. Therefore, the making of comments on the measures of the Government, with the intention of exciting only this species of disapprobation, is not an offence within this clause.

The section was amended by the Indian Penal Code Amendment Act IV of 1898. As a result of the amendment, the single explanation to the section was replaced by three separate explanations as they stand now. The section, as it now stands in its present form, is the result of the several A.O.S. of 1937, 1948 and 1950, as a result of the constitutional changes, by the Government of India Act, 1935, by the Independence Act of 1947 and by the Indian Constitution of 1950.

Section 124A, as it has emerged after successive amendments by way of adaptations as aforesaid, reads as follows:

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

Explanation 1—The expression 'disaffection' includes disloyalty and all feelings of enmity.

Explanation 2—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exiting or attempting to excite hatred, contempt or disaffection do not constitute an offence under this section.

Explanation 3—Comments expressing disapprobation of the administrative of other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.'

This offence, which is generally known as the offence of Sedition, occurs in Chapter IV of the Indian Penal Code, under the heading 'Of offences against the State'.

Every State, whatever its form of government, has to be armed with the power to punish those who, by their conduct, jeopardize the safety and stability of the State, or disseminate such feelings of disloyalty as have the tendency to lead to the disruption of the State or to public disorder. In England, the crime has thus been described in *Stephen's Commentaries on the Laws of England,* in these words:

Section IX—Sedition and Inciting to Disaffection: We are now concerned with conduct which, on the one hand, fall short of treason, and on the other does not involve the use of force or violence. The law has here to reconcile the right of

> private criticism with the necessity of securing the safety and stability of the State. Sedition may be defined as conduct which has, either as its object or as its natural consequence, the unlawful display of dissatisfaction with the Government or with the existing order of society.
>
> The seditious conduct may be by words, by deed, or by writing. Five specific heads of sedition may be enumerated according to the object of the accused. This may be either
>
> 1. to excite disaffection against the King, Government, or Constitution, or against Parliament or the administration of justice;
> 2. to promote, by unlawful means, any alteration in Church or State;
> 3. to incite a disturbance of the peace;
> 4. to raise discontent among the King's subjects;
> 5. to excite class hatred.
>
> It must be observed that criticism on political matters is not of itself seditious. The test is the manner in which it is made. Candid and honest discussion is permitted. The law only interferes when the discussion passes the bounds of fair criticism. More especially will this be the case when the natural consequence of the prisoner's conduct is to promote public disorder.

This statement of the law is derived mainly from the address to the Jury by Fitzgerald, J., in the case of *Reg Vs. Alexander Martin Sullivan.* In the course of his address to the Jury the learned Judge observed as follows:

> Sedition is a crime against society, nearly allied to that of treason, and it frequently precedes treason by short interval. Sedition in itself is a comprehensive term, and it embraces all those practices, whether by word, deed or writing, which are calculated to disturb the tranquility of the State, and lead ignorant persons to endeavour to subvert the Government and the laws of the empire. The objects of sedition generally are to induce discontent and insurrection and stir up opposition to the Government, and bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion. Sedition has been described, as disloyalty in action and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the Sovereign or the Government, the laws or constitution of the realm, and generally all endeavours to promote public disorder.

Charging the Jury in respect of the indictment which contained the charge of seditious libel by a publication by the defendant, Coleridge, J., in the case of *Rex Vs. Aldred* (1909) observed:

> Nothing is clearer than the law on this head, namely, that whoever by language, either written or spoken incites or encourages other to use physical force or violence in some public matter connected with the State, is guilty of publishing a seditious libel. The word 'sedition' in its ordinary natural signification denotes a tumult, an insurrection, a popular commotion, or uproar; it implies violence or lawlessness in some form....

In *Kedar Nath Singh Vs. State of Bihar* on 20 January 1962 the Supreme Court of India held:

> Section 124A of the Indian Penal Code which makes sedition an offence is constitutionally valid. Though the section imposes restrictions on the

fundamental freedom of speech and expression, the restrictions are in the interest of public order and are within the ambit of permissible legislative interference with the fundamental right.

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The five judge bench headed by Chief Justice B.P. Sinha observed:

> This Court, as the custodian and guarantor of the fundamental rights of the citizens, has the duty cast upon it of striking down any law which unduly restricts the freedom of speech and expression with which we are concerned in this case. But the freedom has to be guarded against becoming a licence for vilification and condemnation of the Government established by law, in words which incite violence or have the tendency to create public disorder. A citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder.

3.4 OBSCENITY

In *Shri Chandrakant Kalyandas Kakodkar Vs. The State of Maharashtra and Others, (1962 (2) SCC 687)*, the Supreme Court of India observed that:

> The concept of obscenity would differ from country to country depending on the standards of morals of contemporary society. What is considered as a piece of literature in France may be obscene in England and what is considered in both countries as not harmful to public order and morals may be obscene in our country. But to insist that the standard should always be for the writer to see that the adolescent ought not to be brought into contact with sex or that if they read any references to sex in what is written whether that is the dominant theme or not they would be affected, would be to require authors to write books only for the adolescent and not for the adults.

In the beginning of 1960s, the Supreme Court of India termed *Lady Chatterley's Lover* as 'obscene'. The expression 'pornography' when used regarding an offence is not specifically defined in any of the statutes in India. However, the expression 'obscenity' is explained in two statutes in India: (i) The Indian Penal Code, 1860 and (ii) The Information Technology Act, 2000. According to Section 292 of the IPC and Section 67 of the IT Act, 'obscenity' means anything that is lascivious or appeals to the prurient interest or in effect it depraves and corrupts the individuals and society.

Section 292 of the IPC as it stands today is quite comprehensive[3]:

> 292 Sale, etc. of obscene books, etc.
>
> (1) For the purposes of sub-section (2), a book, pamphlet, paper, writing, drawing, painting representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

[3] *Indian Penal Code*, available at http://www.vakilno1.com/bareacts/indianpenalcode/s292.htm, access date 18.01.2011.

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(2) Whoever—

(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, reduces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or

(b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or

(d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or

(e) offers or attempts to do any act which is an offence under this section, shall be punished on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees.

Exception—This section does not extend to:

(a) any book, pamphlet, paper, writing, drawing, painting, representation or figure—

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern, or

(ii) which is kept or used bona fide for religious purposes;

(b) any representation sculptured, engraved, painted or otherwise represented on or in—

(i) any ancient monument within the meaning of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), or

(ii) any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

A plain reading of Section 292 of the IPC gives an indication that if an individual is found possessing some obscene material just for his personal use without any objective and intention to act upon any of the purposes mentioned in Section 292 (as given above) it may not count as an offence as per Section 292. In the case *Jagdish Chavla and others Vs. the State of Rajasthan, 1999 CR LJ 2562 (Raj)*, the accused individual was found watching a pornographic film on the television. The VCR along with the cassette was confiscated and a case under Section 292 of the IPC was registered against him. The person filed a petition in the High Court to get the proceedings quashed. The court found that just possessing a blue film does not make an individual guilty as per Section 292 except when it

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gets further proved that the reason of possessing the same is either selling or letting it on hire. Hence in the absence of any proof regarding the intention of possessing the same, none of the offences given in Section 292 could be proved and the proceedings were quashed. So the law excludes from accountability (under Section 292) just the possession of obscene and pornographic material for ones own personal use without any objective to do any of the activities mentioned in Section 292.

Nonetheless, it is better to be aware that a prosecution might dispute that the individual, merely possessing the obscene material just for his own personal use, in fact aids and abets the sale, publication, distribution, hiring, etc. of the pornographic material, which counts as an offence under Section 292. Further, under Section 111 of the IPC, the accomplice in such activities is liable to be held equally guilty of the offence if it gets proved that the offence is a plausible outcome of the abetment.

3.4.1 Tests of Obscenity

The Supreme Court of India has dealt with the matter of obscenity on several occasions. It laid down, considering the right of freedom and expression given in Article 19(1)(a) of the Indian Constitution, its intent and purport and chalked down the wide-ranging principles to determine/judge what constituted obscenity. In *Director General, Directorate General of Doordarshan & Ors. Vs. Anand Patwardhan & Anr.* reported in JT 2006(8) SC 255 (Dr A.R. Lakshmanan and L.S. Panta, JJ) Supreme Court of India mentioned the Hicklin test.

The Hicklin test is a legal concept originating from the English case *R. Vs. Hicklin* (1868), LR 3 QB 360, in English Common Law. It states that a legislature has the power to outlaw anything which 'depraves and corrupts those whose minds are open to such immoral influences and into whose hands a publication of this sort might fall'.

The test questions 'whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences'. If the answer is 'yes', such matter is liable to be declared obscene. Further, the Hicklin test evaluated the concerned content not in totality, but only in parts, i.e., it did not see the objectionable material in relation to the overall content.

The US Supreme Court rejected the Hicklin test in *Roth Vs. United States* (1957) case. It ruled that the suitable test for obscenity is 'whether to the average person, applying contemporary community standards, the dominant theme of the material, taken as a whole, appeals to the prurient interest'. Writing for the Court, Justice Brennan expressed obscenity as 'material which deals with sex in a manner appealing to prurient interest . . . having a tendency to excite lustful thoughts [or] as [a] shameful and morbid interest in sex'.

In *Miller Vs. California* (1973) case, the US Supreme Court formulated a three-part test to decide if the content is obscene and, hence, not worth protection under the First Amendment:

> (1) whether the average person, applying contemporary community standards, would find the work, taken as a whole, appeals to prurient interests; (2) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by applicable state law; (3) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

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In *Samaresh Bose & Anr. Vs. Amal Mitra & Anr.* (Supra) 1986 AIR 967 1985 SCR Supl. (3) 17, the Supreme Court of India stated:

> In England, as we have earlier noticed, the decision on the question of obscenity rests with the jury who on the basis of the summing up of the legal principles governing such action by the learned Judge decides whether any particular novel, story or writing is obscene or not. In India, however, the responsibility of the decision rests essentially on the Court. As laid down in both the decisions of Supreme Court of India earlier referred to, 'the question whether a particular article or story or book is obscene or not does not altogether depend on oral evidence, because it is the duty of the Court to ascertain whether the book or story or any passage or passages therein offend the provisions of Section 292 I.P.C.' In deciding the question of obscenity of any book, story or article the Court whose responsibility it is to adjudge the question may, if the Court considers it necessary, rely to an extent on evidence and views of leading literary personage, if available, for its own appreciation and assessment and for satisfaction of its own conscience. The decision of the Court must necessarily be on an objective assessment of the book or story or article as a whole and with particular reference to the passages complained of in the book, story or article.

Per se nudity is not obscenity

The American Courts have repeatedly dealt with the matters of obscenity and set up parameters to test and judge obscenity. It was also submitted that to determine whether a picture is obscene or not it is necessary to first decide about the nature and quality of the content published. The category of readers should also be taken into consideration. The pictures and articles in a newspaper should fulfill the Miller test's constitutional standard of obscenity for the publisher or distributor to be sued for obscenity. Nudity by itself is not enough to turn the material legally obscene. Keeping an obscene newspaper at home is constitutionally protected, except when the content includes child pornography.

In *New York Vs. Ferber* (1982), the US Supreme Court in a unanimous decision outlawed child pornography, even if the pictures are not found obscene as per the Miller test. The Court defended a New York statute prohibiting the exhibition, production or selling of any material or content that depicts any performance or presentation by a child under the age of 16 including 'actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse or lewd exhibitions of the genitals'. Justice White for the Court said, 'The prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance.'

Contemporary society

It was also argued that to protect minors and children the State must remember that the same content may not be that much offensive to the sense and sensibilities

of adult men and women. The shielding of minors should not come at the cost of restricting the adult population from reading and seeing the material fit for their age groups.

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In *Alfred E Butler Vs. State of Michigan*, 1 Led 2d 412, the US Supreme Court stated:

> The State insists that, by thus quarantining the general reading public against books not too rugged for grown men and women in order to shield juvenile innocence, it is exercising its power to promote the general welfare. Surely, this is to burn the house to roast the pig.

The right of speech and expression should not be suppressed while protecting children from harmful content. In *Janet Reno Vs. American Civil Liberties Union*, 138 Led 2d 874, it was held:

> The Federal Government's interest in protecting children from harmful materials does not justify an unnecessarily broad suppression of speech addressed to adults, in violation of the Federal Constitution's First Amendment; the Government may not reduce the adult population to only what is fit for children, and thus the mere fact that a statutory regulation of speech was enacted for the important purpose of protecting children from exposure to sexually explicit material does not foreclose inquiry into the statute's validity under the First Amendment, such inquiry embodies an overarching commitment to make sure that Congress has designed its statute to accomplish its purpose without imposing an unnecessarily great restriction on speech.

Literary merit and 'prepondering social purpose'

When art and obscenity are intermixed, it has to be seen whether the literary, artistic or social standards of the concerned work outweigh its 'obscene' quotient. This opinion was adopted by the Supreme Court of India in *Ranjit D. Udeshi Vs. State of Maharashtra*, AIR 1965 SC case:

> Where there is propagation of ideas, opinions and information of public interest or profit the approach to the problem may become different because then the interest of society may tilt the scales in favour of free speech and expression. It is thus that books on medical science with intimate illustrations and photographs, though in a sense immodest, are not considered to be obscene but the same illustrations and photographs collected in book form without the medical text would certainly be considered to be obscene. Where art and obscenity are mixed, the element of art must be so prepondering as to overshadow the obscenity or make it so trivial/inconsequential that it can be ignored; Obscenity without a preponderating social purpose or profit cannot have the constitutional protection of free speech.

Contemporary standards

In order to assess whether a particular work is obscene or not, the contemporary mores, values and national standards must be taken into consideration. While the Indian Supreme Court found *Lady Chatterley's Lover* to be obscene, the jury in England acquitted the publishers on the grounds that the publication did not fail in the obscenity test. This turned out to be a milestone in the struggle for literary freedom in UK. Possibly the 'community mores and standards' played a major

part in the Indian Supreme Court's different ruling on the issue. However, the test has turned somewhat obsolete in the contemporary Internet age which has removed the traditional barriers by making publications from all over the world available just at the click of a mouse.

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D.H. Lawrence's novel *Lady Chatterley's Lover* was first published in 1928. Its initial edition was published in Florence, Italy. Due to its controversial nature, it could not be published openly in the United Kingdom till 1960. In the US, Alfred A. Knopf, Inc. published an authorized abridgment of *Lady Chatterley's Lover* in 1928. However, the script was censored to a great extent. Afterwards, in 1946 this edition was republished in paperback in the US by Penguin Books and Signet Books. In 1960, Penguin Books published a full and unexpurgated edition in Britain. It led to the trial of Penguin as per the Obscene Publications Act of 1959. Several academic experts and critics of varied class, including Helen Gardner, E.M. Forster, Richard Hoggart, Norman St John-Stevas and Raymond Williams were called as witnesses. The verdict was delivered on 2 November 1960. The publisher was not found guilty. The second edition by Penguin which was published in 1961 contains a publisher's dedication. It reads:

> For having published this book, Penguin Books were prosecuted under the Obscene Publications Act, 1959 at the Old Bailey in London from 20 October to 2 November 1960. This edition is therefore dedicated to the twelve jurors, three women and nine men, who returned a verdict of 'Not Guilty' and thus made D.H. Lawrence's last novel available for the first time to the public in the United Kingdom.

Modernist poet and McGill University Professor of Law F.R. Scott appeared before the Supreme Court of Canada in 1945 to save *Lady Chatterley's Lover* from censorship. Nonetheless, in spite of his efforts, the book was banned in Canada for three decades because of the issues related to open portrayal of sexual intercourse and the use of 'obscene language'. On 15 November 1960, Attorney General Kelso Roberts appointed an Ontario panel of experts. The panel found that the novel was not obscene under the Canadian Criminal Code.

In Japan, Sei Ito published a full translation of *Lady Chatterley's Lover* in 1950. It led to the well-known obscenity trial lasting from 8 May 1951 to 18 January 1952. In fact the appeals lasted till 13 March 1957. Many distinguished literary personalities testified for the defense. The trial eventually culminated in a guilty verdict. Ito was fined ¥100,000 while the publisher was fined ¥250,000 for the same.

In 1964, Ranjit Udeshi, a bookseller in Mumbai, was prosecuted under Section 292 of the Indian Penal Code for selling an unexpurgated copy of *Lady Chatterley's Lover*. The case *Ranjit D. Udeshi Vs. State of Maharashtra* (AIR 1968 SC 881) was put before a three-judge bench of the Indian Supreme Court. Chief Justice Hidayatullah considered the law on the issue regarding when and how a book may be considered as obscene. The bench also established essential tests of obscenity like the Hicklin test. The judgement justified the conviction, observing that:

> When everything said in its favour we find that in treating with sex the impugned portions viewed separately and also in the setting of the whole book pass the permissible limits judged of from our community standards and as there is no social gain to us which can be said to preponderate, we must hold the book to satisfy the test we have indicated above.

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Judging the work as a whole

It is essential that publication is judged as a whole. The impugned part, on the other hand, must also be separately analysed to decide whether the impugned sections are obscene to the extent that they will deprave and corrupt the individuals.

Opinion of literary/artistic experts

In *Ranjit Udeshi* case, the Indian Supreme Court held that the subtle task of determining what is obscene and what is artistic has to be taken up by the courts and as a last resort by the Supreme Court itself. Therefore, the evidence and opinions of the men of art and literature on the question of obscenity are not relevant and sufficient. Nevertheless, in *Samresh Bose Vs. Amal Mitra* (Supra), the Indian Supreme Court stated:

> In appropriate cases, the court, for eliminating any subjective element or personal preference which may remain hidden in the subconscious mind and may unconsciously affect a proper objective assessment, may draw upon the evidence on record and also consider the views expressed by reputed or recognized authors of literature on such questions as if there by any of his own consideration and satisfaction to enable the court to discharge the duty of making a proper assessment.

Clear and present danger

In *S. Ragarajan Vs. P. Jagjivam Ram* case, the Supreme Court of India, in interpreting Article 19(2), took into account the American test of obvious danger and observed:

> The commitment to freedom demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have a proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably like the equivalent of a 'spark in a power keg'.

Test of ordinary man

The test to judge a work is supposed to be that of a common man of general sense and prudence instead of an 'out of the ordinary or hypersensitive man'. Chief Justice Hidayatullah observed in *K. A. Abbas*, 'If the depraved begins to see in these things more than what an average person would, in much the same way, as it is wrongly said, a Frenchman sees a woman's legs in everything, it cannot be helped.'

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Invalidating a PIL filed by *Ajay Goswami* on 12 December 2006, the Indian Supreme Court stated:[4]

> The definition of obscenity differs from culture to culture, between communities within a single culture, and also between individuals within those communities. Many cultures have produced laws to define what is considered to be obscene, and censorship is often used to try to suppress or control materials that are obscene under these definitions. The term obscenity is most often used in a legal context to describe expressions (words, images, actions) that offend the prevalent sexual morality. On the other hand the Constitution of India guarantees the right of freedom to speech and expression to every citizen. This right will encompass an individual's take on any issue. However, this right is not absolute, if such speech and expression is immensely gross and will badly violate the standards of morality of a society. Therefore, any expression is subject to reasonable restriction. Freedom of expression has contributed much to the development and well-being of our free society. This right conferred by the Constitution has triggered various issues. One of the most controversial issues is balancing the need to protect society against the potential harm that may flow from obscene material, and the need to ensure respect for freedom of expression and to preserve a free flow of information and idea.

3.4.2 Obscenity Under the Information Technology Act

As per Section 67 of the IT Act, obscenity is liable to be declared an offence if it is transmitted or published or caused to be published in an electronic format. On the first conviction, the punishment for an offence falling under Section 67 of the IT Act may be an imprisonment (rigorous or simple) for a period up to five years, along with a fine that may be to the extent of one lakh rupees. Further, in the eventuality of a second or following convictions, the imprisonment (simple or rigorous) may go up to a period of ten years, along with a fine that may be to the extent of two lakh rupees.

However, the expressions 'publishing' or 'transmission' are not specially defined under the IT Act. Nonetheless, according to Taxmann's commentary 'publishing means making information available to people'. The commentary further holds that 'transmission' and not just the 'possession' of obscene information is an offence. 'Transmission' may well be addressed to some intended recipient just for his personal use and purpose. However this is not relevant here. The act of 'transmission' is adequate to be counted as an offence as per Section 67 of the IT Act. So if any type of obscene material is transmitted or published in any electronic format, it qualifies as a punishable offence under Section 67 of the IT Act. In fact, the provisions of Section 67 of the IT Act and Section 292 of the IPC are similar, wherein just the act of possessing the obscene material for ones own personal use might not be counted as an act of offence. Nonetheless on a precautionary note, it is advisable to be aware of the fact that the prosecution may make a plea of abetment even in a case of just 'possession'.

[4] *Ajay Goswami Vs. Union of India & Ors [2006] RD-SC 947* (12 December 2006)

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Section 292 of the IPC mainly deals with obscene material that can be expressed through physical mediums like books, papers, pamphlets, writings, paintings, drawings and representations. In addition, the provisions of Section 67 (corresponding to the provisions of Section 292 of the IPC) under the IT Act are concerned with computer networks and systems, an intangible medium like the Internet and electronic communication devices like cellular phones. Also, a prosecution may be started jointly or independently under both these Acts.

Applicability of the Acts to cybercafé owners

Particularly in the framework of cybercafés, if a customer downloads some obscene material for his personal use on the assigned terminal and if the owner of the cybercafé is aware of this fact, it will constitute an offence. Under these circumstances, the cybercafé owner is liable to be punished under Section 292 of the IPC read with Section 67 of the IT Act. If it is proved that the act was committed without the owner's knowledge, it may be hard for the prosecution to maintain its plea under Section 292 of the IPC and Section 67 of the IT Act. Still the owner might not be entirely absolved from liability and possibly may be held accountable for encouraging the offence (if not for its commission altogether) in terms of facilitating the distribution and circulation of the obscene material.

The law concerning the liability of cybercafé owners as per the provisions of the IPC and the IT Act is not defined very clearly. Therefore, it is open to subjective interpretation. To alleviate the liability and escape the possible criminal prosecution, the cybercafé owners may possibly try to take protection under Section 79 of the IT Act. This act absolves the 'intermediaries' who just provide access to content instead of providing the content itself. The argument of defense may also be made more solid through creating a mechanism (software or hardware) wherein the customers are not allowed to access any obscene websites and disclaimers are prominently displayed informing the customers that obscenity is a punishable offence. If the customers still access such websites, they are liable to be held personally responsible.

Nonetheless, the argument of drawing a parallel between cybercafé owners and intermediaries is yet to be judicially tested. As per the plain reading of Section 79 of the IT Act, the 'intermediaries' are limited to mean just 'network service providers' such as Videsh Sanchar Nigam Limited, Mahanagar Telephone Nigam Limited, etc. The provisions of Section 79 of the IT Act put an obligation on the intermediaries that they will be able to avail benefit from this section, if it is proved that the offence was committed without their knowledge or that they had shown enough diligence to stop its commission. However, what exactly constitutes this 'due diligence' is unluckily not defined or explained in the IT Act. So it is entirely open for the prosecution to decide its own level of 'due diligence'.

In the present shape, the law on obscenity regarding the imposable liability on the cybercafés owners is definitely not free from uncertainty. Thus it puts an onerous obligation on the cybercafés owners to defend a prosecution under the

related provisions of the IPC and the IT Act. If certain precautions are taken, like following mechanisms that block such websites and prominently displaying the disclaimers, it may help in holding a good defense.

Article 10 of the European Convention on Human Rights balances freedom of expression with the protection of morals. Compared to the US Supreme Court, the European Court of Human Rights (ECHR) has rarely struggled with the definitional quandary over obscenity as an *unprotected* expression. Nonetheless, its few obscenity cases recognize a reality surrounding obscenity as an ambiguous issue in the legal, socio-political and cultural arenas. The 1976 ECHR obscenity case, *Handyside Vs. United Kingdom*, is illuminating.

Handyside started with the police seizing the copies of *The Little Red Schoolbook*, a reference book for children. Published by Richard Handyside in London, the book dealt with the early sexual experiences of children. In considering whether the English government's interference with Handyside's freedom of expression was acceptable or not, the ECHR found that English judges had the authority, in the exercise of their discretion, to conclude that the book may adversely affect the morals of the children who read it. The seizure of the copies of the book by the authorities was aimed to protect the morals of the young which is a justifiable purpose as per the English law.

Widespread concern about the actual or perceived harm of sexual material to children led the European Union in 1989 to declare that member states must take suitable regulatory measures to proscribe television programme that 'might seriously impair the physical, mental or moral development of minors, in particular that involve pornography and violence'. In late 1996, the EU Commission, addressing the issue of illegal and harmful Internet content, made clear that all cyber child pornography falls under the existing legal framework.

European nations were among the first countries to restrict Internet distribution, e.g., in Germany the manager of a subsidiary of CompuServe was prosecuted and sentenced in 1998 for distributing online pornography. The case was later reversed when a court found that a subordinate was not in a position to limit illegal content access. Under German law, pornography is grouped with racist, violent and other speech that is considered harmful.

The Japanese Supreme Court has recognized the governmental authority to restrict sexual expression, even when it has significant artistic or literary value. The Supreme Court has held obscene materials to be outside the protection of the Constitution of Japan on freedom of speech and the press. As the Court stated, 'When writings of artistic and intellectual merit are obscene, then to make them the object of penalties in order to uphold order and healthy customs in sexual life is of benefit to the life of the whole nation.'

Regulation of sexual expression varies from society to society. As the Statement on Freedom of Expression for the Commonwealth notes, 'The law with respect to obscenity and pornography must arise from, and respect the value

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of, the society in which it operates. States have a special responsibility for eliminating child pornography.' Pornography definitions frequently run into difficulty because the line between porn and art is not clear. The depiction of sex by digital artists is very risky because the multimedia materials may blur the age of actors. The use of home computers, digital cameras and video-recording equipment has created a revolution in the production and distribution of pornography. Inexpensive and easily available equipment allows the individuals to create their own erotic or pornographic materials. Enforcement of laws generally halts at one's front door, unless the sexual content involves illegal behaviour or distribution.

CHECK YOUR PROGRESS

5. Give the statutes which define pornography and obscenity in the Indian legal system.
6. What do you mean by the Hicklin test?
7. Name a case which dealt with the issue of art and obscenity in the Indian legal history.
8. Why is it necessary to judge the work as a whole while considering the obscenity issues regarding a work?

3.5 CENSORSHIP

'Censor' was a title given to two magistrates in ancient Rome who were responsible for administering the census and supervising public morals. Word 'censorship' is derived from the root *cense* from the Latin *censure* which means to assess, estimate, rate or judge. When the Roman Empire became the Holy Roman Empire, the Church assumed primary responsibility for censorship.

The Church began cataloguing forbidden texts as early as the 2nd century. The development of the Gutenberg press in the 15th century posed a profound challenge to the authority of the Church. Printing facilitated the spread of heterodox ideas. The Church responded by establishing an elaborate administrative system of prior censorship, requiring a license to publish (an imprimatur), and certification that a book had been inspected by a local authority, usually the bishop. The Church published its first index of forbidden books, known as the Pauline index, in 1559. The *Index Librorum Prohibitorum* went through forty-two editions before it ceased publication in 1966. The Index provides the most comprehensive record of censorship ever compiled. State censorship bureaucracies adapted the administrative model of the Church, with its central authority and local enforcement. If the Church publicly condemned objectionable ideas, the state censorships routinely operated covertly as well as overtly. National security, often a contentious construct with expansive boundaries, provides the justification for covert state censorship (secrecy), especially in wartime, when all nation-states practice censorship.

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Censorship in the West also involved Church and State collaborations. In France, under the Ancien Régime, the Faculty of Theology at the University of Paris was responsible for censorship. Later, the King played a more prominent role; and then in the period prior to the revolution, the police served as the censor.

The roots of censorship in Anglo-American law can be traced to King Henry VIII's in 16th-century England. In part to develop a favourable relationship with the Catholic Church in Rome, Henry tried to assist the Church by controlling the heretics' freedom of expression. In 1529, he issued the first list of forbidden books and executed booksellers and anyone else who owned copies of books he had prohibited. One year later, Henry created the first licensing system outside of the Church. All religious materials had to be scrutinized and approved by the clergy before publication. Anyone who disobeyed this order faced fines, imprisonment and execution. Although soon after this, Henry had a rift with the Catholic Church and began executing Catholics. He thought that through censorship he could strengthen his authority by controlling public opinion. Thus, in the Proclamation of 1538, he expanded the licensing system to include all printing. In particular, no criticism of the government was allowed. After 1557, the Stationers' Company, made up of printers and manuscript merchants, was granted a monopoly over the production and distribution of print by the crown. The Stationers' Company was also given responsibility of suppressing all work that posed a danger to authority. With the proliferation of print, the administration of prior censorship became increasingly difficult in England. The Censorship Act was allowed to expire in 1604. However, offensive expression remained subject to prosecution under criminal law. The licensing system continued in the American colonies until the 1720s, when a Massachusetts grand jury declined to indict a Boston newspaper publisher for refusing to abide by the legislature's licensing system.

In 1769, Sir William Blackstone in his *Commentaries on the Laws of England*, wrote the following in what has been considered the foundation of the doctrine against prior restraint:

> 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. Every freeman has an undoubted right to lay what sentiments he pleases before the public: to forbid this is to destroy the freedom of the press: but if he published what is improper, mischievous, or illegal, he must take the consequences of his own temerity.

The most comprehensive and long-lasting form of state censorship in recent history was put into place as an emergency measure by Lenin immediately following the victory of his forces in the Russian Revolution in 1917. State censorship remained formally in force until 1989, when the Supreme Soviet eliminated newspaper censorship. Russia had a long tradition of censorship under the Tsars, with only a brief period of liberalization (1855–1865) under Alexander II. Lenin was acutely aware of the power of the press and arts as 'collective organizers' of propaganda, and mobilized them for socialist re-education. There was some openness to ideological divergence in the immediate post-revolutionary era; however, after

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1928 ideological conformity to socialist realism, which entailed viewing life as it was to become rather than as it actually was, became mandatory. Religion was suppressed and tight controls over art and literature were imposed.

Multiple agencies had responsibilities for supervising literary affairs and the performing arts. The most visible was the Chief Administration for Literary Affairs, known as Glavit; enfranchised in 1922, its powers were expanded considerably under Stalin to include all printed materials, visual arts, broadcasts, lectures and exhibits. According to the procedural fiction, submission of materials to Glavit for editorial and ideological criticism prior to being publicly disseminated was 'voluntary'. Glavit actually exercised absolute authority over publication and the performing arts, and possessed the power to shut down any newspaper for ideological deviations. The campaign to rid Soviet culture of neo-bourgeois elements resulted in purges of well-known writers, including Isaac Babel, Osip Mandelstam and Mikhail Kolcov. In all, it has been estimated that as many as 6,000 writers perished in Stalin's gulags. Tight controls were also imposed over foreign literature entering the Soviet Union, and over artistic and scientific contacts with the West. Stalin personally intervened in supervision of the arts in highly unpredictable ways; this made already cautious bureaucrats even more vigilant, and accelerated self-censorship in literature, arts and science to the point of cultural stagnation. The Soviet administration of mind was so successful that in 1952 Stalin had to moderate it because it constrained scientific discovery and produced dull, formulaic literature.

During a brief thaw in Soviet censorship in 1956, Khrushchev personally approved the publication of Alexandr Solzhenitsyn's *One day in the life of Ivan Denisovich*, a story about life in a Stalinist labour camp. The same year Khrushchev denounced the Stalinist cult of personality at the 20th Party Congress. Although strict controls remained in effect, these two interrelated developments contributed immeasurably to the emergence of a visible dissident movement in the Soviet Union. After 1956, travel became possible for scientists and intellectuals, and Soviet participation in international conferences and performances increased substantially. Travel not only brought more exposure to western ideas, but also to Russian literature published abroad, *tamizdat*, such as Boris Pasternak's *Dr Zhivago*.

Technology posed special challenges to Soviet censors. Under Stalin, the typeface of every typewriter had to be registered so that illicit manuscripts, *samizdat*, could be traced. When photocopying machines became available, access was strictly regulated and every copy had to be registered. Administering these controls proved onerous; and in order to function at all, work routines were developed that gave higher level employees access to the 'not allowed but possible' works. A fundamental contradiction was built into the Soviet system; the government emphasized universal literacy and provided its citizens with good educational opportunities that fostered intellectual curiosity. At the same time, however, Glavit's censorship was designed to stifle curiosity. Technology was also a factor in the demise of the Soviet system; suspicion of communication technologies along with restrictions imposed by the United States on export of high-performance computers

to the Soviet Union and China left Soviet Union lagging far behind the West in the telecommunications revolution of the 1980s. After the demise of Soviet Union in 1991, Russian media and arts experienced a decade of unprecedented openness. However, under Vladimir Putin's leadership, the Russian Federation has reasserted centralized control, including control of media, especially television.

The two primary ways in which a government can censor material are either through prior restraint or subsequent punishment. Prior restraint refers to a government's attempts to prevent material from being released to the public. Prior restraints include legislation requiring a person to seek government permission before publishing or broadcasting information as well as government injunctions and orders barring the public release of specific material. Subsequent punishment, on the other hand, attempts to censor material through punishment after the offending material has already been published. Types of subsequent punishment include lawsuits for defamation, slander and libel as well as criminal statutes for publishing certain material such as pornography.

In US jurisprudence and, to some extent, in European legal codes like the German Basic Law, the law has been strikingly more hostile towards prior restraint than subsequent punishment. For example, in *Nebraska Press Assn. Vs. Stuart*, Chief Justice Warren Burger of US Supreme Court writes, '[P]rior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights.' Some authors have questioned the distinction between prior restraint and subsequent punishment. Eric Barendt (2005) argues that sometimes the effects of subsequent punishment may be greater than prior restraint because a publisher's fear of facing prosecution and an unpredictable prison sentence may be particularly high. Furthermore, he states that criminal statutes against a wide range of material—such as those against pornography—affect many more publications than a prior restraint—a court or administrative order, for example—against a single publication. However, Barendt does acknowledge the main reason why the courts in Western Europe and North America have been more hostile towards prior restraints. Prior restraints prevent the censored material from ever being distributed in the public. On the other hand, material facing subsequent punishment still enters the marketplace of ideas, allowing public criticism and review. According to US constitutional scholar Alexander Bickel (1975), 'A criminal statute chills, prior restraint freezes.'

According to Vincent Blasi (1981), prior restraint is antithetical to the following three premises inherent in the limited government and libertarian theories that produced the First Amendment of the US Constitution and other codes against prior restraint: (i) distrust of government, (ii) acceptance of risk and (iii) respect for individual autonomy. First, Blasi argues that by rejecting prior restraint, governments acknowledge that societies should base their trust in individuals and the public rather than in the State. Conversely, by regulating the public space, prior restraints can prevent open government criticism.

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Second, freedom of speech includes accepting risks. Governments that impose prior restraints try to deter worst-case scenarios and provide stability and security. However, the doctrine against prior restraint argues that a government's worst-case scenarios usually do not come true, and a greater risk to society is not allowing the speech to be published. And finally, prior restraint restricts the autonomy that individuals in a constitutional system of limited government should have in relation to the State. Although public forums scrutinizing government action may create certain burdens on the State, supporters of the doctrine against prior restraint argue that this is a suitable price to pay for individual autonomy.

A major question regarding the doctrine against prior restraint, as practised by Western democratic governments, is whether judicial injunctions should face the same hostility in the courts as administrative censorship. Most forms of administrative censorship—when an administrative official or committee rejects certain material prior to publication—are condemned almost universally by the Western democratic governments. However, many countries differ as to whether the judicial injunctions and orders to stop the issue of certain publications should be more tolerable than administrative restraints.

In England, for example, the courts will grant injunctions in certain cases but not others. English courts usually refused to grant an injunction to stop defamatory allegations before a full trial if the defendant argued that the accusations were true or if the comments could be perceived as a suitable comment on public interest matters. On the other hand, the courts are willing to grant injunctions after a successful libel lawsuit, as well as temporary injunctions in breach of confidence and copyright cases.

Similarly, German and French courts are willing to grant temporary injunctions in certain cases regarding defamation and privacy. Although the third sentence of Article 5(1) of the German Basic Law states, 'There shall be no censorship', the German courts have never argued that this statement should disallow granting temporary judicial orders to stop publication of certain material. In the US, on the other hand, the courts have argued that the doctrine against prior restraint applies to judicial restraints as well. For example, in the 1971 *Pentagon Papers* case, the US Supreme Court argued that temporary orders granted against newspapers for revealing confidential government secrets are unconstitutional. The American courts have very rarely argued that injunctions are consistent with the First Amendment of the US Constitution.

Regarding confidential government information, European courts have generally given greater consideration to accepting prior restraints than their American counterparts. The primary justification in accepting prior restraints in these circumstances is that if the law does not prevent the publication of government secrets, then the harm will have already taken place and subsequent punishments would be useless. The *Spycatcher* litigation in England is one example in which the courts stopped the publication of government confidential information. In this

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case, the English Attorney General in 1986 obtained interlocutory injunctions to prevent the *Observer* and *Guardian* newspapers from printing allegations from former MI5 agent Peter Wright about the English security services. Although the newspapers applied to discharge the injunctions, the injunctions were upheld initially by the Court of Appeal and subsequently by the House of Lords. The case then went to the European Court of Human Rights, which sided with the newspapers and ruled that maintaining the injunctions after July 1978 was incompatible with freedom of expression. The court continued to say that although all prior restraints are not incompatible with the European Convention on Human Rights, 'the dangers inherent in prior restraints are such that they call for the most careful scrutiny on the part of the Court' (14 EHRR 153, para. 60). The court argued that delaying a story can remove its interest and value.

The position of US courts regarding the issue of prior restraints on confidential information is significantly different from that of the English courts. In the 1931 case *Near Vs. Minnesota*, the US Supreme Court left open the possibility of prior restraints on government secrets. Chief Justice Charles Evans Hughes's opinion states, '[T]he protection even as to previous restraint is not absolutely unlimited. But the limitation has been recognized only in exceptional cases.' He suggests that confidential government and military secrets could be examples of 'exceptional cases' (238 US 717). In the *Pentagon Papers* case, however, the Supreme Court denied a request government to prevent the *Washington Post* and *New York Times* newspapers from publishing secret State Department records on US involvement in the Vietnam War. The judges disagreed over when the injunctions should be issued regarding government confidential information. While Justices Hugo Black and William Douglas stated that the First Amendment does not allow any prior restraints, the majority of the Supreme Court supported the position that an injunction can be issued if the publication of confidential government information will cause irreparable damage to vital national interests.

While the courts in Western democratic states continue to debate to what extent prior restraints in defamation, privacy and confidential information cases are acceptable, authoritarian regimes in China and Saudi Arabia have practiced some of the most stringent forms of administrative prior restraint. Within the last decade, both countries have expanded their use of prior restraint over one of the most up-to-date methods of public disseminating of information—the Internet. In December 2000, the Chinese government passed a series of regulations explaining why and how the Internet would be censored. The Chinese government has established a prior restraint on certain Internet content by creating a nationwide firewall, which blocks thousands of websites that it deems inappropriate. Using domestic software, China filters not only sexually explicit material, but also websites it finds as politically sensitive, e.g., overseas human rights organizations, some news organizations and sites related to Taiwan, Tibet, the Falun Gong movement and dissident and pro-democracy groups.

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Similarly, the Saudi government has established the most widespread and technologically advanced filtering system in the world to block all online material that the ruling family argues is contrary to Saudi Muslim customs and values. A government body called the Internet Services Unit maintains specialized proxy equipment, which processes all website requests from within the country and compares them to a blacklist of banned sites. If the requested site is included in the blacklist, then it is blocked. The blacklists are purchased from commercial companies and renewed on a continuous basis. In addition to the commercial blacklists, Saudi censors contribute other websites they deem inappropriate. Despite political opposition groups and others who have used increasingly sophisticated techniques to circumvent government censorship and disseminate information online in China and Saudi Arabia, prior restraint has allowed these governments to continue to maintain a stranglehold on power in the same way that King Henry VIII did with his licensing system hundreds of years earlier.

In the 21st century, China is expected to be the primary site of struggles for intellectual freedom. Its imposition of controls on the Internet, with the compliance of US-based software companies Google, Microsoft and Yahoo, has become a *cause celebre* among the Internet freedom advocacy groups. Nevertheless, the Committee to Protect Journalists listed Burma, North Korea, Equatorial Guinea, Turkmenistan, Eritrea, Libya, Uzbekistan, Cuba, Belarus and Syria as the ten most censored countries in the world in 2006. In an era of instantaneous international communication, journalists, media workers and communication facilities have increasingly become targets in both regional and international conflicts. Since 1991, when the Committee to Protect Journalists began monitoring violent deaths of journalists, 580 deaths had been recorded by early 2006—more than three per month, 71 per cent of whom were directly targeted in retaliation for their reporting. Even in war zones, murder is the leading cause of death for journalists. By October 2006, 118 media workers and journalists had lost their lives in Iraq since the start of US-led invasion in 2003, making it the deadliest war for journalists in modern history, far exceeding the number of journalists who died in World War II (69) and Vietnam (63).

In 1823, Leicester Stanhope, 5th Earl of Harrington (1784–1862) wrote about India, 'Previous to Lord Wellesley's administration no restriction on writing or publishing had ever existed in Indostan. The Censorship of the Press or on writing there, was an innovation, and this alone was wanting, where power fell into the hands of an arbitrary ruler, to complete the sum of human misery under Asiatic despotism.' Lord Wellesley was the Governor General of India from 18 May 1798 to 30 July 1805.

In 1776, a former employee of the British East India Company, William Bolts, tried to start the first newspaper in India. However, he was deported. The typographic media began in India with James Augustus Hicky's *Bengal Gazette* or *Calcutta General Advertiser*, the first issue of which came out of the press on 29 January 1780. When Hickey started to unmask Warren Hasting ('the Great

Moghul') and East India Company's ruling clique (the 'Nabobs') there was no law, which could restrict him. Hicky's Gazette put on record 'the strictly private arrangement by which Mrs Imhoff became the wife of the first governor-general in India'. Hicky's courage gave birth to the first government order against freedom of the press.[5]

> Fort William, November 14, 1780. Public notice is given that a weekly newspaper called the Bengal Gazette or Calcutta General Adviser, printed by J.A. Hicky, has lately been found to contain several improper paragraphs tending to vilify private characters and to disturb the peace of the settlement. It is no longer permitted to be circulated through the channel of the General Post Office.

Unfortunately, libel suits resulting in heavy fines and imprisonments ultimately crushed Hicky. He had to sell his press and pass rest of his life in poverty.

When newspapers in India were published by only the Europeans, expulsion of the editor (printer) was the ultimate penalty. The Supreme Court of Judicature upheld this power. American journalist, William Duane (1760–1835) learned the printer's occupation in Ireland. In 1787, he reached Calcutta and edited the *Indian World.* On 27 December 1794, Duane was invited by the acting Governor-General Sir John Shore (1746–1794) for breakfast and when he reached there he was handcuffed and after detention for three days deported to England on an armed ship '*Indiaman'.* On his arrival in England he was set free without a word of apology or explanation. His Calcutta property worth 50,000 dollars was confiscated and his paper banned forever. The first newspaper in Madras, *The Madras Courier* (October 1785) also had trouble with the authorities. Pre-censorship was first introduced in Madras (now Chennai) in 1795. *Madras Gazette* agreed to submit all general orders of the Government for scrutiny by the Military Secretary before their publication. In May 1799, Marquis of Wellesley legalized this system by issuing the regulation for the control of newspapers.

It appears that the growing importance of the Fourth Estate in England and the desire of missionaries to start newspapers in India ultimately led to the abolition of pre-censorship in 1818 by Lord Hastings. Like censorship, licensing was also a European institution to control the press. It was introduced in Bengal in 1823 through Adam's regulations. The East India Company also issued instruction that no servant of the company should have any connection with a newspaper.

With several ups and downs, the press in India became free only after Independence when the Constitution guaranteed freedom of expression which included freedom of press. Censorship of newspapers was imposed only during the brief period of Internal Emergency (26 June 1975–21 March 1977); otherwise the Indian news media has been enjoying a reasonable freedom. There have been bans on books, relating to religious objections like Salman Rushdie's *The Satanic Verses* with a view towards maintaining communal and religious harmony against the background of communal tension in the country. There is of course film

[5] Shiv Charan, Nitima. ed. 2009. *Mass Media in India 2009.* New Delhi: Publications Division, Ministry of Information and Broadcasting.

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censorship, categorizing films for general viewing or adult viewing. States can impose local bans to avoid communal tension. In 2006, many states (Punjab, Nagaland, Tamil Nadu, Goa, Andhra Pradesh) banned the exhibition and release of the Hollywood movie *The Da Vinci Code*. The book on which the movie was based was also banned. All this was done even though the Central Board of Film Certification had cleared the film for adult viewership all over India.

3.6 CONTEMPT OF COURT

The 'Law of Contempt' in India is derived from the English law. In England from early times, the Superior Courts of record have exercised the authority to commit for contempt the individuals who scandalized the Judges or the Court.

In 1926, the first Indian judicial measure on the law of contempt, i.e., the Contempt of Courts Act was enacted. It was passed to define the powers of certain courts in punishing for the offences amounting to the contempt of courts. While the Contempt of Courts Act, 1926 (XII of 1926) was applicable to the British India, several Indian States had their analogous enactments as well. Such states were Madhya Bharat, Hyderabad, Pepsu, Mysore, Travancore-Cochin, Rajasthan and Saurastra. After Independence, the Contempt of Courts Act, 1952 (32 of 1952) replaced the state enactments prevalent in the Indian States and the Contempt of Courts Act, 1926.

In April 1960, an effort was made to introduce a bill in the Lok Sabha to consolidate and amend the law pertaining to the Contempt of Courts. After analysing the issue, the government felt that the law related to the Contempt of Courts is undefined, uncertain and unsatisfactory. It was also accepted that against the background of the constitutional changes that have taken place in the country, it is advisable to get the entire law scrutinized and critically examined by a Special Committee.

As a follow-up to that a Committee was established on 29 July 1961. Its chairman was Shri H.N. Sanayal, the Additional Solicitor General at that time. It submitted its report on 28 February 1963 to limit and define the powers and authority of certain courts in meting out punishments regarding the contempt of courts. It also included the regulatory measures to institutionalize the procedure in this regard. The Committee's recommendations took note of the significance provided to the freedom of speech and expression in the Constitution. The Committee further emphasized the need for protecting the status and dignity of Courts to ensure a proper administration of justice. These recommendations put forward by the Committee have been by and large accepted by the government after taking into account the views on these recommendations by the Judicial Commissioners, various State governments, Union Territories, the Supreme Court and the High Courts. The Joint Select Committee of Parliament on Contempt of Courts discussed the issue in detail and a fresh Bill 'The Contempt of Courts Bill,

1968' was introduced. In December 1971, the Contempt of Courts Act, 1971 (70 of 1971) was passed by the Parliament which came into force w.e.f. 24 December 1971[6].

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In this Act following definitions are given:[7]

(a) 'Contempt of court' means civil contempt or criminal contempt.

(b) 'Civil contempt' means willful disobedience to any judgement, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court.

(c) 'Criminal contempt' means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which—

(i) Scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court, or

(ii) Prejudices, or interferes or tends to interfere with the due course of any judicial proceeding, or

(iii) Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

It is clarified in this Act that 'innocent publication and distribution of matter' does not amount to contempt (Section 3); honest and accurate report on judicial proceeding does not qualify as contempt (Section 4); reasonable criticism of judicial acts does not fall under the category of contempt (Section 5).[8]

A person shall not be guilty of contempt of court in respect of any statement made by him in good faith concerning the presiding officer or any subordinate court to (a) Any other subordinate court, or (b) The High court to which it is subordinate, (Section 6).

Section 7 (1) Notwithstanding anything contained in this Act, a person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceedings before any court sitting in chambers or in camera except in the following cases, that is to say—

(a) Where the publication is contrary to the provisions of any enactment for the time being in force.

(b) Where the court, on grounds of public policy or in exercise of any power vested in it, expressly prohibits the publication of all information relating to the proceeding or of information of the description which is published.

(c) Where the court sits in chambers or in camera for reason connected with public order or the security of the State, the publication of information relating to those proceedings,

(d) Where the information relates to secret process, discovery or invention which is an issue in the proceedings.

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[6] Nair, Balasankaran. 2004. *Law of Contempt of Court in India.* New Delhi: Atlantic Publishers and Distributors.

[7] The Contempt of Court, available on http://www.vakilno1.com/bareacts/contemptact/S2.html, access date 28.01.2011.

[8] The Contempt of Courts Act, 1971, available on http://punjabrevenue.nic.in/contempt_court1.htm, access date 28.01.2011.

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(2) Without prejudice to the provisions contained in sub-section (1) a person shall not be guilty of contempt of court for publishing the text or a fair and accurate summary of the whole, or any part, of an order made by a court sitting in chambers or in camera, unless the court has expressly prohibited the publication thereof on grounds of public policy, or for reasons connected with public order or the security of the State, or on the ground that it contains information relating to secret process, discovery or invention, or in exercise of any power vested on it.

High Courts have been given powers to deal with contempt of subordinate courts (Section 10) and also such cases beyond their jurisdiction (Section 11).

Punishment has been provided by Section 12.

12. Punishment for contempt of court—(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.

Explanation—An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

(2) Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section for any contempt either in respect of itself or of a court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that the he be detained in a civil prison for such period not exceeding six months as it may think fit.

(4) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of each such person.

Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

(5) Notwithstanding anything contained in sub-section (4) where the contempt of court referred to therein has been committed by a company and it is provided that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manger, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer.

Explanation—For the purpose of sub-sections (4) and (5)-

(a) 'Company' means any body corporate and includes a firm or other association of individuals, and.

(b) 'Director' in relation to a firm, means a partner in the firm.

Section 13 advices Court to be cautious while punishing for contempt.

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13. Contempt is not punishable in certain cases—Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice.

3.6.1 Supreme Court Rulings

In *State of Haryana Vs. Ch. Bhajanlal* (*AIR 1993 SC 1348*) the Supreme Court stated:

> The law relating to contempt of court is well settled. Any act done or writing published which is calculated to bring a court or a Judge into contempt, or to lower his authority, or to interfere with the due course of justice or the lawful process of the court, is a contempt of court; Q.R. *Vs.* Gray, 1900 (2) QBD 36 (40).
>
> ... Contempt by speech or writing may be by scandalizing the court itself, or by abusing parties to actions, or by prejudicing mankind in favour of or against a party before the cause is heard. It is incumbent upon courts of justice to preserve their proceedings from being misrepresented, for prejudicing the mind of the people against persons concerned as parties in causes before the cause is finally heard has pernicious consequences. Speech or writings misrepresenting the proceedings of the court of prejudicing the public for or against a party or involving reflections on parties to a proceeding amount to contempt. To make a speech tending to influence the result of a pending trial, whether civil or criminal is a grave contempt. Comments on pending proceedings, if emanating from the parties or their lawyers, are generally a more serious contempt than those coming from independent sources.

In *Sukhdev Singh Vs. Teja Singh, AIR 1954 SC 186*, the Supreme Court stated: 'There is no special principle attached to the press to comment, criticise or investigate the facts of any case of the prejudice of the trial of the case.'

In *State of West Bengal Vs. N.N. Bagchi, AIR 1966 SC 447*, the Court held, 'The scope of contempt of courts has not been enlarged. What was not contempt so far is not contempt of court even now. The contempt of court should not be resorted to only for the purpose of enforcing interpretive rights.'

In *Noorali Babul Thanewala Vs. K.M.M. Shetty, AIR 1990 SC 564*, the Court held that the 'breach of an injunction, or breach of an undertaking given to a court by a person in a civil proceeding amounts to contempt'.

In *Union of India Vs. S.C. Sharma, (1980) 2 SCC 144*, the Supreme Court of India observed: 'The contempt power should be kept sheathed.'

Justice V.R. Krishna Iyer, eminent jurist who was a Supreme Court Judge from 1973 to 1980, in an article, '*Against abuse of the contempt power*' published in *The Hindu* on 12 July 2010 wrote:

> The judiciary as a class must reorient its basic philosophy to suit a socialist secular democratic republic. This transformation is essential if *fiat justicia* is to be a paramount principle of governance in India as emphasised by Jawaharlal Nehru in his tryst-with-destiny speech as India became independent.

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> ... Above the Executive and Legislature is the Judiciary to guard the values of the Constitution with integrity, fearlessness, frankness and fraternity. That is your institutional glory. No one shall darken your bright image. The little poor seek your compassionate protection. You are the wonder of democracy. I salute you as the humanist defender of people's constitutional rights. When you fail to function, sharp criticism is the only corrective. The question then arises: have the people a right to criticise you, and if so, when does it become contempt of court, and what are the limitations to this freedom of expression?

On 15 December 2010, *Times of India* on the front page of its Mumbai edition published '*An apology to the Bombay High Court*:

> The *Times of India* had published three articles in its print edition on November 20, 22 and December 4, 2010 and its internet edition on December 1, 2010 regarding the allegations by Uday Dandavate (son of Late Shri Madhu Dandawate) that his father's probate was inordinately delayed because he allegedly refused to pay money to officials in the Testamentary department.
>
> Subsequently, an inquiry was set up by the Hon'ble Chief Justice which found that the allegations were false and came to the conclusion; Uday and his Advocate were to be blamed for the delay. As a matter of fact, the said Testamentary petition was decided in less than three years, out of which a period of almost two and a half years was consumed by the party and his Advocate, in paying court fees, complying with various formalities and removing office objections.
>
> Accordingly, to this effect, a press release was issued by the Hon'ble Bombay High Court on 3.12.2010, which we have already published in an article on 05.12.2010, clarifying to our readers that the said allegations of corruption, as reported by us, were not true. We hereby state that our reporter, though required, did not verify or ascertain the correct facts from Registrar General of the Hon'ble High Court or any other concerned official. As a result, incorrect, misleading and wrong information was printed and published by us, as also published on the internet edition about the functioning of the Testamentary department of the Hon'ble High Court, Bombay. We deeply regret the same and express our sincere and profound apology for this lapse.
>
> We humbly submit that, we never had any intention to scandalize or lower the supreme authority, majesty and dignity of the Hon'ble High Court, Bombay. We state that what has happened was purely out of inadvertence and a lapse on our part and express our deep regret for the same. We had no intention whatsoever to malign or disrespect the Hon'ble Bombay High Court. We most respectfully submit that we have the highest regard for judiciary and express our deep regret and sincerely and unconditionally apologize for the harm and inconvenience caused by us.

The above apology is indicative of the current status of freedom of press vis-à-vis contempt of court in India.

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CHECK YOUR PROGRESS

9. What was the Supreme Court's take on the opinions of literary experts on the obscenity issue?
10. What are the roots of the term 'censor'?
11. When was the first Indian judicial measure on the law of contempt enacted?

3.7 SUMMARY

- In India, mass media laws have a long history being deeply rooted in the country's colonial period under the British control.
- The initial regulatory steps are traced back to 1799 when Lord Wellesley promulgated the Press Regulations. In effect, it meant the imposition of pre-censorship on the infant newspaper industry in the country.
- In 1835, the Press Act was promulgated. It undid some of the repressive elements of earlier legislations on the issue.
- The 'Gagging Act' of 1857 introduced compulsory licensing for running and owning of printing presses.
- The government could also prohibit the circulation and publication of any book, newspaper or other printed material having a tendency to create dissent against the government.
- The Press and Registration of Books Act, 1867 still continues to remain in force.
- The Vernacular Press Act, 1878 promulgated by Governor General Lord Lytton allowed the Government to crack down the publication of writings considered seditious.
- During the period of Lord Minto, the Newspapers (Incitement to Offences) Act, 1908 authorized the local authorities to initiate action against the editor of any newspaper which published matter that may lead to an incitement to rebellion.
- After Independence, various government legislations and court rulings have resulted in the setting up of an elaborate and logical system of checks on media in the form of slander, libel, sedition, obscenity, censorship and contempt of court.

3.8 KEY TERMS

- **Mass media:** Refers collectively to all media technologies, including the Internet, television, newspapers and radio, which are used for mass communications

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- **Slander:** Base, defamatory, untrue words said aloud, and tending to prejudice another person in business, means of livelihood or reputation
- **Libel:** Negligent or intentional publication or broadcast of a defamatory statement that exposes a person to contempt, disrespect, hatred or ridicule
- **Sedition:** Conduct which is directed against a government and which tends towards insurrection but does not amount to treason
- **Obscenity:** Such indecency as is calculated to promote the violation of the law and the general corruption of morals
- **Contempt of court:** An act or omission tending to obstruct or interfere with the orderly administration of justice, or to impair the dignity of the court or respect for its authority
- **Treason:** Violation of allegiance towards one's country or sovereign, especially the betrayal of one's country by waging war against it or by consciously and purposely acting to aid its enemies

3.9 ANSWERS TO 'CHECK YOUR PROGRESS'

1. The two forms of defamation are slander and libel.
2. The origin of the law of defamation can be drawn to ancient times. Although it has evolved significantly, the contemporary themes are quite noticeable in its origins. The concept of civil law evolved from the Roman *acto injuriarum*, which concentrated more on the 'intentional and unjustified hurting of another's feelings' than harm to public status.
3. Modern jurisprudence is yet to take a clearly defined stand on the issue of criminal defamation. Some of the courts think that this kind of prosecution is inappropriate. Others put the argument that the criminal defamation laws intrinsically infringe upon the freedom of expression and hence must be abolished entirely. Despite these divergent opinions, various cases and commentaries suggest a trend towards discouraging criminal prosecutions for defamation.
4. In English common law, certain statements like accusing somebody of lying, doing a crime or suffering from a despicable disease were considered libelous *per se*. It meant these could not be considered innocent in meaning and needed no extra information for the defamatory meaning to be apparent. On the other hand, libel *per quod* needed extrinsic evidence, i.e., saying that a woman is pregnant will not damage her reputation unless supplementary facts (for example, her husband is out of the country for the last 1 year) is made known.

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5. The expression 'pornography' when used regarding an offence is not specifically defined in any of the statutes in India. However, the expression 'obscenity' is explained in two statutes in India: (i) The Indian Penal Code, 1860 and (ii) The Information Technology Act, 2000.
6. The Hicklin test is a legal concept originating from the English case *R. Vs. Hicklin (1868), LR 3 QB 360,* in English Common Law. It states that a legislature has the power to outlaw anything which 'depraves and corrupts those whose minds are open to such immoral influences and into whose hands a publication of this sort might fall'.
7. When art and obscenity are intermixed, it has to be seen whether the literary, artistic or social standards of the concerned work outweigh its 'obscene' quotient. This opinion was adopted by the Supreme Court of India in *Ranjit D. Udeshi Vs. State of Maharashtra, AIR 1965 SC* case.
8. It is essential that publication is judged as a whole. The impugned part, on the other hand, must also be separately analysed to decide whether the impugned sections are obscene to the extent that they will deprave and corrupt the individuals.
9. In Ranjit Udeshi case, the Indian Supreme Court held that the subtle task of determining what is obscene and what is artistic has to be taken up by the courts and as a last resort by the Supreme Court itself. Therefore, the evidence and opinions of the men of art and literature on the question of obscenity are not relevant and sufficient.
10. 'Censor' was a title given to two magistrates in ancient Rome who were responsible for administering the census and supervising public morals. Word 'censorship' is derived from the root *cense* from the Latin *censure* which means to assess, estimate, rate or judge.
11. The 'Law of Contempt' in India is derived from the English law. In 1926, the first Indian judicial measure on the law of contempt, i.e., the Contempt of Courts Act was enacted. It was passed to define the powers of certain courts in punishing for the offences amounting to the contempt of courts.

3.10 QUESTIONS AND EXERCISES

Short-Answer Questions

1. What do you understand by defamation?
2. What is the difference between slander and libel?
3. What is the meaning of obscenity?
4. 'Per se nudity is not obscenity.' Explain.
5. Examine the problem of obscenity under the Information Technology Act.

Long-Answer Questions

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1. Write a detailed note on the state of press control during the British period.
2. Discuss the evolution and growth of media control measures in the world.
3. Critically examine the emerging shape of media laws in independent India.
4. Discuss some important court rulings in the country which had a direct bearing on the media laws.
5. What are media laws? Critically evaluate their advantages and disadvantages.

3.11 FURTHER READING

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UNIT 4 MEDIA ACTS

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4.0 Introduction
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4.0 INTRODUCTION

Media plays a very critical role in the functioning of social systems. It is a very potent tool. It can make or mar images. The governments world over have always tried to control media through various laws so as to make it a partner in their administrative schemes. During the British period, the colonial government in India set up an effective system of press control. Even before the enactment of Official Secrets Act in 1923, the government had been trying to prevent the newspapers from publishing certain facts about its functioning that might have put it in a bad light. Promulgated on 2 April 1923, the Official Secrets Act comprises 15 sections, out of which at least three are very important (Sections 3, 5 and 7). It is noteworthy that the Act is still in operation albeit with some amendments to adjust popular demands over the decades after Independence. This Act provides against two sets of events. It is directed against espionage and in this respect has practically left nothing to chance. To improve the working conditions of media men, the government passed the Working Journalists Act, 1955. The Act intends to regulate the working conditions of journalists and non-journalist newspaper employees. Parliamentary privileges and proceedings and press freedom has been a very critical issue in the Indian scenario. To ensure that the Parliament discharges its functions appropriately, the Indian Constitution provides certain immunities and powers to

both the houses and their individual members. These atypical rights are known as Parliamentary privileges.

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4.1 UNIT OBJECTIVES

After going through this unit, you will be able to:

- Understand the historical measures that led to the enactment of Official Secrets Act, 1923
- Explain the salient features of Working Journalists Act of 1955
- Discuss the concept of 'Parliamentary proceedings and privileges'
- Explain the Press and Registration of Books Act, 1867

4.2 OFFICIAL SECRETS ACT

British obsession with secrecy found its way to India. In 1843, the Central (British) Government issued a notification prohibiting Civil Servants from giving outsiders any information in their possession 'without the previous consent of the Government to which alone they belong'. In July 1875, the British Central Government again issued detailed instructions to regulate the contemporary administrative behaviour in relation to the emerging Press in India. In 1885, the Government of India adopted a resolution specifically prohibiting any communication to the Press 'directly and indirectly' and this included 'private and unofficial intercourse with non-official persons'. In 1889, the British Official Secrets Act was also extended to India. In 1904, upholding of secrecy in official work was incorporated in the Government Servant Conduct Rules.

India separately passed its Official Secrets Act (19 of 1923) on the instigation of the General Army staff in India and also to contain the spread of communism, communalism and the Japanese influence. Promulgated on 2 April 1923, the Official Secrets Act comprises 15 sections, out of which at least three are very important (Sections 3, 5 and 7). Section 3 involves the penalties for spying. It did not raise much concern because it was considered a necessary measure for the country's security. Section 5 is concerned with unjust and wrong communication of information. For example, it states that if an individual who is in possession of secret information that relates to or can be used in prohibited place or may assist an enemy, jeopardize the security of the country or adversely affect relations with friendly countries, or he hands over the information to unauthorized persons, he may be held guilty of offence. Such an offence is punishable with three years imprisonment or fine or both. On this account, it is the most loathsome section and demands have been made to repeal it. Its revocation was recommended by the Second Press Commission which was set up after the Internal Emergency. Section 7 is concerned with individuals interfering with officers or members of the armed

forces. It says, 'No person in the vicinity of any prohibited place shall obstruct or interfere with any police officer engaged in guard duty or prohibited place.'

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This Act was modelled on the British Act of 1920. Actually, the Frank's Committee in England stated that the scope and nature of Section 2 of the British Act corresponding to Section 5 of the Indian Act is extremely wide, 'Any law which impinges on the freedom of information in a democracy should be more tightly drawn.'

The necessity for amending Section 5 of the Act has been considered by several committees and commissions. The matter was examined by several committees and commissions.

The Press Laws Enquiry Committee (1948) and the first Press Commission (1954) did not suggest any major changes in the Act as they thought that after Independence the Act as a whole was being administered in an eminently reasonable manner. However, from the report of the Press Laws Inquiry Committee it appears that the secrecy law has been invoked on quite a few occasions.

The first Press Commission was of the view that just because a document was marked 'secret' or 'confidential' it should not attract the provisions of the Act if it ought to be published in the interest of public.

In place of liberalizing the Act, after the Independence, it was made stiffer by an amendment introduced in 1967. This Act was amended to make the punishments more stringent after the Indo-China conflict of 1962 and the Indo-Pak war of 1965. In the process, Parliament not only further sanctified official secrecy but also weakened itself as well as the society vis-à-vis the executive.

The Official Secrets Act, 1923 (as amended in 1967) provides against two sets of events. First, it is directed against espionage and in this respect has practically left nothing to chance. The provisions relating to espionage are extremely favourable towards the State because an individual may be punished even on the slightest evidence. For example, the Act states that it shall not be essential to prove that the accused individual is guilty of any specific act prejudicial and dangerous to the interests or safety of the state. He may be convicted if, from the conditions of the case or his demeanour or his identified character as proved, it seemed that his purpose and actions were prejudicial to the state interests. Further, the Act states that an individual can be presumed to be in communication with a foreign agent if 'he has, either within or without (India), visited a foreign agent or either within or without India, the name or address of, or any other information regarding, a foreign agent has been found in his possession'.

The second set of circumstances covered by the Act is concerned with the communication of official information to outsiders. According to the Act, it is a penal offence for an individual holding office under the government to intentionally communicate or pass over any official information to any individual other than the one to whom he is authorized to do the same. Furthermore, it is an offence for an individual to get such information. We can say that the statute has the provisions to

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punish both 'the thief' as well as the 'receiver of the stolen goods'. This authority is drawn from Section 5 of the Official Secrets Act, 1923 which, as already mentioned, is a very comprehensive provision with hardly anything capable of escaping its staggering provisions. It has been said that over 2,000 differently worded charges can be framed under Section 5. This section, moreover, covers all that happens within the government; all information, which a civil servant happens to learn in the course of his duty, is official, and is thus covered under it. To make it even better, the Act states that a mere receipt of official information may be counted as an offence. Even the fact that the information may have been communicated to the concerned individual against his choice is irrelevant and does not provide him immunity of any sort. Furthermore, Section 5 relates not only to a civil servant but also to other persons, for instance, contractors having dealings with the Government.

In February 1968, the report of the Deshmukh Study Team of the Administrative Reforms Commission on 'Machinery of the Government and its Procedure of Working' pointed out that under the Indian Official Secrets Act, 1923, it was an offence to pass on without authority not only the secret information but all information obtained owing to their position by persons holding government office. The Conduct Rules and the Manual of Office Procedure reinforces the provisions of Official Secrets Act as a result of which no distinction is made between secret and non-secret information, the unauthorized passing of both being treated as a criminal offence, as well as an act of misconduct. Calling for amendments not only to the Official Secrets Act but also to the Conduct Rules and the Manual of Office Procedure, the report suggested devising of measures to ensure that the 'secret' classification is used only where necessary, and introduction of a new approach that would free non-secret information from dispensable shackles thus clearing the way to more open information policy. As for requests from general public other than scholars or those with grievances, the Committee had expressed the view that it would like to see an information policy of providing maximum information relevant to a particular request rather than the prevailing practice of furnishing the minimum possible information, and very often less than that.

The recommendation of the Deshmukh Study Team had no follow up action because the Administrative Reforms Commission did not make any recommendation on these aspects of secrecy in the Government in its final report.

In 1977, the Janata Party, which came to power, made a special mention of promoting 'openness' in the government in its manifesto. The Janata Government (1977–79), which replaced the Congress rule, at first showed preference towards releasing some of the restrictions on the flow of administrative information. To this end in 1977, it even set up a working group comprising senior secretaries to assess if the Official Secrets Act 1923 may be modified to facilitate greater propagation of official information among the public. After a hard work of five months, the group concluded that the Official Secrets Act, 1923 did not contain anything which may be said to come in the way of flow of 'legitimate' information

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to the people. There was nothing surprising about the recommendation. The very composition of the group ordained the kind of the verdict which ultimately emanated from it.

Second Press Commission (1982) considered the question of amending Section 5. However it recommended:

> We are of the opinion that it would be more appropriate to repeal the Section and substitute it by other provisions suited to meet the paramount need of national security and other vital interests of the state as well as the right of the people to know the affairs of the state affecting them. It is essential, in our view, to restrict the operation of Section 5 by prescribing the types of information, which need protection from disclosure. These types or categories will necessarily be broad; but primarily it will be the task of the executive to determine whether a document falls under any of the specified categories. This will create an atmosphere in the bureaucracy that anything and everything which they consider to be secret would not gain the protection of the Act. ... The other provisions in the Official Secrets Act may be carefully examined by an expert body to see which of them deserve modification and thereafter those provisions could also be incorporated in the new legislation proposed.

The National Front, which swung into prominence around 1989, promised to the people the right to information in its election manifesto. It declared its intention to include this right as a fundamental right in the Constitution. Its election manifesto said, 'The National Front commits itself to full freedom of the media, autonomous corporations for television and radio and elimination of practices that lead to direct and indirect arm-twisting of the Press, people's right to information shall be guaranteed through constitutional provisions'. V.P. Singh reiterated that it was not an empty promise. In his first address to the nation on radio and television on 3 January 1990, V.P. Singh, as the Prime Minister, said:

> For increasing people's control and to curb corruption, if the government functions in full public view, wrong-doing will be greatly minimized. The Official Secrets Act will be amended and we will make the functioning of the government more transparent. Secrecy will be maintained only where the interests of national security and foreign relations so warrant. Free flow of information is a prerequisite for democracy. The right to information will be enshrined in our Constitution.

Later, on 20 December 1989, R. Venkataraman, President of India, told a joint session of Parliament among other things that the Official Secrets Act could be suitably amended to ensure citizens' right to information.

The National Front government thus exuded a large measure of enthusiasm in taking action on its electoral pledge. A few seminars were organized, of course, hurriedly without much prior preparation and a lot of euphoria was generated on the Right to Information. A high power committee on the right to information was set up, consisting of Mufti Mohammed Sayeed (Home Minister), I.K. Gujral (External Affairs Minister), P. Upendra (Information and Broadcasting Minister), K.P Unnikrishnan (Surface Transport Minister), George Fernandes (Railway Minister) and R.K Hegde (Deputy Chairman of the Planning Commission). An interdepartmental study group to suggest concrete proposals on the proposed

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right to know even prepared an approach paper suggesting appropriate amendments to the Official Secrets Act. The Working Group set up in this connection also suggested a constitutional amendment wherein a new sub-section 8 in Article 19 incorporating the Right to Information was recommended to be included. Reportedly, the approach paper was even considered by the committee of secretaries. However, the following measures were not that much encouraging. The V.P. Singh Government fell in November 1990 without proceeding with any legislative measure in this regard.

4.2.1 Official Secrets Act Vs. Right to Information

M. Veerappa Moily, Chairperson of the Second Administrative Reforms Commission, on 9 June 2006 submitted the first report on 'Right to Information—Master Key to Good Governance'. The report submitted to the Prime Minister, Dr Manmohan Singh, observed that the Official Secrets Act, 1923 (OSA) in its present form is incompatible with the regime of transparency in a democratic government. OSA ought to be repealed and appropriate measures to safeguard the security of State must be included in the National Security Act. It recommended:

> At least half the members of the Information Commissions should be drawn from non-Civil Service background, so that members represent the rich variety and varied experience in society. Complete reorganization of public records is a precondition for effective implementation of RTI. A public Records Office should be established in each State as a repository of expertise, to monitor, supervise, control and inspect all public records. 1% of the funds of all flagship programmes of Government of India should be earmarked for five years for updating all records and building necessary infrastructure. The Information Commission should be entrusted with the authority and responsibility of monitoring the implementation of the RTI Act in all public authorities. Clear and unambiguous guidelines need to be evolved to determine which nongovernmental organizations would come under the purview of RTI Act. Most requests for information are usually to use it as a tool for grievance redressal. States may be advised to establish independent public grievance redressal authorities to deal with complaints of delay, harassment and corruption. These authorities should work in close coordination with the Information Commission. A roadmap should be charted out for effective implementation of RTI Act in the Legislature and Judiciary at all levels.

4.2.2 Iftikhar Gilani Case

On 9 June 2002, police arrested Iftikhar Gilani, New Delhi bureau chief of the Jammu-based newspaper *Kashmir Times*. The authorities charged Gilani of possessing classified documents. He was booked under OSA for keeping 'sensitive' material on his computer disc about the deployment of forces on the Indo-Pak Line of Control. His lawyer stated before the court that the 'sensitive' information is under public domain for the last six years. They further held that similar information is freely found on the Internet. Actually, a Pakistani author Nazir Kamal had written the 'sensitive' material found on his computer. This author had written it for the Institute of Strategic Studies, Islamabad. It was written in January 1996 and the

concerned institute had mailed it to ten institutions in India, including the government-run Institutes of Indian Council of World Affairs and Defence Studies and Strategic Analysis.

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Director General of Military Intelligence (DGMI), Lt. Gen. O.S. Lochab, stated that the documents seized from Gilani were not classified and that the files available on the journalist's computer system were 'neither secrets nor a threat to national security'. The viewpoint was provided on the request of the Investigating Officer directed by a Sessions Court to approach the DGMI for the very same. The Government withdrew the case and Mr Gilani was released on the court's order on 12 January 2003.

4.2.3 Santanu Saikia Case

On 26 February 2009, journalist Santanu Saikia was discharged by the Additional Sessions Judge Inder Jeet Singh. The case had been booked against him by the CBI, ten years ago for publishing the text of a Cabinet note on disinvestment policy. Commenting on a 1996 Supreme Court judgement in the case of *Sama Alana Abdulla Vs. State of Gujarat*, Singh held that the test of whether a particular revelation compromised a secret is based on whether some 'official code' or 'password' is divulged according to Section 5.

The basis of Saikia's discharge was the fact that the publication of the disinvestment document was not likely to adversely affect the sovereignty and integrity of the country or the state security or friendly relations with other countries.

Saikia, who fought the case himself in the court, observed how an archaic Act—intended to nab spies—could be used to harass a journalist in the modern times. He also stated that during the times of the Right to Information Act, wherein the courts and commissions are enlarging the domain of official documents available to common citizens, just a news report on disinvestment policy can in no way be taken as an offence deserving penalties as harsh as those provided under the OSA.

CHECK YOUR PROGRESS

1. What was the first measure taken by the Britishers to maintain the secrecy of its policies, measures and functions from the newspapers?
2. On what basis the Official Secrets Act of 1923 was passed?
3. What is the focus of Section 5 of the Official Secrets Act, 1923?

4.3 WORKING JOURNALISTS ACT

First Press Commission observed that under the current working conditions there is exploitation of journalists and other newspaper employees. Also, their working

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conditions are not suitably and properly defined. The Commission was of the opinion that the things might be improved if the minimum wage was fixed, particularly for the working journalist who did not enjoy any legal protection. The Commission dwelt on the subject at length and put forward comprehensive recommendations. The government on its part accepted these recommendations. It resulted in an enactment of the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provision Act, 1955 (45 of 1995). The Act intends to regulate the working conditions of journalists and non-journalist newspaper employees. Apart from dealing with service conditions, such as work hours and leaves, the Act also contains provisions for Wage Boards for journalists and non-journalist newspaper and news-agency employees. The recommended Wage Boards have a tripartite nature in which the representative of employers, workers and independent members participate to finalize the recommendations.

As per the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provision Act, 1955 (45 of 1995):[1]

> **Section 2** a) **'Newspaper'** means any printed periodical work containing public news or comments on public news and includes such other class of printed periodical work as many, from time to time, be notified in this behalf by the central government in the official gazette.
>
> b) **'Newspaper employees'** means any working journalists and includes any other person employed to do any work in or in relation to any newspaper establishment.
>
> c) **'Newspaper establishment'** means an establishment under the control of any person or body of persons, whether incorporated or not for any production or publication of one or more newspaper or for conducting any news agency or syndicate.
>
> d) **'Working journalists'** means a person whose principal avocation is that of a journalist and (who is employed as such, either whole-time or part-time in, or in relation to, one or more newspaper establishment), and includes an editor, a leader writer, news-editor, sub-editor, feature-writer, copy-tester, reporter, correspondent, cartoonist, news-photographer and proof-reader, but does not include any such person who—
>
> i) is employed mainly in a managerial or administrative capacity or
>
> ii) being employed in a supervisory capacity, performs, either by the nature of duties attached to his office of by reasons of the power vested in him, and function mainly of a managerial nature.
>
> *Section 3 (1)* The provisions of the Industrial Disputes Act, 1947 were made applicable to, working journalists as they apply to, or in relation to, workmen within the meaning of that Act.
>
> *Section 3 (2)* provided for notice period in relation to the retrenchment of a working journalist namely—

[1] Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provision Act, 1955 (45 of 1995), available on http://labour.nic.in/act/acts/wja.doc, accessed on 29.01.2011.

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b) six months, in case of an editor,

c) three months, in case of any other working journalists.

Section 4 made special provisions in respect of certain cases of retrenchment: Where at any time between July 14, 1954 and March 12, 1955, any working journalist had been retrenched, he shall be entitled to receive from employer—a) Wages for one month at the rate to which he was entitled immediately before his retrenchment, unless he has been given one month notice in writing before such retrenchment; and b) Compensation which shall be equivalent to 15 days average pay for every completed years of service under that employer or any part thereof in excess of six months.

Section 5 Payment of gratuity: a) Where any working journalist has been in continuous service, whether before or after the commencement of this act for not less than three years in any newspaper establishment and

i) his services are terminated by the employer in relation to that newspaper establishment for any reason whatsoever, otherwise than a punishment inflicted by way of disciplinary action or

ii) he retires from services on reaching the age of superannuation or

b) any working journalist has been in continuous service whether before or after the commencement of this act for not less than 10 years in any newspaper establishment and he voluntarily resigns on or after July 1, 1961 from services in that newspaper establishment on any ground what so ever other than on the ground of conscience or,

c) any working journalist has been in continuous service whether before or after the commencement of this act for not less than three years in any newspaper establishment and he voluntarily resigned on or after July 1, 1961, from services in that newspaper establishment on any ground whatsoever other than on the ground of conscience or

d) any working journalist dies while he is in service in any newspaper establishment.

Section 6 Hours of work

1) Subject to any rules that may be made under this act, no working journalist shall be required or allowed to work in any newspaper establishment for more than 144 hours during any periods of four consecutive weeks, exclusive of time for meals.

2) Every working journalist shall be allowed during any period of seven consecutive days rest for a period of not less than 24 consecutive hours, the period between 10 pm and 6 pm being included therein (Explanation—for the purpose of this section, 'week' means a period of seven days beginning at midnight on Saturday.)

Section 7 Leave—Without prejudice to such holidays, casual leave or other kinds of leave as may be prescribed, every working journalist shall be entitled to:

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

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

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Section 8 provides for fixation or revision of rates of wages.

Section 8 (1) The Central Government may, in the manner hereinafter provided,—

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

(b) revise, from time to time, at such intervals as it may think fit, the rates of wages fixed under this section or specified in the order made under section 6 of the Working Journalists (Fixation of Rates of Wages) Act, 1958 (29 of 1958).

Section 8 (2) The rates of wages may be fixed or revised by the Central Government in respect of working journalists for time work and for piece work.

Section 9 Procedure for fixing and revising rates of wages.

For the purpose of fixing or revising rates of wages in respect of working journalists under this Act, the Central Government shall, as and when necessary, constitute a Wage Board which shall consist of—

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

(b) two persons representing working journalists;

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

Presently, the number of persons in (a) and (b) above has been increased to three, while in (c) it has increased to four. In Section 13C there are analogous provisions for the non-journalist newspaper employees. This change was the result of Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions (Amendment) Act, 1996.

Section 10 provides an outline for the functioning of Wage Board; Section 11 contains the powers and procedures of the Wage Board; and Section 12 delineates the powers of Central Government in enforcing the recommendations put forward by the Wage Board. Section 13 intended that on the coming into operation of an order from the Central Government under Section 12, all working journalists will be entitled to be paid by their employers wages at the rate which must not, in no case, be less than the ones mentioned in the order. Under Section 13A, the government got the powers to fix the interim rates of wages.

On 2 May 1956, the Government of India constituted the first Wage Board for working journalists. Its chairman was Mr H.V. Divatia, a retired Judge of the Bombay High Court. On 10 May 1957, Divatia Wage Board's recommendations were accepted by the government. However, the validity and justifiability of the Board's decision was challenged by the management of some newspapers in the Supreme Court through applications under Article 32 of the Indian Constitution. In the Court's judgement dated 19 March 1958, the proceedings of the Wages Board—the decision having been found to have been taken without considering the employers' capacity to pay salaries—were quashed. In this manner, the Supreme Court set up the principles that should usually direct the statutory authority entrusted with the responsibility of fixing the salaries of working journalists. The judgment is cited in *Express Newspapers Vs. The Union of India 1958 S.C.R. 598.*

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On 14 June 1958, the President of India promulgated the Working Journalists (Fixation of Rates of Wages) Ordinance 1958. It was intended to fix the rates of wages for the working journalists. This Ordinance was replaced by an Act bearing the same name. This Act came into force on 16 September 1958. On 14 June 1958, as per the Ordinance of 1958, the Central Government formed a Wage Committee. Mr. K.Y. Bhandarkar, Secretary to the Government of India, Ministry of Law, was its chairman. In May 1959, the Committee's recommendations about wage scales and allowances were notified by the government. These were accepted by the Central Government and using the powers vested in the government as per Section 6 of the 1958 Act, an order in terms of the accepted recommendations was passed. This order became effective from 1 June 1958. It gave birth to demands for the rationalization of wage structure of the non-journalist employees in the newspaper industry.

On 12 November 1963, the Second Wage Board for Working Journalist was appointed. Its chairman was Mr G.K. Shinde, Ex-Chief Justice of the former Madhya Bharat High Court. In February 1964, the Government also formed a Wage Board for non-journalist employees in the newspapers industry under the same chairmanship. On 27 October 1966, the main Award for the working journalists was notified. Also, the non-statutory award for non-journalist employees was notified on 18 November 1967. However, some newspaper establishments and a News Agency challenged the award for working journalists in the Supreme Court/High Courts. The non-journalist employees award also could not be implemented. Both journalists and non-Journalists started an agitation. The strike called on 24 January 1968 was successful throughout the nation. Attempts were made by the Union Labour Ministry to bring the parties to the negotiation table. However, these efforts did not meet much success and it resulted in an indefinite strike. Finally, the controversy about the non-journalists was taken up by the National Tribunal. On 17 September 1968, the government passed on the dispute for arbitration to the National Tribunal formed under the Chairmanship of Mr B.N. Banerjee. The government published the Tribunal Award on 3 August 1970.

In 1975, the Third Wage Board (Palekar Wage Board) was constituted. However, the Wage Board could not work because of the litigation and non-cooperation of the employers. On 31 January 1979, the President of India promulgated the Working Journalists and other Newspaper Employees (Conditions of Services and Miscellaneous Provisions) Amendment Ordinance, 1979. It empowered the Central Government to set up a Tribunal for the purpose of fixing and revising wage rates for the working journalists and non-journalist employees in newspapers. As a follow up to the Ordinance, the Central Government appointed a one man Tribunal on 9 February 1979. It consisted of Mr D.G. Palekar, retired Judge of the Supreme Court. On 12 August 1980, the Tribunal gave its recommendations.

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To form the Tribunal in 1979 (Act 6 of 1979) the following provision was included in the Act:[2]

> *Article 13 AA* Constitution of Tribunal for fixing or revising rates of wages in respect of working journalists—
>
> (1) Notwithstanding anything contained in this Act, where the Central Government is of opinion that the Board constituted under section 9 for the purpose of fixing or revising rates of wages in respect of working journalists under this Act has not been able to function (for any reason whatsoever) effectively, and in the circumstances, it is necessary so to do, it may, by notification in the Official Gazette, constitute a Tribunal, which shall consist of a person who is, or has been, a Judge of a High Court or the Supreme Court, for the purpose of fixing or revising rates of wages in respect of working journalists under this Act.
>
> (2) The provisions of sections 10 to 13A shall apply to, and in relation to, the Tribunal constituted under sub-section (1) of this section, the Central Government and working journalists, subject to the modifications that—
>
> (a) the references to the Board therein, wherever they occur, shall be construed as references to the Tribunal;

Section 13DD had comparable provisions for non-journalist newspaper employees.

The Central Government formed separate Wage Boards for working journalist and non-journalist newspaper employees in July/August 1985 under the Chairmanship of Mr U.N. Bhachawat, retired Judge of the Madhya Pradesh High Court. The Bhachawat Wage Boards submitted provisional estimates on 31 August 1988 and final proposals on 30 May 1989. The Central Government accepted the recommendations on 31 August 1989. However, some publications filed writ petitions in their respective High Courts. Afterwards, all writ petitions were shifted to the Supreme Court. The apex court gave interim orders on 30 January 1990. The Bhachawat Boards' recommendations became effective from August 1989.

Consequently, on 2 September 1994, the Central Government set up separate Wage Boards for working journalists and non-journalist employees in newspaper industry and the news agencies. These Boards functioned under the Chairmanship of Justice Rajkumar Manisana Singh, retired Judge of the Assam High Court. On the basis of recommendations of these Boards, on 20 April 1995 the Central Government announced an interim relief of 20 per cent plus ₹100 per month. On 30 December 1999, the Manisana Wage Boards gave the tentative proposals of wage rates for the working journalists and non-journalist employees of the newspapers and news agencies. On 25 July 2000, the final recommendations were submitted to the Central Government. As a follow up to the recommendations, the Central Government put up a notification dated 5 December. 2000. It fixed

[2] Ins. by Act 60 of 1974, sec. 4 (w.e.f., 21-12-1974). Working Journalists Act, 1955, available on http://hrlabour.org/docs/labourActpdfdocs/working_newspaper_empemployees_Act.doc, access date: 29.01.2011.

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the wages, allowances and benefits of journalists and non-journalists in newspapers establishments and news agencies.

On 24 May 2007, the government submitted notifications to set up wage boards for working journalists and non-journalists of newspapers and news agencies. Dr Justice K. Narayana Kurup was the Chairman of both these Boards. Justice Kurup gave an interim report of the two Wage Boards. It recommended an interim relief of 30 per cent of the basic salary for newspaper employees with effect from January 2008. A notification to this effect was issued by the government in October 2008. After the resignation of Justice Kurup, Justice G.R. Majithia was appointed as the Chairman of Wage Boards.

The importance of this Act and the Wage Boards has diminished since more and more journalists are getting employed on contract basis. This development started in late 1980s when many journalists were given profitable packages if they chose the contract option. Nevertheless, the Act fulfils its function by ensuring basic minimum through Wage Boards.

Section 16 of the Act provides for:[3]

> 16. Effect of laws and agreements inconsistent with this Act—
>
> (1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the commencement of this Act: Provided that where under any such award, agreement, contract of service or otherwise, a newspaper employee is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the newspaper employee shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act.
>
> (2) Nothing contained in this Act shall be construed to preclude any newspaper employee from entering into an agreement with an employer for granting him rights or privileges in respect of any matter which are more favourable to him than those to which he would be entitled under this Act.

4.4 PARLIAMENTARY PROCEEDINGS AND PRIVILEGES

To ensure that the Parliament discharges its functions appropriately, the Indian Constitution provides certain immunities and powers to the both houses and their individual members. These atypical rights are known as Parliamentary privileges. In the UK, according to a statutory expression in Article 9 of the Bill of Rights, 1689, the freedom of speech in its proceedings is the principal parliamentary

[3] Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provision Act, 1955 (45 of 1995), available on http://labourandemployment.gov.in/ilc_a/law/WJ_act/chapter%20IV.htm, access date 29.01.2011.

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privilege enjoyed by the UK Parliament. It meant in essence the parliamentary triumph over the royal executive. In fact, the struggle had been going on for most of the 17th century. It came to an end with the flight of James II and Parliament appointing William II as his successor. As per this privilege, a member cannot be held accountable by an individual or an outside body for his speech in the Parliament. Comparable concepts are available in most of the democratic legislatures world. On a lesser degree of significance, other privileges are also surviving, such as freedom of access to the monarch, freedom from arrest in civil process and punishment rights against those who abuse parliamentary privileges or those found to be in contempt of parliament. The expression 'Parliamentary privileges' found in constitutional writings means both these types of immunities and rights. Sir Thomas Erskine May explains the term 'Parliamentary privileges' as: 'The sum of the peculiar rights enjoyed by each house collectively is a constituent part of the High Court of Parliament, and by members of each house of parliament individually, without which they cannot discharge their functions, and which exceed those possessed by other bodies or individuals.'

Article 105 of the Indian Constitution deals with the privileges and powers of the Parliament and its members, and the committees thereof:[4]

> 1. Subject to the provisions of this Constitution and the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.
>
> 2. No Member of Parliament shall be liable to any proceeding in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.
>
> 3. In other respects, the powers, privileges and immunities of each House of Parliament, and the members and the committee of each House, shall be such as may from time to time be defined by Parliament by law, and until so defined, shall be those of that House and of its members and committees immediately before the coming into force of Section 15 of the Constitution (44th Amendment) Act, 1978.
>
> 4. The provision of clauses (1), (2), and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to the members of Parliament.

Article 194—a precise replica of Article 105—is concerned with the State Legislatures and their committees and members. Nevertheless, there is a possibility of disagreement between the legislative privileges and the press freedom. The state legislatures and the Parliament are yet to define their privileges. They are comfortably enjoying, through Articles 105 and 194 of the Indian Constitution, the privileges enjoyed by the UK House of Commons. The UK House of Commons

[4] Jayant Bhatt, 'An Analysis of Parliamentary Privileges in India,' available at http://www.legalserviceindia.com/articles/parliamentary001.htm, access date 31.01.2011.

is provided the absolute privilege to directly manage the publication of its deliberations and proceedings. However, the Indian Constitution does not enforce any constraint on the freedom of press regarding such privilege in Article 19(2).

The conflict of rights issue was handled by the Supreme Court in M.S.M. *Sharma, editor of Searchlight Vs. Shri Krishna Sinha, etc. A.I.R. (1959) S.C. 295*. A few remarks made by a Bihar Legislative Assembly member were expunged by the Speaker. The *Searchlight* published these remarks. As a result, the editor was called to appear before the privileges committee. Mr M.S.M. Sharma approached the Supreme Court. The bench decided in favour of the legislative privilege by a majority verdict. However, Justice Subba Rao dissented with the majority decision on the ground that the absolute privilege of the House of Commons was in disuse in 1950 at the time of formulation of the Indian Constitution. He emphasized that whatever was incorporated into it as per Article 194(3) did not qualify as an absolute privilege. Justice Subba Rao further questioned why is Article 194 preferred over Article 19(1) and not the reverse. In the event of a conflict, the privilege must yield to the degree it affected the fundamental right. According to him, the legislature possessed just the privilege of restricting the mala fide publication of its proceedings.

4.4.1 Proceedings

Article 361A of the Constitution, inserted by the 44th Amendment, provides:[5]

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

The provision does not include the publication of expunged sections. The power and authority of expunction is distinctive to the Indian presiding officer. The Speaker of the House of Commons enjoys no such power. In fact, the House itself has ordered the expunction of entries from its Journal. However, it has never restricted the same from *House of Commons Daily Debates* (Hansard). From 1769 to 1909, there have been only five such instances of expunction; however, the deleted words are published in Hansard all the same. In case of Central Legislative Assembly, it was customary for the Assembly to order expunction on a motion. After Independence, the 'Rules of Procedure' provided the power to the Speaker in this regard. Moreover, this power has been used as a disciplinary tool.

In 1978, the Clerk of the House in House of Commons stated in a scholarly memorandum that the press rights rest on reporting Parliamentary proceedings, not in publishing the official reports. So even if a Speaker directs the expunction of words from the official record, he does not possess the right to give directions to the press not to report the expunged words.

[5] The Parliamentary Proceedings Protection of Publication Act, 1977, available at http://www.feeleminds.com/indialaws/view/1130/the-parliamentary-proceedings—protection-of-publication—act—1977, access date 31.01.2011.

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4.4.2 Right of Publication of Proceedings

According to Clause (2) of Article 105, no person shall be liable for the publication by order under the directions and authority of a house of Parliament, of any paper, report, votes or proceedings. The common law provides the defence of qualified privilege to accurate and fair unofficial reports of parliamentary proceedings.

In *Wason Vs. Walter* case, Cockburn, C.J. held the opinion that it was of utmost public and national significance that parliamentary proceedings should be communicated to the public. The reason is that the public has a very deep and real interest in getting information about what-in the Parliament. However, an incomplete report or an abstract report about some detached part of proceedings published with an intention to harm the reputation and status of individuals may be entitled to punishment. A similar law is applicable in India. According to Parliamentary Proceedings (Protection of Publication) Act, 1956, no individual shall be liable to any proceedings, criminal or civil, in a court regarding the publication of a considerably fair and accurate report of the proceedings in either House of the Parliament, except when it gets proved that the publication carries with it the element of malice.

4.4.3 Other Privileges

In a detailed discussion on the issue of privileges, Jayant Bhatt, Amity Law School, states:[6]

> Clause (3) of Article 105, as amended declares that the privileges of each House of Parliament, its members and committees shall be such as determined by Parliament from time to time and until Parliament does so, which it has not yet done, shall be such as on 20th June 1979 i.e., on the date of commencement of Section 15 of the 44th Amendment. Before the amendment this clause has provided that until Parliament legislates the privileges of each House and its members shall be such as those of the House of Commons in England at the time of commencement of the Constitution. As the position till 20th June 1979 was determined on the basis of original provision, it is still relevant to refer to the law as it has been in the context of English law. In that perspective it may be emphasized that there are certain privileges that cannot be claimed by Parliament in India. For example, the privileges of access to the sovereign, which is exercised by the House of Commons through its Speaker to have at all times the right of access to the sovereign through their chosen representative can have no application in India.

On the issue of law courts and privileges, Jayant Bhatt further states:[7]

> Article 105, so also Article 194 subjects the powers, privileges and immunities of each House as well as all its members and all its committees not only to the laws made by the appropriate legislature but also to all other provisions of the Constitution. Both these articles far from dealing with the legislative powers of

[6] Jayant Bhatt, 'An Analysis of Parliamentary Privileges in India,' available at http://www.legalserviceindia.com/articles/parliamentary001.htm, access date 31.01.2011.

[7] Jayant Bhatt, op. cit.

the Houses of Parliament or of State Legislature respectively are confined in scope to such powers of each House as it may exercise separately functioning as a House.

The Press Commissions of India have put up recommendations for the codification of privileges. However, the legislatures have not considered the issue so far.

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CHECK YOUR PROGRESS

4. Why was the Official Secrets Act, 1923 made more stringent after Independence instead of liberalizing it?
5. What were the First Press Commission's observations that resulted in the enactment of Working Journalists Act, 1955?
6. Give the major areas covered by the Working Journalists Act, 1955.

4.5 PRESS AND REGISTRATION OF BOOKS ACT

The Press and Registration of Books Act, 1867 (25 of 1867) is meant to regulate the printing presses and newspaper. It also ensures the preservation of copies of newspapers and books printed in India. Further, it calls for the registration of such newspapers and books. A major post-independence amendment to the Act provides for Registrar of Newspapers of India as recommended by the first Press Commission. For this purpose, Part VA comprising Sections 19A–191 was inserted by Act 55 of 1955. Other important parts of the Act are as follows: Part I Preliminary (Sections 1–2); Part II Printing Presses and Newspapers (Sections 3–8); Part III Delivery of Books (Sections 9–11); Part IV Penalties (Sections 12–17); Part V Registration of Books (Sections 18–19) and Part VI Miscellaneous (Sections 20–22).

This British period Act has a very interesting historical background. On 22 March 1867, the Statement of Objects and Reasons of the Bill became the Act 25 of 1867. The Statement had an instruction from the late Court of Directors of the East India Company. According to this instruction, the copies of all noteworthy and interesting works published in India were to be dispatched to England to be kept in the India House library. On the urgent demand of the Royal Asiatic Society in London, the Secretary of State for India repeated the instructions of the late Court of Directors. He also desired that the catalogues of all the works published in India need to be sent to England. These instructions made a special reference to the province of Lower Bengal. As a result, the local authorities in this province got into action. A plan suggested by Mr Talboys Wheeler of the Home Office was put into practice by Mr Robinson, Bengali Translator to the Government of Bengal. Consequently, a scheme of registration of books on terms and conditions favourable

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to publishers was notified. Hence, a catalogue of books published in the province of Lower Bengal was created.

The Statement of Objects and Reasons of the Bill also stated:

> The literature of a country is no doubt an index of the opinion and condition of the people, and such an index it is essential to good government that the rulers of a country should posses. In the interest, too, of history and of the scholars of Europe, it is undoubtedly wise to provide that a complete collection of the publications of the press of this country should be made as well in this country as in England. It cannot, too, but be of benefit to authors and publishers that catalogues of their works, and to a very limited extent copies of the works themselves, should be accessible to the public at certain well-known places.

Regrettably, the plan of voluntary registration of publications was found not to work. Therefore, this Bill proposed to set up a scheme of compulsory sale to the government of three copies of all books or similar works being printed in India. One copy of such works was meant to be sent to England, while the two others, once the books had been registered, were to be kept in India, to be placed in places where they could be carefully preserved. A list of such registered works was published in the quarterly Official Gazette. It was not, however, quite clear whether the provisions of the proposed Bill were required in any province other than Lower Bengal.

According to the Press and Registration of Books Act, 1867:[8]

> **'Book'** includes every volume, part of division of a volume, and pamphlet, in any language, and every sheet of music, map, chart of plan separately printed;
>
> **'editor'** means the person who controls the selection of the matter that is published in a newspaper.
>
> **'Magistrate'** means any person exercising the full powers of a Magistrate, and includes a Magistrate of police;
>
> **'newspaper'** means any printed periodical work containing public news or comments on public news;
>
> **'Press Registrar'** means the Registrar of Newspapers for India appointed by the Central Government under section 19A and includes any other person appointed by the Central Government to perform all or any of the functions of the Press Registrar.

According to Section 3 of this Act, it is mandatory that, 'Every book or paper printed within India shall have printed legibly on it the name of the printer and the place of printing, and (if the book or paper be published) the name of the publisher, and the place of publication.'

As per Section 4 it essential for the keeper of a printing press to file a declaration to the Magistrate holding the jurisdiction over the place where the printing press is located.

[8] The Press and Registration of Books Act, 1867, available on https://rni.nic.in/prbact.asp, access date 31.01.2011.

4.5.1 Rules for Publication of a Newspaper

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Section 5 of the Press and Registration of Books Act, 1867 delineates rules for the publication of a newspaper.[9]

No newspaper shall be published in India, except in conformity with the rules hereinafter laid down:

(1) Without prejudice to the provisions of Section 3, every copy of every such newspaper shall contain the names of the owner and editor thereof printed clearly on such copy and also the date of its publication.

(2) The printer and the publisher of every such [newspaper] shall appear in person or by agent authorised in this behalf in accordance with rules made under Section 20, before a District, Presidency or Sub-divisional Magistrate within whose local jurisdiction such newspaper shall be printed or published and shall make and subscribe, in duplicate, the following declaration:

'I AB, declare that I am the printer (or publisher, or printer and publisher) of the newspaper entitled ... and to be printed or published, or to be printed and published, as the case may be at?'.

And the last blank in this form of declaration shall be filled up with a true and precise account of the premises where the printing or publication is conducted.

(2A) Every declaration under rule (2) shall specify the title of the newspaper, the language in which it is to be published and the periodicity of its publication and shall contain such other particulars as may be prescribed.

(2B) Where the printer or publisher of a newspaper making a declaration under rule (2) is not the owner thereof, the declaration shall specify the name of the owner and shall also be accompanied by an authority in writing from the owner authorising such person to make and subscribe such declaration.

(2C) A declaration in respect of a newspaper made under rule (2) and authenticated under Section 6 shall be necessary before the newspaper can be published.

(2D) Where the title of any newspaper or its language or the periodicity of its publication is changed, the declaration shall cease to have effect and a new declaration shall be necessary before the publication of the newspaper can be continued.

(2E) As often as the ownership of a newspaper is changed, a new declaration shall be necessary.

(3) As often as the place of printing or publication is changed, a new declaration shall be necessary:

Provided that where the change is for a period not exceeding thirty days and the place of printing or publication after the change is within the local jurisdiction of the Magistrate referred to in rule (2), no new declaration shall be necessary if

a. statement relating to the change is furnished to the said Magistrate within twenty four hours thereof; and

b. the printer or publisher or the printer and publisher of the newspaper continues to be the same.

[9] ibid

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(4) As often as the printer or the publisher who shall have made such declaration as is aforesaid shall leave India for a period exceeding ninety days or where such printer or publisher is by infirmity or otherwise rendered incapable of carrying out his duties for a period exceeding ninety days in circumstances not involving the vacation of his appointment, a new declaration shall be necessary.

(5) Every declaration made in respect of a newspaper shall be void, where the newspaper does not commence publication—

a. within six weeks of the authentication of the declaration under Section 6, in the case of a newspaper to be published once a week or oftener; and

b. within three months of the authentication of the declaration under Section 6 in the case of any other newspaper. And in every such case, a new declaration shall be necessary before the newspaper can be published.

(6) Where, in any period of three months, any daily, tri-weekly, bi-weekly, weekly or fortnightly newspaper publishes issues the number of which is less than half of what should have been published in accordance with the declaration made in respect thereof, the declaration shall cease to have effect and a new declaration shall be necessary before the publication of the newspaper can be continued.

(7) Where any other newspaper has ceased publication for a period, exceeding twelve months, every declaration made in respect thereof shall cease to have effect, and a new declaration shall be necessary before the newspaper can be re-published.

(8) Every existing declaration in respect of a newspaper shall be cancelled by the Magistrate before whom a new declaration is made and subscribed in respect of the same:

Provided that no person [who does not ordinarily reside in India, or] who has not attained majority in accordance with the provisions of the Indian Majority Act, 1875 (9 of 1875), or of the law to which he is subject in respect of the attainment of majority, shall be permitted to make the declaration prescribed by this section, nor shall any such person edit a newspaper.

Section 6[10] ensures that each of the two originals of every declaration thus made and subscribed, as is aforesaid, needs to be authenticated under the signature and official seal of the Magistrate to whom the concerned declaration is supposed to be made:

Provided that where any declaration is made and subscribed under Section 5 in respect of a newspaper, the declaration shall not, save in the case of newspapers owned by the same person, be so authenticated unless the Magistrate is, on inquiry from the Press Registrar, satisfied that the newspaper proposed to be published does not bear a title which is the same as, or similar to, that of any other newspaper published either in the same language or in the same State.

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

[10] The Press and Registration of Books Act, 1867, op. sit.

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According to Section 7[11], the office copy is the prima facie evidence.

> In any legal proceeding whatever, as well civil as criminal, the production of a copy of such declaration as is aforesaid, attested by the seal of some Court empowered by this Act to have the custody of such declaration, or, in the case of the editor, a copy of the newspaper containing his name printed on it as that of the editor shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be subscribed to such declaration, or printed on such newspaper, as the case may be] that the said person was printer or publisher, or printer and publisher(according as the words of the said declaration may be) of every portion of every newspaper whereof the title shall correspond with the title of the newspaper mentioned in the declaration, or the editor of every portion of that issue of the newspaper of which a copy is produced.

Section 8[12] contains provisions for making a new declaration by the individuals who have already signed a declaration, but afterwards ceased to be publishers or printers.

> If any person has subscribed to any declaration in respect of a newspaper under Section 5 and the declaration has been authenticated by a Magistrate under section and subsequently that person ceases to be the printer or publisher of the newspaper mentioned in such declaration, he is required to make a declaration to that effect.
>
> Section 8A provides for declaration by a person whose name is wrongly printed as editor.
>
> Section 8B provides for the cancellation of declaration by Magistrate and Section 8C for appeal within 60 days against the decision to Press and Registration Appellate Board.
>
> Following are the grounds for cancellation of declaration mentioned in the Act (Section 8B):
>
> i. the newspaper, in respect of which the declaration has been made is being published in contravention of the provisions of this Act or rules made thereunder;
>
> ii. the newspaper mentioned in the declaration bears a title which is the same as, or similar to, that of any other newspaper published either in the same language or in the same State; or
>
> iii. the printer or publisher has ceased to be the printer or publisher of the newspaper mentioned in such declaration; or
>
> iv the declaration was made on false representation or on the concealment of any material fact or in respect of a periodical work which is not a newspaper;

The Act provides for delivery of copies of books to government gratis as notified by State Government (Section 9), receipt (Section 10) and disposal (Section 11). Section 11A provides that 'the printer of every newspaper in India shall deliver at such place and to such officer as the State Government may, by notification in the Official Gazette, direct, and free of expense to the Government, two copies of

[11] The Press and Registration of Books Act, 1867, op. sit.
[12] ibid

each issue of such newspaper as soon as it is published'. Section 11B provides, 'Subject to any rules that may be made under this Act, the publisher of every newspaper in India shall deliver free of expense to the Press Registrar one copy of each issue of such newspaper as soon as it is published.'

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4.5.2 Penalties Provided Under the Act

According to Section 12, 'Whoever shall print or publish any book or paper otherwise than in conformity with the rule contained in Section 3 of this Act, shall, on conviction before a Magistrate, be punished by fine not exceeding. two thousand rupees, or by simple imprisonment for a term not exceeding six months, or by both.'

Section 13 maintains, 'Whoever shall keep in his possession any such press as aforesaid in contravention of any of the provisions contained in Section 4 of this Act, shall, on conviction before a Magistrate, be punished by fine not exceeding two thousand rupees, or by simple imprisonment for a term not exceeding six months or by both.'

Section 14 says, 'Any person who shall, in making any declaration or other statement under the authority of this Act, make a statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall on conviction before a Magistrate, be punished by fine not exceeding two thousand rupees, and imprisonment for a term not exceeding six months.'

Section 15[13] of the Press and Registration of Books Act, 1867, provides for penalties for publishing and printing newspaper without conforming to rules:

> (1) Whoever shall edit, print or publish newspaper, without conforming to the rules hereinbefore laid down, or whoever shall edit, print or publish, or shall cause to be edited, printed or published any newspaper, knowing that the said rules have not been observed with respect to that newspaper, shall, on conviction before a magistrate, be punished with fine not exceeding two thousand rupees, or imprisonment for a term not exceeding six months or both.
>
> (2) Where an offence is committed in relation to a newspaper under subsection (1), the Magistrate may, in addition to the punishment imposed under the said sub-section, also cancel the declaration in respect of the newspaper.
>
> Section 15A: If any person who has ceased to be a printer or publisher of any newspaper fails or neglects to make a declaration in compliance with Section 8, he shall, on conviction before a Magistrate, be punishable by fine not exceeding two hundred rupees.

Section 16[14] has provisions of penalty for not delivering books or inability to supply maps to the printer.

> If any printer of any such book as is referred to in Section 9 of this Act shall neglect to deliver copies of some pursuant to that section, he shall for every such default forfeit to the Government such sum not exceeding fifty rupees as a

[13] The Press and Registration of Books Act, 1867, op. sit.
[14] The Press and Registration of Books Act, 1867, op. sit.

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Magistrate having jurisdiction in the place where the book was printed may, on the application of the officer to whom the copies should have been delivered or of any person authorized by that officer in this behalf, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to the value of the copies which the printer ought to have delivered.

If any publisher or other person employing any such printer shall neglect to supply him, in the matter prescribed in the second paragraph of Section 9 of this Act with the maps, prints or engravings which may be necessary to enable him to comply with the provisions of that section, such publisher or other person shall for every such default forfeit to the Government such sum not exceeding fifty rupees as such a Magistrate as aforesaid may, on such an application as aforesaid, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the maps, prints or engravings which such publisher or other person ought to have supplied.

4.5.3 Registration of Memoranda of Books

Section 18[15] is concerned with the registration of memoranda of books.

There shall be kept at such office, and by such officer as the State Government shall appoint in this behalf, a book to be called Catalogue of Books printed in India, wherein shall be registered a memorandum of every book which shall have been delivered pursuant to clause (a) of the first paragraph of Section 9 of this Act. Such memorandum shall (so far as may be practicable) contain the following particulars (that is to say):—

1. the title of the book and the contents of the title-page, with a translation into English of such title and contents, when the same are not in the English language;
2. the language in which the book is written;
3. the name of the author, translator, or editor of the book of any part thereof;
4. the subject;
5. the place of printing and the place of publication;
6. the name of firm of the printer and the name of firm of the publisher;
7. the date of issue from the press or of the publication;
8. the number of sheets, leaves or pages;
9. the size;
10. the first, second or other number of the edition;
11. the number of copies of which the edition consists;
12. whether the book is printed cyclostyled or lithographed;
13. the price at which the book is sold to the public; and
14. the name and residence of the proprietor of the copyright or of any portion of such copyright.

[15] The Press and Registration of Books Act, 1867, op. sit.

Such memorandum shall be made and registered in the case of each book as soon as practicable after the delivery of the copy thereof pursuant to clause (a) of the first paragraph of Section 9.

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Section 19 is concerned with the publication of memoranda registered. It says, 'The memoranda registered during each quarter in the said Catalogue shall be published in the Official Gazette, as soon as may be after the end of such quarter, and a copy of the memoranda so published shall be sent to the Central Government.'

4.5.4 Registration of Newspapers

Part VA[16] of the Press and Registration of Books Act, 1867 (Sections 19A—19L) provides for the registration of newspapers.

19A. Appointment of Press Registrar and other officers.

The Central Government may appoint a **Registrar of newspapers for India** and such other officers under the general superintendence and control of the Press Registrar as may be necessary for the purpose of performing the functions assigned to them by or under this Act, and may, by general or special order, provide for the distribution of allocation of functions to be performed by them under this Act.

19B. Register of newspaper—

(1) The Press Registrar shall maintain in the prescribed manner a Register of Newspapers.

(2) The Register shall, as for as may be practicable, contain the following particulars about every newspaper published in India, namely:—

a. the title of the newspaper;

b. the language in which the newspaper is published;

c. periodicity of the publication of the newspaper;

d. the name of the editor, printer and publisher of the newspaper;

e. the place of printing and publication;

f. the average number of pages per week;

g. the number of day of publication in the year;

h. the average number of copies printed, the average number of copies sold to the public and the average number of copies distributed free to the public, the average being calculated with reference to such period as may be prescribed;

i. retail selling price per copy;

j. the names and addresses of the owners of the newspaper and such other particulars relating to ownership as may be prescribed;

k. any other particulars which may be prescribed.

(3) On receiving information from time to time about the aforesaid particulars, the Press Registrar shall cause relevant entries to be made in the Register and may make such necessary alterations or corrections therein as may be required for keeping the Register up-to-date.

[16] The Press and Registration of Books Act, 1867, op. sit.

19C. Certificate of Registration.

On receiving from the Magistrate under Section 6 a copy of the declaration in respect of a newspaper and on the publication of such newspaper, the Press Registrar shall, as soon as practicable thereafter, issue a certificate of registration in respect of that newspaper to the publisher thereof.

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19D. Annual statement, etc., to be furnished by newspapers.

It shall be the duty of the publisher of every newspaper—

a. to furnish to the Press Registrar an annual statement in respect of the newspaper at such time and containing such of the particulars referred to in subsection (2) of Section 19B as may be prescribed;

b. to publish in the newspaper at such times and such of the particulars relating to the newspaper referred to in sub-section (2) of Section 19B as may be specified in this behalf by the Press Registrar.

19E. Returns and reports to be furnished by newspapers.

The publisher of every newspaper shall furnish to the Press Registrar such returns, statistics and other information with respect to any of the particulars referred to in sub-section (2) of Section 19B as the Press Registrar may from time to time require.

19F. Right of access to records and documents.

The Press Registrar or any gazetted officer authorised by him in writing in this behalf shall, for the purpose of the collection of any information relating to a newspaper under this Act, have access to any relevant record or document relating to the newspaper in the possession of the publisher thereof, and may enter at any reasonable time any premises where he believes such record or document to be and may inspect or take copies of the relevant records or documents or ask any question necessary for obtaining any information required to be furnished under this Act.

Section 20 gives powers to make rules to State and Central Governments and Section 21 provides that 'the State Government may, by notification in the Official Gazette, exclude any class of books or papers from the operation of the whole or any part of parts of this Act; Provided that no such notification in respect of any class of newspapers shall be issued without consulting the Central Government'. The last provision under Section 22 extends the operation of this Act to 'the whole of India'.

CHECK YOUR PROGRESS

7. Provide the areas covered by Sections 11–13 of the Working Journalists Act, 1955.
8. What is the focus of the Press and Registration of Books Act, 1867?

4.6 SUMMARY

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- The Official Secrets Act, 1923 was based on the British Act of 1920. Actually, the Frank's Committee in England stated that the scope and nature of Section 2 of the British Act corresponding to Section 5 of the Indian Act is extremely wide: 'Any law which impinges on the freedom of information in a democracy should be more tightly drawn.' Strangely, In place of liberalizing the Act after the Independence, it was made stiffer by an amendment introduced in 1967.
- This Act was amended to make the punishments more stringent after the Indo-China conflict of 1962 and the Indo-Pak war of 1965. In the process, Parliament not only further sanctified official secrecy, but also weakened itself as well as the society vis-à-vis the executive.
- In the present context, there is a big debate about the relevance of the Act in the light of Right to Information Act.
- First Press Commission observed that under the current working conditions, there is exploitation of journalists and other newspaper employees. Also, their working conditions are not suitably and properly defined.
- Working Journalists Act of 1955 was intended to streamline the working conditions and wages of journalists and non-journalist staff in newspapers and news agencies.
- Given the prevailing conditions, which were really unfavourable to the journalists, it was felt that the media sector should be streamlined on the tune of other sectors. Unfortunately, most of these provisions have remained only in law books.

4.7 KEY TERMS

- **Parliamentary privilege:** A legal immunity enjoyed by members of certain legislatures, in which legislators are granted protection against civil or criminal liability for actions done or statements made related to one's duties as a legislator
- **Common law:** The system of laws originated and developed in England and based on court decisions, on the doctrines implicit in those decisions, and on customs and usages rather than on codified written laws
- **Civil law:** The body of laws of a state or nation dealing with the rights of private citizens
- **Espionage:** The act or practice of spying or of using spies to obtain secret information, as about another government or a business competitor
- **Manifesto:** A public declaration of principles, policies or intentions, especially of a political nature

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4.8 ANSWERS TO 'CHECK YOUR PROGRESS'

1. British obsession with secrecy found its way to India. In 1843, the Central (British) Government issued a notification prohibiting Civil Servants from giving outsiders any information in their possession 'without the previous consent of the Government to which alone they belong'.
2. India separately passed its Official Secrets Act (19 of 1923) on the instigation of the General Army staff in India and also to contain the spread of communism, communalism and the Japanese influence.
3. Section 5 is concerned with unjust and wrong communication of information. For example, it states that if an individual who is in possession of secret information that relates to or can be used in prohibited place or may assist an enemy, jeopardize the security of the country or adversely affect relations with friendly countries, or he hands over the information to unauthorized persons, he may be held guilty of offence.
4. In place of liberalizing the Act, after the Independence, it was made stiffer by an amendment introduced in 1967. This Act was amended to make the punishments more stringent after the Indo-China conflict of 1962 and the Indo-Pak war of 1965. In the process, Parliament not only further sanctified official secrecy but also weakened itself as well as the society vis-à-vis the executive.
5. First Press Commission observed that under the current working conditions there is exploitation of journalists and other newspaper employees. Also, their working conditions are not suitably and properly defined. The Commission was of the opinion that the things might be improved if the minimum wage was fixed, particularly for the working journalist who did not enjoy any legal protection. It resulted in an enactment of the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provision Act, 1955 (45 of 1995).
6. The Act intends to regulate the working conditions of journalists and non-journalist newspaper employees. Apart from dealing with service conditions such as work hours and leaves, the Act also contains provisions for Wage Boards for journalists and non-journalist newspaper and news-agency employees. The recommended Wage Boards have a tripartite nature in which the representative of employers, workers and independent members participate to finalize the recommendations.
7. Section 10 provides an outline for the functioning of Wage Board; Section 11 contains the powers and procedures of the Wage Board; and Section 12 delineates the powers of Central Government in enforcing the recommendations put forward by the Wage Board. Section 13 intended that on the coming into operation of an order from the Central Government under Section 12, all working journalists will be entitled to be paid by their employers wages at the rate which must not, in no case, be less than the ones mentioned in the order.

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8. The Press and Registration of Books Act, 1867 (25 of 1867) is meant to regulate the printing presses and newspaper. It also ensures the preservation of copies of newspapers and books printed in India. Further, it calls for the registration of such newspapers and books. A major post-independence amendment to the Act provides for Registrar of Newspapers of India as recommended by the first Press Commission.

4.9 QUESTIONS AND EXERCISES

Short-Answer Questions

1. Provide a brief note on the historical background of the Official Secrets Act, 1923.
2. What are the important features of Working Journalists Act, 1955?
3. What is the origin of the concept of 'Parliamentary privileges'?
4. What are the 'Parliamentary privileges' provided to the Houses of Indian Parliament and their individual members?

Long-Answer Questions

1. Give a detailed note on the Official Secrets Act as it stands today. How far it restricts the freedom of press in India?
2. Critically examine the position of Right to Information Act against the background of Official Secrets Act.
3. How effective has been the Working Journalists Act in alleviating the problems of media personnel?
4. What are the similarities and dissimilarities between the 'Parliamentary proceedings and privileges' in Britain and India?

4.10 FURTHER READING

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UNIT 5 THE PRESS COUNCIL AND PRESS COMMISSIONS OF INDIA

Structure

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  5.2.1 The Press Council of 1979
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5.11 Questions and Exercises
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5.0 INTRODUCTION

Given the criticality of media matters both for the government as well the society, it becomes inevitable that both self-regulatory as well as legislative measures are institutionalized for the proper functioning of media industry. In India, the Press Council of India functions as a statutory body. It governs the conduct and behaviour of the broadcast and print media. This self-regulatory institution plays a very significant role in ensuring a healthy role of media in the success of democratic set-up in India. It has also the authority to hold hearings on receiving complaints and take appropriate actions. It may either censure or warn the errant journalists. To evaluate the exact condition of press in India, the First Press Commission was appointed in September 1952. Its chairman was Justice G.S. Rajadhyaksha. In its

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report submitted in 1954, the Commission made many significant recommendations which resulted in the setting up of a number of institutions. These institutions were meant to organize the profession of journalism in a systematic way. It was the first enquiry of this nature looking into the functioning of press.

The Parliament of India enacted the Right to Information Act 2005 (RTI). It is meant to implement the freedom of information legislation at the national level 'to provide for setting out the practical regime of right to information for citizens'. As per the provisions of this Act, every citizen has the right to avail information regarding the policies and actions of the governmental machinery. Further, Internet has come to play a very big part in the 21st century. Information Technology Act, 2000 provides legal status to the transactions carried out through electronic data interchange and other types of electronic communication. It is an effort to regularize 'electronic commerce' involving the use of alternatives to paper-based means of communication and storage of information. It is supposed to facilitate electronic filing of documents and papers with the government agencies and also to amend the Indian Evidence Act, 1872, Indian Penal Code, the Reserve Bank of India Act, 1934 and the Bankers' Books Evidence Act, 1891.

5.1 UNIT OBJECTIVES

After going through this unit, you will be able to:

- Discuss the role, functions and guidelines of the Press Council of India
- Critically examine the recommendations of the Press Commissions in India
- Examine the important features of the Right to Information Act
- Understand the nature and scope of Information Technology Act, 2000

5.2 PRESS COUNCIL OF INDIA

The Press Council of India was set up on 4 July 1966 as a statutory, autonomous and quasi-judicial body. Justice J.R. Mudholkar, at that time a Judge of the Supreme Court, was its Chairman. The Press Council Act, 1965, mentioned the below given functions of the Council in pursuing its objects:[1]

> The Council may, in furtherance of its object, perform the following functions, namely:—
>
> (a) to help newspapers to maintain their independence;
>
> (b) to build up a code of conduct for newspapers and journalists in accordance with high professional standards;
>
> (c) to ensure on the part of newspapers and journalists the maintenance of high standards of public taste and foster a due sense of both the rights and responsibilities of citizenship;

[1] The Press Council Act, 1965, available at http://www.karmayog.org/centralgovtacts/centralgovtacts_6351.htm, access date 02.02. 2011.

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(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 such cases of assistance received by any newspaper or news agency in India from foreign sources, as are referred to it by the Central Government.

(g) to promote the establishment of such common service for the supply and dissemination of news to newspapers as may, from time to time, appear to it to be desirable;

(h) to provide facilities for the proper education and training of persons in the profession of journalism;

(i) to promote a proper functional relationship among all classes of persons engaged in the production or publication of newspapers;

(j) to study developments which may tend towards monopoly or concentration of ownership of newspapers, including a study of the ownership or financial structure of newspapers, and if necessary, to suggest remedies therefore;

(k) to promote technical or other research;

(l) to do such other acts as may be incidental or conducive to the discharge of the above functions.

The constitution and responsibilities of the Press Council of India include the following:[2]

The Act of 1965 provided that the Council shall consist of a Chairman and 25 other members. Of the 25 members, 3 were to represent the two houses of Parliament, 13 were to be from amongst the working journalists, of which not less than 6 were to be editors who did not own or carry on the business of management of newspapers and the rest were to be the persons having special knowledge or practical experience in respect of education and science, law, literature and culture. By an amendment of the Act in 1970, the membership of the Council was raised by one to provide a seat for persons managing the news agencies.

The Chairman under the Act on 1965 was to be nominated by the Chief Justice of India. Of the three Members of Parliament, two representing Lok Sabha were to be nominated by the Speaker of the Lok Sabha and one representing Rajya Sabha, was to be nominated by the Chairman of the Rajya Sabha. The remaining 22 members were to be selected by a three-man Selection Committee comprising the Chief Justice of India, Chairman of the Press Council and a nominee of the President of India. The Chairman and the members were to hold office for a period of three years provided that no member could hold office for a period exceeding six years in the aggregate.

When in the early years of the Council's existence a grievance was aired about the selection of a category of members, Parliament embarked on a search for a meticulous formula which would ensure uncompromising impartiality and fairness in the selection of Chairman and other members. This led to the amendment of the 1965 Act entrusting this work to a Committee comprising the incumbent of

[2] History, available at http://presscouncil.nic.in/history.htm, access date 02.02.2011.

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the three highest offices which are considered as an embodiment of these attributes, namely, Chairman of Rajya Sabha, Speaker of Lok Sabha and Chief Justice of India. But, the pursuit for still less subjective scheme continued. Even a statistical formula was evolved for equitable presentation of the various representative organizations of the profession.

The composition of the nominating committee was changed by an amendment of the said Act in 1970, according to which the Chairman and the members from the press were to be nominated by a Nominating Committee consisting of the Chairman of the Rajya Sabha, the Chief Justice of India and the Speaker of the Lok Sabha.

The amending Act of 1970 introduced several other provisions in the Act. The manner of selection of persons of special knowledge or practical experience was specified. It provided that of the three persons to be nominated from among such people, one each shall be nominated by the University Grants Commission, the Bar Council of India and the Sahitya Academy. It also provided for raising the membership of the Council to give one seat to the persons managing the news agencies. Out of the six seats for proprietors and managers of newspapers, two each were earmarked for big, medium and small newspapers. No working journalist who owned or carried on the business of management of newspapers could now be nominated in the category of working journalists. Also, it was specified that not more than one person interested in any newspaper or group of newspapers under the same control, could be nominated from the categories of editors, other working journalists, proprietors and managers.

The Nominating Committee was empowered to review any nomination on a representation made to it by any notified association or by any person aggrieved by it or otherwise. The amended Act also barred re-nomination of a retiring member for more than one term. Where any association failed to submit a panel of names when invited to do so, the Nominating Committee could ask for panels from other associations or persons of the category concerned or nominate members after consultation with such other such individuals or interests concerned as it thought fit. Under the original Act, the Chief Justice of India nominated the Chairman. But, after this amendment, nomination of the Chairman was also left to the Nominating Committee.

The Council set up under the Act of 1965 functioned from July 1966 to December 1975. During the Internal Emergency imposed by Mrs. Indira Gandhi in June 1975, the Press Council was abolished on first day of January 1976 by the Press Council (Repeal) Act 1976.

5.2.1 The Press Council of 1979

Mrs Indira Gandhi lost the 1977 General Elections and the Janata Government came to power. It revived the Press Council through a fresh legislation, the Press Council of India Act 1978 (37 of 1978). The new Council was set up on 1 March 1979. This Press Council derived its authority straight from Parliamentary enactment and functioned as an independent, objective and self-regulatory institution. The Press Council of 1979 had the following features:[3]

[3] The Press Council of 1979, available at http://presscouncil.nic.in/history.htm, access date 02.02.2011.

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The present Council is a body corporate having perpetual succession. It consists of a Chairman and 28 other members. Of the 28 members, 13 represent the working journalists. Of whom six are to be editors of newspapers and remaining seven are to be working journalists other than editors. Six are to be from among persons who own or carry on the business of management of newspapers. One is to be from among the persons who manage news agencies. Three are to be persons having special knowledge or practical experience in respect of education and science, law and literature and culture. The remaining five are to Members of Parliament: three from Lok Sabha and two from Rajya Sabha.

The new Act provides for selection of the Chairman by a Committee consisting of the Chairman of the Rajya Sabha, the Speaker of Lok Sabha and a person elected by the members of the Council from among themselves. The twenty representatives of the Press are nominated by the associations of aforesaid categories of the newspapers and news agencies notified for the purpose by the Council in the each category.

One member each is nominated by the University Grants Commission, the Bar Council of India and the Sahitya Academy. Of the five Members of Parliament, three are nominated by the Speaker of the Lok Sabha and two by the Chairman of the Rajya Sabha. The term of the Chairman and the members of the Council is three years. A retiring member is eligible for re-nomination for not more than one term. Despite being a statutory body, the Ministry of Information and Broadcasting has been completely kept out of the nomination process except for publishing the notification in the official gazette of the names of the members nominated.

The objects of present Press Council are substantially the same as were laid down under the Act of 1965. But the functions have undergone some change in that the three of the functions listed in the earlier Act were not included in the 1978 Act as they were considered to be burdensome for the Council to perform. These related to (a) promoting the establishment of such common services for the supply and dissemination of news to newspapers as may, from time to time, appear to it to be desirable; (b) providing facilities for proper education and training of persons in the profession of journalism; and (c) promoting technical or other research.

In addition, the Act of 1978 lists two new functions of the Council:

(a) to undertake studies of foreign newspapers, including those brought out by any embassy or any other representative in India of a foreign State, their circulation and impact; and,

(b) to undertake such studies as may be entrusted to the Council and to express its opinion in regard to any matter referred to it by the Central Government. The other functions remain the same as enumerated in the Act of 1965.

The powers of the Press Council are provided in Sections 14 and 15 of the Act. On receipt of a complaint made to it or otherwise, the Council has reason to believe that a newspaper or news agency has offended against the standards of journalistic ethics or public taste; or that an editor or a working journalist has committed any professional misconduct, the Council may, after giving the newspaper, or news agency, the editor or journalist concerned an opportunity of being heard, hold an inquiry and if it is satisfied that it is necessary to do, it may, for reasons to be recorded in writing, warn, admonish or censure the newspaper, the news agency, the editor or the journalist, as the case may be.

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It is provided that the Council may not take cognizance of a complaint if in the opinion of the Chairman, there is no sufficient ground for holding an inquiry.

If the Council is of the opinion that it is necessary or expedient in public interest so to do, it may require any newspaper to publish therein in such manner as the Council thinks fit, any particulars relating to any inquiry under this section against a newspaper or news agency, an editor or a journalist working therein, including the name of such newspaper, news agency, editor or journalist.

The Council is not empowered to hold an inquiry into any matter in respect of which any proceeding is pending in a court of law. The decision of the Council shall be final and shall not be questioned in any court of law.

Section 15 provides that for the purpose of performing its functions or holding any inquiry under this Act, the Council has the same powers throughout India as are vested in a civil court while trying a suit under the Code of Civil Procedure, in respect of the following matters namely summoning and enforcing the attendance of persons and examining them on oath; requiring the discovery and inspection of documents; receiving evidence on affidavits; requisitioning any public record or copies thereof from any court or office; issuing commissions for the examination of witnesses or documents; and any other matter, which may be prescribed.

However, the Council cannot compel any newspaper, news agency, editor or journalist to disclose the source of any news or information published by that newspaper or received or reported by that news agency, editor or journalist.

Every inquiry held by the Council shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code. The Council may, if it considers it necessary for the purpose of carrying out its objects or for the performance of any of its functions under this Act, make such observations, as it may think fit, in any of its decisions or reports, respecting the conduct of any authority, including Government. The Inquiry Regulations framed by the Council empower the Chairman to take suo motu action and issue notices to any party in respect of any matter falling within the scope of Press Council Act. The procedure for holding a suo motu inquiry is substantially the same as in the case of a normal inquiry except that for any normal inquiry a complaint is required to be lodged with the Council by a complainant.

The Council, in 1980 had proposed amendment of the Act, for empowering the Council to recommend to the authorities concerned, denial of certain facilities and concessions in the form of accreditation, advertisements, allocation of newsprint or confessional rates of postage for a certain period in the case of a newspaper which was censured thrice by the Council. Acceptance of the Council's recommendations on the part of the authorities was sought to be made obligatory. The Council was further of the view that, as in the case of newspapers, the power vested in it under Section 15(4) of the Press Council Act, 1978, to make such observations as it may think fit, in any of its decisions or reports, respecting the conduct of any authority including government, should expressly include the power to warn, admonish or censure such authorities and that the observations of the Council in this behalf should be placed on the Table of both the Houses of Parliament and/or of the Legislature of the State concerned. In the year 1987, the Council reconsidered the matter and after detailed deliberations, decided to withdraw its proposal for penal powers because it was of the reconsidered opinion that in the prevalent conditions these powers could tend

to be misused by the authorities to curb the freedom of the Press. Since then, time and again, suggestions or references have been made to the Council that it should have penal powers to punish the delinquent newspapers/journalists. In response, the Council has consistently taken the view that the moral sanctions provided to it under the existing scheme of the Act are adequate.

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The Act provides that the Council may, for the purpose of performing its functions under the Act, levy fee at the prescribed rates from registered newspapers and news agencies [Section 16(1)]. Apart from this, the Central Government has been enjoined to pay the Council by way of grant such sums of money as the Central Government may consider necessary for the performance of its functions.

5.2.2 Code and Guidelines of PCI

Section 13(2)(b) in the Press Council Act, 1978, empowers the Council to institutionalize a Code of Conduct for journalists, newspapers and news agencies to ensure high professional standards to guide the newsmen. Framing of such a Code is a very dynamic process. It should keep pace with the contemporary time and events. It means that the Press Council may evolve the code on case by case basis through its arbitration. In 1984, a comprehensive compendium of the principles built up by the Press Council through its guidelines and adjudications was published by the Council in partnership with the Indian Law Institute. It was titled, 'Violation of Journalistic Ethics and Public Taste'. In 1986, the second part of the compendium 'Violation of Freedom of Press' was concerned about the complaints against the authorities.

5.3 NORMS OF JOURNALISTIC CONDUCT

In 1992, the Council brought out 'A Guide to Journalistic Ethics'. An updated version of the code was published in 1996.[4]

Principles and Ethics

The fundamental objective of journalism is to serve the people with news, views, comments and information on matters of public interest in a fair, accurate, unbiased, sober and decent manner. Towards this end, the Press is expected to conduct itself in keeping with certain norms of professionalism universally recognized. The norms enunciated below and other specific guidelines appended thereafter, when applied with due discernment and adaptation to the varying circumstance of each case, will help the journalist to self-regulate his or her conduct.

Accuracy & Fairness

1) The Press shall eschew publication of inaccurate, baseless, graceless, misleading or distorted material. All sides of the core issue or subject should be reported. Unjustified rumours and surmises should not be set forth as facts.

Pre-publication Verification

2) On receipt of a report or article of public interest and benefit containing imputations or comments against a citizen, the editor should check with due care

[4] *India's Norms to Journalistic Conduct*, available at http://www.eyeonethics.org/journalist-code-of-ethics-in-asia/indias-norms-of-journalistic-conduct/, access date 02.02. 2011.

and attention its factual accuracy-apart from other authentic sources with the person or the organisation concerned to elicit his/her or its version, comments or reaction and publish the same with due amendments in the report where necessary. In the event of lack or absence of response, a footnote to that effect should be appended to the report.

Caution against defamatory writings

3) Newspaper should not publish anything which is manifestly defamatory or libelous against any individual organization unless after due care and checking, they have sufficient reason to believe that it is true and its publication will be for public good.

4) Truth is no defence for publishing derogatory, scurrilous and defamatory material against a private citizen where no public interest is involved.

5) No personal remarks which may be considered or construed to be derogatory in nature against a dead person should be published except in rare cases of public interest, as the dead person cannot possibly contradict or deny those remarks.

6) The Press shall not rely on objectionable past behaviour of a citizen for basing the scathing comments with reference to fresh action of that person. If public good requires such reference, the Press should make pre-publication inquiries from the authorities concerned about the follow up action, if any, in regard to those adverse actions.

7) The Press has a duty, discretion and right to serve the public interest by drawing reader's attention to citizens of doubtful antecedents and of questionable character but as responsible journalists they should observe due restraint and caution in hazarding their own opinion or conclusion in branding these persons as 'cheats' or 'killers' etc. The cardinal principle being that the guilt of a person should be established by proof of facts alleged and not by proof of the bad character of the accused. In the zest to expose, the Press should not exceed the limits of ethical caution and fair comments.

8) Where the impugned publication are manifestly injurious to the reputation of the complainant, the onus shall be on the respondent to show that they were true or to establish that they constituted for comment made in good faith and for public good.

Parameters of the right of the Press to comment on the acts and conduct of public officials

9) So far as the government, local authority and other organs/institutions exercising governmental power are concerned, they cannot maintain a suit for damages for acts and conduct relevant to the discharge of their official duties unless the official establishes that the publication was made with reckless disregard for the truth. However, judiciary which is protected by the power to punish for contempt of court and the Parliament and Legislatures, protected as their privileges are by Articles 105 and 194 respectively, of the Constitution of India, represent exception to this rule.

10) Publication of news or comments/information on public officials conducting investigations should have a tendency to help the commission of offences or to impede the prevention or detection of offences or prosecution of the guilty. The

investigative agency is also under a corresponding obligation not to leak out or disclose such information or indulge in disinformation.

11) The Official Secrets Act, 1923 or any other similar enactment or provision having the force of law equally bind the press or media though there is no law empowering the state or its officials to prohibit, or to impose a prior restraint upon the Press/media.

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12) Cartoons and caricatures in depicting good humour are to be placed in a special category of news that enjoy more liberal attitude.

Right to Privacy

13) The Press shall not intrude or invade the privacy of an individual unless outweighed by genuine overriding public interest, not being a prurient or morbid curiosity. So, however, that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by Press and media among others.

Explanation: Things concerning a person's home, family, religion, health, sexuality, personal life and private affairs are covered by the concept of PRIVACY excepting where any of these impinges upon the public or public interest.

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

15) Minor children and infants who are the offspring of sexual abuse or 'forcible marriage' or illicit sexual union shall not be identified or photographed.

Recording interviews and phone conversation

16) The Press shall not tape-record anyone's conversation without that person's knowledge or consent, except where the recording is necessary to protect the journalist in a legal action, or for other compelling good reason.

17) The Press shall, prior to publication, delete offensive epithets used by an interviewer in conversation with the Press person.

18) Intrusion through photography into moments of personal grief shall be avoided. However, photography of victims of accidents or natural calamity may be in larger public interest.

Conjecture, comment and fact

19) Newspaper should not pass on or elevate conjecture, speculation or comment as a statement of fact. All these categories should be distinctly stated.

Newspapers to eschew suggestive guilt

20) Newspapers should eschew suggestive guilt by association. They should not name or identify the family or relatives or associates of a person convicted or accused of a crime, when they are totally innocent and a reference to them is not relevant to the matter reported.

21) It is contrary to the norms of journalism for a paper to identify itself with and project the case of any one party in the case of any controversy/dispute.

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Corrections

22) When any factual error or mistake is detected or confirmed, the newspaper should publish the correction promptly with due prominence and with apology or expression of regrets in a case of serious lapse.

Right of Reply

23) The newspaper should promptly and with due prominence, publish either in full or with due editing, free of cost, at the instance of the person affected or feeling aggrieved/or concerned by the impugned publication, a contradiction/reply/clarification or rejoinder sent to the editor in the form of a letter or note. If the editor doubts the truth or factual accuracy of the contradiction/reply/clarification or rejoinder, he shall be at liberty to add separately at the end a brief editorial comment doubting its veracity, but only when this doubt is reasonably founded on unimpeachable documentary or other evidential material in his/her possession. This is a concession which has to be availed of sparingly with due discretion and caution in appropriate cases.

24) However, where the reply/contradiction or rejoinder is being published in compliance with the discretion of the Press Council, it is permissible to append a brief editorial note to that effect.

25) Right of rejoinder cannot be claimed through the medium of Press Conference, as publication of the news of a conference is within the discretionary powers of an editor.

26) Freedom of the Press involves the readers' right to know all sides of an issue of public interest. An editor, therefore, shall not refuse to publish the reply or rejoinder merely on the ground that in his opinion the story published in the newspaper was true. That is an issue to be left to the judgement of the readers. It also does not behove an editor to show contempt towards a reader.

Letters to Editor

27) An editor who decides to open his columns for letters on a controversial subject is not obliged to publish all the letters received in regard to that subject. He is entitled to select and publish only some of them either in entirety or the gist thereof. However, in exercising this discretion, he must make an honest endeavour to ensure that what is published is not one-sided but represents a fair balance between the views for and against with respect to the principal issue in controversy.

28) In the event of rejoinder upon rejoinder being sent by two parties on a controversial subject, the editor has the discretion to decide at which stage to close the continuing column.

Obscenity and vulgarity to be eschewed

29) Newspapers/journalists shall not publish anything which is obscene, vulgar or offensive to public good taste.

30) Newspapers shall not display advertisements which are vulgar or which, through depiction of a woman in nude or lewd posture, provoke lecherous attention of males as if she herself was a commercial commodity for sale.

31) Whether a picture is obscene or not, is to be judged in relation to three tests; namely

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i) Is it vulgar and indecent?

ii) Is it a piece of mere pornography?

iii) Is its publication meant merely to make money by titillating the sex feelings of adolescents and among whom it is intended to circulate? In other words, does it constitute an unwholesome exploitation for commercial gain?

Other relevant considerations are whether the picture is relevant to the subject matter of the magazine. That is to say, whether its publication serves any preponderating social or public purpose, in relation to art, painting, medicine, research or reform of sex.

Violence not to be glorified

32) Newspapers/journalists shall avoid presenting acts of violence, armed robberies and terrorist activities in a manner that glorifies the perpetrators acts, declarations or death in the eyes of the public.

Glorification/encouragement of social evils to be eschewed

33) Newspapers shall not allow their columns to be misused for writings which have a tendency to encourage or glorify social evils like Sati Pratha or ostentatious celebrations.

Covering communal disputes/clashes

34) News, views or comments relating to communal or religious disputes/clashes shall be published after proper verification of facts and presented with due caution and restraint in a manner which is conducive to the creation of an atmosphere congenial to communal harmony, amity and peace. Sensational, provocative and alarming headlines are to be avoided. Acts of communal violence or vandalism shall be reported in a manner as may not undermine the people's confidence in the law and order machinery of the State. Giving community-wise figures of the victims of communal riot, or writing about the incident in a style which is likely to inflame passions, aggravate the tension, or accentuate the strained relations between the communities/religious groups concerned, or which has a potential to exacerbate the trouble, shall be avoided.

Headings not to be sensational/provocative and must justify the matter printed under them

35) In general and particularly in the context of communal disputes or clashes—

a. Provocative and sensational headlines are to be avoided;

b. Headings must reflect and justify the matter printed under them;

c. Headings containing allegations made in statements should either identify the body or the source making it or at least carry quotation marks.

Caste, religion or community references

36) In general, the caste identification of a person or a particular class should be avoided, particularly when in the context it conveys a sense or attributes a conduct or practice derogatory to that caste.

37) Newspapers are advised against the use of word 'Scheduled Caste' or 'Harijan' which has been objected to by some persons.

38) An accused or a victim shall not be described by his caste or community when the same does not have anything to do with the offence or the crime and plays no part either in the identification of any accused or proceeding, if there be any.

39) Newspaper should not publish any fictional literature distorting and portraying the religious characters in an adverse light transgression of the norms of literary taste and offending the religious susceptibilities of large sections of society who hold those characters in high esteem, invested with attributes of the virtuous and lofty.

40) Commercial exploitation of the name of prophets, seers or deities is repugnant to journalistic ethics and good taste.

Reporting on natural calamities

41) Facts and data relating to spread of epidemics or natural calamities shall be checked up thoroughly from authentic sources and then published with due restraint in a manner bereft of sensationalism, exaggeration, surmises or unverified facts.

Paramount national interest

42) Newspapers shall, as a matter of self-regulation, exercise due restraint and caution in presenting any news, comment or information which is likely to jeopardise, endanger or harm the paramount interests of the State and society, or the rights of individuals with respect to which reasonable restrictions may be imposed by law on the right to freedom of speech and expression under clause (2) of Article 19 of the Constitution of India.

43) Publication of wrong/incorrect map is a very serious offence, whatever the reason, as it adversely affects the territorial integrity of the country and warrants prompt and prominent retraction with regrets.

Newspapers may expose misuse of diplomatic immunity

44) The media shall make every possible effort to build bridges of co-operation, friendly relations and better understanding between India and foreign States. At the same time, it is the duty of a newspaper to expose any misuse or undue advantage of the diplomatic immunities.

Investigative journalism, its norms and parameters

45) Investigative reporting has three basic elements:

a. It has to be the work of the reporter, not of others he is reporting;

b. The subject should be of public importance for the reader to know;

c. An attempt is being made to hide the truth from the people.

(i) The first norm follows as a necessary corollary from (a) that the investigative reporter should, as a rule, base his story on facts investigated, detected and verified by himself and not on hearsay or on derivative evidence collected by a third party, not checked up from direct, authentic sources by the reporter himself.

(ii) There being a conflict between the factors which require openness and those which necessitate secrecy, the investigative journalist should strike and maintain in his report a proper balance between openness on the one hand and secrecy on the other, placing the public good above everything.

(iii) The investigative journalist should resist the temptation of quickies or quick gains conjured up from half-baked incomplete, doubtful facts, not fully checked up and verified from authentic sources by the reporter himself.

(iv) Imaginary facts, or ferreting out or conjecturing the non-existent should be scrupulously avoided. Facts and yet more facts are vital and they should be checked and cross-checked whenever possible until the moment the paper goes to Press.

(v) The newspaper must adopt strict standards of fairness and accuracy of facts. Findings should be presented in an objective manner, without exaggerating or distorting, that would stand up in a court of law, if necessary.

(vi) The reporter must not approach the matter or the issue under investigation, in a manner as though he were the prosecutor or counsel for the prosecution. The reporter's approach should be fair, accurate and balanced. All facts properly checked up, both for and against the core issues, should be distinctly and separately stated, free from any one-sided inferences or unfair comments. The tone and tenor of the report and its language should be sober, decent and dignified, and not needlessly offensive, barbed, derisive or castigatory, particularly while commenting on the version of the person whose alleged activity or misconduct is being investigated. Nor should the investigative reporter conduct the proceedings and pronounce his verdict of guilt or innocence against the person whose alleged criminal acts and conduct were investigated, in a manner as if he were a court trying the accused.

(vii) In all proceedings including the investigation, presentation and publication of the report, the investigative journalist newspaper should be guided by the paramount principle of criminal jurisprudence, that a person is innocent unless the offence alleged against him is proved beyond doubt by independent, reliable evidence.

(viii) The private life, even of a public figure, is his own. Exposition or invasion of his personal privacy or private life is not permissible unless there is clear evidence that the wrong doings in question have a reasonable nexus with the misuse of his public position or power and has an adverse impact on public interest.

(ix) Though the legal provisions of Criminal Procedure do not in terms, apply to investigating proceedings by a journalist, the fundamental principles underlying them can be adopted as a guide on grounds of equity, ethics and good conscience.

Confidence to be respected

46) If information is received from a confidential source, the confidence should be respected. The journalist cannot be compelled by the Press Council to disclose such source; but it shall not be regarded as a breach of journalistic ethics if the source is voluntarily disclosed in proceedings before the Council by the journalist who considers it necessary to repel effectively a charge against him/her. This rule requiring a newspaper not to publish matters disclosed to it in confidence, is not applicable where:

(a) consent of the source is subsequently obtained; or

(b) the editor clarified by way of an appropriate footnote that since the publication of certain matters were in the public interest, the information in question was being published although it had been made 'off the record'.

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Caution in criticizing judicial acts

47) Excepting where the court sits 'in-camera' or directs otherwise, it is open to a newspaper to report pending judicial proceedings in a fair, accurate and reasonable manner. But it shall not publish anything:–

- which, in its direct and immediate effect, creates a substantial risk of obstructing, impeding or prejudicing seriously the due administration of justice; or
- is in the nature of a running commentary or debate, or records the paper's own findings, conjectures, reflection or comments on issues, subjudice and which may amount to arrogation to the newspaper the functions of the court; or
- regarding the personal character of the accused standing trial on a charge of committing a crime.

Newspaper shall not as a matter of caution, publish or comment on evidence collected as a result of investigative journalism, when, after the accused is arrested and charged, the court becomes seized of the case: Nor should they reveal, comment upon or evaluate a confession allegedly made by the accused.

48) While newspapers may, in the public interest, make reasonable criticism of a judicial act or the judgement of a court for public good; they shall not cast scurrilous aspersions on, or impute improper motives, or personal bias to the judge. Nor shall they scandalize the court or the judiciary as a whole, or make personal allegations of lack of ability or integrity against a judge.

49) Newspaper shall, as a matter of caution, avoid unfair and unwarranted criticism which, by innuendo, attributes to a judge extraneous consideration for performing an act in due course of his/her judicial functions, even if such criticism does not strictly amount to criminal Contempt of Court.

Newspapers to avoid crass commercialism

50) While newspapers are entitled to ensure, improve or strengthen their financial viability by all legitimate means, the Press shall not engage in crass commercialism or unseemly cut-throat commercial competition with their rivals in a manner repugnant to high professional standards and good taste.

51) Predatory price wars/trade competition among newspapers, laced with tones disparaging the products of each other, initiated and carried on in print, assume the colour of unfair 'trade' practice, repugnant to journalistic ethics. The question as when it assumes such an unethical character, is one of the fact depending on the circumstances of each case.

Plagiarism

52) Using or passing off the writings or ideas of another as one's own, without crediting the source, is an offence against ethics of journalism.

Unauthorized lifting of news

53) The practice of lifting news from other newspapers publishing them subsequently as their own, ill-comports the high standards of journalism. To remove its unethicality the 'lifting' newspaper must duly acknowledge the source the report. The position of features articles is different from 'news': Feature articles shall not be lifted without permission proper acknowledgement.

54) The Press shall not reproduce in any form offending portions or excerpts from a proscribed book.

Non-return of unsolicited material

55) A paper is not bound to return unsolicited material sent for consideration of publication. However, when the same is accompanied by stamped envelope, the paper should make all efforts to return it.

Advertisements

56) Commercial advertisements are information as much as social, economic or political information. What is more, advertisements shape attitude and ways of life at least as much, as other kinds of information and comment. Journalistic propriety demands that advertisements must be clearly distinguishable from editorial matters carried in the newspaper.

57) Newspaper shall not publish anything which has a tendency to malign wholesale or hurt the religious sentiments of any community or section of society.

58) Advertisements which offend the provisions of the Drugs and Magical Remedies (Objectionable Advertisement) Act, 1954, should be rejected.

59) Newspapers should not publish an advertisement containing anything which is unlawful or illegal, or is contrary to good taste or to journalistic ethics or proprieties.

60) Newspapers while publishing advertisements shall specify the amount received by them. The rationale behind this is that advertisements should be charged at rates usually chargeable by a newspaper since payment of more than the normal rates would amount to a subsidy to the paper.

61) Publication of dummy advertisements that have neither been paid for, nor authorised by the advertisers, constitute breach of journalistic ethics.

62) Deliberate failure to publish an advertisement in all the copies of a newspaper offends against the standards of journalistic ethics and constitutes gross professional misconduct.

63) There should be no lack of vigilance or a communication gap between the advertisement department and the editorial department of a newspaper in the matter of considering the propriety or otherwise of an advertisement received for publication.

64) The editors should insist on their right to have the final say in the acceptance or rejection of advertisements, specially those which border on or cross the line between decency and obscenity.

65) An editor shall be responsible for all matters, including advertisements published in the newspaper. If responsibility is disclaimed, this shall be explicitly stated beforehand.

CHECK YOUR PROGRESS

1. What is the role played by the Press Council of India in the functioning of press industry in India?
2. What were the changes brought about by the amending Act of 1970 regarding the Press Council of India?
3. Under what circumstances the Press Council of 1979 was set up?

5.4 GUIDELINES ON SPECIFIC ISSUES

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The Press Council of India from time to time issues guidelines of specific issues like:[5]

A) Guidelines for observance by the Press in the wake of communal disturbances (1969)

Recognizing that the Press which enjoys the utmost freedom of expression has a great and vital role to play in educating and moulding public opinion on correct lines in regard to the need for friendly and harmonious relations between the various communities and religious groups forming the fabric of Indian political life and in mirroring the conscience of the best minds of the country to achieve national solidarity, the Press Council of India considers that this object would be defeated, communal peace and harmony disturbed and national unity disrupted if the Press does not strictly adhere to proper norms and standards in reporting on or commenting on matters which bear on communal relations. Without attempting to be exhaustive, the Council considers the following as offending against journalistic proprieties and ethics:

1. Distortion or exaggeration of facts or incidents in relation to communal matters or giving currency to unverified rumours, suspicions or inferences as if they were facts and base their comments on them.

2. Employment of intemperate or unrestrained language in the presentation of news or views, even as a piece of literary flourish or for the purpose of rhetoric or emphasis.

3. Encouraging or condoning violence even in the face of provocation as a means of obtaining redress of grievances whether the same be genuine or not.

4. While it is the legitimate function of the Press to draw attention to the genuine and legitimate grievances of any community with a view to having the same redressed by all peaceful, legal and legitimate means, it is improper and a breach of journalistic ethics to invent grievances, or to exaggerate real grievances, as these tend to promote communal ill-feeling and accentuate discord.

5. Scurrilous and untrue attacks on communities, or individuals, particularly when this is accompanied by charges attributing misconduct to them as due to their being members of a particular community or caste.

6. Falsely giving a communal colour to incidents which might occur in which members of different communities happen to be involved.

7. Emphasising matters that are not to produce communal hatred or ill-will, or fostering feelings of distrust between communities.

8. Publishing alarming news which are in substance untrue or make provocative comments on such news or even otherwise calculated to embitter relations between different communities or regional or linguistic groups.

9. Exaggerating actual happenings to achieve sensationalism and publication of news which adversely affect communal harmony with banner headlines or in distinctive types.

[5] The Press Council of India's norms of journalistic conduct, available at http://nwmindia.org/articles/norms, access date 02.02. 2011.

10. Making disrespectful, derogatory or insulting remarks on or reference to the different religions or faiths or their founders.

B) Guidelines for Financial Journalists

The Press Council of India has counseled reporters/financial journalists/ newspaper establishments to refrain from receiving any gifts/grants/concessions/ facilities, etc., either in cash or kind, which are likely to compromise free and unbiased reporting on financial matters.

2. The Council in its Report has observed that the financial journalists today enjoy considerable influence over readers' minds and, therefore, they owe it to them to present a balanced and objective view of the financial dealings, status and prospects of a company. It observed that some companies are given excessive news coverage in the newspapers/magazines because they have issued advertisements to that print media. Sometimes, adverse reports are published of those companies, which do not give advertisements to the newspapers or magazines. Again, when a media is not happy with any company/ management for whatever reason, the negative aspects of the company are highlighted, while in the reverse situation, no negative aspects are brought to light. Some companies are also known to give gifts, loans, discounts, preferential shares, etc., to certain financial journalists to receive favourable and positive reports of the companies. At the same time, there is no mechanism for investors' education or for raising public opinion against such unhealthy practices.

3. The Council feeling concerned over the malpractice in the Corporate Sector and after holding detailed deliberations and discussions with the representatives of financial institutions and journalists, has recommended the guidelines enumerated below for observance by the financial journalists:

1) The financial journalists should not accept gifts, loans, trips, discounts, preferential shares or other considerations, which compromise or are likely to compromise his position.

2) It should be mentioned prominently in the report about any company that the report is based on information given by the company or the financial sponsors of the company.

3) When the trips are sponsored for visiting establishments of a company, the author of the report who has availed of the trip must state invariably that the visit was sponsored by the company concerned and that it had also extended the hospitality as the case may be.

4) No matter related to the company should be published without verifying the facts from the company and the source of such report should also be disclosed.

5) A reporter, who exposes a scam or brings out a report for promotion of a good project, should be encouraged and awarded.

6) A journalist who has financial interests such as share holdings, stock holdings, etc., in a company, should not report on that company.

7) The journalist should not use for his own benefit or for the benefit of his relations and friends, information received by him in advance for publication.

8) No newspaper owner, editor or anybody connected with a newspaper should use his relations with the newspaper to promote his other business interests.

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9) Whenever there is an indictment of a particular advertising agency or advertiser by the Advertising Council of India, the newspaper in which the advertisement was published must publish the news of indictment prominently.

C) Guidelines expected to be observed by the newspapers, journalists, etc., while publishing reports on elections

General Election is a very important feature of our democracy and it is imperative that the media transmits to the electorate fair and objective reports of the election campaign by the contesting parties. Freedom of the Press depends to a large measure on the Press itself behaving with a sense of responsibility. It is, therefore, necessary to ensure that the media adheres to this principle of fair and objective reporting of the election campaign.

The Press Council has, therefore, formulated the following guidelines to the media for observance during elections:

1. It will be the duty of the Press to give objective reports about elections and the candidates. The newspapers are not expected to indulge in unhealthy election campaigns, exaggerated reports about any candidate/party or incident during the elections. In practice, two or three closely contesting candidates attract all the media attention. While reporting on the actual campaign, a newspaper may not leave out any important point raised by a candidate and make an attack on his or her opponent.

2. Election campaign along communal or caste lines is banned under the election rules. Hence, the Press should eschew reports which tend to promote feelings of enmity or hatred between people on the ground of religion, race, caste, community or language.

3. The Press should refrain from publishing false or critical statements in regard to the personal character and conduct of any candidate or in relation to the candidature or withdrawal of any candidate or his candidature, to prejudice the prospects of that candidate in the elections. The Press shall not publish unverified allegations against any candidate/party.

4. The Press shall not accept any kind of inducement, financial or otherwise, to project a candidate/party. It shall not accept hospitality or other facilities offered to them by or on behalf of any candidate/party.

5. The Press is not expected to indulge in canvassing of a particular candidate/ party. If it does, it shall allow the right of reply to the other candidate/party.

6. The Press shall not accept/publish any advertisement at the cost of public exchequer regarding achievements of a party/ government in power.

7. The Press shall observe all the directions/orders/instructions of the Election Commission/Returning Officers or Chief Electoral Officer issued from time to time.

5.4.1 Paid News

Press Council looked into the incident of 'Paid News' which came into light after 2009 general elections. Earlier, it was observed during the Uttar Pradesh Assembly elections. The Press Council, in its 'Report on Paid News' dated 30 July 2010 termed 'paid news' as 'any news or analysis appearing in any media (Print and Electronic) for a price in cash or kind as consideration'.

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The report said:

> Paid news is a complex phenomenon and has acquired different forms over the last six decades. It ranges from accepting gifts on various occasions, foreign and domestic junkets, various monetary and non-monetary benefits, besides direct payment of money. Another form of paid news that has been brought to the notice of the Press Council of India by the Securities and Exchange Board of India (SEBI) is in the form of 'private treaties' between media companies and corporate entities. Private treaty is a formal agreement between the media company and another non-media company in which the latter transfers certain shares of the company to the former in lieu of advertisement space and favourable coverage.

This report made following recommendations to the government:

(i) Representation of the People Act, 1951 needs to be amended to make the practice of paid news a punishable electoral offence.

(ii) The Press Council of India should be empowered to arbitrate in the complaints and grievances of 'paid news' and provide final judgement on the issue.

(iii) Press Council Act should be amended to turn its recommendations legally binding and the electronic media must be brought under its jurisdiction.

(iv) Press Council of India needs to be restructured to comprise representatives from electronic and other media.

5.5 PRESS COMMISSIONS

The press played a key role in the Indian freedom struggle. From time to time, the British Government enforced legal provisions to control the press. Leaders of freedom struggle like Mahatma Gandhi and Bal Gangadhar Tilak were working as newspaper editors as well and hence were sent to jail for their writings. Just before Independence, the Interim Government formed the Press Law Enquiry Committee to study the existing laws in relation to fundamental rights.

5.5.1 First Press Commission

To study the status of the press as well as suggest measures for its healthy growth in independent India, the first Press Commission was constituted on 23 September 1952. Justice G.S. Rajadhyaksha was its chairman with very renowned persons serving as the members. The Commission gave its report in 1954.

Apart from legal provisions concerned with press, the Commission looked into the management, control, ownership and financial structure of the press. It also studied the content and working environment and service conditions prevailing in the sector. For example, the commission observed the decline in the editor's position:

> There has been a general decline in the status and independence of the editor and this decline is particularly noticeable in the case of daily newspapers. In the

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past it was quite usual for the majority of the readers to be both aware and conscious of the role played by the editor in the formulation of the views set out in the paper, and it was quite usual to refer to the paper not merely by its name but by the name of the editor. The position has changed today and we feel that the bulk of the newspaper readers today may be unaware of who is the editor of their newspaper and indifferent to the name that appears on small print on the last page.

The Commission criticized the practice of giving astrological predictions and stated: 'The spread of the habit of consultation of, and reliance upon, astrological predictions, particularly of the nature and manner they are published at present is certain to produce an unsettling effect on the minds of readers. We would describe the practice of publishing such predictions as undesirable.'

The Commission took a serious note of the occurrence of yellow journalism, slanderous writing directed against groups or communities, sensationalism, prejudice in presenting news and lack of proper responsibility in comment, indecent remarks and crudeness and personal attacks on individuals. Nonetheless, the Commission observed that the well-established newspapers had, more or less, preserved a high journalistic standard. They had been successful in avoiding 'cheap sensationalism and unwarranted intrusion into private lives'. However, it stated that 'whatever the law relating to the Press may be, there would still be a large quantum of objectionable journalism which, though not falling within the purview of the law, would still require to be checked'. It held the opinion that the most suitable manner of sustaining professional journalistic standards is to set up a body of individuals mainly related to the industry. This body should be accountable to arbitrate on doubtful points and to reprimand anyone found guilty of the breach of the code of journalistic ethics.

In this connection the Commission stated the need for the establishment of a Press Council:[6]

(a) to safeguard the freedom of the press and help the press to maintain its independence.

(b) to censure objectionable types of journalistic conduct and by all other possible means to build up a code in accordance with the highest professional standards.

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

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

(e) to study the developments in the press which may tend towards concentration or monopoly, and if necessary, to suggest remedies.

(f) to publish reports, at least once a year, recording its work and reviewing the performance of the press, its development and factors affecting them and

(g) to improve methods of recruitment, education and training for the profession by the creation of suitable agencies for the purpose such as a Press Institute.

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[6] Kanungo, Chitra. 2001. *Freedom under Assault*. New Delhi: APH Publishing.

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The Commission emphasized the need for establishing the Council on a statutory basis. It noted that the Council should possess legal authority to hold inquiries or else each member, and the Council as a whole, will be subject to the danger of legal action by those whom it seeks to punish.

The Commission observed that the Council should comprise men who command the respect and confidence of the profession. It should possess twenty-five members excluding the Chairman. The Chairman, to be nominated by the Chief Justice of India, must be an individual who was or had been a Judge of the High Court. On 4 July 1966, the press council of India was established and it began functioning from 16 November 1966. This day is commemorated as the National Press Day.

The Office of the Registrar of Newspapers for India (RNI) also owes its existence to the First Press Commission's recommendations. The Commission observed: 'To prepare the account of the press and the position of every year, there should be appointment of the Registrar of Newspaper for India (RNI).'

After a detailed and careful study, the Commission concluded that both capital and the staff should be indigenized, particularly at the higher levels. Further, it was very much expected that the proprietorial interests in daily and weekly newspapers are chiefly controlled by the Indians themselves.

After evaluating the Press Commission's recommendations and the Note provided by the Ministry of Information & Broadcasting, the Union Cabinet adopted a Resolution on 13 September 1955. It became the fundamental policy document regarding the functioning of press in India. The resolution banned Foreign Direct Investment in print media.

Concerned about the poor service conditions of working journalists, the Commission made detailed recommendations to improve them. In 1955, the Government enacted the Working Journalist and Other Newspaper Employees (Conditions of Services) and Miscellaneous Provisions Act. Under this Act, Wage Boards were appointed. The Commission also suggested that there needs to be a relationship between price and pages. It is necessary to control excessive advertising in some newspapers. The government accepted this recommendation for a Price-Page Schedule. However, the Supreme Court of India struck it down.

Many members of the Commission were freedom fighters like those in the Government, so the Commission was in favour of 'maintaining a cordial relationship between the government and the Press'. To meet this end, it recommended the setting up of a Press Consultative Committee. Consequently, a Press Consultative Committee was set up on 22 September 1962.

To assess the financial condition of the newspapers and news agencies, the Commission recommended the establishment of a fact-finding committee. As a result, a Fact Finding Committee was set up on 14 April 1972, which gave its report on 14 January 1975.

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To protect the key principles of the freedom of press and to save the newspapers from monopolistic trends, the Commission suggested the formation of Newspaper Financial Corporation. On 4 December 1970, a Bill was presented in the Lok Sabha to this effect, but unfortunately it lapsed.

The Commission also recommended that a public corporation needs to run the Press Trust of India. This recommendation was not heeded to at that time. However, during the Internal Emergency this idea was revived and after the merger of four news agencies, 'Samachar' was formed. However, it was undone by the Janata Government.

5.5.2 Second Press Commission

The atmosphere in the country had changed when the Second Press Commission was appointed. The Internal Emergency had come to an end with Mrs. Indira Gandhi losing in the General Elections of 1977. After coming to power, the Janata Government appointed the Second Press Commission on 29 May 1978. Justice P.K. Goswami was its chairman. However, before the Commission could give its report, the Janata Government fell bringing elections to the Lok Sabha in its wake. In these elections, Mrs Indira Gandhi recaptured power. The Goswami Commission resigned on 14 January 1980. Anyway, the Second Press Commission was revived in April 1980 with Justice K.K. Mathew as its chairman. Its members included Amrita Pritam, Rajendra Mathur, Girilal Jain, K.R. Ganesh and Madan Bhatia.

The Second Press Commission expected the press to be neither a mechanical opponent nor an automatic ally of the government. It wanted the press to play a significant role in the development process in the country. 'The press should be widely accessible to the people if it is to reflect their aspirations and problems.'

The issue of urban bias also drew the attention of the Commission. It stated that for development to take place, internal stability was must to safeguard the national security. The Commission further highlighted the role and responsibility of the press in preventing communal disturbances. Moreover, the Commission maintained that development has to be the essential focus of the press. The Commission observed that a responsible press may also be a free press and vice-versa. It held that freedom and responsibility are complimentary to each other instead of being contradictory in nature.

The Commission further recommended the concept of Price-page schedule believing that the Supreme Court might revise its earlier verdict. To ensure the development and growth of small and medium newspapers, the Commission recommended the setting up of Newspaper Development Commission. It also wished that newspapers need to be separated from industries and other business interests.

Over all, the Second Press Commission's report provides a decent overview of the development of press since the report of First Press Commission. Many studies and researches were commissioned by the Commission to study various

aspects of the press. All this has created a big pool of information which is very useful for the researchers. Unfortunately, unlike the First Press Commission, the institutions and authorities recommended by the Second Press Commission could not come into existence. Also, it was not able to give any specific direction to the press, because most of the media houses ignored its recommendations.

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There have been demands for setting up a media commission since the turn of present century because media scene has undergone massive changes since the Second Press Commission gave its report. Nonetheless, so far no new commission is in sight of getting constituted.

CHECK YOUR PROGRESS

4. From which sections of the Act, the Press Council of 1979 derived its powers?
5. Under which section the Press Council can frame a Code of Conduct for the journalists?
6. What are the Press Council's guidelines for the financial journalists?

5.6 THE RIGHT TO INFORMATION ACT

The Indian Constitution does not specifically mention the right to information or even the right to freedom of press. In Indian jurisprudence, the right to information has mainly evolved in parallel to the freedom of speech and expression provided by Article 19(1)(a) of the Constitution of India.

On several occasions, the apex court of India has interpreted these constitutional provisions which are a part of the chapter on fundamental rights. It includes: (i) the Right to Equal Protection of the Laws and the Right to Equality Before the Law (Article 14), (ii) the Right to Freedom of Speech and Expression [Article 19(1)(a)] and (iii) the Right to Life and Personal Liberty (Article 21). All this began with the landmark judgment in *Bennett Coleman and Co. Vs. Union of India* and the *State of U.P. Vs. Raj Narain* in the 1970s.

The Constitution Bench of Supreme Court deliberated over the issue, in the *State of UP Vs. Raj Narain* (1975), if privileges can be justifiably claimed by the Uttar Pradesh Government as per Section 123 of the Evidence Act regarding certain documents. Giving the judgement on behalf of the Constitution Bench, Justice K.K. Mathew stated:

> In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. Their right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary when secrecy is claimed for transactions which can at

any rate have no repercussion on public security. But the legislative wing of the State did not respond to it by enacting suitable legislation for protecting the right of the people.

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In 1982, the right to know attained the status of a constitutional right, thanks to the famous case of *S P Gupta Vs. Union of India (AIR) 1982 SC (149)*. In this case, the Government of India made the claim for privilege before the Court regarding the disclosure of certain documents. The court emphasized, 'The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under article 19 (1) (a).' The Court held that 'open Government should be the new democratic culture in an open society towards which every liberal democracy is moving and our country should be no exception. In a country like India, which is committed to socialistic pattern of society, right to know becomes a necessity for the poor, ignorant and illiterate masses.'

Recently in a judgement made in 2004, the Supreme Court began the verdict with '1. Right of information is a fundamental right under Article 19(1)(a) of the Constitution.' Later, the Court dealt with the issue in detail:

> 45. Right of information is a facet of the freedom of 'speech and expression' as contained in Article 19 (1) (a) of the Constitution of India. Right of information, thus is indisputably is a fundamental right.
>
> 46. In 1948, the United Nations proclaimed a Universal Declaration of Human Rights. It was followed by the International Covenant of Civil and Political Rights (ratified in 1978). Article 19 of the Covenant declares that 'everyone has the right to freedom of opinion and expression: the right includes freedom to hold opinion without interference, and to seek and receive and impart information and ideas through any media and regardless of frontiers'.
>
> 47. A similar enunciation is to be found in the declaration made by the European Convention for the Protection of Human Rights (1950). Article 10 of the declaration guarantees *inter alia*, 'not only the freedom of the press to inform the public but also the right of the public to be informed.'
>
> 48. In keeping with the spirit of the Universal Declaration of 1948 the preamble to the Constitution of India embodies a solemn resolve of its people to secure, *inter alia*, to its citizens liberty of thought and expression. In pursuance of this supreme objective Article 19 (1) (a) guarantees to the citizens, the right to 'freedom of speech and expression' as one of the fundamental rights listed in the Part III of the Constitution. These rights have been advisedly set out in broad terms leaving scope for their expansion and adaptation, through interpretation, to the changing needs and evolving notions of the free society.

5.6.1 *Jan Sunwai*

In 1994, waging a struggle for minimum wages for the rural poor in Rajasthan, the Mazdoor Kisaan Shakti Sangathan (MKSS) devised a new way to reveal the significance of information in an individual's life. They showed it through public hearings or *jan Sunwais*. The issue started with an old man's call for assistance in getting wages which he claimed to have been long overdue. The MKSS activists

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approached the block development office to see his records. They unearthed the troubling proof of corruption in the execution of public projects related to relief works. On 2 December 1994, the first *jan sunwai* was held in the village of Kot Kirana in Rajasthan's Pali district. They hired a tent, a microphone and a video camera to document the hearing. Chaired by an outsider, the *jan sunwai* was open to all. An independent panel comprising lawyers, academics, activists and journalists was also present. Aruna Roy and her colleagues from MKSS presented the gathered information. It included the workers' names on the muster rolls for several projects, the sums of money supposedly paid to them in the form of wages and details of the construction material claimed to have been used. People were surprised to hear their names as the individuals who had worked on a specific project. Most of them testified that they had never been at the concerned work site. The list also included the names of people long dead, while many others were not known to anyone. On hearing the bills for construction materials, the people came to know that some buildings in the locality were listed as completely finished on paper while in actuality they still had to get doors, windows, roofs, etc.

Through public hearings, people came to know that their villages and districts were to get schools, health clinics, toilets, roads and wells. The government paid funds for these projects. Unfortunately, most of them did not exist in reality. As a result, the people began questioning, calling for legal action and audits. Many guilty public functionaries were compelled to return the money they had embezzled.

The campaign launched by MKSS called for transparency of official records and a social audit of the expenditure born by the government. This campaign attracted public imagination. In 1996, the National Campaign for People's Right to Information (NCPRI) was formulated. It turned out to be a broad-based platform for action.

Under the leadership of Justice P.V. Sawant, the Press Council played a very significant role through organizing workshops and seminars on the Right to Information. During these seminars, the NCPRI members also expressed their opinions. On the right to information, in 1996, the Press Council of India provided a draft model law to the Government of India. It was later updated in a seminar in Hyderabad and rechristened as the PCI-NIRD Freedom of Information Bill 1997.

5.6.2 State RTI Acts

The NCPRI was also going ahead with the campaign for state RTI acts. Some State Governments in fact wanted to appear as more progressive in this regard. On 31 July 1997, the Goa Right to Information Act 1997 (Goa Act 28 of 1997) was passed by the Goa Legislative Assembly. It was accepted by the Governor of Goa on 29 October 1997. On the same lines, the Tamil Nadu Right to Information Act 1997 (Tamilnadu Act 24 of 1997) was also passed. On 11 May 2000, the Rajasthan Right to Information Act 2000 (Act No. 13 of 2000) was approved by the Governor. On 14 May 2001, the Delhi Right to Information Act 2001 (Delhi Act No.7 of 2001) received Lt. Governor's approval. On 1 May 2002, the Assam

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Right to Information Act 2001 (Act No. 9 of 2002) got the Governor's approval. Madhya Pradesh Jankari ki Swatantrata Adhiniyam 2002 (Act 3 of 2003) got the approval of Governor on 24 January 2003. Further, on 5 January 2004, the Jammu and Kashmir Right to Information Act 2004 (Act 1 of 2004) got the Governor's approval.

Maharastra witnessed an interesting case in this regard. The Maharashtra Right to Information Act (Maharashra Act of 38 of 2000) got flak for being modelled on flawed Tamil Nadu Act. On 23 September 2002, the Governor of Maharashtra promulgated the Maharashtra Right to Information Ordinance, 2002. It got replaced by the Maharashtra Right to Information Act, 2002 (31 of 2003).

In Karnataka as well an ordinance was promulgated before the Act. The Karnataka Right to Information Ordinance 2000 (Karnataka Ordinance No. 9 of 2000), in the statement of objects and reasons, among other things, provides for the following:

(i) Requiring public authorities to make voluntary disclosure of certain information referred to in clause 3.

(ii) Listing exemption from giving information under certain circumstances as mentioned in clause 4.

(iii) Specifying the procedure for supply of information;

(iv) Specifying the grounds for refusal to supply information in certain cases.

(v) Imposing a penalty on the competent authority up to two thousand rupees for failure to give information without any reasonable cause.

(vi) An appeal is provided against the order of the competent authority and a second appeal lies to the Karnataka Appellate Tribunal;

In 2000, the Government of Uttar Pradesh adopted what is known as the 'Code of Practice on Access to Information'. The objectives of this code were:[7]

> (1) to improve policy making and the democratic process by extending access to the facts and analyses which provide the basis for the consideration of proposed policy; (2) to protect the interests of the individuals by ensuring that reasons are given for administrative decisions, except where there is statutory authority or established convention to the contrary; and (3) to support and extend the principles of public service established under the Citizen's Charter.

In the states ruled by different political parties, these 'right to information laws' had dissimilar provisions regarding exceptions, appeal and penalty. However, taken together these emphasize the need for a Central Government legislation because no Union Government department is covered under them. Further, there was an utmost requirement for uniformity on this important right.

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[7] Code of Practice on Access to Government Information, available at http://www.legislationline.org/documents/action/popup/id/6958, access date 03.02.2011.

5.6.3 Shourie Committee

The Central Government set up a working group under the chairmanship of HD Shourie (the Shourie Committee). It was given the mandate to formulate draft legislation on the freedom of information. In 1997, the Shourie Committee's Report and draft law were published. The draft law got criticism for not adopting a sufficiently high standard of disclosure. Successive governments did not act upon the Shourie Committee draft law. Hence it was never introduced in the Parliament. In 1999, Ram Jethmalani, the Union Minister for Urban Development, gave an administrative order. It was meant to enable the citizens to examine and obtain photocopies of files belonging to his Ministry. Nonetheless, the Cabinet Secretary did not allow this order to become effective.

Finally in 2002, the national Freedom of Information Bill 2000 was introduced in the Parliament. It got passed in December 2002 and attained Presidential accent on 6 January 2003 (Freedom of Information Act 2002 [Act. 5 of 2003]). Unluckily, a date for enforcing the Act could not be notified and hence it never came into operation in reality. On 13 July 2004, the Supreme Court entertained public interest litigation on the languishing Central Freedom of Information (FOI) Act, passed in 2002. The Centre for Public Interest Litigation and the National Campaign for People's Right to Information (NCPRI) were the petitioners. Famous public interest lawyer Prashant Bhushan appeared for the petitioners. After the hearings, the Chief justice asked the government to 'either notify the Central FOI Act or formulate rules and guidelines to give effect to it right away'. The government's lawyers informed that some guidelines and rules for the FOI Act had already been formulated and the same had been sent to all the State governments for comments and review.

5.6.4 UPA and NAC

The United Progressive Alliance (UPA) Government got into power at the Centre in May 2004. Its Common Minimum Programme promised, 'The Right to Information Act will be made more progressive, participatory and meaningful.' To supervise the implementation of the Common Minimum Programme, the National Advisory Council (NAC) was set up. Congress President Sonia Gandhi was its chairperson. Among others, RTI activists Aruna Roy and economist Jean Dreze were the members of NAC. Both of them were also the members of Working Committee of National Campaign for the People's Right to Information (NCPRI) for 2004–2006. They wrote to Sonia Gandhi to give specific recommendations for the government to consolidate and amend the Freedom of Information Act:[8]

[8] 'Supreme Court sets deadline on FOI law,' *India Together*, available at http://www.indiatogether.org/2004/jul/rtk-rtiupdate.htm, access date 03.02.2011.

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> Transparency of government and the right to information are not merely linked to corruption but in fact affect the right to life and livelihood of the people. It is a tool to fight the arbitrary use of power. It is also crucial for ensuring the rule of law and the effective functioning of regulatory, development and service mechanisms...The Freedom of Information Act needs to be strengthened and amended, and notified in the shortest possible time frame.

On 17 July 2004, at the first meeting of the NAC, the members submitted a statement by the (NCPRI) asking for the action on RTI. To facilitate discussions, Commonwealth Human Rights Initiative (CHRI) provided an analysis of the FOI Act. After the first NAC meeting, Aruna Roy collaborated with important government stakeholders who asked the civil society to submit a paper regarding amendments to the FOI Act. In this way, the Draft National Campaign for the People's Right to Information recommending amendments to the Central FOI Act 2002 was developed. On 31 July 2004, it was submitted to the NAC for consideration at their second meeting. The NAC reviewed the draft NCPRI Recommendations and submitted the draft NAC Recommendations Amending the FOI Act 2002. At these first two meetings, Aruna Roy and Jean Dreze submitted an update on the discussions of the NAC. Meantime on 14 August 2005, at the NAC's third meeting, CHRI made a submission about the draft NAC recommendations for consideration at the meeting. The NAC reached an agreement on the final recommendations regarding amendments to the FOI Act 2002. The final version was sent by its chairperson, Mrs Sonia Gandhi, to the Prime Minister Office. A Government Press Release dated 18 September 2004 stated: 'The government will also introduce in the Winter Session of Parliament a bill to seek amendments to the Right to Information Act, based on suggestions put forth by the NAC.'

5.6.5 National RTI

On 23 December 2004, the Right to Information Bill 2004 (RTI Bill 2004) was tabled during the winter session of the Lok Sabha. It was largely based on the recommendations by the NAC (which were based on the NCPRI's original draft Bill) made to the government. NCPRI provided a comparative analysis of the RTI Bill 2004 against the FOI Act 2002 as well as the original NAC Recommendations.

The Parliament referred the RTI Bill 2004 to the Standing Committee on Personnel, Public Grievances, Law and Justice. On 21 March 2005, the Committee's report (including a proposed amended version of the RTI Bill) was tabled in the Lok Sabha.

On 10 May 2005, the RTI Amendment Bill 2005 (containing many of the recommendations put forward by the Parliamentary Standing Committee) was tabled in the Lok Sabha. The Lok Sabha approved it on 11 May 2005, followed by the Rajya Sabha on 12 May. On 15 June 2005, President APJ Abdul Kalam also approved the Right to Information Act 2005. After the presidential approval, both the Central and State Governments had 120 days to implement the provisions of the Act. The Act officially came into effect on 12 October 2005.

This national Act is far more liberal than most of the prevailing acts. It provides that all Indian citizens possess the right to seek information from the Central Government public authorities and the public authorities under the jurisdiction of states. It includes the grass root village level bodies (*panchayats*). All public authorities set up by the Constitution or statute are covered by the Act. It also covers the bodies managed or largely financed by the government or non-government organizations that are availing substantial funds from the government. The citizens can request to inspect or copy information from the concerned departments. The Act further allows them to put forward application to examine public works and take samples as well. The applications are to be submitted to a Public Information Officer (PIO) who is to be appointed for every unit of a public authority. The PIO is required to reply in writing within thirty days. If the request is related to the life or liberty of an individual, the information has to be submitted within 48 hours.

David Banisar, in his analysis of the Act, states:[9]

> The Act includes a list of exemptions, which are all subject to a blanket override whereby information may be released if the public interest in disclosure outweighs the harm to the protected interest. Exemptions cover disclosures that would prejudicially affect the sovereignty and integrity of India, the security, strategic or economic interests of the State, relations with foreign States, would lead to incitement of an offence, has been expressly forbidden to be published by a court or tribunal, could constitute a contempt of court; would endanger the life or safety of a person or identify a source used by law enforcement bodies, would impede an investigation or apprehension or prosecution of an offender, would cause a breach of parliamentary privilege; Cabinet papers (although materials relied upon must be released after decisions are made), commercial confidence information, trade secrets or intellectual property where disclosure would harm the competitive position of a third party, information available due to a fiduciary relationship, information obtained in confidence from a foreign government and personal information which has no relationship to any public activity or which would cause an unwarranted invasion of privacy.

All Public authorities must fulfill the requirements of Section 4 of the Act:[10]

> **4.** (*1*) Every public authority shall—
>
> *a)* maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated;

[9] Banisar, David. 2006. Global Survey: Freedom of Information and Access to Government Records Around the World, available at http://www.freedominfo.org/regions/east-asia/india/, access date 03.02.2011.

[10] The Right to Information Act, available at http://rti.kerala.gov.in/actch2.htm, access date 03.02.2011.

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b) publish within one hundred and twenty days from the enactment of this Act,—

(i) the particulars of its organisation, functions and duties;

(ii) the powers and duties of its officers and employees;

(iii) the procedure followed in the decision making process, including channels of supervision and accountability;

(iv) the norms set by it for the discharge of its functions;

(v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;

(vi) a statement of the categories of documents that are held by it or under its control;

(vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;

(viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;

(ix) a directory of its officers and employees;

(x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;

(xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;

(xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;

(xiii) particulars of recipients of concessions, permits or authorizations granted by it;

(xiv) details in respect of the information, available to or held by it, reduced in an electronic form;

Hence the Right to Information Act, 2005 is a very progressive legislation. In fact, it contains certain radical provisions which are not found in comparable laws of other advanced countries. Under the Act, a citizen does not necessarily have to establish his *locus standi* regarding a subject matter to seek information. When it comes to the allegations of corruption and human rights violation, even the organizations concerned with national security and intelligence are not exempt from the purview of the Act. The Act involves the provisions for severe punishment to public servants if they deny information.

5.6.6 National Convention

At Vigyan Bhavan, New Delhi from 13–15 October 2006, the national convention on Right to Information Act was organized by the Central Information Commission on the completion of one year of its enforcement. It was inaugurated by President Dr APJ Abdul Kalam and the valedictory address was delivered by the Prime Minister Dr Manmohan Singh. This high profile convention reviewed the year and came up with following recommendations which sum up the challenges and fears:[11]

1. The governments must provide required resources, facilities, funding and personnel to the Information Commissions to be able to implement the Right to Information Act.
2. All Public Authorities must fulfill the requirements of Section 4, and a compliance report should be submitted to the appropriate Information Commissions before 1 January, 2007.
3. The government must give an undertaking publicly that no changes will be made in the RTI Act until October, 2008.
4. Commissions must give an opportunity for a personal hearing to appellants and complainants.
5. Commissions should go by the letter and spirit of the law, ensuring that all denials of information are only as per the exemptions listed in the Act.
6. The governments must ensure a common name in whose favour the application fees can be made by demand drafts or postal orders, and increase the modes of payment of these fees.

On the completion of two years of enforcement of RTI Act, the Central Information Commission held a conference with State Chief Information Commissioners and Information Commissioners. It was organized at India International Centre, New Delhi on 17 October 2007. The conference gave several practical recommendations for the enforcement of Section 4 of the RTI Act and creation of 'e-Districts'. National Panchayat Portal (www.panchayat.gov.in) may be used for updating information at the level of panchayat. A standardized format, in which the information may be provided, is available on this website. The RTI services in e-Districts can be used for reaching the applications, tracking the status of applications, receiving services from the Public Information Officer, etc.

On the issues of autonomy and other administrative measures concerned with the Information Commissions, the conference recommended among others, equating the State Information Commissioners with High Court Judges and that of Central Information Commissioners with the Supreme Court Judges with powers of contempt. Regarding the enforcement of decisions and the Act's penal clauses, the conference recommended the amount of penalty imposed or compensation

[11] Resolutions passed at the National Convention. Organized by Central Information Commission, Vigyan Bhawan, New Delhi, 13—15 October 2006. Available at https://right2information.wordpress.com/2006/10/19/resolutions-passed-at-the-national-convention/, access date 03.02.2011.

awarded by the Commission should be made recoverable in the form of land revenue arrear. The conference also recommended that the RTI Act should be included in the syllabus at High School and College level education.

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In December 2007, the Central Information Commission formed a national sub-committee of Chief Information Commissioners from nine states and the Central Information Commissioner. Its objective was to organize suggestions and recommendations from the State Commissions. It was also supposed to evaluate the suggested amendments in the Right to Information Act 2005. On 2 February 2008, in its meeting held in Hyderabad, the committee chose against considering any amendments in the Act because doing so appeared too premature.

In July 2008, in its report the committee noted that RTI Act, 2005, had established firm roots throughout the nation. The awareness among the public about the rights provided under the Act is increasing. The State Information Commissions are getting an increasing number of appeals and complaints under the RTI Act, 2005. It shows increasing acceptance among the general public of the fact that freedom of information is a very critical instrument of accountability in a democratic set up.

The Committee, however, found that the free flow of information has been obstructed by various factors. These comprise institutional and organizational issues, non-standardization of work-flow, non-compliance with fundamental mechanisms and processes, lack of awareness about the usage of RTI Act, shortcomings in the functioning and role of State Information Commissions and inadequate use of information technology. It observed that the quality and level of managing records in public authorities is very poor and unprofessional. In majority of government organizations, there is no systematic organization of records. The use of IT tools to augment the record management systems has been implemented in just a few government offices. It observed, 'The problem of delivery at the field/district level is a critical one. There is a lack of infrastructure with the public authorities at the district level which makes dissemination of information practically impossible. At the same time, the organizational and individual capacities at the cutting edge level for dealing with the RTI mandate are considerably weaker.'

5.7 INFORMATION TECHNOLOGY ACT, 2000

The term 'information technology' (IT) does not have a precise meaning. It is generally applied to a broad area of activities and technologies associated with the use of computers and communication. We can explain IT as an application of computers to create, store, process and use information particularly in the field of commerce. Basically, IT enables the corporate management to have access to timely, accurate and relevant data, with the use of computers, communication and telephone, Internet, etc., which help in informed decision-making, minimize the response time and enable better coordination in the organisation resulting in reduced costs or increased profits.

5.7.1 Rationale Behind the IT Act, 2000

The 'Statement of Objects and Reasons' appended to the 'Information Technology Bill, 2000,' explains the rationale behind the IT Act, 2000. Excerpts from the said statement are given below:

'New communication systems and digital technology have made dramatic changes in the way we live. A revolution is occurring in the way people transact business. Businesses and consumers are increasingly using computers to create, transmit and store information in the electronic form instead of traditional paper documents. Information stored in electronic form has many advantages. It is cheaper, easier and faster to store, retrieve and communicate. Although people are aware of these advantages, they are reluctant to conduct business or conclude any transaction in the electronic form due to lack of appropriate legal framework. The two principal hurdles which stand in the way of facilitating electronic commerce and electronic governance are the requirements as to writing and signature for legal recognition. At present, many legal provisions assume the existence of paper-based records and documents, and records which should bear signatures. The law of evidence is traditionally based upon paper-based records and oral testimony. Since electronic commerce eliminates the need for paper-based transactions, hence to facilitate e-commerce, the need for legal changes have become an urgent necessity. International trade through the medium of e-commerce is growing rapidly in the past few years and many countries have switched over from traditional paper-based commerce to e-commerce.'

5.7.2 Scheme of the IT Act, 2000

The Information Technology Act, 2000 consists of 13 Chapters divided into 94 Sections. Chapters I to VIII are mostly related to the digital signature-related. Chapters IX to XIII are regarding penalties, offences, etc. The Act has four Schedules on consequential amendments in respect of certain other Acts.

The first Schedule makes amendments to the Indian Penal Code, 1860, and the second Schedule makes amendments to the Indian Evidence Act, 1872 to provide for necessary changes in the various provisions which deal with offences relating to documents and paper-based transactions. The third Schedule makes amendments to the Bankers' Books Evidence Act, 1891 to give legal sanctity for books of account maintained in the electronic form by the banks. The fourth Schedule makes amendments to the Reserve Bank of India Act, 1934, to facilitate electronic fund transfers between the financial institutions and banks.

Exceptions [Sec. 1(4)]. The provisions of the IT Act, 2000 shall not apply to the following documents:

1. Execution of a Negotiable Instrument (other than cheque) under the Negotiable Instruments Act, 1881.
2. Execution of a Power of Attorney under the Powers of Attorney Act, 1882.

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3. Creation of a Trust under Indian Trusts Act, 1882.
4. Execution of a 'Will' under the Indian Succession Act, 1925, including any other testamentary disposition by whatever name called.
5. Entering into a contract for the sale or conveyance of immovable property or any interest in such property.
6. Execution of such class of documents or transactions as may be notified by the Central Government in the Official Gazette. The reason for excluding the above-mentioned documents from the purview of the Act is that such documents are required to be authenticated only by the handwritten signatures. Moreover, these require special attestation and/or registration formalities, which also explain their exclusion.

5.7.3 Offences

The Information Technology Act provides civil and criminal penalties for the violation of its provisions. Sections 43–47 dealing with civil penalty. Sections 65–76 deal with criminal penalty. In all cases severe penalty is provided which is criminal in nature, i.e., either imprisonment for the offence or imposition of fine or both.

Tampering with Computer Source Documents (Section 65)

If any person knowingly or intentionally conceals, destroys or alters or intentionally or knowingly causes another to conceal, destroy or alter any computer source code used for a computer, computer program, computer system or computer network, when the computer source code is required to be kept or maintained by law for the time being in force, he shall be punishable with imprisonment up to three years, or with fine up to ₹ 2 lakh, or with both.

Explanation—For the purposes of this Section, 'computer source code' means the listing of programs, computer commands, design and layout and program analysis of computer resource in any form.

Hacking of Computer System (Section 66)

Whoever with the intent to cause or knowing that he is likely to cause wrongful loss or damage to the public or any person destroys or deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means, commits hacking. Whoever commits hacking shall be punished with imprisonment up to three years, or with fine up to ₹ 1 lakh, or with both.

Publishing of Information which is Obscene in ElectronicForm (Section 67)

Whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in

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it, shall be punished. On first conviction he shall be punishable with imprisonment up to five years and with fine up to ₹ 1 lakh. In the event of a second or subsequent conviction, he shall be punishable with imprisonment up to ten years and also with fine up to ₹ 2 lakh.

It may be noted that it is only the publishing or transmitting of obscenity which is an offence, and not its possession.

Securing Unauthorised Access to Protected System (Section 70)

The government, may, by notification in the *Official Gazette* declare any computer, computer system or computer network to be a protected system. It may also, by order in writing, authorise persons to have access to it. Any person who secures or attempts to secure unauthorised access to a protected system shall be punished with imprisonment which may extend to 10 years and shall also be liable to fine.

Penalty for Misrepresentation (Section 71)

Whoever makes any misrepresentation to, or suppresses any material fact from, the Controller or the Certifying Authority for obtaining any licence or Digital Signature Certificate, as the case may be, shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to ₹ 1 lakh, or with both.

Penalty for Breach of Confidentiality and Privacy (Section 72)

If any person who, in pursuance of any of the powers conferred under this Act, rules or regulations made thereunder, has secured access to any electronic record, book, register, correspondence, information, document or other material without the consent of the person concerned discloses such electronic record, book, register, correspondence, information, document or other material to any other person, he shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to ₹ 1 lakh, or with both. Thus, Section 72 prohibits unauthorised disclosure of the contents of electronic record.

CHECK YOUR PROGRESS

7. How did the practice of 'paid news' come to the notice of the Press Council of India?
8. When and why was the First Press Commission set up? Also name its chairman.
9. What were the Second Press Commission's expectations from the Indian press?
10. What was the purpose of setting up the Shourie Committee?

5.8 SUMMARY

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- The Press Council of India was set up on 4 July 1966. It is a statutory, autonomous and quasi-judicial body.
- The primary objective of journalism is to serve people by providing views, news, comments and information on the issues of public interest in an accurate, fair, unbiased, decent and sober manner. To meet this end, the PCI has set up a detailed system of the norms for journalistic conduct.
- To study the status of press and recommend the means of its healthy growth in the country, the First Press Commission was appointed on 23 September 1952.
- Apart from the legal provisions concerning the press, the Commission also examined the issues of the management, control, ownership and financial structure of the press. It also looked into the content and working environment and service conditions of the people working in the newspaper industry.
- At the time when the Second Press Commission was appointed, the atmosphere was different in the country. In the General Elections of 1977, the Congress lost the mandate and the Internal Emergency came to an end.
- The Second Press Commission intended the press to be neither a mechanical adversary nor an unquestioning collaborator of the government.
- The commission expected the press to function as a responsible player in the development of the nation. It held the opinion that 'the press should be widely accessible to the people if it is to reflect their aspirations and problems'.
- Right to Information Act has a clear bearing on the press functioning in the country.
- As per this national Act, which is far liberal than most of the prevailing acts, all citizens possess the right to ask for information not just from the Central Government and public authorities, but also from the public authorities under the jurisdiction of the states in India. This comprises local village level bodies (panchayats) as well.

5.9 KEY TERMS

- **Journalistic code:** A set of rules governing some form of behaviour, either rigidly enforced or used for guidance only
- **Journalistic standards:** Code of ethics which a journalist should observe, such as objectivity, honesty, accuracy and fairness
- **Defamatory:** Intended to harm someone by saying or writing bad or false

things about them

- **Vandalism:** Meaningless destruction of property
- **Press conference:** Meeting where newspaper and television reporters are invited to hear news of something such as a new product or a takeover bid
- **Press council:** A self-regulatory governing body for the print media in many countries including Australia, New Zealand, India and the Netherlands
- **Investigative reporting:** Type of reporting that involves the journalist having to do a lot of research to discover more detail, often an exposé of something that somebody is trying to cover up
- **Plagiarism:** The process of copying another person's idea or written work and claiming it as original
- **Sensationalism:** The practice of making things seem especially exciting or shocking

5.10 ANSWERS TO 'CHECK YOUR PROGRESS'

1. In India, the Press Council of India functions as a statutory body. It governs the conduct and behaviour of the broadcast and print media. This self-regulatory institution plays a very significant role in ensuring a healthy role of media in the success of democratic set-up in India. It has also the authority to hold hearings on receiving complaints and take appropriate actions. It may either censure or warn the errant journalists.
2. The amending Act of 1970 introduced several provisions in the Act. The manner of selection of persons of special knowledge or practical experience was specified. It provided that of the three persons to be nominated from among such people, one each shall be nominated by the University Grants Commission, the Bar Council of India and the Sahitya Academy. It also provided for raising the membership of the Council to give one seat to the persons managing the news agencies.
3. Mrs Indira Gandhi lost the 1977 General Elections and the Janata Government came to power. It revived the Press Council through a fresh legislation, the Press Council of India Act 1978 (37 of 1978). The new Council was set up on 1 March 1979. This Press Council derived its authority straight from Parliamentary enactment and functioned as an independent, objective and self-regulatory institution.
4. The powers of the Press Council are provided in Sections 14 and 15 of the Act. On receipt of a complaint made to it or otherwise, the Council has reason to believe that a newspaper or news agency has offended against the standards of journalistic ethics or public taste.

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5. Section 13(2)(b) in the Press Council Act, 1978, empowers the Council to institutionalize a Code of Conduct for journalists, newspapers and news agencies to ensure high professional standards to guide the newsmen. Framing of such a Code is a very dynamic process. It should keep pace with the contemporary time and events. It means that the Press Council may evolve the code on case by case basis through its arbitration.
6. The Press Council of India has counseled reporters/financial journalists/ newspaper establishments to refrain from receiving any gifts/grants/ concessions/facilities, etc., either in cash or kind, which are likely to compromise free and unbiased reporting on financial matters.
7. Press Council looked into the incident of 'Paid News' which came into light after 2009 general elections. Earlier, it was observed during the earlier Uttar Pradesh Assembly elections. The Press Council, in its 'Report on Paid News' dated 30 July 2010 termed 'paid news' as 'any news or analysis appearing in any media (Print & Electronic) for a price in cash or kind as consideration'.
8. To study the status of the press as well as suggest measures for its healthy growth in independent India, the First Press Commission was constituted on 23 September 1952. Justice G.S. Rajadhyaksha was its chairman with very renowned persons serving as the members. The Commission gave its report in 1954.
9. The Second Press Commission expected the press to be neither a mechanical opponent nor an automatic ally of the government. It wanted the press to play a significant role in the development process in the country. 'The press should be widely accessible to the people if it is to reflect their aspirations and problems.'
10. The Central Government set up a working group under the chairmanship of HD Shourie (the Shourie Committee). It was given the mandate to formulate draft legislation on the freedom of information.

5.11 QUESTIONS AND EXERCISES

Short-Answer Questions

1. Write a brief note on the role played by the Press Council of India in maintaining the journalistic standards in the country.
2. What are the limits of the right of the Press to comment on the acts and conduct of public officials?
3. Write a brief note on the Press Council's guidelines for the financial journalists.
4. What is meant by 'paid news'?
5. What were the main recommendations of the Shourie Committee on the issue of freedom of information?

Long-Answer Questions

1. What is Press Council of India? Write a detailed note on the norms suggested by it on the issue of journalistic conduct.
2. Describe the Press Council's guidelines for the Press in the wake of communal disturbances.
3. Critically examine the recommendations put forward by the First Press Commission.
4. What is Right to Information Act? Describe its effectivity in the Indian scenario.
5. Give a detailed account of the Information Technology Act, 2000.

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5.12 FURTHER READING

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