



BAOU
Education
for All

Dr. Babasaheb Ambedkar
Open University

(Established by Government of Gujarat)

MA JMC 10

SEM-03



Media Laws, Ethics and Challenges

MASTER OF ARTS - JOURNALISM AND MASS COMMUNICATION

Message for the Students

Dr. Babasaheb Ambedkar Open University is the only state Open University, established by the Government of Gujarat by the Act No. 14 of 1994 passed by the Gujarat State Legislature; in the memory of the creator of Indian Constitution and Bharat Ratna Dr. Babasaheb Ambedkar. We stand at the seventh position in terms of establishment of the Open Universities in the country. The University provides as many as 81 courses including various Certificate, Diploma, UG, PG as well as Doctoral to strengthen Higher Education across the state.



On the occasion of the birth anniversary of Babasaheb Ambedkar, the Gujarat government secured a quiet place with the latest convenience for University, and created a building with all the modern amenities named 'Jyotirmay' Parisar. The Board of Management of the University has greatly contributed to the making of the University and will continue to this by all the means.

Education is the perceived capital investment. Education can contribute more to improving the quality of the people. Here I remember the educational philosophy laid down by Shri Swami Vivekananda:

“We want the education by which the character is formed, strength of mind is increased, the intellect is expands and by which one can stand on one’s own feet.”

In order to provide students with qualitative, skill and life oriented education at their threshold. Dr. Babasaheb Ambedkar Open University is dedicated to this very manifestation of education. The university is incessantly working to provide higher education to the wider mass across the state of Gujarat and prepare them to face day to day challenges and lead their lives with all the capacity for the upliftment of the society in general and the nation in particular.

The university following the core motto ‘स्वाध्यायः परमम् तपः’ does believe in offering enriched curriculum to the student. The university has come up with lucid material for the better understanding of the students in their concerned subject. With this, the university has widened scope for those students who are not able to continue with their education in regular/conventional mode. In every subject a dedicated term for Self Learning Material comprising of Programme advisory committee members, content writers and content and language reviewers has been formed to cater the needs of the students. Matching with the pace of the digital world, the university has its own digital platform Omkar-e to provide education through ICT.

The University is offering MA in Journalism and Mass Communication course under the School of Humanities of Social Sciences, it aims to emerge its learners as excellent communicators in the global arena by developing skills in thinking, reading, writing, and editing, audio-video production and more.

With all these efforts, Dr. Babasaheb Ambedkar Open University is in the process of being core centre of Knowledge and Education and we invite you to join hands to this pious *Yajna* and bring the dreams of Dr. Babasaheb Ambedkar of Harmonious Society come true.



Prof. Ami Upadhyay
Vice Chancellor,
Dr. Babasaheb Ambedkar Open University,
Ahmedabad

Media Laws, Ethics and Challenges

Editors

Prof. (Dr.) Ami Upadhyay
Vice Chancellor
Dr. Babasaheb Ambedkar Open University, Ahmedabad

Dr. Awa Shukla
Assistant Professor (Subject Head)/ Director (I/c) Student Services
Dr. Babasaheb Ambedkar Open University, Ahmedabad

Co-Editors

Dr. Akhilesh Kumar Upadhyay
Assistant Professor, Journalism & Mass Communication
Dr. Babasaheb Ambedkar Open University, Ahmedabad

Dr. Divyesh Vyas
Assistant Professor, Journalism & Mass Communication
Dr. Babasaheb Ambedkar Open University, Ahmedabad

Programme Advisory Committee

Prof. (Dr.) Ami Upadhyay
Vice Chancellor
Dr. Babasaheb Ambedkar Open University, Ahmedabad

Dr. Awa Shukla
Assistant Professor (Subject Head)/ Director (I/c) Student Services
Dr. Babasaheb Ambedkar Open University, Ahmedabad

Shyam Parekh
Head, School of Journalism & Mass Communication, Auro University, Surat
Former Resident Editor, DNA Ahmedabad

Jumana Shah
Consulting Editor, Divya Bhaskar, Ahmedabad,
Adjunct Professor, School of Journalism & Mass Communication, Auro University, Surat, Formerly: Executive Editor, DNA Ahmedabad.

Reviewers

Dr. Awa Shukla
Shyam Parekh

Content Writers

Chander Mahadev
Ms. Jumana Shah
Madhulika Singh

Programme Coordinator

Dr. Awa Shukla
Assistant Professor (Subject Head, J & MC)/ Director (I/c), Student Services
Dr. Babasaheb Ambedkar Open University, Ahmedabad

Publisher

Dr. Bhavin Trivedi
Registrar (I/c), Dr. Babasaheb Ambedkar Open University, Ahmedabad.

Copyright © Dr. Babasaheb Ambedkar Open University – Ahmedabad. February 2022

ISBN: 978-93-5598-295-7

Year: 2022

All rights reserved. No part of this work may be reproduced in any form, by mimeograph or any other means without permission in writing from Dr. Babasaheb Ambedkar Open University, Ahmedabad.



Dr. Babasaheb Ambedkar Open University
(Established by Government of Gujarat)

MAJMC-10
Media Laws, Ethics and Challenges

Paper

10

Unit 1 Constitution of India	1
Unit 2 Emergency Provisions & Their Impacts on Media	18
Unit 3 Cyber Laws & Ethics	33
Unit 4 Cinematograph Act 1952	50
Unit 5 Intellectual Property Rights	65
Unit 6 Right to Information Act, 2005	83
Unit 7 Press Council of India & Other Self-Regulatory Bodies	99

Unit 8 **117**
Cyber Laws & Ethics

Unit 9 **132**
Cinematograph Act, 1953

Unit 10 **145**
Emergency & Constitution of India

Unit 11 **161**
Right To Information, 2005

Unit 12 **175**
Principles of Ethical Journalism

Unit 13 **185**
Ethical and Moral Reasoning For Journalists

Unit 14 **199**
Working Conditions of Journalists

:: STRUCTURE::**1.0 Introduction****1.1 Objective****1.2 Preamble to the Indian Constitution****1.3 Key Concepts and Values in Preamble****1.3.1 Sovereignty****1.3.2 Socialism****1.3.3 Secularism****1.3.4 Democracy****1.3.5 Republic****1.3.6 Justice****1.3.7 Liberty****1.3.8 Equality****1.3.9 Fraternity****1.4 Fundamental Rights****1.5 Fundamental Duties****1.6 Directive Principles of State Policy****1.7 Check your Progress****1.8 Key words****1.9 References**

1.0 INTRODUCTION

The constitution of a particular country lays down the national goals which form the basic edifice on which the nation rests upon. Since the country's constitution stands superior to all the laws framed within the territorial precincts of the country, any law enacted by the ruling

government has to be in conformity with the concerned constitution. The Indian Constitution is important in several dimensions and it is the noble and universal book for the people of India. It lays down the basic structure of the government under which its people are to be governed. It establishes the main organs of the government - the executive, the legislature and the judiciary.

1.1 OBJECTIVES

1. To enable the student to understand the importance of constitution
2. To enable the student to understand the basic expressions and values mentioned in Preamble
3. To enable the student to understand of fundamental rights and duties
4. To enable the student to understand the directive principles of state policy

At the end of the unit, students will be able to...

1. understand historical background, making and importance of the Constitution for building a democratic India
2. evaluate Preamble, Fundamental Rights and Duties,
3. understand the structure of Indian government, the structure of state government, the local Administration
4. apply the knowledge on directive principle of state policy,

Body Text

Constitution of India

The constitution of India was adopted on the 26th of November, 1949 but it came to effect on the 26th of January, 1950. Dr. B. R. Ambedkar, the chairman of the Drafting Committee, is widely considered to be the architect of the Constitution of India. After the adoption of the constitution, The Union of India became the contemporary and modern Republic of India.

The world's longest constitution is the Indian's constitution. At its commencement, it had 395 articles in 22 parts and 8 schedules. It consists of approximately 145,000 words, making it the second largest active constitution in the world. Currently, it has a preamble, 25 parts with 12 schedules, 5 appendices, 448 articles, and 101 amendments.

1.2 PREAMBLE TO THE INDIAN CONSTITUTION

The preamble of the Indian Constitution serves as a brief introductory statement of the Constitution that sets out the guiding purpose, principles and philosophy of the Indian Constitution. By 42nd Constitutional Amendment, 1976, it was amended which determined to constitute India into a Sovereign, Socialist, Secular and Democratic Republic. It secures justice, liberty, equality to all citizens of India and promotes fraternity amongst the people.

The idea of the following things can be given by the Preamble which are:

1. Source of the Constitution
2. Nature of Indian State
3. A statement of its objective
4. Date of its adoption

The Preamble

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a **SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC** and to secure to all its citizens: **JUSTICE**, social, economic and political; **LIBERTY** of thought, expression, belief, faith and worship; **EQUALITY** of status and of opportunity; and to promote among them all **FRATERNITY** assuring the dignity of the individual and the unity and integrity of the Nation; **In Our Constituent Assembly** this twenty-sixth day of November, 1949, do **Hereby Adopt, Enact And Give To Ourselves This Constitution.**

1.3 KEY CONCEPTS IN THE PREAMBLE

1.3.1 Sovereignty:

By declaring us as a sovereign entity, Preamble emphasizes complete political freedom. It implies that our state is internally powerful and externally free. She is free to determine for herself without any external interference. There is none within her to challenge her authority. If a state cannot freely determine what it wants and how to achieve it, it loses the rationale to exist. The government is duty bound to defend its sovereignty by preventing any kind of threat to it coming from any entity and direction.

1.3.2 Socialism:

The word socialist was added to the Preamble by the 42nd amendment act of 1976 however, several articles of our Constitution were already there giving credence to the ideal. The fathers of our Constitution had a wider vision of social transformation. Despite all social, economic and political inequality present and inherent in Indian traditional society, our Constitution started a crusade against that order. The Constitution has deliberately imposed on us the ideal of socialist pattern of society. It stands to end all forms of exploitation in all spheres of our existence. Our Constitution directs the state to ensure a planned and coordinated social advance in all fields while preventing concentration of wealth and power in few hands. Our Constitution supports land reforms, promotes the well-being of working class and advocates for social control of all important natural resources and means of production for the wellbeing of all sections. To ensure a basic minimum to all has been the crux of many of our public policies today.

1.3.3 Secularism:

India is a home to almost all major religions in the world. To keep the followers of all these religions together secularism has been found to be a convenient formula. The ideal of secularism in the Indian context implies that our country is not guided by any religion or any religious considerations. However, our polity is not against religions. It allows all its citizens to profess, preach and practice any religion of their liking. Constitution strictly prohibits any discrimination on the ground of religion. All minority communities are granted the right to conserve their distinctive culture and the right to administer their educational institutions.

1.3.4 Democracy:

India is a parliamentary democracy to ensure a responsible and stable government. As a form of government it derives its authority from the will of the people. The people elect the rulers of the country and the latter remain accountable to the people. The people of India elect their governments at all levels (Union, State and local) by a system of universal adult franchise; popularly known as One man one vote.

Elections are held periodically to ensure the approval of the people to the governments at different levels. All the citizens without any discrimination on the basis of caste, creed, colour, sex, religion or education are allowed freedom of speech, thought and expression and also association. Democracy contributes to stability in the society and it secures peaceful change of rulers. It allows dissent and encourages tolerance. It rules by persuasion, not by coercion. It stands for a constitutional government, rule of law, inalienable rights of citizens, independence of judiciary, free and fair elections and freedom of press etc.

1.3.5 Republic:

As opposed to a monarchy, our Constitution prefers to remain a republic. The office of the head of the state is elective. This idea strengthens and substantiates democracy that every citizen of India, after attaining a particular age, is equally eligible to become the head of the state if he is elected as such. Political equality is its chief message. Any sort of hereditary rule is thus regarded as a disvalue in India.

1.3.6 Justice:

Justice is called a total value. The fathers of our Constitution knew that political freedom would not automatically solve the socio-economic problems which have been deep rooted. Therefore, they stressed that the positive constructive aspect of political freedom has to be instrumental in the creation of a new social order, based on the doctrine of socio-economic justice. The message of socio-economic justice mentioned in the preamble to our Constitution has been translated into several articles enshrined in part-III and part- IV of the Constitution.

1.3.7 Liberty:

It was well understood by the fathers of our Constitution that the ideal of democracy was unattainable without the presence of certain minimal rights which are essential for a free and civilized existence. Therefore, the Preamble mentions these essential individual rights such as freedom of thought, expression, belief, faith and worship which are assured to every member of the community against all the authorities of States by Part-III of the Constitution. Unless all dissenting voice is heard and tolerated and their problems are addressed liberty will be a distant dream.

1.3.8 Equality:

Every citizen of India is entitled to equality before law and equal protection of law. As a human being everybody has a dignified self. To ensure its full enjoyment inequality in all forms present in our social structure has been prohibited. Our Constitution assures equality of status and opportunity to every citizen for the development of the best in him. Political equality though given in terms of vote but it is not found in all spheres of politics and power. Equality before law in order to be effective requires some economic and education base or grounding. Equality substantiates democracy and justice.

1.3.9 Fraternity:

Fraternity stands for the spirit of common brotherhood. In the absence of that, a plural society like India stands divided. Therefore, to give meaning to all the ideals like justice, liberty and equality our Constitution gives ample stress on fraternity. Democracy has been given the responsibility to generate this spirit of brotherhood amongst all sections of people. This has been a foremost objective to achieve in a country composed of so many races, religions, languages and cultures. Article-51A (e) therefore, declares it as a duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities. Article 51A (f) further asks each citizen to value and preserve the rich heritage of our composite culture.

1.4 FUNDAMENTAL RIGHTS

Fundamental rights are the basic human rights enshrined in the Constitution of India which are guaranteed to all citizens. They are applied without discrimination on the basis of race, religion, gender, etc. Significantly, **fundamental rights are enforceable by the courts**, subject to certain conditions.

These rights are called fundamental rights because of two reasons:

1. They are enshrined in the Constitution which guarantees them
2. They are justiciable (enforceable by courts). In case of a violation, a person can approach a court of law.

List of Fundamental Rights:

1. Right to Equality (Article 14-18)
2. Right to Freedom (Article 19-22)

3. Right against Exploitation (Article 23-24)
4. Right to Freedom of Religion (Article 25-28)
5. Cultural and Educational Rights (Article 29-30)
6. Right to Constitutional Remedies (Article 32)

Originally, there were seven Fundamental Rights in the Constitution. Besides the above mentioned six rights, there was the Right to Property also. Since this Right created a lot of problems in the way of attaining the goal of socialism and equitable distribution of wealth, it was removed from the list of Fundamental Rights in 1978 by 44th constitutional amendment. However, its deletion does not mean that we do not have the right to acquire, hold and dispose of property. Citizens are still free to enjoy this right. But now it is just a legal right and not a Fundamental Right.

1. Right to Equality

Right to equality is very important in a society like ours. The purpose of this right is to establish the rule of law where all the citizens should be treated equal before the law. It has five provisions (Articles 14-18) to provide for equality before law or for the protection of law to all the persons in India and also to prohibit discrimination on the grounds of religion, race, caste, sex or place of birth.

(i) Equality before Law: The Constitution guarantees that all citizens will be equal before law. It means that everyone will be equally protected by the laws of the country. No person is above law. It means that if two persons commit the same crime, both of them will get the same punishment without any discrimination.

(ii) No Discrimination on the basis of Religion, Race, Caste, Sex or Place of Birth: The State cannot discriminate against a citizen on the basis of religion, race, caste, sex or place of birth. This is necessary to bring about social equality. Every citizen of India has equal access to shops, restaurants, places of public entertainment or in the use of wells, tanks or roads without any discrimination. However, the State can make special provisions or concessions for women and children.

(iii) Equality of Opportunity to all Citizens in matter of Public Employment: The State cannot discriminate against anyone in the matter of public employment. All citizens can apply and become employees of the State. Merits and qualifications will be the basis of employment. However, there are some exceptions to this right. There is a special provision for the reservation of posts for citizens belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes (OBCs) (iv) Abolition of Untouchability: Practising untouchability in any form has been made a punishable offence under the law. This provision is an effort to uplift the social status of millions of Indians who had been looked down upon and kept at a distance because of either their caste or the nature of their profession. But, it is really very unfortunate that despite constitutional provisions, this social evil continues even today. Can you

find any difference when you see a nurse cleaning a patient, a mother cleaning her child and a lady cleaning a toilet in the illustration? Why do people consider the cleaning of a toilet in a derogatory manner?

(v) Abolition of Titles: All the British titles like Sir (Knighthood) or Rai Bahadur which were given to the British loyalists during the British rule, have been abolished because they created distinctions of artificial nature. However, the President of India can confer civil and military awards to those who have rendered meritorious service to the nation in different fields. The civil awards such as Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Shri and the military awards like Veer Chakra, Paramveer Chakra, Ashok Chakra are conferred. Do you know that these awards are not titles? Educational and military awards can be prefixed with one's name?

2. Right to Freedom

The Constitution of India provides Right to Freedom to all its citizens. This Right is stipulated under Articles 19-22.

The following are the four categories of Rights to Freedom:

I. Six Freedoms:

Article 19 of the Constitution provides for the following six freedoms:

- (a) Freedom of speech and expression
- (b) Freedom to assemble peacefully and without arms
- (c) Freedom to form Associations and Unions
- (d) Freedom to move freely throughout the territory of India
- (e) Freedom to reside and settle in any part of India
- (f) Freedom to practise any profession or to carry on any occupation, trade or business.

The purpose of providing these freedoms is to build and maintain an environment for proper functioning of democracy. However, the Constitution has authorized the State to impose certain reasonable restrictions on each of them:

1. Restrictions may be put on the Right to Freedom of speech and expression in the interests of the sovereignty, integrity and security of India, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.
2. Right to assemble peacefully and without arms may be restricted in the interests of the sovereignty and integrity of India or public order
3. Right to form associations or unions may have restrictions in the interests of the sovereignty and integrity of India, public order or morality.
4. Right to move freely throughout the territory of India and to reside and settle in any part of India may also be restricted in the interest of the general public or for the protection of the interests of any Scheduled Tribe.

5. Right to practice any profession or to carry on any occupation, trade or business may have restrictions in the interests of the general public.

The State is also permitted to lay down the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business.

II. Protection in respect of conviction for offenses: Article 20 of the Constitution provides for the protection in respect of conviction for offenses. No one can be convicted for an act that was not an offence at the time of its commission, and no one can be given punishment greater than what was provided in the law prevalent at the time of its commission. Also, no one can be prosecuted and punished for the same offense more than once and can be forced to give witness against his or her own self.

III. Protection of life and personal liberty: As provided in Article 21, no one can be deprived of his or her life or personal liberty except according to the procedure established by law.

IV. Protection against arrest and detention in certain cases: It is provided in Article 22 that whenever a person is arrested, he or she should be informed, as soon as it is possible, of the grounds for arrest and should be allowed to consult and to be defended by a legal practitioner of his or her choice. Moreover, the arrested person must be produced before the nearest magistrate within 24 hours of such an arrest excepting a person who has been arrested under preventive detention law. The case of the person arrested under preventive detention law has also to be referred to an Advisory Board within a period of three months of his or her arrest.

3. Right against Exploitation

Traditionally, Indian society has been hierarchical and has encouraged exploitation in many forms. Which is why the Constitution makes provisions against exploitation. The citizens have been guaranteed the right against exploitation through Articles 23 and 24 of the Constitution.

These two provisions are:

1). Prohibition of traffic in human beings and forced labour: Traffic in human beings and beggars and other similar forms of forced labour are prohibited and any breach of this provision shall be an offence punishable in accordance with law.

2) Prohibition of employment of children in factories, etc.: 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. This right aims at eliminating one of the most serious problems, child labour, that India has been facing since ages. Children are assets of society. It is their basic right to enjoy a happy childhood and get an education. But as shown in

the illustration and as you also may have observed, in spite of this constitutional provision, the problem of child labour is still continuing at many places. This malice can be eliminated by creating public opinion against it.

4. Right to Freedom of Religion

One of the objectives declared in the Preamble is “to secure to all its citizens liberty of belief, faith and worship”. Since India is a multi-religion country, where Hindus, Muslims, Sikhs, Christians and many other communities live together, the Constitution declares India as a ‘secular state’. It means that the Indian State has no religion of its own. But it allows full freedom to all the citizens to have faith in any religion and to worship, the way they like. But this should not interfere with the religious beliefs and ways of worship of other fellow beings. This freedom is available to the foreigners as well. In respect of the Right to freedom the Constitution makes the following four provisions under Articles 25-28:

1. Freedom of conscience and free profession, practice and propagation of religion: All persons are equally entitled to freedom of conscience and the right to profess, practise and propagate religion freely. However, it does not mean that one can force another person to convert his/her religion by force or allurement. Also, certain inhuman, illegal and superstitious practices have been banned. Religious practices like sacrificing animals or human beings, for offering to gods and goddesses or to some supernatural forces are not-permissible. Similarly, the law does not permit a widow to get cremated live with her dead husband (voluntarily or forcibly) in the name of Sati Pratha. Forcing the widowed woman not to marry for a second time or to shave her head or to make her wear white clothes are some other social evils being practised in the name of religion. Besides the above stated restrictions, the State also has the power to regulate any economic, financial, political or other secular activities related to religion. The State can also impose restrictions on this right on the grounds of public order, morality and health.

2. Freedom to manage religious affairs: Subject to public order, morality and health, every religious group 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.

3. Freedom as to the payment of taxes for promotion of any particular religion: No person shall be compelled to pay any tax, the proceeds of which are specifically used in payment of expenses incurred on the promotion or maintenance of any particular religion or religious sect.

4. Freedom as to attendance at religious instruction or religious worship in certain educational institutions: No religious instruction shall be provided in any educational institution wholly maintained out of State

funds. However, it will not apply to an educational institution which is administered by the State but has been established under any trust which requires that religious instruction shall be imparted in such an institution. But no person attending such an institution shall be compelled to take part in any religious instruction that may be imparted there or attend any religious worship that may be conducted there. In case of a minor, the consent of his/her guardian is essential for attending such activities.

5. Cultural and Educational Rights

India is the world's largest democracy with diversity of culture, scripts, languages and religions. However, the democracy is a rule of the majority, the minorities are also equally important for its successful working. Therefore, protection of language, culture and religion of the minorities becomes essential so that the minorities may not feel neglected or undermined under the impact of the majority rule. Since people take pride in their own culture and language, a special right known as Cultural and Educational Right has been included in the Chapter on Fundamental Rights. In Articles 29-30 two major provisions have been made:

1. Protection of Interests of Minorities: Any minority group having a distinct language, script or culture of its own shall have the right to conserve the same. 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.

2. Right of minorities to establish and administer educational institutions: All Minorities, whether based on religion or language, have the right to establish and administer educational institutions of their choice. In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property would not restrict or abrogate the right guaranteed under that clause. 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.

6. Right to Constitutional Remedies

Since Fundamental Rights are justiciable, they are just like guarantees. They are enforceable, as every individual has the right to seek the help from courts, if they are violated. But in reality it is not so. Encroachment or violation of Fundamental Right in our day to day life is a matter of great concern. Which is why our Constitution does not permit the legislature and the executive to curb these rights. It provides legal remedies for the protection of our Fundamental Rights. This is called the Right to Constitutional Remedies stipulated in Article 32. When any of our rights are violated, we can seek justice through courts. We can directly approach the Supreme Court that can issue directions, orders or writs for the enforcement of Fundamental Rights.

7. Right to Education (RTE) (Article 21A)

The Right to Education was added by introducing a new Article 21A in the Chapter on Fundamental Rights in 2002 by the 86th Constitutional Amendment. It was a long standing demand so that all children in the age group of 6-14 years (and their parents) can claim compulsory and free education as a Fundamental Right. It is a major step forward in making the country free of illiteracy. But this addition remained meaningless, as it could not be enforced until 2009 when the Parliament passed the Right to Education Act, 2009. It is this Act which aims at ensuring that every child who is between 6-14 years of age and is out of the school in India, goes to school and receives quality education, that is his/her right.

1.5 FUNDAMENTAL DUTIES

The original Constitution enforced on 26th January, 1950 did not mention anything about the duties of the citizen. It was expected that the citizens of free India would perform their duties willingly. But things didn't go as expected. Therefore, ten Fundamental Duties were added in Part-IV of the Constitution upon the recommendations of the Swaran Singh Committee under Article 51-A in the year 1976 through the 42nd Constitutional Amendment.

However, whereas Fundamental Rights are justiciable, the Fundamental Duties are non-justiciable. It means that the violation of fundamental duties, i.e. the non-performance of these duties by citizens is not punishable. The following ten duties have been listed in the Constitution of India:

1. To abide by the Constitution and respect its ideals and institutions, the National Flag, National Anthem;
2. To cherish and follow the noble ideals which inspired our national struggle for freedom;
3. To uphold and protect the sovereignty, unity and integrity of India;
4. To defend the country and render national service when called upon to do;
5. To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women;
6. To value and preserve the rich heritage of our composite culture;
7. To protect and improve the natural environments including forests, lakes, rivers and wildlife;
8. To develop the scientific temper, humanism and the spirit of inquiry and reform;
9. To safeguard public property and not to use violence;
10. To serve towards excellence in all spheres of individual and collective activity.

Note: A new duty has been added after the passage of Right to Education Act, 2009.

11. A parent or guardian has to provide opportunities for the education of his child/ward between the age of six and fourteen years.

Some of these duties are vague. For example, a common citizen may not understand what is meant by ‘composite culture’, ‘rich heritage’ ‘humanism’, or ‘excellence in all spheres of individual and collective activities’.

1.6 DIRECTIVE PRINCIPLES OF STATE POLICY

The Directive Principles of State Policy are embedded in **Part IV** of the Indian Constitution starting from **Articles 36 to Article 51**. The idea of Directive Principles of State Policy is borrowed from the Irish Constitution of 1937 which interestingly has borrowed itself from the Spanish Constitution.

Several Features of Directive Principles of State Policy

1. The Phrase ‘Directive Principles of State Policy’ denotes the ideals to be considered while forming the policies and statutes for governance. These are like guidelines or recommendations or instructions for forming the laws and legislatures. These need to be kept in mind by all the authorities under the meaning of ‘State’ defined in Fundamental Rights.
2. The Directive Principles of State Policy are similar to the concept of ‘Instrument of Instructions’ contained in the Government of India Act of 1935 which were recommendations for Governor-General and other Governors of the colonies by the British Government. The only difference is that they are for legislatures and are recommended by the Constituent Assembly.
3. These are comprehensive guidelines for Socio-Economic and political guidelines for the idealistic democratic State which was not possible at the time of Independence but seek to achieve high ideals of justice, liberty, equality and fraternity on which pillars of Indian Democracy stands. The concept of a welfare state needs to be achieved in contrast to the police state as it was under the British.
4. These principles are non-justiciable in nature, meaning these cannot be legally enforced in a court of law against the government. However, Article 37 of the Constitution itself says that these are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws.
5. Although these are non-justiciable in nature, they immensely help the court in determining the constitutional validity of the law. The Supreme Court many a time seeks to enforce Directive Principles till justice is done.

Classification of the Directive Principles of State Policy

The constitution doesn’t differentiate between types of Directive Principles of State Policy but for better understanding of the terms, these can be classified into three broad categories namely, Socialistic, Gandhian and Liberal-intellectual.

1. Socialist Principles:

- **Article 38:** The promotion of the welfare of people by effectively maintaining social order in all institution of the nation. It will be the duty of the state to minimise the inequalities and will strive to eliminate inequalities in status, facilities and opportunity to an individual.
- **Article 39:** The state will follow certain principles in order to ensure the following:
 - Men and women are treated equally and both have the right to adequate means of livelihood.
 - To serve the community the ownership and control will be distributed in the best interest of society and to subserve the common interest of common good.
 - The economic system will not be the result of the concentration of wealth and means of production would never be a detriment to the common good of the people.
 - Both men and women will be paid equally for an equal amount of work.
 - The mental and physical health of workers is of prime interest, children are not to be forced due to economic necessity and citizens are not to be forced to work unsuited to their age and health.
 - Opportunities and facilities are to be given to children for the development of children in an all-round manner, freedom and dignity of children need to be respected and need to be protected against exploitation.
- **Article 39A:** It will the duty of the state to secure equal justice and to provide equal access to justice, a system of free legal aid for economically backward class people, so justice is denied to none
- **Article 41:** The state within its economic capacity develops a system for the right to work, to education and provisions in cases of unemployment, old age, sickness and disability.
- **Article 42:** It is the duty of the state to ensure just and humane conditions in the workplace and provisions for maternity relief.
- **Article 43:** State will ensure a living wage to industrial, agriculture workers and ensure decent workplace to work and to promote cottage industries on an individual or co-operative basis in rural areas.
- **Article 47:** The state shall work in raising the level of nutrition and standard of living of its people and to raise the level of nutrition and the standard of living of people and to improve public health.

These Articles are embedded keeping in mind the Socialist nature of Society in mind. However, only a few of them are achieved and the Government is still struggling to make them a reality.

2. Gandhian Principles

In order to fulfill the dreams of Gandhi and to achieve Gandhian State, these articles were included in the constitution. These are the following articles.

1. **Article 40:** The steps will be taken by the states to organize village panchayats and there will be decentralisation of power and authority, in order to form self-government.
2. **Article 43:** State will ensure a living wage to industrial, agriculture workers and ensure a decent workplace to work and to promote cottage industries on an individual or co-operative basis in rural areas.
3. **Article 43B:** To promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.
4. **Article 46:** to prevent Scheduled Caste and Scheduled Tribes from exploitation and injustice, the educational and economic interests of them shall be promoted.
5. **Article 47:** The state shall work in raising the level of nutrition and standard of living of its people to raise the level of nutrition and the standard of living of people and to improve public health.
6. **Article 48:** Organization of agriculture and animal husbandry on the basis of scientific lines and steps in preserving and improving the breeds, prohibiting the slaughter of cows, calves and other milch and draught cattle.

3. Liberal-Intellectual Principles:

The liberalism ideology stands for the freedom and autonomy of an individual. These principles are included keeping in mind the ideology of Liberalism. These are:

1. **Article 44:** To secure for all citizens a uniform civil code throughout the country across all religions and every section of the society.
2. **Article 45:** To provide elementary education until the age of fourteen years which has now become a fundamental right under Article 21A.
3. **Article 48:** Organization of agriculture and animal husbandry on the basis of scientific lines and steps in preserving and improving the breeds, prohibiting the slaughter of cows, calves and other milch and draught cattle.
4. **Article 48 A:** It is the duty of the state to protect and conserve the environment and forest and wildlife of the country.
5. **Article 49:** it is the obligation of the state to protect every monument or place or object of artistic or historic interest declared under law as a monument of national importance.
6. **Article 50:** To separate the judiciary from the executive in the public services of the State.
7. **Article 51:** To promote international peace and security and maintain just and honourable relations between nations; to foster respect for international law and treaty obligations, and to encourage settlement of international disputes by arbitration.

1.7 CHECK YOUR PROGRESS

1. By which act were the fundamental duties included in the constitution?

2. In which part of the constitution are the fundamental duties mentioned?

3. Which of the following article of the Constitution contains fundamental duties?

4. By which right was the Right to property removed from the list of fundamental rights?

5. Which of the following committees suggested incorporating fundamental duties in the constitution?

6. Which of the following Articles contain the right to religious freedom?

7. Which article guarantees equality before law and equal protection of law for all individuals residing within the territory of India?

8. Which article of the Constitution abolishes Untouchability?

9. Fundamental Rights have no value without?

10. In which part of the Indian Constitution, the Fundamental rights are provided?

1.8 KEY WORDS

Constitution	the basic principles and laws of a nation, state, or social group that determine the powers and duties of the government and guarantee certain rights to the people in it
Preamble	A brief introductory statement that sets out guidelines, which guide the people of the nation, and to present the principles of the Constitution, and to indicate the source from which the document derives its authority, and meaning
Fundamental Right	The basic human rights enshrined in the Constitution of India which are guaranteed to all citizens and are applied without any discrimination
Fundamental Duty	the moral obligations of all citizens to help promote a spirit of patriotism and to uphold the unity of India.

To sum it up

1. The world's longest constitution is the Indian's constitution. At its commencement, it had 395 articles in 22 parts and 8 schedules.
2. The preamble of the Indian Constitution serves as a brief introductory statement that sets out the guiding purpose, principles and philosophy of the Indian Constitution.
3. Fundamental rights are the basic human rights enshrined in the Constitution of India are enforceable by the courts.
4. The Directive Principles of State Policy of India (DPSP) are the guidelines or 15 principles given to the federal institutes governing the State of India, to be kept in citation while framing laws and policies.

1.9 REFERENCES

Books:

1. Austin, Granville (1996), *The Indian Constitution : Cornerstone of a Nation*, Oxford: Clarendon Press, p. 308.
2. Nehru, Jawaharlal (1949), *Independence and after*, New Delhi: Publication Division, Govt. of India, p.375.
3. Kashyap, S.C.(1995), *Our Constitution*, New Delhi: National Book Trust, India
4. Basu, D.D.(1991), *Introduction to the Constitution of India*, New Delhi: Prentice Hall of India Pvt. Ltd.
5. Guha Thakurta, Paranjyot (2012), *Media Ethics*, New Delhi: Oxford University Press
6. Basu D D (2007), *commentary on the constitution of India*, volume 2, 8th edition, Wadhwa and company, Nagpur

Online Reading

- https://www.constitutionofindia.net/constitution_of_india/preamble
<https://www.mea.gov.in/Images/pdf1/Part3.pdf>
<https://doj.gov.in/sites/default/files/Constitution%20Day.pdf>
<https://mhrd.gov.in/directive-principles-of-state-policy>
<https://freedomhouse.org/>

Videos

- <https://www.youtube.com/watch?v=LYHAY68pQWA>
<https://www.youtube.com/watch?v=QEtgMCLpElw>
https://www.youtube.com/watch?v=o2r_y9LAGpo
https://www.youtube.com/watch?v=Id_Ch5y8Zc
https://www.youtube.com/watch?v=LSULAO_cvEo

UNIT:2**EMERGENCY PROVISIONS &
THEIR IMPACTS ON MEDIA****:: STRUCTURE::****2.0 Introduction****2.1 Objectives****2.2 Three types of Emergency****2.2.1 National Emergency****2.2.2 State Emergency****2.2.3 Financial Emergency****2.2.4 Indira Gandhi and the Pre-Emergency Period****2.3 National Emergency and Press Censorship****2.4 Indira's methods of press control****2.5 The Print Media's Response to the Emergency****2.6 Central Censorship Order and Guidelines for the Press****2.7 Three Methods to manipulate press****2.8 Press surrendered without struggle****2.9 Check Your Progress****2.10 Key Words****2.11 References**

2.0 INTRODUCTION

In the early hours of June 26, 1975, then President Fakhruddin Ali Ahmed declared a state of Emergency in India citing threat to national security by "internal disturbances". The then prime minister Indira Gandhi suspended the civil liberties - free press among other things - and the Constitution was amended and altered. During the emergency, journalists, Opposition leaders, and activists were thrown in jail under the Draconian rule of Indira Gandhi government. While things changed

overnight and India was in the face of a Constitutional crisis during the Emergency, the Press freedom was one that took a dark turn.

2.1 OBJECTIVES

1. To enable the student to understand the provision of emergency in the constitution
2. To enable the student to understand the impact of emergency imposed by Indira Gandhi government on media and society
3. To enable the student to understand the importance of freedom of press during emergency

At the end of the unit, students will be able to...

5. understand the political background of emergency imposed in 1975
6. understand the emergency provisions that can be misused by the government
7. understand the importance of freedom of press

Body Text

The emergency provisions are contained in part XVIII of the constitution, from articles 352 to 360. National Emergency is mentioned in article 352 and president's rule is mentioned in article 356 of the Indian constitution. During an Emergency, the Central government becomes all powerful and the states go into the total control of the Centre. It converts the federal structure into a unitary one without a formal amendment of the Constitution.

2.2 THREE TYPES OF EMERGENCY

2.2.1 National Emergency: An emergency due to war, external aggression or armed rebellion (Article 352). This is popularly known as 'National Emergency'. However, the Constitution employs the expression 'proclamation of emergency' to denote an emergency of this type.

- If the president of the state is not satisfied that a grave emergency exists whereby the security of India or any part is threatened whether by war or external aggression or an armed rebellion, then he may proclaim a state of national emergency for the whole of India or a part of India.
- Such a proclamation of emergency may be revoked by the president subsequently.
- The proclamation of emergency made under article 352 may be subjected to judicial review and its constitutionality can be questioned in a court of law on the grounds of malafide.
- The proclamation made must be approved by both the houses of parliament within one month after the proclamation.
- The effect of the proclamation of emergency is the emergence of the full-fledged Unitary Government.

2.2.2 State Emergency: An Emergency due to the failure of the constitutional machinery in the states (Article 356). This is popularly known as ‘President’s Rule’. It is also known by two other names—‘State Emergency’ or ‘constitutional Emergency’. However, the Constitution does not use the word ‘emergency’ for this situation.

- Article 356 provides that if the President, on receipt of a report from the Government of a state or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on by the provisions of the Constitution; the President may issue a proclamation.
- By that proclamation, the president may assume to himself all or any of the powers vested in the Governor and may declare that the powers of the legislature of the State shall be exercisable by the Parliament.
- The proclamation issued under Article 356 must be laid before each House of the Parliament. If the proclamation is not approved by both Houses, it will expire in two months.
- The Proclamation is so approved by Parliament (by simple majority) shall be in operation for six months. However, it may be revoked in between or extended further by the Parliament.

2.2.3 Financial Emergency : due to a threat to the financial stability or credit of India (Article 360). This type of emergency is never proclaimed in India.

- Article 360 states that if the President is satisfied that a situation has arisen whereby the financial stability or the credit of India or any part thereof is threatened, the President may declare a state of financial emergency.
- During the period such Proclamation is in operation, the executive authority of the Union extends to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions, any such directions may also include:
 1. A provision required the reduction of salaries and allowances of all or any class of person serving a State or the Union.
 2. A provision requiring all Money Bills or other Financial Bills to be reserved for the consideration of the President after they are passed by the legislature of the State.
- A Proclamation issued under Article 360 will remain in force for two months unless before the expiry of the period it is approved by both the Houses of the Parliament.
- A proclamation issued under Article 360 will remain in force for two months unless before the expiry of the period it is approved by both the Houses of the Parliament.
- Once approved it remains in force till revoked by the President.
- No emergency under Article 360 has been issued so far.

2.2.4 Indira Gandhi and the Pre-Emergency Period : The success in the Bangladesh Liberation War elevated Mrs Gandhi's clout and power in office. The power structure within the Congress party also changed. There was the rise of sycophancy, consolidation of the cult leader status for Mrs. Gandhi which was consequently followed by her intolerance to criticism. The "authoritarian streak" ¹¹ in Mrs. Gandhi's rule was also becoming apparent. But despite her triumph in the sphere of foreign policy and her omniscient status in the Indian political scenario, she could not rein in political dissent growing within the country. In 1973 in Gujarat a mass agitation sparked off over shortage of food and rise in food prices. The Nav Nirman movement led to the dissolution of the state legislature and imposition of President's rule in the state. When re-elections were conducted in June 1975, the Congress was defeated by an alliance of the opposition parties. In Bihar, in April 1974, Gandhian leader Jayaprakash Narayan, popularly known as JP threw his weight behind a student agitation against the Congress state government. His call for "total revolution" led to an agitated mass movement. The role and crusade of JP against the existing political and social system needs to be discussed in a little detail here to understand the situation in the country just before the imposition of Emergency. The Congress found a real challenger in the form of Jayaprakash Narayan, popular as JP in the days after independence. JP was always critical of parliamentary democracy and advocated "party-less democracy" which according to many was a vague concept and away from the political reality. His call for "Total Revolution" or "Sampoorna Kranti" was also an unclear and "nebulous" concept. As Bipin Chandra, Aditya Mukherjee and Mridula Mukherjee¹² observed "JP at no stage was able to explain what a political system without political parties would involve or how the popular will be expressed or implemented in it." So though JP was an epitome of integrity, selflessness, sacrifice and champion of civil liberties and social order, his political ideals have been criticized as vague and ill-defined. Yet, arguably, the JP movement was one of the most noteworthy moments in India's political scenario since Independence. As JP drew on the enormous discontent prevalent in the country to force a nation-wide movement against Indira Gandhi, he came to represent the voice of opposition in an era when official opposition had all but disappeared. He came to represent people fed up with three decades of corruption, misrule and ineptitude of the Congress. The main justification of the JP movement was to end corruption in Indian life and politics whose fountainhead was allegedly Indira Gandhi and to defend democracy which was endangered by her dictatorial personality and her authoritarian administrative style. JP often said that Indira Gandhi's continuation in office was "incompatible with the survival of democracy in India.¹⁴" The stage was set for an electoral confrontation between Mrs. Gandhi and JP in the parliamentary elections scheduled after a few months. But a court verdict on 12th June, 1975 changed the entire political situation. Justice Jagmohanlal Sinha of the Allahabad High Court hearing a petition of

electoral malpractices convicted Mrs. Gandhi of indulging in corrupt campaigning practices in the parliamentary elections of 1971 and declared her election null and void. The conviction meant she could not hold on to the office of prime minister as well. JP and the opposition seized the occasion, accused her of “clinging to an office corruptly gained” and demanded her immediate resignation. In a rally in the national capital JP and his associates announced a nation-wide civil disobedience movement to force her resignation. In his speech JP asked people to make it impossible for the government to function and asked the armed forces, police personnel and the bureaucracy to refuse to obey orders they considered “illegal and unconstitutional”. Mrs. Gandhi's lightning response was to declare a state of Internal Emergency in the whole country on 26th June, 1975. It was the darkest hour for democracy in post-independent India.

2.3 NATIONAL EMERGENCY AND PRESS CENSORSHIP

During the summer of 1975, as Indira Gandhi became increasingly more threatened by the mounting criticisms of her government, she declared a state of emergency. Immediately she took control of the press, prohibiting their reporting of all domestic and international news. The government expelled several foreign correspondents (mainly American and British) and withdrew accreditation from more than 40 Indian reporters who normally covered the capital. In recent years, this has probably been the most important development in the life of the Indian press. From the very beginning of independent India, the Congress Party of India remained in power in one form or another until March 1977. At the inception of national independence, the country adopted democratic principles and pronounced India a democratic socialist nation. However, several incidents that occurred during Indira Gandhi's reign indicated that the country was drifting away from parliamentary democracy. The declaration of a national emergency, which is justified under the Indian Constitution, lasted for about 19 months. The emergency was declared as a result of mounting political pressure exerted upon the government from opposing political parties which were striving to fight corruption, inflation and economic chaos in the country. Indira Gandhi's government, rather than taking this as a political challenge, resorted to declaring a national emergency and imprisoning the opposition party leaders, including all dissenting voices from the media. The fundamental rights of the Indian people were suspended, and strict controls were imposed on freedom of speech and press. According to the Right of Freedom-Article 19(1) of the Indian Constitution, Indians have the right (a) to freedom of speech and expression, (b) to assemble peacefully and without arms, (c) to form associations or unions, (d) to move freely across the length and breadth of the country, (e) to reside or settle in any part of India, (f) to own or dispose of property, and (g) to carry on any lawful trade or occupation.' It is obvious that, unlike the American Constitution or others. In which

freedom of the press is mentioned as one of the fundamental rights, the Indian Constitution doesn't specifically mention freedom of the press. However, the fundamental Rights Clause of the Indian Constitution treats freedom of the press as an integral part of the larger "freedom of expression." Based on the First Amendment Act of 1951, The Indian courts, in the past, have considered press freedom as a fundamental right. The second part of Article 19 of the Indian Constitution enumerates limitations on the various types of freedom. It mentions that the "states shall be authorized to make any law restricting the exercise of the freedom of speech in the interest of the security of the state, friendly relations with foreign countries, public order, and decency and good conduct."~ The states have also been authorized to restrict press freedom "in order to check slanderous articles and promotion of disaffection towards or contempt of court."~ Indira Gandhi's government use the "security of the state" and "promotion of disaffection" as its defense for imposing strict control on the press. And with the airwaves already under government ownership, Indira Gandhi successfully controlled the mass communication system in India for over a year and a half. During censorship, most of the nation's domestic dailies, however, gave up the battle for press freedom. Their pages were "filled with fawning accounts of national events, flattering pictures of Gandhi and her ambitious son, and not coincidentally, lucrative government advertising."~ But two tough, prominent publishers of English language dailies, The Indian Express and The Statesman, fought courageously against Indira Gandhi's opposition of the Indian press. Despite some bold fights and stubborn stands taken up by these publishers, it was quite clear that Indira Gandhi had as strong a grip on the Indian press as she had on Indian politics, at least during the government-imposed emergency. India, a nation which had always cherished democratic principles and had admired Mahatma Gandhi's ideals of a democratic society, was quickly set on the road to dictatorship. For Mahatma Gandhi, freedom of the press was "a dear privilege." He urged the editors to express their ideas fearlessly: We must devised methods of circulating our ideas unless and until the whole press becomes fearless, defies consequences and publishes ideas, even when it is in disagreement with them, just for the purpose of securing that freedom ... It is a negation of one's calling for an editor to have suppressed his best thoughts. However, Indira Gandhi's call made editors suppress their best thoughts, and for the Indian mass media, freedom became a matter of history.

2.4 INDIRA'S METHODS OF PRESS CONTROL

Like other dictators in history, Indira Gandhi's first attempt was to impose "thought control" on the populous. For her, this was to be effectuated not merely by controlling the Indian mass media but also by molding the media to her own purpose. It has now become a well-known fact that during the emergency Indira Gandhi had a firm grip on the Indian mass media. This was especially true since radio and television in

India are government owned and operated; for Indira, there was the simple matter of controlling the newspapers in order to achieve a total control of the mass media. She used at least three methods in manipulating the newspapers: (1) allocation of government advertising; (2) shotgun merger of the news agencies; and (3) use of fear-arousal techniques on newspaper publishers, journalists and individual shareholders. The Indian newspapers depend a great deal on governmental advertising; without such revenues, it would be difficult for many Indian newspapers to stay in business. Unfortunately, this has kept many of them vulnerable to government manipulation. The large scale possibility of such manipulation, however, was not fully demonstrated until Indira Gandhi's government decided to take advantage of this unique circumstance. In the beginning of censorship, when a few leading newspapers such as The Indian Express and The Statesman refused to abide governmental censorship, the government withdrew its advertising support from these newspapers. Later on, this type of financial castigation was used on several other rebellious newspapers. The second and perhaps more profound way of manipulating the news flow resulted from the governmental decision to bring about a shot-gun merger of the four privately-owned Indian news agencies; the main purpose behind this merger was to alter the management and control of the Indian news agencies and thus to control much of the content of the leading newspapers. Since these agencies had been acting as the gatekeepers of information, it was essential for Indira Gandhi and her Information and Broadcasting Minister, V.C. Shukla, to control the gatekeepers. To effect such a merger, the government carried through various successful tactics. First of all, pressure was put on the members of boards of these agencies. Then the financial squeeze was applied to the agencies themselves by withholding governmental subsidy. Thirdly, the government introduced the threat of cutting-off the teleprinter services, the lifelines of a news agency. For example, the government-owned Post and Telegraph Department ordered a suspension of services to the United News of India if it resisted the merger. The manipulation of these four news agencies was so effective that hardly a voice was raised to resist the governmental perfidy. Soon after this, Shukla reported to the Indian parliament that these four news agencies accepted the merger "voluntarily." A third and equally effective method applied by Indira Gandhi was to use fear-arousal techniques on the newspaper publishers, editors, reporters and shareholders. Such techniques were imposed by making false charges with regard to tax arrears, possible reductions in newsprint quotas, imprisonment of publishers and their immediate families, threats of shutting down the press, and removal of governmental housing and other facilities for Delhi-based journalists. In any event, after 19 months of national emergency and the control of the mass media, Indira Gandhi became so confident of her continued success that she called for a parliamentary election in March of 1977. Simultaneously, she also removed press censorship. The results of the national election, however,

turned out to be frustrating for Indira Gandhi, her son, as well as for some of her closest advisers. An overwhelming public outcry against the atrocities of Indira Gandhi's regime brought about a coalition government of several small political parties. The effects of the Desai government in regard to restoring freedom of the mass media in India will be discussed in the latter section of the paper.

2.5 THE PRINT MEDIA'S RESPONSE TO THE EMERGENCY

With freedom comes the responsibility to uphold that freedom under all circumstances. Sadly, during the Emergency, most of India's domestic dailies gave up the battle for Press freedom after the initial protest. For the first two days there was some semblance of opposition from some section of the print media. Blank editorials appeared as a gesture of protest. Official threats caused these to vanish in no time. Thereafter there was, by and large, meek submission to the drastic curtailment of Press and personal freedoms. As L K Advani famously said, "When Indira Gandhi asked the media to bend, it crawled." Their pages were "filled with fawning accounts of national events, flattering pictures of Mrs. Gandhi and her ambitious son, and not coincidentally, lucrative government advertising". The Hindustan Times, one of the leading English-language dailies, headed by K.K. Birla, a prominent Indian industrialist became a strong supporter of the government during. The Times of India, one third of whose directors were government nominees, soon surrendered its independence and reflected the official line. Political cartoons disappeared overnight and no one dared put out any cartoon of Mrs. Gandhi which was unflattering. The Hindu, in south India, believed discretion to be the better part of valour and acted accordingly. There was support for Emergency from even journalists like Khushwant Singh, who at the time was the editor of "The Illustrated Weekly of India". He observed "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 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 resigned." The proprietors, owners and journalists had their own reason for supporting the Emergency. The Board of The Times of India, for example, decided that the paper would not oppose the Emergency, because whatever their opinion of the matter, the law was to be followed and this was the law at that point of time. A senior journalist of the paper Inder Malhotra stated "We cannot speak against it, it was decided, and as it was a privately owned paper, we had to follow suit. A few of us proposed that if we couldn't speak against it, we wouldn't support it either, and that was the final position the paper took." The content of the

newspapers also reflected this sanitized and detached approach. “India’s Sterile Press”, referring to the sterilization drive of the Indira Gandhi government under the supervision of her son Sanjay Gandhi, was filled with ineffectual government hand-outs of the Ministry of Information and Broadcasting. Most of the reports were equivalent to government propaganda. L. K. Advani observed, “Following the censorship of the Press there was hardly any difference between one paper and another. They were all drab and dull, inane and insipid, mere reproductions of official handouts”²⁷. Writer Gnani Sankaran who was then a reporter in the Indian Express, Chennai edition opined there was no other option with the newspapers. He wrote, “The Censor wanted to kill newspapers by delaying approvals. Along with letting pages go blank, sometimes innocuous and frivolous stuff like how to make onion raita (salad) had to be printed since political news could not be taken without consent.” These are certainly cases where the print media’s journalistic and ethical standards fell through but at the same time there was very little in terms of content that the newspapers could print bypassing censorship strictures. It was the first time after Independence that pre-censorship on the Press have been imposed on the Indian Press. It implied the government would decide the news and information to be disseminated by the newspapers on all policies, programs and even individuals. So instead of the editors and journalists playing their role as independent watchdogs in the democratic system, the government became the ‘gatekeeper’ of all news.

2.6 CENTRAL CENSORSHIP ORDER AND GUIDELINES FOR THE PRESS

The government issued Central Censorship Order and Guidelines for the Press in the Emergency period. The Central Censorship Order imposed under rule 48 of the Defense of India Rules, 1971, addressed all printers, publishers and editors and prohibited the publication of news, comments, rumours or other reports relating to actions taken by the government without their first being submitted for scrutiny to an authorized government official (the Censor). In the initial days an official from the office the Chief Censor officer was sent to each daily newspaper in the evening²⁹ though later the process was discontinued for obvious logistic reasons. The strictures on the Press sometimes bordered on the ludicrous. Quotations of Rabindranath Tagore, Mahatma Gandhi and Jawaharlal Nehru were banned as they were used against British rule and now may be used out of context against the present government. Innocuous news’ which had little to do with criticism against governmental action or measures were not allowed to be published like the black out of some unpleasant news about the criminal convictions of an actress and of some businessmen. The Censor’s scissors were applied arbitrarily and in a few cases the decisions ‘bordered on the farcical; of course there were some newspapers who protested tooth and nail against

editorial during the Emergency besides many smaller, independent newspapers and journals like Himmat. The Indian Express and The Statesman, fought courageously against Indira Gandhi's dictum on the Indian Press. The Indian Express Delhi edition on June 28, 1975 carried a blank first editorial and the Financial Express reproduced in large type Rabindranath Tagore's poem "where the mind is without fear and the head held high" concluding with the prayer "Into that heaven of freedom, my Father, let my country awake." A small fortnightly newsmagazine, India Today was launched in October 1975, right in the middle of the Emergency. In the two issues that came out after the declaration of Emergency, Himmat chose to leave its editorials blank. Thereafter, it decided to write until it was informed that it had violated some guidelines. Despite some bold fights and stubborn stands by these print media it was clear that Indira Gandhi had as strong a grip on the Indian Press as she had on Indian politics, during the emergency. The surrendered media said the options available to newspapers and reporters during the Emergency were limited owing to the coercive methods applied by the government.

How press fought back:

2.7 THREE METHODS TO MANIPULATE PRESS

Indira Gandhi used three methods to manipulate the Press: (1) allocation of government advertising; (2) shotgun merger of the news agencies; and (3) use of fear-arousal techniques on newspaper publishers, journalists and individual shareholders. During the 1970s the Indian newspapers depended a great deal on governmental advertising. Without revenues from this head it was difficult for many Indian newspapers to stay in business. Unfortunately, this kept them vulnerable to government manipulation for years. While this remained a latent worry for the newspapers, the Indira Gandhi government made it evident that it is going to use this against newspapers. As if to reinstate its point the government at the beginning of the imposition of Press censorship, withdrew its advertising support from The Indian Express and The Statesman when they refused to abide by the governmental censorship. As the emergency continued this kind of financial chastisement was used on other newspapers who failed to toe the government line. The second way that the Indira administration applied to control news flow to newspapers was the merger of the four privately-owned Indian news agencies, Press Trust of India (PTI) and United News of India (UNI) in English and the Samachar Bharti and Hindustan Samachar in Hindi. The main purpose behind this merger was to alter the management of the Indian news agencies and control much of the content of the newspapers. Since these agencies had been acting as the gatekeepers of information, it was essential for Indira Gandhi to control the gatekeepers and consequently become the gatekeeper. To effect such a merger, the government carried out several strong-arm tactics. First of all, pressure was put on the members of boards of these agencies. Then the financial

squeeze was applied to the agencies themselves by withholding governmental subsidy. Thirdly, the government threatened to cut-off the tele-printer services, the lifeline of a news agency. The government-owned Post and Telegraph Department threatened to impose a suspension of services to the UNI if it resisted the merger. Chitra Kanungo added the news agencies were threatened with non-payment of large arrears of subscription due to them by AIR unless they agreed to merge. It goes without saying that the government gained immense power by the merger of the news agencies. The third way in which Mrs. Gandhi's government held the Press with iron fist was direct reprisals if the Press ignored the threats and warnings of the government. There were false charges with regard to tax arrears, threats of reductions in newsprint quotas, imprisonment of publishers and their immediate families, threats of shutting down the Press, and removal of governmental housing and other facilities for Delhi-based journalists. Ramnath Goenka, the proprietor of the Indian Express described his ordeal thus, "The government, acting under the personal directions of Indira Gandhi, abused its authority and subverted lawful processes to liquidate me and my group of companies economically and made me an object of public ridicule and shame". It is widely known that within hours of the declaration of Emergency on the midnight of June 25, 1975, electric supply was cut down at Bahadurshah Zafar Road, the hub of newspapers in New Delhi to prevent the newspapers from printing the breaking news of proclamation of Emergency. Tavleen Singh, a journalist with The Statesman then has revealed how newspapers that were submitted to the censors at Press Information Bureau, New Delhi for 'pre-censorship' were returned so late at night they could be sold before 8 am in the morning, when there were hardly any takers for them. Marcus F. Franda observed Indira Gandhi's justification for the repression of the Indian mass media was based on three major assumptions. (1) economic productivity and social justice are more important than civil liberties and freedom of expression: (2) the Press in India was acting in a manner that seriously hindered the state in its efforts to promote economic productivity and social justice; and (3) a drastic contraction of civil liberties and Press rights will advance the state's ability to promote those causes. Commenting on this rationale for Press censorship,

2.8 PRESS SURRENDERED WITHOUT STRUGGLE

On the cut off of electricity service to the Delhi newspapers soon after the declaration of Emergency, the White Paper on the Misuse of Mass Media during the Emergency commented "Conscious that the implementation of censorship may take time, and in the meanwhile the Delhi papers at least may come out with screaming headlines about the cataclysmic events, the government resorted to blatant illegality. Power supply to newspapers (in Delhi) was cut off. According to Delhi Electric Supply Undertaking, oral instructions were received by them from the Lieutenant Government of Delhi that this be done. Most Delhi

newspapers were, therefore, unable to bring out their editions on June 26, 1975.” The ethical degradation of the Indira Gandhi government in the imposition of the emergency is obvious. But the response of the Press, the majority of it was unbecoming. Talking about the response of the print media in general to the emergency and pre censorship laws, one of the legal luminaries, Soli Sorabjee⁴² observed, “The first and most crucial round of battle for freedom of the Press and civil liberties was lost without a struggle in the first week after the emergency.” The absurdity and illegality of the Censor’s action was not lost on the newspapers and their editors but barring a valiant few the others were unwilling to challenge it in the court of law. This was unfortunate as contesting in the court of laws proved effective. In the Binod Rau V/S M R Masani case the Bombay High Court on April, 1976 ruled among other things, “if there is a right to praise either an individual or the government, there is equally a right to criticize the individual or the government.” The fact of the matter was that fear had struck the print media. Editors were more interested in saving their jobs and printers did not want to risk forfeiture of their presses. This stance of the majority of the print media was thus disapproving. The clamour for Press freedom did not translate into a fight to stave off attack on Press freedom. Ghosh wrote “At a meeting on June 26, 1975 Indira Gandhi laid down a broad policy in respect of the media. At this meeting, it was proposed to abolish the Press Council, fuse the four news agencies into one, review the advertisement policy by the Directorate of Advertising and Visual Publicity (DAVP) with respect to newspapers, withdraw the housing facilities given to journalists and deport the foreign correspondents not willing to fall in line.” Her despotic stance against the print media was ably implemented by Vidya Charan Shukla, handpicked by Sanjay Gandhi as the Information and Broadcasting minister. As the White Paper on Misuse of Mass Media during the Internal Emergency⁴⁵ underlined, “The press and films, otherwise outside the control of government were made to dance to the tune of the rulers by a set of draconian laws which reduced press freedom to naught and there was consistent abuse of authority in the matter of disbursing advertisement, allocation of newsprint and release of raw stock for films.” The enactment of the Prevention of Publication of Objectionable Matters Act, 1976 proved to be the death knell for Indian journalists. The Act empowered the government to prohibit publications on all grounds pertaining to Article 19 (2). Thus the Act effectively banned all media publicity to anti-government criticism or protests against government policies. It also empowered competent authorities to confiscate or shut down printing presses or forfeit security deposit for printing “Objectionable matter” which of course included anything and everything. Most of the Press became apprehensive and restrained and maintained this stance throughout the Emergency period. The media was thus a fettered and dysfunctional institution during the Emergency.

2.9 CHECK YOUR PROGRESS

1. Which of the following constitutional amendments equipped the President to impose National Emergency on any particular part of India?

2. When was the word "armed rebellion" added to the Constitution to declare a National Emergency?

3. How soon imposition of National Emergency should be approved by the Parliament?

4. If the announcement of the National Emergency has been approved by both Houses of Parliament, how long will it be effective?

5. Which kind of emergency will be imposed in the case of war, external aggression and armed rebellion?

7. Which Fundamental Rights do not get abolished automatically during National Emergency?

8. When a National Emergency is enforced, the Fundamental Rights of Article 19 are repealed after the President's order.

9. How many times has the National Emergency been implemented in India?

10. Which president of India declared emergency at the behest of Indira Gandhi?

2.10 KEY WORDS

Emergency	A 21-month period from 25 th June 1975 to 21 st March 1977 when Prime Minister Indira Gandhi had a state of emergency declared across the country.
Freedom of Press	The principle that communication and expression through various media, including printed and electronic media, especially published materials, should be considered a right to be exercised freely.
Right to Information	an act of the Parliament of India which sets out the rules and procedures regarding citizens' right to information.
MISA	Maintenance of Internal Security Act which was misused to detain Indira's opponents.

To sum it up

1. On 12th June 1975, Allahabad high court found Indira Gandhi guilty of electoral malpractice and disqualified, and barred her from holding an elected office for six years.
2. A few minutes before midnight, a state of emergency was declared by President Fakhruddin Ali Ahmed.
3. The supply of electricity to major newspaper offices was cut and opposition leaders were arrested.
4. *The Times of India* published an obituary for democracy, *The Indian Express* carried a blank editorial while *The Financial Express* printed the Tagore poem 'Where the mind is without fear'.
5. The Maintenance of Internal Security Act (MISA) was amended through an ordinance to allow the detention of any person who may pose a political threat by voicing opposition, without a trial.

2.11 REFERENCES

Books:

1. Austin, Granville (1996), *The Indian Constitution: Cornerstone of a Nation*, Oxford: Clarendon Press, p. 308.
2. R.C. Aggarwal, *The Constitutional History of India and National Movement* (New Delhi: S. Chan & Co., 1964)
3. S. Natrajan, *A History of the Press in India* (Bombay: Asia Publishing House, 1962)
4. Basu, D.D. (1991), *Introduction to the Constitution of India*, New Delhi: Prentice Hall of India Pvt. Ltd.
5. Government of India, *White Paper on Misuse of Mass Media During the Internal Emergency* (New Delhi: Jain Book Agency,

Online Reading

https://en.wikipedia.org/wiki/State_of_Emergency_in_India

<http://snschool.yolasite.com/resources/Indian%20media%20system%20during...pdf>

<https://www.tandfonline.com/doi/abs/10.1080/00947679.2017.12059157>

<https://theprint.in/india/governance/43-years-of-emergency-a-timeline-of-events/74568/>

<https://www.organiser.org/Encyc/2019/6/25/When-Freedom-of-Speech-and-Press-were-by-completely-curtailed-by-Congress-and-Indira-Gandhi-during-Emergency.html>

Videos

<https://www.youtube.com/watch?v=dsdLJ0uEEMw>

<https://www.youtube.com/watch?v=DxXUn7XTY8k>

<https://www.youtube.com/watch?v=SOT4q7XWfFg>

<https://www.youtube.com/watch?v=mCGjT-QTjlc>

<https://www.youtube.com/watch?v=WMd6bis74dM>

UNIT : 3**CYBER LAWS & ETHICS****:: STRUCTURE::****3.0 Introduction****3.1 Objectives****3.2 What is Cyber Law?****3.3 Cyber Crime and Cyber Security****3.4 Categories of Cyber Crime****3.4.1 Crime against People****3.4.2 Crime against Property****3.4.3 Crime against Government****3.4.4 Cyber Law Trends****3.4 Cyber Law and Intellectual Property****3.5 Cyber Laws Terms and Laws****3.6 Information Technology Act 2000****3.6.1 Salient Features of I.T Act****3.6.2 Penalties, Compensation and Adjudication****3.6.3 Offenses Under Information Technology Act, 2000****3.6.4 Section 66 A of the Information Technology Act****3.6.5 Amendments****3.7 Notable Cases****3.8 Check Your Progress****3.9 Key Words****3.10 References**

3.0 INTRODUCTION

Ethical values in computing are essential for understanding and maintaining the relationship between computing professionals and researchers and the users of their applications and programs. While concerns about cyber ethics and cyber law are constantly changing as technology changes, the intersections of cyber ethics and cyber law are still underexplored. This unit - Cyber Law and Ethics - discusses the impact of cyber ethics and cyber law on information technologies and society. Featuring current research, theoretical frameworks, and case studies, the book will highlight the ethical and legal practices used in computing technologies, increase the effectiveness of computing students and professionals in applying ethical values and legal statutes, and provide insight on ethical and legal discussions of real-world applications.

3.1 OBJECTIVES

4. To create more awareness among students about cyber legal issues and challenges.
5. To enable the student to understand the ethical issues of the cyber world.
6. To provide advice, inputs as also guidance to people on their day-to-day legal issues concerning the use of cyberspace.
7. To contribute to the global debate on evolving Cyber law jurisprudence.

At the end of the unit, students will be able to...

8. Demonstrate an understanding of how ethical issues affect individuals, communities and societies
9. Able to analyze the consequences of various professional ethical dilemmas.
10. Demonstrate awareness and understanding of what is morally/ethically at stake in various situations
11. Identify appropriate and ethical behaviors, legal standards, rights, restrictions, and moral duties in the digital world.

Body Text

3.2 WHAT IS CYBER LAW?

Cyber law is any law that applies to the internet and internet-related technologies. Cyber law is one of the newest areas of the legal system. This is because internet technology develops at such a rapid pace. Cyber law provides legal protections to people using the internet. This includes both businesses and everyday citizens. Understanding cyber law is of the utmost importance to anyone who uses the internet. Cyber Law has also been referred to as the "law of the internet."

3.3 CYBERCRIME AND CYBER SECURITY

Areas that are related to cyber law include cybercrime and cyber security. With the right cyber security, businesses and people can protect themselves from cybercrime. Cyber security looks to address weaknesses in computers and networks. The International Cyber security Standard is known as ISO 27001.

Cyber security policy is focused on providing guidance to anyone that might be vulnerable to cybercrime. This includes businesses, individuals, and even the government. Many countries are looking for ways to promote cyber security and prevent cybercrime. For instance, the Indian government passed the Information Technology Act in 2000. The main goal of this law is to improve transmission of data over the internet while keeping it safe.

Information is another important way to improve cyber security. Businesses, for example, can improve cyber security by implementing the following practices:

- Offering training programs to employees.
- Hiring employees who are certified in cyber security.
- Being aware of new security threats.

Cybercrimes can be committed against governments, property, and people.

3.4 CATEGORIES OF CYBER CRIME

Generally, there are three major categories of cybercrimes that you need to know about. These categories include:

3.4.1 Crimes against People. While these crimes occur online, they affect the lives of actual people. Some of these crimes include cyber harassment and stalking, distribution of child pornography, various types of spoofing, credit card fraud, human trafficking, identity theft, and online related libel or slander.

3.4.2 Crimes against Property. Some online crimes happen against property, such as a computer or server. These crimes include DDOS attacks, hacking, virus transmission, cyber and type squatting, computer vandalism, copyright infringement, and IPR violations.

3.4.3 Crimes against Government. When a cybercrime is committed against the government, it is considered an attack on that nation's sovereignty and an act of war. Cybercrimes against the government include hacking, accessing confidential information, cyber warfare, cyber terrorism, and pirated software.

3.4.4 Cyber Law Trends

Cyber law is increasing in importance every single year. This is because cybercrime is increasing. To fight these crimes, there have been recent trends in cyber law. These trends include the following:

- New and more stringent regulations.
- Reinforcing current laws.
- Increased awareness of privacy issues.
- Cloud computing.
- How virtual currency might be vulnerable to crime.
- Usage of data analytics.

Creating awareness of these issues will be a primary focus of governments and cyber law agencies in the very near future. India, for instance, funded cyber trend research projects in both 2013 and 2014. In addition, India held an international conference related to cyber law in 2014. This was meant to promote awareness and international cooperation.

3.4 CYBER LAW AND INTELLECTUAL PROPERTY

An important part of cyber law is intellectual property. Intellectual property can include areas like inventions, literature, music, and businesses. It now includes digital items that are offered over the internet. IP rights related to cyber law generally fall into the following categories:

- **Copyright.** This is the main form of IP cyber law. Copyrights provide protection to almost any piece of IP you can transmit over the internet. This can include books, music, movies, blogs, and much more.
- **Patents.** Patents are generally used to protect an invention. These are used on the internet for two main reasons. The first is for new software. The second is for new online business methods.
- **Trademarks Service Marks.** Trademarks and service marks are used the same online as they are in the real world. Trademarks will be used for websites. Service marks are used for websites that provide services.
- **Trade Secrets.** Trade secret laws are used to protect multiple forms of IP. This includes formulas, patterns, and processes. Online businesses can use trade secret protections for many reasons. However, it does not prevent reverse engineering.
- **Domain Disputes.** This is related to trademarks. Specifically, domain disputes are about who owns a web address. For instance, the person who runs a website may not be the person who owns it. Additionally, because domains are cheap, some people buy multiple domains hoping for a big payday.
- **Contracts.** Most people don't think contracts apply online. This is not the case. For example, when you register for a website, you usually have to agree to terms of service. This is a contract.
- **Privacy.** Online businesses are required to protect their customer's privacy. The specific law can depend on your industry. These laws become more important as more and more information is transmitted over the internet.
- **Employment.** Some employee contract terms are linked to cyber law. This is especially true with non-disclosure and non-compete

clauses. These two clauses are now often written to include the internet. It can also include how employees use their company email or other digital resources.

- **Defamation.** Slander and libel law has also needed updating because of the internet. Proving defamation was not altered substantially, but it now includes the internet.
- **Data Retention.** Handling data is a primary concern in the internet age. An area where this has become a big issue is in terms of litigation. In lawsuits, it is now common to request electronic records and physical records. However, there are no current laws that require keeping electronic records forever. This is not true for physical records.
- **Jurisdiction.** Jurisdiction is a key part of court cases. Cybercrime has complicated this issue. If a cybercriminal is located in Minnesota and their victim is located in North Carolina, which state has jurisdiction? Different states have different rules about this issue. Also, it can depend on in what court, federal or state, a case was filed.

Protecting IP can be difficult over the internet. An example of this would be the popularity of pirated movies and music. Each business that relies on the internet needs to develop strategies for protecting their IP. Governments can also take part in this process. In 1999, India did just this by updating their IP laws.

3.5 CYBER LAW TERMS AND LAWS

There are three main terms that people need to know related to cyber law:

1. **Information Technology Law.** These laws refer to digital information. It describes how this information is gathered, stored, and transmitted.
2. **Cyber Law/Internet Law.** These laws cover usage of the internet. This is a newer legal area. Many laws can be undefined and vague.
3. **Computer Law.** This covers a large legal area. It includes both the internet and laws related to computer IP.

There have been many countries that have tried to fight cybercrime with cyber laws:

- **Computer Misuse Act 1990 (Great Britain).** This law is mostly focused on data and computer systems. It includes three sections. Section 1 focuses on the unauthorized use of a computer (hacking). Section 2 covers situations where a Section 1 violation has occurred and further offenses are likely. Section 3 is for when a computer is altered illegally. This is usually due to a virus or denial of service act.
- **IT Act of 2000 (India).** This act is focused on information technology. This law both outlines offenses like hacking and Trojan attacks, as well as possible solutions. One section outlines

the use of digital signatures to improve cyber security. Some offenses can compound. This increases their potential punishment.

- **The Middle East and Asia.** Countries across these regions use combinations of cyber laws. In certain countries, these laws are used to prevent citizens from accessing certain information.

Other laws related to cyber law that have been passed by countries around the world include electronic signature laws, information technology guidelines, and information technology laws.

3.6 INFORMATION TECHNOLOGY ACT 2000

The Genesis of IT legislation in India: Mid 90's saw an impetus in globalization and computerisation, with more and more nations computerizing their governance, and e-commerce seeing enormous growth. Until then, most of international trade and transactions were done through documents being transmitted through post and by telex only. Evidence and records, until then, were predominantly paper evidence and paper records or other forms of hard-copies only. With much of international trade being done through electronic communication and with email gaining momentum, an urgent and imminent need was felt for recognizing electronic records i.e. the data that is stored in a computer or an external storage attached thereto. The United Nations Commission on International Trade Law (UNCITRAL) adopted the Model Law on e-commerce in 1996. The General Assembly of United Nations passed a resolution in January 1997 inter alia, recommending all States in the UN to give favourable considerations to the said Model Law, which provides for recognition to electronic records and accordingly give it the same treatment like a paper communication and record

Objectives of I.T. legislation in India:

It is against this background the Government of India enacted its Information Technology Act 2000 with the objectives as follows, stated in the preface to the Act itself. "to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involve the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies and further to amend the Indian Penal Code, the Indian Evidence Act, 1872, the Bankers' Books Evidence Act, 1891 and the Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto." The Information Technology Act, 2000, was thus passed as the Act No.21 of 2000, got President assent on 9 June and was made effective from 17 October 2000. The Act essentially deals with the following issues: Legal Recognition of Electronic Documents Legal Recognition of Digital Signatures Offenses and Contraventions Justice Dispensation Systems for cybercrimes. Amendment Act 2008: Being the first legislation in the nation on

technology, computers and ecommerce and e-communication, the Act was the subject of extensive debates, elaborate reviews and detailed criticisms, with one arm of the industry criticizing some sections of the Act to be draconian and other stating it is too diluted and lenient. There were some conspicuous omissions too resulting in the investigators relying more and more on the time-tested (one and half century-old) Indian Penal Code even in technology based cases with the I.T. Act also being referred to in the process and the reliance more on IPC rather on the ITA.

3.6.1 Salient Features of I.T Act

- Digital signature has been replaced with electronic signature to make it a more technology neutral act.
- It elaborates on offenses, penalties, and breaches.
- It outlines the Justice Dispensation Systems for cyber-crimes.
- It defines in a new section that *cyber café is any facility from where the access to the internet is offered by any person in the ordinary course of business to the members of the public.*
- It provides for the constitution of the Cyber Regulations Advisory Committee.
- It is based on The Indian Penal Code, 1860, The Indian Evidence Act, 1872, The Bankers' Books Evidence Act, 1891, The Reserve Bank of India Act, 1934, etc.
- It adds a provision to Section 81, which states that the provisions of the Act shall have overriding effect. The provision states that *nothing contained in the Act shall restrict any person from exercising any right conferred under the Copyright Act, 1957.*

Most of these types of cybercrimes have been addressed by the IT ACT of 2000 and the IPC. Cybercrimes under the IT ACT include:

- Sec. 65, Tampering with Computer Source Documents.
- Sec. 66, Hacking Computer Systems and Data Alteration.
- Sec. 67, Publishing Obscene Information.
- Sec. 70, Unauthorized Access of Protected Systems.
- Sec. 72, Breach of Confidentiality and Privacy.
- Sec. 73, Publishing False Digital Signature Certificates.

Special Laws and Cybercrimes under the IPC include:

- Sending Threatening Messages by Email, Indian Penal Code (IPC) Sec. 503.
- Sending Defamatory Messages by Email, Indian Penal Code (IPC) Sec. 499
- Forgery of Electronic Records, Indian Penal Code (IPC) Sec. 463
- Bogus Websites & Cyber Fraud, Indian Penal Code (IPC) Sec. 420
- Email Spoofing, Indian Penal Code (IPC) Sec. 463
- Web-Jacking, Indian Penal Code (IPC) Sec. 383
- Email Abuse, Indian Penal Code (IPC) Sec. 500

There are also cybercrimes under the Special Acts, which include:

- Online Sale of Arms Under Arms Act, 1959
- Online Sale of Drugs Under Narcotic Drugs and Psychotropic Substances Act, 1985

(b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device,

(c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages, shall be punishable with imprisonment for a term which may extend to three years and with fine."

Section 66A provides punishment for sending offensive messages through communication services.

These messages may be any information created, transmitted or received on a computer system, resource or device including attachments in the form of...

- Text
- Images
- Audio
- Video
- Any other electronic record which may be transmitted with the message

The law targets messages that...

- Are grossly offensive or menacing
- Proffer false information intending to cause annoyance, inconvenience, intimidation, insult, obstruction, etc.
- Are intended at deceiving the addressee about the origin of the message

The law was amended in 2008 and received Presidential assent on February 5, 2009.

3.6.2 Penalties, Compensation and Adjudication under Information Technology Act, 2000

Section 43: Where a person without the permission of owner or any other person-in-charge damage the Computer, or Computer System, or Computer Network, the he shall be liable for Penalty and Compensation to such person so affected.

Where a person fails to furnish any document, return, report to the controller, or certifying authority, then he shall be liable to pay penalty up to **Rs.1, 50,000/-** per failure. Further where a person fails to furnish any information, books or other documents within time specified, then he shall be liable to pay penalty up to **Rs.5, 000/-** per day. Further provided that where a person fails to maintain books of accounts or other records, then he shall be liable to pay penalty up to **Rs.10, 000/-** per day.

3.6.3 Offences under Information Technology Act, 2000

Any person tamper, conceal, destroy, or alter any computer source document intentionally, then he shall be liable to pay penalty up to **Rs.2, 00,000/-**, or Imprisonment up to **3 years**, or both.

Any person dishonestly, or fraudulently does any act as referred in then he shall be liable to pay penalty up to **Rs.5,00,000/-**, or Imprisonment up to **3 years**, or both.

Any person dishonestly, or fraudulently receives or retains any stolen computer resource or communication device, then he shall be liable to pay penalty up to **Rs.1, 00,000/-**, or Imprisonment up to **3 years**, or both.

Any person dishonestly, or fraudulently make use of Electronic Signature, Password or any other Unique Identification Feature of any other person, then he shall be liable to pay penalty up to **Rs.1,00,000/-**, or Imprisonment up to **3 years**, or both.

Any person dishonestly, or fraudulently by means of any communication device or computer resource cheats by personating, then he shall be liable to pay penalty up to **Rs.1,00,000/-**, or Imprisonment up to **3 years**, or both.

Any person intentionally captures, publishes, or transmits image of private area of any person without consent, then he shall be liable to pay penalty up to **Rs.2,00,000/-**, or Imprisonment up to **3 years**, or both.

Any person does any act electronically, or with use of computer with intent to threaten unity, integrity, security, or sovereignty of India, then he shall punishable with **Imprisonment for Life**.

Any person publishes, or transmits in electronic form any material which appeals to prurient interest, or if its effect is such as to tend to deprave and corrupt persons who are likely to read, see, or hear matter contained in it, then he shall be liable to pay penalty up to **Rs.5,00,000/-**, or Imprisonment up to **3 years**, or both, And in the event of second or subsequent conviction, he shall be liable to pay penalty up to **Rs.10,00,000/-**, or Imprisonment up to **5 years**, or both.

Any person publishes, or transmits in electronic form any material which contains sexually explicit act, or conduct, then he shall be liable to pay penalty up to **Rs.10, 00,000/-**, or Imprisonment up to **5 years**, or both, **And** in the event of second or subsequent conviction, he shall be liable to pay penalty up to **Rs.10, 00, 000/-**, or Imprisonment up to **7 years**, or both.

The Controller may, by order, direct a Certifying Authority or any employee of such Authority to take such measures or cease carrying on such activities as specified in the order if those are necessary to ensure compliance with the provisions of this Act, rules or any regulations made thereunder and if any person who intentionally or knowingly fails to comply with the order, then he shall be liable to pay penalty up to **Rs.1, 00,000/-**, or Imprisonment up to **2 years**, or both.

Where the Central Government or a State Government or any of its officers specially authorized by the Central Government or the State Government, as the case may be, in this behalf may, if satisfied that it is

necessary or expedient so to do, in the interest of the sovereignty or integrity of India, defense of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offense relating to above or for investigation of any offense, it may with reasons to be recorded in writing, by order, direct any agency of the appropriate Government to intercept, monitor or decrypt or cause to be intercepted or monitored or decrypted any information generated, transmitted, received or stored in any computer resource, Any person who fails to comply with the order, then he shall be liable to Imprisonment of **7 years**, along with the **fine (amount of fine is not specified in the act)**.

The appropriate Government may, by notification in the Official Gazette, declare any computer resource which directly or indirectly affects the facility of Critical Information Infrastructure, to be a protected system, Any person who fails to comply with the notification, then he shall be liable to Imprisonment of **10 years**, along with the **fine (amount of fine is not specified in the act)**.

Whoever makes any misrepresentation to, or suppresses any material fact from the Controller or the Certifying Authority for obtaining any License or Electronic Signature Certificate, as the case may be, then he shall be liable to pay penalty up to **Rs.1,00,000/-**, or Imprisonment up to **2 years**, or both.

If any person who 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, then he shall be liable to pay penalty up to **Rs.1, 00,000/-**, or Imprisonment up to **2 years**, or both.

If any person who has secured access to any material containing personal information about another person, with the intent to cause or knowing that he is likely to cause wrongful loss or wrongful gain discloses, without the consent of the person concerned, or in breach of a lawful contract, then he shall be liable to pay penalty up to **Rs.5, 00,000/-**, or Imprisonment up to **3 years**, or both.

If any person publishes an Electronic Signature Certificate, or makes it available to any other person with the knowledge that

- Certifying Authority has not issued it, or
- Subscriber has not accepted it, or
- Certificate has been revoked or suspended

then he shall be liable to pay penalty up to **Rs.1, 00,000/-**, or Imprisonment up to **2 years**, or both.

If any person knowingly creates, publishes, or otherwise makes available Electronic Signature Certificate for any fraudulent or unlawful purpose, then he shall be liable to pay penalty up to **Rs.1,00,000/-**, or Imprisonment up to **2 years**, or both.

If any person have committed an offense, or contravention committed outside India, and if the act or conduct constituting the offence or

contravention involves a computer, computer system or computer network located in India, then the **provisions of this Act shall apply also to any offense or contravention committed outside India** by any person **irrespective of his nationality**.

Any computer, computer system, floppies, compact disks, tape drives, or any other accessories related thereto, in respect of which any provision of this Act, rules, orders, or regulations made thereunder has been, or is being contravened, shall be **liable to confiscation**. However, if it is proved that such resources were not used in committing fraud then only person in default will be **arrested**.

of the Information Technology Act

The Information Technology Act, 2000 was amended in 2008. The amended Act which received the assent of the President on February 5, 2009, contains section 66A.

3.6.4 Section 66 A of the Information Technology Act

What Section 66A says?

"Any person who sends, by means of a computer resource or a communication device

- (a) any information that is grossly offensive or has menacing character; or
- (b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device,
- (c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages, shall be punishable with imprisonment for a term which may extend to three years and with fine."

Section 66A provides punishment for sending offensive messages through communication services.

These messages may be any information created, transmitted or received on a computer system, resource or device including attachments in the form of...

- Text
- Images
- Audio
- Video
- Any other electronic record which may be transmitted with the message

The law targets messages that...

- Are grossly offensive or menacing
- Proffer false information intending to cause annoyance, inconvenience, intimidation, insult, obstruction, etc.,
- Are intended at deceiving the addressee about the origin of the message

The law was amended in 2008 and received Presidential assent on February 5, 2009.

Explanation.— For the purpose of this section, terms “electronic mail” and “electronic mail message” means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, images, audio, video and any other electronic record, which may be transmitted with the message.

The original Act contained 94 sections, divided into 13 chapters and 4 schedules. The laws apply to the whole of India. If a crime involves a computer or network located in India, persons of other nationalities can also be indicted under the law.

The Act provides a legal framework for electronic governance by giving recognition to electronic records and digital signatures. It also defines cybercrimes and prescribes penalties for them. The Act directed the formation of a Controller of Certifying Authorities to regulate the issuance of digital signatures. It also established a Cyber Appellate Tribunal to resolve disputes arising from this new law.^[3] The Act also amended various sections of the Indian Penal Code, 1860, the Indian Evidence Act, 1872, the Banker's Book Evidence Act, 1891, and the Reserve Bank of India Act, 1934 to make them compliant with new technologies.

In November 2012, IPS officer Amitabh Thakur and his wife social activist Nutan Thakur, filed a petition in the Lucknow bench of the Allahabad High Court claiming that the Section 66A violated the freedom of speech guaranteed in the Article 19(1)(a) of the Constitution of India. They said that the section was vague and frequently misused.^[24] Also in November 2012, a Delhi-based law student, Shreya Singhal, filed a Public Interest Litigation (PIL) in the Supreme Court of India. She argued that the Section 66A was vaguely phrased, as a result it violated Article 14, 19 (1) (a) and Article 21 of the Constitution. The PIL was accepted on 29 November 2012.^{[25][26]} A similar petition was also filed by the founder of MouthShut.com, Faisal Farooqui,^[27] and NGO Common Cause represented by Prashant Bhushan^[28] In August 2014, the Supreme Court asked the central government to respond to petitions filed by Mouthshut.com and later petition filed by the Internet and Mobile Association of India (IAMAI) which claimed that the IT Act gave the government power to arbitrarily remove user-generated content.

3.6.5 Amendments

A major amendment was made in 2008. It introduced Section 66A which penalized sending "offensive messages". It also introduced Section 69, which gave authorities the power of "interception or monitoring or decryption of any information through any computer resource". Additionally, it introduced provisions addressing child porn, cyber terrorism and voyeurism. The amendment was passed on 22 December 2008 without any debate in Lok Sabha. The next day it was passed by the

Rajya Sabha. It was signed into law by President Pratibha Patil, on 5 February 2009.

On 24 March 2015, the Supreme Court of India gave the verdict that Section 66A is unconstitutional in entirety. The court said that Section 66A of IT Act 2000 is "arbitrarily, excessively and disproportionately invades the right of free speech" provided under Article 19(1) of the Constitution of India. But the Court turned down a plea to strike down sections 69A and 79 of the Act, which deal with the procedure and safeguards for blocking certain websites.

3.7 NOTABLE CASES

- In February 2001, in one of the first cases, the Delhi police arrested two men running a web-hosting company. The company had shut down a website over non-payment of dues. The owner of the site had claimed that he had already paid and complained to the police. The Delhi police had charged the men for hacking under Section 66 of the IT Act and breach of trust under Section 408 of the Indian Penal Code. The two men had to spend 6 days in Tihar jail waiting for bail. Bhavin Turakhia, chief executive officer of directi.com, said that this interpretation of the law would be problematic for web-hosting companies.
- In February 2017, M/s VouchaGram India Pvt. Ltd, owner of Delhi based Ecommerce Portal www.gyfr.com made a Complaint with Hauz Khas Police Station against some hackers from different cities accusing them for IT Act / Theft / Cheating / Misappropriation / Criminal Conspiracy / Criminal Breach of Trust / Cyber Crime of Hacking / Snooping / Tampering with Computer source documents and the Web Site and extending the threats of dire consequences to employees, as a result four hackers were arrested by South Delhi Police for Digital Shoplifting.

Section 66A

- Cartoonist Aseem Trivedi was charged by the cybercrime cell of the Mumbai Police with sedition under section 124 A of the Indian Penal Code, the Prevention of Insults to National Honour Act and section 66(A) of the IT Act on 9 September 2012, for displaying cartoons that mocked Parliament and corruption on his website and Facebook page. Trivedi's cartoons purportedly depicted Parliament as a giant commode and showed the national emblem with wolves instead of lions. The caricatures were shared on other social media.
- In April 2012, the West Bengal government used Section 66A against a professor of Jadavpur University for circulating emails that mocked chief minister Mamata Banerjee. Ambikesh Mahapatra and his neighbour Subrata Sengupta were arrested for circulating a cartoon lampooning Banerjee that was based on a scene from Satyajit Ray's popular children's detective movie Sonar Kella (The Golden Fortress). The cartoon showed Banerjee pointing to the Indian Railways' logo and telling her partyman and railway minister Mukul Roy: 'See

Mukul, the Golden Fortress.’ To which Roy points to his predecessor Dinesh Trivedi and exclaims: ‘That’s an evil man!!!’ At which Mamata says: ‘Evil man, vanish!’

- A Puducherry-based businessman Ravi Srinivasan was arrested by local police following a complaint from former finance minister P. Chidambaram’s son, Karti, for posting a tweet, which was critical of him. In his tweet on 20 October 2012, Srinivasan said, “got reports that Karti Chidambaram has amassed more wealth than Vadra.” Robert Vadra is Congress President Sonia Gandhi’s son-in-law. Nine days later, Srinivasan was arrested and charges were framed against him under Section 66A. The police sought Srinivasan’s custody for 15 days, but the court declined the request.
- On 19 November 2012, a 21-year-old girl was arrested from Palghar for posting a message on Facebook criticizing the shutdown in Mumbai for the funeral of Bal Thackeray. Another 20-year-old girl was arrested for "liking" the post. They were initially charged under Section 295A of the Indian Penal Code (hurting religious sentiments) and Section 66A of the IT Act. Later, Section 295A was replaced by Section 505(2) (promoting enmity between classes). A group of Shiv Sena workers vandalised a hospital run by the uncle of one of girls. On 31 January 2013, a local court dropped all charges against the girls.
- On 18 March 2015, a teenaged boy was arrested from Bareilly, Uttar Pradesh, for making a post on Facebook insulting politician Azam Khan. The post allegedly contained hate speech against a community and was falsely attributed to Azam Khan by the boy. He was charged under Section 66A of the IT Act, and Sections 153A (promoting enmity between different religions), 504 (intentional insult with intent to provoke breach of peace) and 505 (public mischief) of Indian Penal Code. After the Section 66A was repealed on 24 March, the state government said that they would continue the prosecution under the remaining charges.
- In May 2012, the cybercrime cell of Mumbai police arrested two Air India cabin crew members, Mayank Mohan Sharma and K.V.J Rao under section 66(A) and 67 of the IT Act for allegedly posting indecent jokes about the prime minister and other politicians and for insulting the national flag. The men were commenting on a strike by Air India pilots. While they claimed to have merely circulated what was already present online, both spent 12 days in jail and were suspended from work till the charges were dropped.
- In May 2012, the cyber-crime cell of Mumbai police arrested two Air India cabin crew members, Mayank Mohan Sharma and K.V.J Rao under section 66(A) and 67 of the IT Act for allegedly posting indecent jokes about the prime minister and other politicians and for insulting the national flag. The men were commenting on a strike by Air India pilots. While they claimed to have merely circulated what

was already present online, both spent 12 days in jail and were suspended from work till the charges were dropped.

- In what is the most bizarre case of them all, in Ulhasnagar, Maharashtra, and a boy was arrested in December 2012 for sending a cake to a girl's house with her picture on top of it. The parents registered a complaint claiming that he had stolen the picture from the girl's social media account and used it without authorization, thereby breaking the law.

3.8 CHECK YOUR PROGRESS

1. Cyber-laws are incorporated for punishing all criminals only. True or False?
2. Cyber-crime can be categorized into _____ types. Credit card details leak in the deep web is a type of peer-to-peer cyber-crime. True or false?
4. Spying someone using keylogger is not an example of a computer as weapon cyber-crime. True or false?
5. What is the name of the IT law that India is having in the Indian legislature?
6. What is the full form of ITA-2000?
7. Under which section of IT Act, stealing any digital asset or information is written a cyber-crime?
8. What is the punishment in India for stealing computer documents, assets or any software's source code from any organization, individual, or from any other means?
9. What is the updated version of the IT Act, 2000?
10. In which year the Indian IT Act, 2000 got updated?

3.9 KEY WORDS

Cyber Crime	criminal activities carried out by means of computers or the Internet.
Cyber Security	The processes employed to safeguard and secure assets used to carry information of an organization from being stolen or attacked.
Phishing	the fraudulent practice of sending emails purporting to be from reputable companies in order to induce individuals to reveal personal information, such as passwords and credit card numbers.
IT Act 2000	It is the primary law in India dealing with cybercrime and electronic commerce.

Data Theft	act of stealing information stored on computers, servers, or other devices from an unknowing victim with the intent to compromise privacy or obtain confidential information.
-------------------	---

To sum it up

6. Cyberspace is one of the great legal frontiers of our time.
7. It is said that a major percentage of World War III will be based on cyber-attacks by cyber armies of different countries.
8. There are three major categories of cybercrimes – Crime against people, Crime against Property, and Crime against Government.
9. Information Technology Act -2000 (ITA-2000), came into existence on 17th Oct 2000, which is dedicated to cyber-crime and e-commerce law in India.
10. Explanation: In the year 2008, the IT Act, 2000 was updated and came up with a much broader and precise law on different computer-related crimes and cyber offenses.

3.10 REFERENCES

Books:

1. CYBER CRIMES & LAWS BY TAXMAN.
2. TECHNOLOGY LAW DECODED by N.S.NAPPINAI by LEXIS NEXIS.
3. "The Information technology Act, 2000- Bare Act- Professional Book Publishers, New Delhi."
4. Prasad T.V.R. Satya, : "Law Relating to Information Technology (Cyber Laws)" 1st edition 2001:- Asia Law House
5. Steinberg Joseph, Cybersecurity for dummies

Online Reading

<https://cis-india.org/internet-governance/resources/section-66A-information-technology-act>

<http://www.mondaq.com/india/x/13430/IT+internet/Cyberlaw+In+India+The+Information+Technology+Act+2000+Some+Perspectives>

https://en.wikipedia.org/wiki/Information_Technology_Act,_2000

https://www.tutorialspoint.com/information_security_cyber_law/information_technology_act.htm

<https://cis-india.org/internet-governance/blog/section-66-a-information-technology-act-2000-cases>

<https://www.livemint.com/Politics/xnoW0mizd6RYbuBPY2WDnM/Six-cases-where-the-draconian-Section-66A-was-applied.html>

Videos

https://www.youtube.com/watch?v=1vQhSm5_UqY

<https://www.youtube.com/watch?v=ZFHCZt5VnMs>

https://www.youtube.com/watch?v=Vbqi0z_48bA

<https://www.youtube.com/watch?v=cQYACLLAPOw>

<https://www.youtube.com/watch?v=q74DHPIjP5Y>

:: STRUCTURE::

- 4.0 Introduction**
- 4.1 Objectives**
- 4.2 Censorship of films**
- 4.3 Types of Certification**
 - 4.3.1 Universal (U)**
 - 4.3.2 Parental Guidance (UA)**
 - 4.3.3 Adults Only (A)**
 - 4.4.4 Restricted to Special Class of Persons (S)**
 - 4.4.5 Objectives of film certification**
 - 4.5.6 Constitution of the Censor Board**
- 4.4 Common Reasons for Censorship or Banning of a Film**
- 4.5 Cinematograph (Amendment) Bill, 2018**
- 4.6 Salient Features of the 2018 Bill**
- 4.7 Abbreviated Key Points**
- 4.8 Possible drawbacks of the 2018 Bill**
- 4.9 The Cinematograph Amendment Bill, 2019**
- 4.10 Check Your Progress**
- 4.11 Key Words**
- 4.12 References**

4.0 INTRODUCTION

Cinema is an artistic expression of ideas, stories and often opinions, sometimes inspired by reality occasionally set to music, designed to enthrall, enchant, or simply to entertain. There are hardly any other mediums of expression that can actually claim for levels of insidious influence and presence in our daily lives. It has been one of the most potent tools of expression since its inception years back. It has been seen as a medium through which a larger picture of the society is depicted on the screen. It has been a source of introspection where it has brought or tended to bring a positive change in the society.

4.1 OBJECTIVES

1. To enable the student to understand the importance of cinema and legal framework
2. To enable the student to understand the censorship in cinema
3. To enable the student to understand the need and importance of reformation of the Central Board of Film Certification.

At the end of the unit, students will be able to...

12. understand censorship of films in India
13. understand type of certifications and their criteria,
14. understand the objectives of film certification
15. Understand the constitution of the censorship board.

Body Text

I. Introduction

Censorship is defined by the Oxford Dictionary as the '*prohibition or suppression of any part of the news, books, films, etc. that are considered politically unacceptable, obscene, or a threat to security.*' Films are considered an excellent medium of communication with the general public. The evolution of technology has brought a sea of change in the way films have been able to reach the public in every corner of India. Additionally, it has boosted the power of films to significantly contribute to the cultural and social development of the country. Generally, Press and Films enjoy the same right and status as far as the constitution freedom related to expression and spreading of an idea is concerned. **Article 19(1)** of the *Constitution of India* guarantees freedom of speech and expression. Hence, both Press and Films are regulated under this provision. It is pertinent to note that the above right is not absolute and has certain limitations. Matters that are against foreign relations, public policy, integrity and sovereignty of the State, decency and morality, public order, etc. are certain limitations to the above, as mentioned in the **Article 19(2)** of the Constitution of India.

4.2 CENSORSHIP OF FILMS

The *Cinematograph Act, 1952* (the Act), ensures that films fulfil the objectives prescribed by law. In the Act is a provision for the establishment of a *Central Board of Film Certification* (the Board). This is the regulatory body in India that issues a certificate to the makers of films for public exhibition. Once the Board has examined a film, the Board can:

- Sanction the film for unrestricted exhibition;
- Sanction the film for public exhibition limited to adults;
- Direct such modifications and excisions in the film before sanctioning the film to any of the above;

- Refuse to sanction the film for exhibition completely.

One of the first cases where the issue of censorship of film was raised is *K A Abbas v Union of India*, where the Supreme Court of India considered the vital question related to pre-censorship of cinematography in relation to the freedom of speech and expression that is guaranteed under the Constitution of India. It was held by Hidayatullah, C.J, that censorship of films which includes pre-censorship was constitutionally lawful. Though, he added, that unjustified restriction on freedom of expression by the Board should not be exercised. In the case of *S. Rangrajan v Jagjivan Ram*, Supreme Court faced a similar question, and was of the view that '*if the exhibition of the film could not be validly restricted under Article 19(2), risk of procession and demonstration was not a valid ground to suppress the same.*' The Supreme Court added that it was the State's duty to protect the freedom of expression. The Supreme Court of India in giving its judgement in the case of *Bobby Art International v Om Pal Singh Hoon* was of the opinion that, a film must be judged in its entirety. The court added that where the theme of the film is to condemn violence and degradation, scenes of expletives to advance the message, which was the main intention of the film, is permissible.

4.3 TYPES OF CERTIFICATION

There are mainly four kinds of certifications given by the Central Board of Film Certification:

4.3.1 Universal (U)

This type of certification is the Unrestricted Public Exhibition, and the same holds no limitations for the age groups that may watch the same. They could be family, educational or social oriented themes. This category has fantasy violence and minimal foul language. When a movie is being certified U by the Board, it must ensure that the movie is suitable for a family to watch it together including the children.

4.3.2 .Parental Guidance (UA)

This type of certification explains that the film is appropriate for all age groups. However, it is in the interest of the children below the age of 12 to be accompanied by their parents. The reason could that the theme of the movie may not be the most appropriate for the child without the guidance of their parents.

4.3.3 Adults Only (A)

As the certification suggests, this type of film is restricted to adults only. Persons above the age of 18 are adults, for the meaning of this certification. The theme may contain disturbing, violent, drug abuse and other related scenes which are not considered suitable for viewing by children who may be influenced by the same negatively. Films that meet the requisites of the abovementioned criteria but are not suitable for exhibition to children or those below the age of 18 shall be certified A.

4.4.4 Restricted to Special Class of Persons (S)

This is the last type of the certifications under the board, and the same explains that the films which are rated S are meant for a special class of persons only. For example, doctors. If the Board is of the opinion that with regards to content, nature and the theme of the film is to be restricted to members of a class of persons or any profession, the above certification shall be given to such film.

4.4.5 OBJECTIVES OF FILM CERTIFICATION

A. The main objectives of the Board for the above are as follows:

1. To ensure that the medium of the film is responsible. Additionally, to safeguard the sensitivity of standards and value of the society.
2. To ensure that creative freedom and expression are not unjustifiably curbed.
3. To ensure to adapt to the social changes.
4. To ensure the theme of the film provides a healthy and clean entertainment.
5. To ensure that the film is of cinematically an adequate standard and aesthetic value.

B. In pursuance of the above, the Board must ensure that:

1. Activities that anti-social such as violence are not justified or glorified;
2. The way criminals are depicted, and other related words or visuals must not incite the commission of any kind of offence;
3. The scenes showing ridicule and abuse of mentally and physically handicapped, cruelty or abuse of animals, involving children as victims of violence and abuse must not be presented needlessly;
4. Avoidable or pointless scenes of cruelty, horror and violence that are intended to provide entertainment but may have the effect of dehumanizing or desensitizing people are not shown;
5. Scenes that glorify or justify drinking are not shown;
6. Scenes that tend to justify, glamourize or encourage drug addiction are not shown. Additionally, similar scenes for the consumption of tobacco or smoking must not be shown;
7. Human susceptibilities are not offended by obscenity, vulgarity or obscenity;
8. Words with dual meanings that cater to dishonorable instincts are not used;
9. Scenes denigrating or degrading women in any manner is not shown;
10. Scenes that involve sexual violence against women in the form of rape or any other form of molestation are avoided. If the theme of the movie requires so, the same must be reduced to a minimum and no details are to be shown. The same goes for scenes that involve sexual perversion;

11. Words or visuals contemptuous of religious, racial or other groups must not be presented;
12. Words or visuals that promote obscurantist, communal, anti-national and anti-scientific attitude are not shown;
13. The integrity and sovereignty of the country is not called in question;
14. The security of the country is not endangered or jeopardized;
15. Relations with foreign states are not overwrought;
16. Public order is maintained, and not hindered;
17. Words or visuals involving defamation of a body or an individual, or contempt of court are not shown;
18. National emblems and symbols are not presented except according to the provisions of Emblems and Names (Prevention of Improper Use) Act, 1950 (12 of 1950).

C. The Board shall additionally ensure that a film:

1. Is judged as a whole from the perspective of its overall impact; and
2. Is inspected in the light of the period illustrated in the film along with contemporary standards of India and the people who the movie is related to, to ensure that the film does not corrupt the morality and ethics of the audience.

Applying to all of the above categories, the Board shall ensure the titles of each film is carefully scrutinized to ensure they are not vulgar, violating, provocative or offensive to the guidelines mentioned above.

4.5.6 CONSTITUTION of the Censor Board

The Board consists of a Chairman and non-official members, all of whom are appointed by the Central Government. It is headquartered in Mumbai, Maharashtra. Additionally, it has nine Regional offices, namely, Chennai, Bangalore, Hyderabad, New Delhi, Guwahati, Cuttack, Kolkata and Thiruvananthapuram.

Regional Offices, as mentioned above, are assisted by the Advisory Panels. The Advisory Panels, like the Board, is selected by the Central government. The members chosen for the panel are from different walks of life, and they are chosen for a period of 2 years.

It has a two-tier jury system, the Examining Committee and the Revising Committee.

4.4 COMMON REASONS FOR CENSORSHIP OR BANNING OF A FILM

In light of the history of why a film has been banned, or parts of it are censored, the main categories for why the same is done are as follows:

1. **Sexuality:** A rigid social structure has been followed in Indian society. Hence, a medium which portrays sexuality regardless of the audio, written or visual form, which has not been fathomed by the society and is concerned a social stigma is banned on the

grounds that it might have the effect of undignified morals of Indians.

2. **Politics:** The isolation of political forces is not far when one talks about censorship. The description of an allegorical political scene, directly or indirectly, is banned by the authorized party to it. Overt political overtones are not appreciated by the government and hence is a common reason why certain films are either entirely banned, or such scenes are censored or removed.
3. **Communal Conflict:** Under a heterogeneous nation like India, if a film incites or spurs any type of communal conflict, the same is censored. The aim is to avoid the consequences such a film would have on the audience it intentionally or unintentionally targets. If the state believes that a movie would open a window for riots by a community for the way they have been portrayed in the film, the same is banned by the Board or censored.
4. **Incorrect Portrayal:** Sometimes, a situation arises where a well-known personality objects his own depiction in a medium which would be exhibited, and consequently goes for censoring the same. For more clarity, in a situation where the medium is of biographical nature, and the person on whom it is based does not approve the authenticity of the same, there have been times when the person has sued for the medium not to be released, or be edited and released upon approval of such person.
5. **Religion:** Religion does not appreciate any type of defiance or disobedience towards the values it proliferates. Hence, any medium which directly or indirectly distorts any aspect of the religion including its preaching, values, idols, to name a few, is highly criticized and therefore, censored.
6. **Extreme Violence:** Indubitably, the portrayal of extreme gore and violence may meddle and disturb the human mind. Viewing such scenes may have a negative psychological effect on the mind. If the Board of a similar opinion that such a scene through any medium may have an underlying negative impact on the viewer, contrary to the entertainment or knowledge such scene tries to bestow, the same may be banned, edited or censored by the Board in public interest.

4.5 CINEMATOGRAPH (AMENDMENT) BILL, 2018

The present Cinematograph Act was enacted in the year 1952. Since then the Cinema has undergone a radical change, the technology used in film making and even the choices and beliefs of the viewers have undergone a drastic change over the time. Owing to which, there is an imminent need to bring modifications in the law which will regulate, certify and license facets of this ever fluctuating and innovative art form.⁷ To strengthen the concept of artistic freedom and do away with outdated provisions impeding it, Shashi Tharoor, Congress MP introduced the *Cinematograph (Amendment) Bill, 2018* in the Parliament.

The primary objective behind the Cinematograph Bill, 2018 is to safeguard the artistic freedom of the artists and filmmakers. The statement of Objects and reasons of the Cinematograph Bill, 2018 states that "the state may regulate artistic freedom only under the grounds enumerated under article 19(2) of the Constitution, not due to the disagreement with the content of the film.

4.6 SALIENT FEATURES OF THE 2018 BILL:

The Cinematograph Bill, 2018 main aim is to curb the overriding power of the Central Government over CBFC, besides this there are several other changes which might prove to be in favor of the filmmakers. Some of the important features of the bill are:

1. Principles for Guidance in certifying Films

Section 5B of the present Act deals with principles for guidance in certifying films, the Bill provides for introduction of provision 5(B)(2) which states that the Board shall exercise its power to certify a film for public exhibition in accordance with the guidelines mentioned in Schedule I.

2. Central governments revisional powers

The very perilous or the most critical amendment proposed in the bill is omission of Section 6 of the present act. Section 6¹⁰ states that:

"The Central Government may of its own motion at any stage call for the record of any proceeding in relation to any film which is pending before or has been decided by the Board or the Tribunal and after enquiry may pass such order as it deems fit and the Board shall dispose of the matter in conformity with such order."

Besides this, the Section also gives power to the Central Government to direct that a 'certified film' be considered to be an 'uncertified film' and on the basis of this they have the power to restrict the display of the film for a maximum of two months.

It can be said that with the omission of the above mentioned provision CBFC would have the sole authority in sanctioning films for the public exhibition and the Government should not have unbridled powers to suspend the exhibition of films.

3. Schedule I of the bill

Part I: Objective of the Guidelines

It aimed at ensuring that children and adults are protected from potentially harmful or otherwise unsuitable content; Audiences, particularly parents and those with responsibility for children, are empowered to make informed viewing decisions; Artistic expression and creative freedom are not unduly curbed in the process of classification of films; The process of certification by Board is responsive, at all times, to social change.

Part II: Category of Certification of the films in

The following categories:

U- film suitable for all persons, regardless of age, and is often family friendly;

U/A 12+ – film suitable for persons above twelve years of age or for a person under the age of twelve with parental guidance;

U/A 15+ – film suitable for persons (adolescents) above fifteen years or for a person under the age of fifteen with parental guidance;

- film suitable for public exhibition, but restricted to adults;

C (A with Caution)- film restricted for adults with the specific purpose of cautioning them that it has more than a reasonable amount of content such as violence, sex, nudity, drugs and other related contents;

S-Film restricted to viewership by members of a profession or any class of persons, having regard to the nature, content and theme of the film.

Part III: General Guidelines for classification of films

These rules give general variables which may impact an order choice at any dimension and regarding any issue viz.

Context: Context in which an issue is exhibited inside a film or video will be given thought

Theme: To consider the theme of a work, however will depend altogether on the treatment of that topic, and particularly the affectability of its introduction.

Tone and Impact: Film ought to be made a judged completely from the perspective of its overall effect.

Target Audience: The arrangement of the film will likewise rely on the intended crowd of the work and the effect of such work on such crowd.

Part IV

Categorization Guidelines based on the parameters of discrimination, Psychotropic Substances, Liquor, Smoking, Tobacco, imitable behaviour, language, nudity, sex, fear, threat and horror and violence.

Part V- Classification of a Film by Board

In respect of the censorship and limitation of the role of CBFC in certifying films, few important points have been proposed in the Bill:-

1. Applicants need to mention the targeted audience and the classification required while submitting the final cut to the board. Board to inform the Applicant of the likely classification the work will receive and reasons for such decision based on the guidelines.
2. If the applicant is of the view that the particular classification given by the CBFC is not fit then he shall have the freedom to give effective changes in the film and again submit the same to the board to get the desirable category.
3. If the Board thinks that the film does not meet the requirement to merit classification under any of the categories, it can refuse to give the certification with reasons in writing for such a decision. The Board shall not propose or make any cuts, revisions or modifications to the film to meet any of the classification categories.
4. Due opportunity of being heard to be given to the applicant before an order of refusal of certificate is given. Provided that the

applicant shall be given a period of fifteen days, from the date of communication of reasons, to respond and submit his argument in favour of the classification sought.

4.7 ABBREVIATED KEY POINTS

1. Remove the pre-censorship power of the CBFC
2. Restrict the Government's capacity to suspend films
3. Provide classification of confirmation of the film into U, UA 12+, UA 15+, A, C-A, S classifications.
4. Provide criteria for classification.
5. Omission of Section 4(1) (iii) of the present act which empowers the CBFC to direct the applicant to carry out excisions and modifications in the Film as it deems fit before the sanction of the film. Likewise, it seeks omission of Section 5C (1) (e) which grants similar powers to the Film Certification Appellate Tribunal.
6. Section 4 (3) is inserted with the implementation of a new bill which states that "No person apart from the Board shall sanction films for public exhibition".

Regardless of its deficiencies, the 2018 Bill is by all accounts a positive development looking to correct a portion of the age-old and obsolete arrangements of the 1952 Act. It is fascinating to get remarks from partners on their perspectives on the 2018 Bill and whether it has met desires.

4.8 POSSIBLE DRAWBACKS OF THE BILL, 2018

Film is a creative expression of thoughts, stories and opinions, in some cases enlivened by reality occasionally set to music, intended to entrance, interest, or just to entertain the gathering of people. There are only a few other modes of communication that can guarantee equal dimensions of unavoidable impact and nearness in our everyday lives. There is evidence in History that films have started off political discussion and compromised governments, proclaimed social change making society go astray from age old doctrine and furthermore real life lovers to their death in their misplaced hope of emulating the classic romances.

In light of the above, it is absolutely unsafe for a state to surrender free speech with no limitation. For this reason we must ask how this freedom can and ought to be granted to each person so as to be consistent with the stability of the state. If a speech, book, painting or film might provoke or lead to large scale violence, bloodshed and anarchy, thereby threatening the survival or integrity of the State, perhaps it should not be allowed to circulate freely. In today's India, we believe our heroes to be absolutely perfect. One wonders of the question, whether this was always so? In ancient times, "*Yudhishtir*" and "*Ram*" were capable of deceit and divergent behavior and our ancestors were not surprised or angered to

know. But now the situation is such that even on the mildest criticisms through cinema, book or play people get offended.

In a multi-religious society with a history of sectarian violence, artists and writers ought to show some sensitivity in depicting or describing religious icons. But one cannot honestly discuss the lives and legacies of real historical figures, it does not bode well for the health of our democracy. A big example of this was "*Padmavat*", "*Jodha Akbar*" which brought in various troubles with them. The 2018 bill as above discussed seeks to omit many such sections which give overriding power to the government to interfere in CBFC's decision but there is no doubt that too much liberty provided to the artists in some way or the other is going to be a chaotic decision.

The Supreme Court recently in the case of *Viacom 18 Media Private Limited and Ors. v. Union of India And Ors.* held that once an expert body has determined the maintainability of a film in view of its effect on public order, the states cannot refuse such a film for public exhibition on the grounds that it may imperil public order.

The power to refuse a film for public exhibition on the grounds of public order is conferred to the Central Board of Film Certification by virtue of Section 4(1)(iv) read with Section 5B of the Indian Cinematograph Act, 1952 (the act).

Section 4(1)(iv) allows for the refusal of certification of films while Section 5B reads:

“A film shall not be certified for public exhibition if, in the opinion of the authority competent to grant the certificate, the film or any part of it is against the interests of public order”.

A perusal of this provision makes it patent that it is *pari materia* with the restrictions on free speech espoused in Article 19(2) of the Constitution of India (the Constitution). The constitutionality of Section 5B was affirmed in the case of *K.A. Abbas v. Union of India*, wherein the court held:

“With this preliminary discussion we say that censorship in India (and pre-censorship is not different in quality) has full justification in the field of the exhibition of cinema films.”

It is, however, pertinent to note that the constitutionality of Section 5B was only affirmed in response to its incongruence with Article 19(1)(a) of the Constitution which guarantees free speech. In this piece, I shall attempt to explore the constitutionality of Section 5B in terms of the federal structure enshrined in the Constitution.

Seventh Schedule and its Interpretation

Under Article 246(3) of the Constitution, the State Legislature has exclusive power to make laws with respect to any of the matters enumerated in List II of the Seventh Schedule. Entries in the Seventh Schedule are not powers, but fields of legislation.

When the vires of an enactment is impugned, there is an initial presumption of its constitutionality and if there is any difficulty in

ascertaining the limits of the legislative power, the difficulty must be resolved, as far as possible in favor of the Legislature putting the most liberal construction of the entry.

Although In the case of *State of West Bengal v. Committee for the Protection of Democratic Rights*, the Apex Court held “.....in a federal structure, the Union is not permitted to encroach upon the legislative powers of a State in respect of the matters specified in List II of the Seventh Schedule.”, in the same case it was also held that by virtue of the principle of federal supremacy where there is an irreconcilable conflict between the Union and State lists, the supremacy of the Parliamentary law will be adopted.

Public Order and the Act

In Entry 1, List II of the Seventh Schedule of the constitution, Public Order, except for the use of any force under the control of the Union, is a state subject. The state legislature is given the plenary authority to legislate on all matters or are necessary for the maintenance of public order.

Entry 60 of List I of the Seventh Schedule confers upon the union the power to certify cinematograph films for public exhibition. In the case of *State of Madras v. Gannon Dunkerley & Co.*, it was held that a matter mentioned in an entry is construed to cover all matters that are ancillary or subsidiary which can reasonably be said to be comprehended in it.

It is argued that the certification of cinematograph films is dependent on the effect these films have on public order and thus public order is ancillary to Entry 60 of List 1. Moreover, in the case of *Naga People's Movement for Human Rights v. Union of India*, it was contended that the Armed Forces (Special Powers) Act, 1958 insofar as it allowed an officer to use force in the interests of public order, was an encroachment upon Entry 1 of the State List, the Apex Court held that the act did not deal with public order. Public order falls within the realm of law and order.

Further in a slew of cases where a State banned a film after the CBFC's clearance on account of law and order, the Apex Court has held that once an Expert Body (CBFC) has considered the impact of the film on the public and has cleared the film, it is no excuse to say that there may be a law and order situation. One can thus submit that in upholding the authority of the CBFC to certify films for public exhibition based on their purported effects on public order, the Apex Court has implicitly upheld the constitutionality of Section 5B of the act vis-à-vis the federal structure.

It is also pertinent to note that a law is unconstitutional on the grounds of legislating on a subject that is not assigned to the relevant legislature by the distribution of powers made by the Seventh Schedule. The Supreme Court is yet to come across a case that warrants its attention to the constitutionality of the impugned provision as regards its consistency with the federal structure enshrined in the Constitution. When so it is very unlikely that the provision would be struck down as unconstitutional owing to the precedents mentioned hereinabove that favour its

constitutionality, however, it would be interesting to see what view the court would take.

4.9 THE CINEMATOGRAPH AMENDMENT BILL, 2019

The Salient features of the amendment bill are:

- The Amendment Bill makes Film Piracy offences punishable with imprisonment up to three years and fines that may extend to 10 lakh or both.
- The amendment clearly states that any person, who without the written authorisation of the copyright owner, uses any recording device to make or transmit a copy of a film, or attempts to do so, or abet the making or transmission of such a copy, will be liable for such a punishment.
- Section 7 of the original Cinematograph Act, 1952 deals with who can watch and exhibit which films and penalties for violating terms and conditions related to the exhibition of board-certified films. The amendment bill adds a new subsection (4) to section 7 of the Cinematograph Act, 1952 with the definition of piracy and the penal provisions for the same.

The Cinematograph Amendment Bill, 2019 aims to tackle film piracy by including the penal provisions for unauthorized camcording and duplication of films. The Bill when passed can build a credible deterrence which would increase industries revenues, boost job creation, fulfill important objectives of India's National Intellectual Property policy and will give relief against piracy and infringing content online. In order to tackle the menace of film piracy, the Amendment Bill also provide for:

- Insertion of new **Section 6 AA** for the prohibition of unauthorized recording

The following section shall be inserted after Section 6A of the Cinematograph Act, 1952.

6AA: "Notwithstanding any law for the time being in force, no person shall without the written authorization of the author be permitted to use any audio visual recording device to knowingly make or transmit or attempt to make or transmit or abet the making or transmission of a copy of a film or a part thereof."

**The expression author shall have the same meaning as assigned to it in the clause (d) of Section 2 of the Copyright Act of 1957.*

Furthermore there has been an amendment proposed in Section 7 to introduce Penal Provisions for violating provisions of Section 6 AA .In Section 7 of the principal Act, after sub-section 1 the following subsection (1A) shall be inserted:

"If any person contravenes the provisions of Section 6AA, he shall be punishable with an imprisonment for a term which may extend to 3 years or with fine which may extend to 10 lakh rupees or with both."

According to the law, No person shall be permitted without the written authorization of the author to use any audio visual recording device to

knowingly make or transmit or attempt to make or transmit or abet the making or transmission of a copy of a film or a part thereof.

"There are penal provisions for unauthorized camcording and duplication of films", stated Union Minister Ravi Shankar Prasad in official press release. In light of these it is certain that there would be stricter norms in use of Smartphone, Google glasses and other such electronic devices in theaters.

According to a report by global solution provider in digital platform security and media and entertainment, Irdeto, the Indian media and entertainment sector loses \$2.8 billion of its annual revenue to piracy and India is one of the top five countries for peer-to-peer downloads.

In India, the basis on which a film is censored or banned has been evidently traditional norms. That being said, what is censored today, may not be censored tomorrow. The socio-economic dynamics of a country is continually evolving. Hence, all regulations must try to adapt to the same

4.10 Check Your Progress

1. CBFC is a statutory body under Union Ministry of Information and Broadcasting. True or False?

2. Who is the chairman of CBFC?

3. Films can be publicly exhibited in India only after they are certified by the CBFC. True or false?

4. Where is the headquarter of CBFC?

5. Which committee was formed to suggest changes in the Cinematograph act?

6. How many types of film certifications are there?

7. Which certification will be given to a film which may contain disturbing, violent, drug abuse and other related scenes?

8. Which certification will be given to a film which is suitable for a family to watch it together including the children?

9. Which certification will be given to a film for which the children below the age of 12 are to be accompanied by their parents?

10. How many members are there in CBFC?

4.11 Key Words

Cinematograph	an apparatus for showing motion-picture films.
U	Unrestricted public exhibition
U/A	Parental guidance for children under age 12
A	Restricted to adults
S	Restricted to a specialized groups of people, such as engineers, doctors or scientists

To sum it up

1. The Cinematograph Act, 1952 ensures that films fulfil the objectives prescribed by law.
2. The Central Board of Film Certification (CBFC) is a statutory film-certification body in the Ministry of Information and Broadcasting of the Government of India that issues a certificate to the makers of films for public exhibition.
3. There are four types of certification given by the CBFS: U, UA, A and S.

4.12 REFERENCES

Books:

1. Pathak Juhi, (2014) : “INTRODUCTION TO MEDIA LAWS AND ETHICS”, New Delhi Shipra Publication
2. Bhasin, Lalit (2010) : “Media World and Law”, New Delhi : Universal Law Publishing Co. Pvt. Ltd
3. Natarajan, S., (1962) : “A History of the Press in India”, New Delhi : Asian Publisher House
4. Basu, D.D. (1980) : “Law of Press in India ”, New Delhi : LexisNexis Buttersworths.
5. Guha Thakurta, Paranjoy (2012), ‘Media Ethics’, New Delhi: Oxford University Press

Online Reading

https://mib.gov.in/sites/default/files/Report_of_Expert_committee.pdf .

https://mib.gov.in/sites/default/files/Shyam_Benegal_committee_Report.pdf

https://mib.gov.in/sites/default/files/Report_of_Expert_committee.pdf

<https://www.medianama.com/wp-content/uploads/Cinematograph-amendment-bill-2018.pdf>

<http://iprmentlaw.com/2018/08/09/the-cinematograph-amendment-bill-2018-salient-features/>

Videos:

<https://www.youtube.com/watch?v=VbJS5VDv9ww>

<https://www.youtube.com/watch?v=uyaekxncBnY>

<https://www.youtube.com/watch?v=B7ODcTJOE1I>

https://www.youtube.com/watch?v=CfflyDp_9dY

<https://www.youtube.com/watch?v=0jfzmsFPqJ8>

UNIT : 5**INTELLECTUAL PROPERTY RIGHTS****:: STRUCTURE::****5.0 Introduction****5.1 Objectives****5.2 The Copyright Act 1957****5.2.1 Copyright Office and Copyright board****5.2.2 Case study 1****5.2.3 Case study 2 Case study 3****5.2.4 Case study 4****5.3 Trade mark Act 1999****5.3.1 Widened Definition of TradeMark****5.3.2 Two essential ingredients for Trademark
registration****5.3.3 Absolute Grounds for Refusal of Trademark Registration****5.3.4 Trademark Infringement****5.3.5 Difference between Trademark Infringement and
Passing off****5.4 Patents Act 1970****5.5 What Are Inventions?****5.6 Exceptions to the Novelty Rule:****5.7 What Are Not Inventions?****5.8 Trade Secrets****5.9 Check Your Progress****5.10 Key Words****5.11 References**

5.0 INTRODUCTION

Intellectual property is a product of human intellect and the rights granted on it allow its owner to benefit from the fruits of this intellectual endeavor by creating a monopoly over it. Intellectual property law is the method by which law seeks to regulate the commercial use of ideas, innovation and culture. Because law can regulate only the exterior of things, it does this by creating a fictional property in the tangible artifacts produced as the by-product of ideas. This is an inexact form of regulation and many of the controversies in IP law have emerged from the differences between the conceptual model of property and the reality.

5.1 OBJECTIVES

1. To enable the student to understand the Copyright Act 1957
2. To enable the student to understand the Patents Act 1970
3. To enable the student to understand the Trade mark Act 1999
4. To enable the student to understand the Trade Secrets

At the end of the unit, students will be able to...

1. Understand that Intellectual property (IP) is a category of property that includes intangible creations of the human intellect.
2. Understand that the most well-known types of Intellectual Property are copyrights, patents, trademarks, and trade secrets.
3. Apply intellectual property law principles to real problems and analyse the social impact of intellectual property law and policy.
4. Analyse ethical and professional issues which arise in the intellectual property law context

Introduction

Intellectual property (IP) is a category of property that includes intangible creations of the human intellect. The most well-known types are copyrights, patents, trademarks, and trade secrets.

5.2 THE COPYRIGHT ACT, 1957

In ancient days creative persons like artists, musicians and writers made, composed or wrote their works for fame and recognition rather than to earn a living, thus, the question of copyright never arose. The importance of copyright was recognized only after the invention of the printing press which enabled the reproduction of books in large quantities. In India first legislation of its kind, the Indian Copyright Act was passed in 1914 which was mainly based on the UK Copyright Act, 1911.

During the last four decades modern and advanced means of communications like broadcasting, lithography, photography, television, etc. have made inroads in the Indian economy with the result that it became essential to fulfill international obligations in the field of copyright. This necessitated that a comprehensive legislation may be

introduced to completely revise the copyright law. To this effect a Copyright Bill, 1957 was introduced in the Parliament.

It introduced several new features which are briefly indicated below:

1. A Copyright Office is sought to be established under the immediate control of a Registrar of Copyrights who shall act under the superintendence and direction of the Central Government. The principal function of the Copyright Office will be to maintain a Register of Copyrights in which may be entered, at the option of the authors, the names and addresses of authors and owners of copyright for the time being, and other relevant particulars. Such a Register will easily make available useful information to interested members of public in regard to copyrighted works.

In order to encourage registration of copyrights, provision is made that no proceeding regarding infringement of copyright shall be instituted unless copyright is registered in the Copyright Office. In addition to being in charge of the Copyright Office, the duties of the Registrar of Copyrights will be to entertain and dispose of applications for compulsory licenses and to inquire into complaints of importation of infringing copies. An appeal to the Copyright Board is provided for against the orders of the Registrar of Copyrights.

2. Provision is made for setting up a Copyright Board which will determine the reasonableness of the rates of fees, charges or royalties claimed by performing rights societies, consider applications for general licenses for public performances of works and will assess compensation payable under the Bill in certain circumstances. An appeal can be made to the High Court against the decisions of the Copyright Board.
3. The definition of "copyright" is enlarged to include the exclusive right to communicate works by radio-diffusion.
4. A cinematograph film will have a separate copyright apart from its various components, namely, story, music, etc.
5. An author assigning copyright in his work is allowed the option to re-acquire the copyright after seven years but before ten years of the assignment on the condition that he returns the amount received by him at the time of the assignment with interest thereon.
6. The normal term of the copyright is fixed to be the life of the author and a period of 25 years after his death as against the existing term of the life of the author, and a period of 50 years after his death. Shorter terms are fixed for anonymous or pseudonymous works, cinematograph films, mechanical contrivances, photographs, etc.
7. Under the existing law, the sole right to produce a translation of a work first published in India is extinguished after ten years, unless a translation thereof is produced within that period. The Draft Bill

makes the right coextensive with other rights arising out of copyright.

8. Provision is made for the issue of a general or special license for public performances of any work by means of a radio-receiving set or a mechanical contrivance.
9. A license may be issued to any library to make or cause to be made one copy of any book in which copyright subsists and which is not available for sale.
10. Provision is made for regulating the activities of performing rights societies and also for controlling the fees, charges and royalties to be collected by them.
11. Certain rights akin to copyright are conferred on broadcasting authorities in respect of programmes broadcast by them.
12. International copyright relations which are based on international treaties will be regulated by specific orders to be made by the Central Government.
13. A fair dealing with any work for the purposes of radio summary or judicial proceeding will not hereafter constitute an infringement of copyright.

It extends to the whole of India

- a) Adaptation means –
 - In relation to a dramatic work, the conversion of the work into a non-dramatic work.
 - In relation to a literary work or an artistic work, the conversion of the work into a dramatic work by way of performance in public or otherwise.
 - In relation to literary or dramatic work, any abridgement of the work or any version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical.
 - In relation to a musical work, any use of such work involves its arrangement or alteration.
- b) “Work of architecture” means any building or structure having artistic character or design, or any model for such building or structure.
- c) “Artistic work” means –
 - A painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality.
 - A (work of architecture).
 - Any other work of artistic craftsmanship.
- d) “Author” means –
 - In relation to a literary or dramatic work, the author of the work
 - In relation to a musical work, the composer

- In relation to an artistic work other than a photograph, the artist
 - In relation to a photograph, the person taking the photograph
 - In relation to a cinematograph film or sound recording, the producer
 - In relation to any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created
- e) “Broadcast” means communication to the public –
- By any means of wireless diffusion, whether in any one or more of the forms of signs, sounds or visual images
 - By wire and includes a re-broadcast
- f) “Calendar year” means the year commencing on the 1st day of January.
- g) “Cinematograph film” means any work of visual recording on any medium produced through a process from which a moving image may be produced by any means and induced a sound recording accompanying such visual recording and “cinematograph” shall be construed as including any work produced by any process analogous to cinematography including video films.
- h) “Communication to the public” means making any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing copies of such work regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available.
- i) “Infringing copy” means –
- In relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film
 - In relation to a cinematograph film, a copy of the film made on any medium by any means
 - In relation to a sound recording, any other recording embodying the same sound recording, made by any means
 - In relation to a programme or performance in which such a broadcast reproduction right or a performer’s right subsists under the provisions of this Act, the sound recording or a cinematographic film of such programme or performance.

If such reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act.

5.2.1 Copyright Office & Copyright Board

Copyright Office: The Copyright Office shall be under the immediate control of the Registrar of Copyrights and may appoint one or more Deputy Registrars of Copyrights.

Registrar and Deputy Registrars of Copyrights: The Central Government shall appoint a Registrar of Copyrights and may appoint one or more Deputy Registrars of Copyrights.

Copyright Board: The Central Government shall constitute a Board to be called the Copyright Board which shall consist of a Chairman and may appoint one or more than (fourteen) other members.

Works in which copyright subsists

1. Original literary, dramatic, musical and artistic works
2. Cinematograph films
3. Sound recording

Copyright shall not subsist: in any cinematograph film a substantial part of the film is an infringement of the copyright in any other work.

5.2.2 CASE STUDY – I

Common properties are not the subject of copyright

No doubt the central theme of the articles published by the second plaintiff and that of the drama and movie is the same, though the emphasis in the drama and the movie is more on human bondage, particularly of Indian women. The articles published by Ashwini Sarin also contain an autobiographical account of the part actually played by him in the affair. He has presented the whole affair in his own style. But that at the most would give the plaintiff copyright in respect of these articles. There cannot, however, be a copyright in an event which has actually taken place. There is a distinction between the materials upon which one claiming copyright has worked and the product of the application of his skill, judgment, labor and literary talent to these materials. Ideas, information, natural phenomenon and events on which an author expends his skill, labor capital, judgment and literary talent are common property and are not the subject of copyright; *Indian Express Newspapers (Bombay) Pvt. Ltd. V. Dr. Jogmohan Mundhara*, AIR 1985 Bom 229.

5.2.3 CASE STUDY – II

No ownership in case of mere ‘idea’

A person may have a brilliant idea for a story, or for a picture, or for a play, and one which, so far as he is concerned, appears to be original, but, if he communicates that idea to an author or a play writer or an artist, the production which is the result of the communication of the idea to the author or the artist or the playwright is the copyright of the person who has clothed the idea in a form, whether by means of a picture, a play, or a book, and the owner of the idea has no rights in the product: *Donoghue V, Allied Newspaper Ltd., (1937) 3 ChD 503*.

5.2.4 CASE STUDY – III

Producer can defeat rights of music composer or lyricist

The core of the question, whether the producer of a cinematograph film can defeat the right of the composer of music or lyricist by engaging him; the key to the solution of this question lies in the provisions (b) and (c) to

section 17 of the Act reproduced above which put the matter beyond doubt. According to the first of these provisions, viz., proviso (b), when a cinematograph film producer commissions a composer of music or a lyricist for reward or valuable consideration for the purpose of making his cinematograph film, or composing music or lyric therefore i.e.: the sounds for incorporation or absorption in the soundtrack associated with the film, which is already indicated, are included in a cinematograph film, he becomes the first owner of the copyright therein and no copyright subsists in the composer of the lyric or music so composed unless there is a contract to the contrary between the composer of the lyric or music on the one hand and the producer of the cinematograph film on the other.

5.3 TRADE MARK ACT 1999

The Trademark Act, 1999 was enacted with the intent to revise the Act in congruence with latest developments witnessed in trading and commercial practices, rapid globalization and for harmonization with International trade laws.

Some of the epoch- making inclusions in the Trademark Act, 1999 inter alia include:

- Provision was made for trademark registration in respect of services in addition to goods;
- Statutory protection was extended to well-known trademarks;
- Widened the scope and purview of ‘trademark’ in India;
- Provision for registration of ‘collective marks’;
- Incorporated provision to prevent use of a trademark as a corporate or trade name by a third party.

5.3.1 Widened Definition of Trade Mark

The Trademark Act, 1999 under Section 2 (zb) defines “trade mark” as *a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours...*”

Furthermore, the Act also provided for definition of ‘mark’ under Section 2(m) which enumerates a mark to include *a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof.*

5.3.2 Two essential ingredients for Trademark registration

1. **The Mark is Capable of Being Represented graphically**–
‘Graphical representation’ has been defined under Section 2(1) (k) of Trademark Rules, 2007 as *representation of a trademark for goods or services represented or capable of being represented in paper form and include representation in digitized form.* Such graphical representation of a trademark also encompasses within its purview shape of goods, their packaging, combination of

colours, in other words it brings within its ambit “trade dress”. This essential requisite for qualification as a valid trademark merely implies that the mark should be capable of being put on the register in a physical form and also being published in the Journal. This requirement of a valid trademark was further expounded by the European Trademark Office, wherein it elucidated two primary reasons for geographical representation a trademark:

- Enable traders to identify with clarity what other traders have applied for registration as trademark and for what product;
- Enable the public to determine with precision the sign which forms the subject of trademark registration.

2. **Capable of Distinguishing Good and Services of One Person From Those of Others-** The definition of “trade mark” under Section 2(1)(zb) of the 1999 Act means a mark “which is capable of distinguishing the goods or services of one person from those of others”. Therefore, the use of a mark that is not capable of distinguishing the goods of such proprietors of the trade mark would not qualify for the protection under the TM Act. This requisite of a trademark primarily enumerates that a trademark must be distinctive i.e. it should not be devoid of a distinctive character.

5.3.3 Absolute Grounds for Refusal of Trademark Registration

Section 9 of the Trademark Act, 1999 enumerates grounds on which a trademark registration can be absolutely refused. The Act provides that following marks can be refused:

- Marks that are devoid of any distinctive character;
- Marks which serve to designate kind, quality, intended purpose, values, geographical origin or the time of production of goods;
- Marks which have become customary in the current language or in the established practices of trade;

Exception- Aforesaid mark shall not be refused registration if prior to date of trademark application; the mark has acquired distinctive character or is a well-known trademark.

- Marks that may cause deception or confusion in public;
- Mark comprises of matter that is likely to religious sentiments any class of people;
- Mark comprises of scandalous or obscene matter;
- Mark is prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950;
- If the mark consists of shape of goods which results from the nature of the goods themselves;
- Mark consists of shape of goods which is necessary to obtain a technical result;
- Mark gives substantial value to the goods;

Mark devoid of distinctive character

This requirement entails that a trademark should be of a distinctive character. While determining that a mark is distinctive or not, it has to be seen that the mark does not have a direct and close reference to the character and quality of applicant's goods. In order to ascertain whether one mark is deceptively similar to another it is not necessary to place the two marks side by side to find out if there are any differences. It would be enough if the impugned mark bears such an overall similarity to the registered mark as would be likely to mislead a person usually dealing with one to accept the other if offered to him.

The term "distinctive" was defined by *Lord Halsbury* as *the word 'distinctive' means distinguishing a particular person's goods from somebody else's goods-not a quality attributed to the particular article but distinctive in that respect that it means it is a manufacture of his as distinguished from somebody else. The manufacturer may or may not be new, but that is the sort of distinction contemplated by the Statute.*

5.3.4 Trademark Infringement

Section 29 of the Act provides remedy in cases of trademark infringement. The statutory provision also enlists the circumstances under which a mark is infringed:

1. Infringement of a mark occurs when a person not being registered proprietor uses a mark which is identical or deceptively similar to a registered mark in relation to goods or services in respect of which the trademark is registered.
2. When a person not being a registered proprietor uses a registered trademark which because of its identity with registered trademark and similarity with goods or services is likely to cause confusion in public.
3. When a person not being registered proprietor of a mark uses mark which is identical or similar to the registered trademark in relation to similar goods or services and the registered mark has a reputation in India.
4. A registered trademark is infringed by a person if he uses such registered trademark as part of his trade name of his business concern dealing in goods or services in respect of which the trade mark is registered.
5. A registered trademark is infringed by any advertising of that trademark if such advertising takes unfair advantage and is detrimental to its distinctive character.

Under this Section we would deal with cases in which the Judiciary has shed light on trademark infringement law in India.

5.3.5 Difference between Trademark Infringement and Passing off

The difference between a passing off action and an action for trademark infringement was expounded by the Delhi High Court in the case of *Cadbury India Limited and Ors. v. Neeraj Food Products* as under:

- An action for passing off is a common law remedy whereas an action for trademark infringement is a statutory remedy.
- Passing off action in essence is an action of deceit that is, a passing off by a person of his own goods as those of another whereas in case of infringement, the Plaintiff on account of being registered proprietor of the disputed trademark, claims to have an exclusive right to use the mark in relation to those goods.
- The use by the defendant of the trademark of the plaintiff may be prerequisite in the case of an action for infringement while it is not an essential feature of an action for passing off.
- If the essential features of the trademark of the plaintiff have been adopted by the defendant, the fact that the getup, packing and other writing or marks on the goods or on the packets in which the defendant offers his goods for sale show marked differences or indicate clearly a trade origin different from that of a registered proprietor of the mark, would be immaterial for the case of infringement of the trademark. The liability of the defendant for such infringement may be absolute. In the case of passing off, the defendant may escape liability if he can show that the added material is sufficient to distinguish his goods from those of the plaintiff.

The distinction between passing off and infringement was examined by Judge Clauson in the case of *Listen Ltd. V. Harley*, wherein he opined that *if you are restraining the infringement of a registered mark, you can restrain the man from using the mark; but, restrain him from selling the articles under the label containing that word without clearly distinguishing his goods from the goods of the Plaintiff is quite a different thing.*

The Supreme Court in a recent case of *S. Syed Mohideen v. P. Sulochana Bai*, stated that passing off right is a broader remedy than that of infringement. This is due to the reason that the passing off doctrine operates on the general principle that no person is entitled to represent his or her business as the business of another person. The said action in deceit is maintainable for diverse reasons other than that of registered rights which are allocated rights under the Act.

5.4 PATENT ACT 1970

The Patents Act 1970, along with the Patents Rules 1972, came into force on 20th April 1972, replacing the Indian Patents and Designs Act 1911. The Patents Act was largely based on the recommendations of the Ayyangar Committee Report headed by Justice N. Rajagopala Ayyangar. One of the recommendations was the allowance of only process patents with regard to inventions relating to drugs, medicines, food and chemicals.

Later, India became signatory to many international arrangements with an objective of strengthening its patent law and coming in league with the modern world. One of the significant steps towards achieving this objective was becoming the member of the Trade Related Intellectual Property Rights (TRIPS) system.

Significantly, India also became signatory of the Paris Convention and the Patent Cooperation Treaty on 7th December 1998 and thereafter signed the Budapest Treaty on 17th December 2001.

The second phase of amendment was brought in by the Patents (Amendment) Act, 2002 which came into force on 20th May 2003. The main features of the amendments included:

- i. Term of patent was extended from 14 to 20 years, wherein the date of patent was the date of filing of complete specification. Also the difference in terms of a drug/food patent and other patents was removed.
- ii. The definition of "invention" was made in conformity with the provisions of TRIPS Agreement by introducing the concept of inventive step, thereby enlarging the scope of invention.
- iii. Deferred examination system was introduced.
- iv. Introduction of the provision of publication of application after 18 months from the date of filing thereby bringing India at par with the rest of the world.
- v. Microorganisms became patentable, whereas inventions relating to traditional knowledge were included in the list of "*what are not inventions*".
- vi. The concept of unity of invention in accordance with EPC and PCT.
- vii. Section 39 was reintroduced thereby prohibiting the Indian residents to apply abroad without prior permission or first filing in India.
- viii. Provisions of Appellate Board were brought in by inserting section 116. All appeals to the decision of the Controller would be appealable before the Appellate Board. The Head Quarter of the Appellate Board is to be in Chennai.
- ix. Section 117 provided for Bolar provision for the benefit of agrochemical and pharmaceutical industry.

The third and final amendment to the Patents Act, 1970 came by way of Patents (Amendment) Ordinance, 2004, which was later replaced by The Patent (Amendment) Act, 2005, and Patents (Amendment) Rules, 2006 with retrospective effect from 1st January, 2005. With the third amendment India met with the international obligations under the TRIPS. Significant achievements of this amendment were:

- i. Deletion of section 5, opening of mailbox and grant of product patents. Thus this amendment led to the dawn of the "product patent regime" in India.
- ii. Abolition of Exclusive Marketing Rights (EMR).

Current Position:

The present Indian position in respect of patent law is governed by the provisions of the Patents Act, 1970 as amended by the Patents

(Amendment) Act, 2005 (hereinafter referred to as the Act) and Patents Acts Rules, 2006 (hereinafter referred to as the Rules)

The Head Patent Office is located at Kolkata and its branch offices are located at Delhi, Mumbai and Chennai. Patent system in India is administered by the Controller General of Patents, Designs, Trademarks and Geographical Indications. Each office has its own territorial jurisdiction for receiving patent applications and is empowered to deal with all sections of the Patent Act.

The jurisdiction for filing the patent application depends upon:

- i. Indian applicant(s): determined according to place of residence, place of business of the applicant or where the invention actually originated.
- ii. Foreign applicant(s): determined by the address for service in India.

5.5 WHAT ARE INVENTIONS?

The Act provides for the definition of the invention, which is now compliant with the provisions of TRIPS. The criteria for patentability of an invention are novelty, inventive step and industrial applicability.

Section 2(1)(j) of the Patent Act, 2005, defines the "invention" as a new product or as process involving an inventive step and capable of industrial application.

Under the Act "New invention" is defined under section 2(1)(l) of the Patents Act

"New invention" means any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of patent application with complete specification, i.e., the subject matter has not fallen in public domain or that it does not form part of the state of the art.

Thus, according to this definition of new invention, the Act talks of absolute novelty, i.e. the invention should have neither been used anywhere in the world nor published in any part of the world. However, the later sections of the act for the purpose of anticipation and opposition proceedings deal with the relative novelty i.e. not used in India and not published in any part of the world. Further, the entire Act refers to the word invention and not new invention. Therefore, for all purposes relative novelty is the criterion.

5.6 EXCEPTIONS TO THE NOVELTY RULE:

There are a few exceptions where the rule of novelty is not applicable. These cases are as follows:

- i. Subject matter published without the consent of the inventor.
- ii. The invention was published in consequence of the display in an exhibition notified by the Government or reading the paper before

a Learned Society. Grace period of 12 months is given in such cases to file the patent application.

- iii. Previous communication to Government of India.
- iv. Public working for reasonable trials.

"Inventive Step" is defined under Section 2 (1) (ja) of the "Act". Prior to the Amendment of 2005, inventive step meant a feature that makes the invention not obvious to a person skilled in the art. The new Act of 2005 defined inventive step more precisely.

"Inventive step means a feature of an invention that involves technical advance as compare to the existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art."

Thus, in addition to the non-obviousness criterion two other conditions were added i.e. it should also involve technical advancement as compared to the existing knowledge or having economic significance, or both, in addition to being non-obvious.

The terms "technical advance" and "economic significance" have not been defined clearly and are unambiguous. It cannot be left to presume "economic significance" is synonymous with the phrase "capable of industrial application" in section 2 (1) (ac) or in footnote 5 to Article 27. The meaning of the phrase "technical advance" cannot be presumed either, in absence of a specific definition or reference.

The Patents Act 1970 had a very limited scope of protection wherein the essential elements of invention were new, useful and manner of manufacture. Even though manufacture was not defined in the old Act, the Patent Office established the practice of interpreting manufacture as a process resulting in a tangible product. The landmark decision of Calcutta High Court on the process of production of Bursitis virus containing vaccine (*Dimminaco AG vs Controller of Patents, 2002*) changed the practice and now the definition of invention is interpreted keeping in mind the term 'industrial application' as under section 2(1)(j).

The Act defines 'capable of industrial application' in relation to an invention as capable of being made or used in an industry.

An invention is capable of industrial application if it satisfies the three conditions cumulatively:

- i. can be made;
- ii. can be used in at least one field of activity;
- iii. can be reproduced with the same characteristics as many as necessary.

5.7 WHAT ARE NOT INVENTIONS?

Section 3 of the Act, deals with non-patentable inventions.

- a. Inventions which are frivolous or contrary to well established natural laws.

For example: inventions relating to perpetual motion alleged to be giving output without any input is not patentable as it is contrary to natural law. Merely making in one piece, articles, previously made in two or more

pieces is frivolous. Mere usefulness is not sufficient (*Indian Vacuum Brake co. Ltd vs. Lourd (AUR 1962 CAK 152)*).

- b. Inventions whose primary or intended use or commercial exploitation could be contrary to public order or morality (such as something against accepted norms of a culture in a society), or which causes serious prejudice to human, animal or plant life or health or to the environment.

For example terminator technology which involves inserting a gene sequence in a seed to stop germination or growing recombinant plants leading to disappearance of butterflies.

- c. The mere discovery of a scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substances occurring in nature. However isolation of living thing or non-living substances is patentable as it involves human technical intervention.
- d. Mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance, or mere discovery of any new property, or new use of a known substance, or mere use of known process, machine, or apparatus unless such known process results in a new product or employs at least one new reactant.

Explanation to Section 3 (d): "Salts, esters, ethers, polymorphs, metabolites, pure form, particle size, isomers, mixtures of isomers, complexes, combinations, and other derivatives of known substance shall be considered to be the same substance, unless they differ significantly in properties with regard to efficacy."

It may be seen from section 3(d) that new use of a known substance is not permissible. It means that claims for second medical use are not allowed in India. Further, derivatives of known substances are considered to be the same substance unless they "differ significantly in properties with regard to efficacy".

The term "efficacy" under section 3 (d) has been held vague, as it does not indicate the kind of efficacy required under the provision. It is also ambiguous because it is unclear whether the phrase "enhancement of known efficacy" is the same as the phrase "technical advance" under section 2 (1), (ja).

However, the explanation provided to section 3 (d) does not rule out the grant of patent to derivatives, complexes, combinations, isomers and so on, if enhancement of its efficacy as a consequence of its properties can be shown.

- e. Substances obtained by mere admixture such as physical admixture are not patentable under the Act.

However, compositions consisting of combination preparations comprising of two or more known active ingredients are patentable if "synergism" or super additive effect is shown clearly, for example pharmaceutical compositions or any other chemical compositions

f. The mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way.

h. Methods of agriculture or horticulture.

For example, a method of producing a new form of a known plant even if it involves a modification of the conditions under which natural phenomena would pursue their inevitable course is not patentable. (*N.V. Philips Gloeiampnenfabrieken's Application 71 RFC 192*).

i. Processes for medical, surgical, curative, prophylactic, diagnostic, therapeutic, or other treatment of human beings or animals or plants that would render them free of disease or to increase their economic value.

In the United Kingdom, a method for treating an old animal with an enzyme two hours prior to butchering was allowed to be patented as the treatment increased the economic value of the animal by making the meat soft (*Swift Application RPC 37, 1962*). Such a process would not be patentable under the Indian Patent system.

The words 'diagnostic & therapeutic' has to be read as diagnosis of diseases in human beings and animals. Accordingly, the method of screening antibodies for a specific activity is permissible.

j. Plants and animals in whole or any part thereof other than microorganisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals. For example clones and new varieties of plants are not patentable. But the process/method of preparing genetically modified organisms is patentable subject matter.

k. Computer program per se, a mathematical method or a business method or algorithms.

l. Literary, dramatic, musical or artistic work or any other aesthetic creations including cinematographic works and television productions are not patentable as they are covered under the copyrights, design and entertainment laws.

m. Scheme/rule/method of performing a mental act or method of playing a game.

n. Presentation of information.

Unfortunately neither the Act nor the Rules defines a mathematical method, or a business method or a computer program per se or algorithm. Under such circumstances, one has to rely on the practices built up under Articles 52(1), 52(2) and 52(3) of the EPC, where similar provisions corresponding to the Indian Act under section 3(k), 3(m), and 3(n) exist.

A program producing technical effect or program having technical character is permissible in EPO as it is not a program per se. Accordingly, software related inventions may be patentable if accompanied by a novel and non-obvious technical effect which adds to the art of technology.

- o. Topography of integrated circuits.
- p. An invention falling within the scope of traditional knowledge such as the use of herbal medicines.

Inventions relating to atomic energy are not patentable under section 4. Such applications are referred to the Department of Atomic Energy. The decision of the Department of Atomic Energy is final and no appeal lies to the decisions of the Department of Atomic Energy.

With the amendments effected patents are now granted for inventions relating to both product and process. The invention must relate to a machine, article or substance capable of industrial application, or the process of manufacture of an article. A patent may also be obtained for an improvement of an article or of a process of manufacture. Further, with regard to medicine or drug patents are now granted for the product and process of manufacturing the substance.

5.8 TRADE SECRETS

The precise language by which a trade secret is defined varies by jurisdiction, as do the particular types of information that are subject to trade secret protection. Three factors are common to all such definitions:

A trade secret is information that

- is not generally known to the public;
- confers economic benefit on its holder *because* the information is not publicly known; and
- where the holder makes efforts to maintain its secrecy.

Protection:

In contrast to registered intellectual property, trade secrets are, by definition, not disclosed to the world at large. Instead, owners of trade secrets seek to protect trade secret information from competitors by instituting special procedures for handling it, as well as technological and legal security measures. Legal protections include non-disclosure agreements (NDAs), and work-for-hire and non-compete clauses. In other words, in exchange for an opportunity to be employed by the holder of secrets, an employee may sign agreements to not reveal their prospective employer's proprietary information, to surrender or assign to their employer ownership rights to intellectual work and work-products produced during the course (or as a condition) of employment, and to not work for a competitor for a given period of time (sometimes within a given geographic region). Violation of the agreement generally carries the possibility of heavy financial penalties which operate as a disincentive to reveal trade secrets.

5.9 CHECK YOUR PROGRESS

1. Intellectual Property Rights (IPR) protect the use of information and ideas that are of
2. Symbol of Maharaja of Air India is
3. In India, the literary work is protected until
4. Copyright Act, 1957 came into effect from
5. Infringement of a mark occurs when a person not being registered proprietor uses a mark which is identical or deceptively similar to a registered mark in relation to goods or services in respect of which the trademark is registered. True or False?
6. A registered trademark is not infringed by any advertising of that trademark if such advertising takes unfair advantage and is detrimental to its distinctive character. True or False?
7. An action for passing off is a common law remedy whereas an action for trademark infringement is a statutory remedy. True or false
8. Inventions which are frivolous or contrary to well established natural laws are called non inventions. True or false
9. A trade secret is information that confers economic benefit on its holder because the information is not publicly known. True or false?
10. Producer can defeat rights of music composer or lyricist. True or false?

5.10 KEY WORDS

Intellectual property (IP)	It is a category of property that includes intangible creations of the human intellect.
Copyright	The exclusive and assignable legal right, given to the originator for a fixed number of years, to print, publish, perform, film, or record literary, artistic, or musical material.
Patent	A patent is a form of intellectual property that gives its owner the legal right to exclude others from making, using, selling and importing an invention for a limited period of years, in exchange for publishing an enabling public disclosure of the invention.
Trademark	A trademark (also written trade mark or trade-mark) is a type of intellectual property consisting of a recognizable sign, design, or expression which identifies products

Trade Secrets

or services of a particular source from those of others, although trademarks used to identify services are usually called service marks.

Trade secrets are a type of intellectual property that comprise formulas, practices, processes, designs, instruments, patterns, or compilations of information that have inherent economic value because they are not generally known or readily ascertainable by others, and which the owner takes reasonable measures to keep secret.

To sum it up

4. The Intellectual property (IP) is a category of property that includes intangible creations of the human intellect.
5. The most well-known types of Intellectual Property are copyrights, patents, trademarks, and trade secrets.
6. Common properties or ideas are not subject to copyright

5.11 REFERENCES

Books:

1. B. L. Wadhwa on patent, Trademarks, and copyright law.
2. P. Narayan on intellectual property law.
3. G.B. Reddy, Intellectual Property Law.
4. Meenu Paul, Intellectual Property Law.
5. S.R. Myneni, Intellectual Property Law. All these books have been written by Indian authors in an Indian context.

Online Reading

<http://copyright.gov.in/Documents/handbook.html>

<https://unesdoc.unesco.org/ark:/48223/pf0000232208>

<https://www.icsi.edu/media/webmodules/publications/9.4%20Intellectual%20Property%20Rights.pdf>

<http://www.mondaq.com/india/x/655852/Copyright/Copyright+Law+In+India+Everything+You+Must+Know>

<https://meity.gov.in/content/copyright>

:: STRUCTURE::**6.0 Introduction****6.1 Objectives****6.2 History of the Right to Information Act****6.3 RTI Act, 2005****6.4 Comparison of the provisions of the Right to Information Act, 2005 and the Right to Information (Amendment) Bill, 2019****6.5 How to File an RTI?****6.6 How to File Online RTI?****6.7 Which Government Organizations are required to give RTI Information Under RTI Act?****6.8 Which Government Departments are Exempted From the Act?****6.9 Important Judgments on Right to Information****6.10 Check Your Progress****6.11 Key Words****6.12 References**

6.0 INTRODUCTION

It goes without saying that an informed citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed. Right to Information Act 2005 mandates timely response to citizen requests for government information. It is an initiative taken by Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions to provide a- RTI Portal Gateway to the citizens for quick search of

information on the details of first Appellate Authorities, PIOs etc. amongst others, besides access to RTI related information / disclosures published on the web by various Public Authorities under the government of India as well as the State Governments.

6.1 OBJECTIVES

1. To enable the student to understand the legal framework of citizens democratic Right to access information under the control of public authorities.
2. To enable the student to promote the practice of revelation of information to preserve democratic ideals.
3. To enable the student to promote accountability in the functioning of every public authority, thereby reduce corruption.

At the end of the unit, students will be able to...

5. understand what is Right to Information and how it came into effect
6. understand the constitutional validity of Right to Information
7. Understand major Supreme Court remarks on Right to Information
8. apply for an RTI application,

6.2 HISTORY OF THE RIGHT TO INFORMATION ACT

It has taken India 82 years to transition from an opaque system of governance, legitimized by the colonial Official Secrets Act, to one where citizens can demand the right to information. The recent enactment of the Right to Information Act 2005 marks a significant shift for Indian democracy, for the greater the access of citizens to information, the greater will be the responsiveness of government to community needs.

Right to Information is derived from our fundamental right of freedom of speech and expression under Article 19 of the Constitution. If we do not have information on how our Government and Public Institutions function, we cannot express any informed opinion on it. Democracy revolves around the basic idea of Citizens being at the centre of governance. And the freedom of the press is an essential element for a democracy to function. It is thus obvious that the main reason for a free press is to ensure that Citizens are informed. Thus, it clearly flows from this, that the Citizens Right To Know is paramount.

The Act and its rules define a format for requisitioning information, a time period within which information must be provided, a method of giving the information, some charges for applying and some exemptions of information which will not be given.

6.3 RTI ACT, 2005

What does the RTI Act do?

Under the RTI Act, 2005, Public Authorities are required to make disclosures on various aspects of their structure and functioning. This includes: (i) disclosure on their organisation, functions, and structure, (ii) powers and duties of its officers and employees, and (iii) financial information. The intent of such suo moto disclosures is that the public should need minimum recourse through the Act to obtain such information. If such information is not made available, citizens have the right to request it from the Authorities. This may include information in the form of documents, files, or electronic records under the control of the Public Authority. The intent behind the enactment of the Act is to promote transparency and accountability in the working of Public Authorities.

Who is included in the ambit of ‘Public Authorities’?

‘Public Authorities’ include bodies of self-government established under the Constitution, or under any law or government notification. For instance, these include Ministries, public sector undertakings, and regulators. It also includes any entities owned, controlled or substantially financed and non-government organizations substantially financed directly or indirectly by funds provided by the government.

How is the right to information enforced under the Act?

The Act has established a three tier structure for enforcing the right to information guaranteed under the Act.

Public Authorities designate some of their officers as Public Information Officers. The first request for information goes to Central/State Assistant Public Information Officer and Central/State Public Information Officer, designated by the Public Authorities. These Officers are required to provide information to an RTI applicant within 30 days of the request. Appeals from their decisions go to an Appellate Authority. Appeals against the order of the Appellate Authority go to the State Information Commission or the Central Information Commission. These Information Commissions consist of a Chief Information Commissioner, and up to 10 Information Commissioners.

What does the Right to Information (Amendment) Bill, 2019 propose?

The Bill changes the terms and conditions of service of the CIC and Information Commissioners at the center and in states. Table 1 below compares the provisions of the Act and the Bill.

6.4 COMPARISON OF THE PROVISIONS OF THE RIGHT TO INFORMATION ACT, 2005 AND THE RIGHT TO INFORMATION (AMENDMENT) BILL, 2019

Provision	RTI Act, 2005	RTI (Amendment) Bill, 2019
Term	The Chief Information Commissioner (CIC) and Information Commissioners (ICs) (at the central and state level) will hold office for a term of five years.	The Bill removes this provision and states that the central government will notify the term of office for the CIC and the ICs.
Quantum of Salary	The salary of the CIC and ICs (at the central level) will be equivalent to the salary paid to the Chief Election Commissioner and Election Commissioners, respectively. Similarly, the salary of the CIC and ICs (at the state level) will be equivalent to the salary paid to the Election Commissioners and the Chief Secretary to the state government, respectively.	The Bill removes these provisions and states that the salaries, allowances, and other terms and conditions of service of the central and state CIC and ICs will be determined by the central government.
Deductions in Salary	The Act states that at the time of the appointment of the CIC and ICs (at the central and state level), if they are receiving pension or any other retirement benefits for previous government service, their salaries will be reduced by an amount equal to the pension. Previous government service includes service under: (i) the central government, (ii) state government, (iii) corporation established under a central or state law, and (iv) company owned or controlled by the central or state government.	The Bill removes these provisions.

Sources: Right to Information Act, 2005; Right to Information (Amendment) Bill, 2019; PRS.

6.5 How to File RTI?

Every Indian should know about RTI filing. The procedure to **File RTI** is simple and hassle-free.

- Write the application (or get it typed, your choice) on a paper in English/Hindi/the official language of the state. Some states have prescribed a format for RTI applications. Address it to the PIO (Public Information Officer) of the department concerned.
- Ask specific questions. See to it that they are clear and complete, and not confusing whatsoever.
- Write your full name, contact details and address, where you want the information/response to your RTI be sent.
- Take a photocopy of the application for your record. If you're sending the application by post, it's advisable to send it via registered post, as then you will have an acknowledgement of your request's delivery. If you're submitting the application to the PIO in person, remember to take an acknowledgement from him/her.

Some important points:

- The Act is so people-friendly that if an illiterate person approaches a PIO and wants some info under the RTI, he/she can tell his requirement to the PIO and the officer is obliged to write it down for them and read it to them before processing it.
- One need not write the application on a clean sheet of paper. Even a crumpled, old, torn piece of paper will do, so long as your written content on it is legible.
- Until the RTI Act empowered the common man to demand information from the government, only the members of Parliament had the privilege of seeking this information.
- If you are hesitant about sending your RTI application by post and can't take a day off work to catch hold of the PIO concerned, you can go to your post office and submit your application to the assistant PIO. The postal department has appointed many APIOs across its many offices. Their job is to receive RTI applications and forward them to the PIO or appellate authority concerned.

6.6 HOW TO FILE ONLINE RTI?

Currently, Central and a few State government departments have facility for filing **Online RTI**. However, there are multiple independent websites that let you file your application online. They charge you a nominal amount, for which they draft your application and send it to the relevant department. This is as good as sending an RTI application without having to worry about the particulars.

6.7 WHICH GOVERNMENT ORGANISATIONS ARE REQUIRED TO GIVE RTI INFORMATION UNDER RTI ACT ?

All government agencies, whether they are under a state government or the Centre, come under the purview of the Act. For example, Municipal Corporations, PSUs (Public Sector Units), Government departments, Ministries at the State as well as Central level, Judiciary, Government owned Companies, Government Universities, Government Schools, Works Departments, Road Authorities, Provident Fund department etc. The list is quite an exhaustive one.

You can ask a government how much money is being spent on renovation of its ministers' bungalows, what their telephone bill or fuel expenditure is. Or you can ask what amount was spent on MLAs'/MPs' foreign trips.

You can ask how much of allocated money your elected representatives have utilized on improving their constituency; you are entitled to ask for even a break-up of the amount spent, project-wise. This RTI information is available because it is the taxpayers' money that is being spent here. Few ministries and departments make online rti replies available to the public. You can see them on the respective websites.

Not only governments and their departments, but also smaller units such as your city corporation or gram panchayat fall under the ambit of RTI. Be it the police, passport office, your electricity/water supply company or even the IRCTC, all are required to furnish RTI information.

Through RTI, we can get copies of government documents such as records, advice/opinions, reports, papers, file notings. Even email communications and data held in electronic form has to be made available to citizens upon an RTI application. We can even go to the department's office and inspect their records and documents, if at all the RTI information is voluminous you can take photocopies, obtain certified copies, take printouts and what not.

6.8 WHICH GOVERNMENT DEPARTMENTS ARE EXEMPTED FROM THE ACT?

Twenty-odd organisations are exempted from RTI. But all these entities are related to the country's defence and intelligence, such as RAW, BSF, CRPF, CISF, Intelligence Burearu, National Security Guard etc.

Further, there are some specific instances whereby RTI information cannot be furnished. These instances relate to matters which:

- Would affect national security, sovereignty, strategic, economic and/or scientific interest.
- Have been disallowed by the court to be released.
- Have been disallowed by the court to be released.

- Relates to trade secrets or intellectual property, information which might affect/harm the competitive position of a third party.
- Relates to information under fiduciary relationship.
- Relates to foreign government information.
- Would affect the life/physical safety of any person.
- Would affect the process of an investigation.
- Relates to cabinet papers.
- Relates to personal information without any public interest.

However, RTI law says that any information which cannot be denied to a Member of Parliament or state legislature cannot be denied to any citizen.

1. How to use RTI to solve personal problems?

Be it never-ending delay in dispatch of passport or police dilly-dallying in giving you a **copy of FIR** you might have filed, submit an RTI application asking pointed questions. Highly likely this will be the beginning of the end of your woes. **Pending income tax return, pension's release, withdrawal or transfer of PF, release of Aadhaar card or issuance of property documents or driving licence.** Using the RTI tool in any of these scenarios—or other cases involving a government agency—will guarantee you an official response, based on which you can take things further if your issue is not solved.

A citizen can ask government officials reasons for delay in government service requested for. For example, if you have applied for a passport and it has not been delivered. Then one can apply RTI with the following questions:

- Please provide daily progress done on my passport application.
- Please provide names of officers with whom my application has been lying during this period.
- Please inform as per your citizen's charter how many days I should have got my passport.

In the majority of cases, the problem gets resolved. This way you can use RTI to solve many other pending issues and especially the ones where bribes are being asked.

2. How to use RTI to solve problems in the community?

If in your community, you think the facilities are not as expected or you observe some government maintained property in bad condition, you can use RTI to get the government working on it.

For instance, if there is a road in very bad condition you can ask the following questions:

- How much money has been spent on the development of road in past 3 years?
- How was the money spent?
- Please provide a copy of the orders

3. How to solve problems using RTI?

Which Personal Problems can be solved using RTI

- Pending Income Tax return
- Delayed PF withdrawal
- Delayed PF Transfer
- Delayed Passport
- Delayed Aadhar card
- Delayed IRCTC Refund
- Copies of answer sheets
- Property Documents like Occupancy Certificate/Completion Certificate
- Status of FIR
- Status of a complaint
- Status of EPF
- Delay in Scholarship

Which Social Problems can be solved using RTI

- Fix roads with potholes
- Conduct social audit of government projects
- Know how your MP/MLA spent the fund allocated to him
- Know how a particular government project or scheme was implemented

1. How powerful is the RTI Act and how is RTI any different from other anti-corruption laws?

When it comes to RTI, there are watchdogs on multiple levels to ensure the Act is followed in letter and spirit. The Act has employed a 'perform or perish' approach, besides setting up a mechanism to dispense information.

Every government organisation is needed to appoint one employee as a public information officer (PIO). Once a department gets an RTI request, it is the responsibility of the PIO to furnish the information to the applicant within 30 days. Failing to do so means a monetary fine can be imposed on the PIO. The longer a PIO makes an applicant wait, the more the penalty levied on him/her. There have been instances where PIOs have been asked to cough up an amount in thousands of rupees as fine.

Every state has an Information Commission, comprising a Chief Information Commissioner and a few information commissioners. Former judges, IAS, IPS officers of impeccable record are appointed to these positions by the government. Above them in the hierarchy is the Central Information Commission and below them are first and second appellate authorities to see to it that an applicant does get the RTI information he/she has requested.

1. How many days does it take to get an RTI response?

As per law, the RTI information should be provided in 30 days. However, sometimes government records are misplaced or missing. Or the agency you've written to needs to co-ordinate with another department to

provide you the information you want. In such situations, the information may take more than 30 days to arrive. In such a case, the PIO concerned needs to send you a written intimation about the possible delay and the reason. If he/she fails to do so and you don't receive the info within 30 days, a penalty can be levied on the PIO if the matter is taken up with appellate authorities.

1. What is the fee for seeking information under the RTI?

For central government departments one needs to pay Rs. 10 with every RTI application. Mode of payment may vary from government to government. While submitting applications in person, some organisations accept cash while some do not. Some ask for Court Fee Stamp, some ask for Indian postal order (IPO). When sending an RTI application by post, we can use an IPO/ court fee stamp of Rs. 10.

Those below poverty line (BPL) do not have to pay Rs. 10 as fee for filing an RTI.

If you've asked the government office to furnish copies of some records, you will need to pay Rs. 2 per page. Once the office receives your request and ascertains the amount you will need to pay towards making copies, you will get intimation via post. You can make the payment by sending a postal order/court fee stamp/demand draft of the said amount.

1. Is the RTI act different for different states?

The central government has come up with the RTI act which is applicable in all states except Jammu and Kashmir which has its own act very similar to the central act.

Each state has an extended central act with state specific rules which contain rules on RTI fees, mode of payment, RTI application form and sometimes a limit on number of words or questions.

6.9 IMPORTANT JUDGMENTS ON RIGHT TO INFORMATION

Information can't be denied on the Ground that File is missing

Case name: Shahzad Singh v. Department of Posts (CIC, 2018)

In the case, the CIC noted that the Respondent Department's claim that concerned files were not traceable proves the fact they had it in their possession, which binds them to provide the information by searching the same. The Commission also observed that frequent reference to 'missing files' as an excuse to deny the information is a major threat to transparency, accountability and also major reason for violation of Right to Information Act, 2005. Millions of RTI applications might have been rejected by PIOs on this ground during the last 11 years of RTI regime.

With "missing files excuse" being around, it will be futile to talk about implementation of Right to Information Act, 2005. The claim of 'missing files' indicates possibility of deliberate destruction of records to hide the corruption, fraud or immoral practices of public servants, which is a crime under Indian Penal Code.

Other cases on the issue:

Om Prakash v. GNCTD– In the case, CIC noted that *prima facie*, public authority cannot deny the right of the appellant to get an alternative plot, by putting forward an excuse of missing the file. The defense of missing file cannot be accepted even under the Right to Information Act, 2005. The CIC also noted that if the file is really not traceable, it reflects the inefficient and pathetic management of files by the Public Authority. If the file could not be traced in spite of best efforts, it is the duty of the respondent authority to reconstruct the file or develop a mechanism to address the issue raised by the appellant.

Union of India vs. Vishwas Bhamburkar – In this case, the Delhi High Court regarding the plea of the Respondent authority of record being not traceable, has observed that Right to Information Act, 2005 is a progressive legislation aimed at providing the citizens access to the information which before the said Act came into force could not be claimed as a matter of right.

It was also opined that even in the case where it was found that the desired information though available in the record of the government at some point of time, could not be traced despite best efforts made in this regard, the department concerned must necessarily fix the responsibility for the loss of the record and take appropriate departmental action against the officers/officials responsible for loss of the record. **Unless such a course of action is adopted, it would be possible for any department/office, to deny the information which otherwise is not exempted from disclosure, wherever said department/office finds it inconvenient to bring such information into public domain, and that in turn, would necessarily defeat the very objective behind enactment of the Right to Information Act, 2005.**

RTI can't be Denied on the Ground that Information sought is Irrelevant

Case name: Adesh Kumar v. Union of India (Delhi High Court, 2014)

In the case, the Petitioner was aggrieved by denial of information under the RTI Act by the concerned Public Information Officer in the case.

FIR had been lodged against the Petitioner during his tenure of service and subsequently, a charge sheet against the petitioner was submitted. On receipt of the charge sheet, the Petitioner applied for information under the RTI Act pertaining to sanction of prosecution against him.

However, the requested information was rejected by the CPIO claiming that there was no obligation to provide the same by virtue of Section 8(1)(h) of the RTI Act.

The Delhi High Court while dismissing the Petitioner's plea in the case stated that impugned provision prohibits furnishing of information which would **impede the process of investigation or apprehension or prosecution of offenders.**

However, the Court held that merely, citing that the information is exempted under Section 8(1)(h) of the RTI Act would not absolve the

public authority from discharging its onus as required to claim such exemption.

Further, the Delhi High Court in the case has held that whether the information sought by the petitioner is relevant or necessary, is not relevant or germane in the context of the Act, a citizen has a right to information.

Whether Particulars of FIR can be Disclosed under RTI Act?

Case name: Jiju Lukose v. State of Kerala (Kerala High Court, 2014)

In the case, a public interest litigation (PIL) seeking a direction to upload the copy of the FIR in the website of the police station and to make available copies of the FIR to the accused immediately on registration of the FIR was sought for. The Petitioner had alleged that inspite of the FIR being registered, the petitioner received its copy only after 2 months. Till the petitioner could obtain a copy of the FIR, the petitioner and his family members were in dark about the nature of the allegations levelled against the petitioner.

Petitioner's further contended in the case that in view of the Right to Information Act, 2005 all public officers were under obligation to put all information recorded in the public domain. The FIR which is lodged is to be put on the website of the police station, so that anyone can assess the FIR including a person staying outside the country.

Decision

The CIC in the case held that FIR is a public document, however, where an FIR is covered by the provisions under Section 8(1) of the RTI Act, it need not be disclosed to the citizens till investigation is completed. But it can be claimed by the Informant and the accused as per legal provisions under the Code of Criminal Procedure, 1973 as a matter of legal right.

The provisions in the Code of Criminal Procedure, 1973 are specific to this effect, that is, the supply of a copy of FIR to the accused is contemplated only at a stage after proceedings are being initiated on a police report by the competent Magistrate.

UPSC Marks can't be Disclosed Mechanically under RTI- Supreme Court

Case name: Union Public Service Commission Etc. v. Angesh Kumar & ors. (Supreme Court, 2018)

In this recent case, the Supreme Court has made following observations in context of disclosure of civil service examinations marks under the RTI:

- That weighing the need for transparency and accountability on the one hand and requirement of optimum use of fiscal resources and confidentiality of sensitive information on the other, **information sought with regard to marks in Civil Services Exam cannot be directed to be furnished mechanically.**
- That furnishing raw marks will cause problems which would not be in public interest. However, if a case is made out where the

Court finds that public interest requires furnishing of information, the Court is certainly entitled to so require in a given fact situation.

- That if rules or practice so require, certainly such rule or practice can be enforced.

CIC: Pension Payment can't be denied for Want of Aadhaar Card

Case name: N N Dhumane v. PIO, Department of Posts (CIC, 2018)

The order of CIC in this recent case is a remarkable one as it condemns the act of Department of Posts in denying payment of pension for want of Aadhaar Card. Other key observation made by the CIC in the case was that **payment of pension is a matter of life or liberty under the RTI Act and applications relating to payment of Pension shall be disposed by the Public Information Officers within 48 hours.**

CIC: RTI Information cannot be denied for Lack of Aadhaar Card

Case name: Vishwas Bhamburkar v. PIO, Housing & Urban Development Corporation Ltd. (CIC, 2018)

In this recent case *Vishwas Bhamburkar v. PIO, Housing & Urban Development Corporation Ltd.* taken up by the Chief Information Commission, Munirka, New Delhi (CIC), the CIC was confronted with two centric issues under the Right to Information Act, 2005. One pertaining to **word limit in RTI application** and the other relating to **denial of information on lack of producing identity proof** by the Applicant.

The CIC in the case held that the impugned application was not hit by any exception under the Right to Information Act. That the CPIO in the case raised suspicion about the citizenship of the applicant without explaining why he was suspecting. There was nothing to justify his suspicion. That the CPIO failed to justify the denial of information, as he could not site any clause of exception under Section 8 (exemption from disclosure of information) or Section 9 (grounds for rejection to access in certain cases).

Ministers not Public Authorities under RTI Act- Delhi HC

Case name: Union of India and Anr. v. Central Information Commission and Anr. (CIC, 2017)

The Petitioner in the case challenged CIC's (Central Information Commission) order, whereby the CIC had declared "**the Ministers in the Union Government and all State Governments as 'public authorities'**" under Section 2(h) of Right to Information Act, 2005.

RBI can't Deny Information under RTI claiming Fiduciary Relationship

Case name: Reserve Bank of India v. Jayantilal Mistry (Supreme Court, 2015)

In this case, the interesting issue that was raised was *whether all the information sought for under the Right to Information Act, 2005 can be denied by the Reserve Bank of India and other Banks to the public at*

large on the ground of economic interest, commercial confidence, fiduciary relationship with other Bank on the one hand and the public interest on the other?

The RBI in the case took the stand that the information sought for was exempted under Section 8(1) (a), (d) and (e) of the Right to Information Act, 2005. Moreover, as the regulator and supervisor of the banking system, the RBI has discretion in the disclosure of such information in public interest.

While allowing the appeal the Supreme Court in the case held that in the case the RBI does not place itself in a fiduciary relationship with the Financial institutions because, the reports of the inspections, statements of the bank, information related to the business obtained by the RBI are not under the pretext of confidence or trust. In this case neither the RBI nor the Banks act in the interest of each other.

The Court also made the following observations:

- RBI is supposed to uphold public interest and not the interest of individual banks. RBI is clearly not in any fiduciary relationship with any bank. RBI has no legal duty to maximize the benefit of any public sector or private sector bank, and thus there is no relationship of 'trust' between them. RBI has a statutory duty to uphold the interest of the public at large, the depositors, the country's economy and the banking sector.
- Thus, RBI ought to act with transparency and not hide information that might embarrass individual banks. It is duty bound to comply with the provisions of the RTI Act and disclose the information sought by the respondents herein. If information is available with a regulatory agency not in fiduciary relationship, there is no reason to withhold the disclosure of the same.
- Since, the RTI Act is enacted to empower the common people, the test to determine limits of Section 8 of RTI Act is whether giving information to the general public would be detrimental to the economy.

No RTI Query Can Lie With Regard to Judicial Decisions (Delhi High Court, 2017)

Case name: The Registrar, Supreme Court of India v. R S Misra

In the instant case, the Delhi High Court has rendered an in-depth analysis of RTI applications against any decision passed by the Supreme Court. The Court has also ruled that RTI Act does not prevail over the Supreme Court Rules (SCR).

Two Years Wait for RTI Response is Flagrant Violation of RTI Act (CIC, 2017)

Case name: Aabid Hussain v. CPIO, Jabalpur

In this case of October 2017, the CIC took a strong note of delay in RTI response by the concerned Department. The CIC remarked as under:

Commission takes grave exception to the flagrant violation of the RTI Act by the CPIOs of Cantonment Board, Jabalpur and the ignorance of the present CPIO about the pending RTI Applications from the tenure of her predecessor. It is incumbent upon the present CPIO to deal with all such pending RTI Applications and not wait for the Commission to issue notice of hearing to provide reply to RTI Applicants.

IT Returns is “Personal Information”, not under the Purview of RTI Act

Case name: Girish Ramchandra Deshpande vs. Central Information Comm & ors. (Supreme Court, 2012)

In this case, the Apex Court had held that **the details disclosed by a person in his income tax returns are “personal information” which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information.**

Information Available with Public Authority to be provided to Citizen- Delhi HC

Case name: Public Information Officer v. V. Chaudhary

The High Court of Delhi in this recent case has primarily ruled that **Section 11 of the RTI Act cannot be read as a provision proscribing disclosure of information** and that **all information as available with the public authority is required to be provided to the citizen** unless it is exempt from disclosure under Section 8 of the RTI Act.

Delhi High Court

- The Court in the case has ruled that in terms of the RTI Act, all information as available with the public authority is required to be provided to the citizen unless it is exempt from disclosure under Section 8 of the RTI Act or otherwise pertains to the organizations that are excluded from the purview of the RTI Act. Thus, the question whether authentic information is available with another public authority is not a ground to deny the information as sought from a public authority.
- The Petitioner in the case had denied information to the Respondent on the ground that the information sought by the respondent is prohibited under Section 11 of the RTI Act. The Court from the facts and circumstances noted that the petitioner did have the information as sought by the respondent. However, the same was denied to the respondent by referring to Section 11 of the RTI Act. **A plain reading of Section 11 of the RTI Act indicates that the same does not proscribe furnishing of information.**
- Thus, Section 11 of the RTI Act cannot be read as a provision proscribing disclosure of information; it is a provision to enable disclosure of third party information subject to certain safeguards. In

this view, the decision of the CPIO denying the information by referring to Section 11 of the RTI Act is wholly unsustainable. Finally, the Delhi High Court in the case ruled that the information as to unauthorized construction observed by the police authorities cannot be construed as one, which is to be kept confidential in terms of Section 11 of the RTI Act.

6.10 CHECK YOUR PROGRESS

1. RTI Act 2005 came into force on _____
2. File notings do not come under the definition of Right to Information. True or False
3. The officer designated by the public authorities in all administrative units or offices under it to provide information to the citizens requesting for information under the Act is known as...
4. What is the time limit to get the information under RTI Act 2005?
5. What is the time limit to get the information concerning the life and liberty of a person?
6. If the interests of a third party are involved in information sought for, the maximum time limit to get the information will be...
7. What is the fee for getting information under the RTI Act?
8. If information sought has been supplied by third party or is treated as confidential by that third party, the third party must be given a representation before the PIO in reply to the notice issued to him within -- _____ days from the date of receipt of such notice.
9. First appeal to the first appellate authority can be preferred by the applicant within _____ days from the expiry of the prescribed time limit or from the receipt of the decision from the PIO
10. First Appeal shall be disposed of by the first appellate authority within _____ days from the date of its receipt.

6.11 KEY WORDS

Right to Information	Act of the Parliament of India which sets out the rules and procedures regarding citizens' right to information.
RTI Activist	Someone who works to make information available to the general population.
Filing RTI	Process of filing an RTI application whether online or offline.

To sum it up

1. RTI means that citizens can request for information from state or central government departments and offices. And such request should be processed in a timely way as mandated by the RTI Act.
2. The RTI act also requires all public authorities to have their records computerised for wide spread relay, such that requests for information by the citizens are processed faster because of information categorisation.
3. The application process for filing an RTI involves both offline as well as online options.
4. The power of RTI and the applications are limitless. The idea is to ask the Right Questions!

6.12 REFERENCES

Books:

1. Yadav, Shyampal, Journalism through RTI: Information Investigation Impact (India)
2. Daryl F. Mellard & Evelyn Johnson, . RTI: A Practitioner's Guide to Implementing Response to Intervention (2013) Corwin Press
3. Kashyap, S.C.(1995), Our Constitution', New Delhi: National Book Trust, India
4. Guha Thakurta, Paranjoy (2012), 'Media Ethics', New Delhi: Oxford University Press
5. Basu D D (2007), 'commentary on the constitution of India', volume 2, 8th edition, Wadhwa and company, Nagpur

Online Reading

<https://rti.gov.in/>

[https://en.wikipedia.org/wiki/Right to Information Act, 2005](https://en.wikipedia.org/wiki/Right_to_Information_Act,_2005)

ugc.ac.in/subpage/RTI-Act.aspx

<https://www.prsindia.org/theprsblog/explainer-right-information-amendment-bill-2019>

<https://pscnotes.in/right-to-information-act-2005-rti/#:~:text=The%20objective%20of%20Right%20to,promote%20transparency%20and%20ensure%20accountability.&text=To%20promote%20accountability%20in%20the,public%20authority%2C%20thereby%20reduce%20corruption.>

Videos

<https://www.youtube.com/watch?v=rDA6ydWqdlc>

https://www.youtube.com/watch?v=IyDfovqz1_g

<https://www.youtube.com/watch?v=sN97XBrQcfU>

<https://www.youtube.com/watch?v=eGWIhja-yN4>

<https://www.youtube.com/watch?v=-koqQYQwrqA>

UNIT: 7**PRESS COUNCIL OF INDIA &
OTHER SELF-REGULATORY BODIES****:: STRUCTURE::****7.0 Introduction****7.1 Objectives****7.2 Press Council of India****7.2.1 Functions of the Press Council of India****7.2.2 Powers of the Council****7.2.3 Complaint Procedure****7.2.4 Meeting Session****7.2.5 Expectation from the Clients****7.2.6 Guidelines issued by the Press Council of India****7.4 Editors' Guild of India****7.5 Public Relations Society of India (PRSI)****7.5.1 Major Objectives of Public Relations Society of
India (PRSI)****7.5.2 Membership****7.5.3 PRSI Organization****7.5.4 Code of Ethics****7.5.5 PRSI Conferences****7.6 The News Broadcasters Association (NBA)****7.7 Advertising Standards Council of India (ASCI)****7.7.1 Objectives of ASCI****7.7.2 Consumer Complaints Council****7.7.3 Power of the Consumer Complaints Council ASCI's
Mission**

7.8 Which Government Departments are exempted from the Act?

7.9 Important Judgments on Right to Information

7.10 Check Your Progress

7.11 Key Words

7.12 References

7.0 INTRODUCTION

Media in India is mostly self-regulated. The existing bodies for regulation of media such as the Press Council of India which is a statutory body and the News Broadcasting Standards Authority, a self-regulatory organization, issue standards which are more in the nature of guidelines. The Editors Guild has twin objectives of protecting press freedom and for raising the standards of editorial leadership of newspapers and magazines. The Public Relations Society of India (PRSI) promotes the recognition of Public Relations as a profession and formulate and interpret its objectives and the potentialities. The Advertising Standards Council of India (ASCI) is a self-regulatory voluntary organization of the advertising industry in India.

7.1 OBJECTIVES

1. To enable the student to understand the importance of Press Council of India as a statutory, self-regulatory watchdog of the press
2. To enable the student to understand the role of Editors' Guild in protecting press freedom and in raising the standards of editorial leadership of newspapers and magazines
3. To enable the student to understand the importance of Public Relations Society of India (PRSI) in promoting Public Relations as a profession.
4. To enable the student to understand the role of The Advertising Standards Council of India (ASCI) as a self-regulatory voluntary organization of the advertising industry in India.

At the end of the unit, students will be able to...

1. understand the framework and functioning of Press Council of India.
2. understand the efforts of Editors' Guild in raising the standard of journalism.
3. Understand the framework and functions of Public Relations Society of India

4. Understand the significance of Advertising Standards Council of India in Advertising.

7.3 PRESS COUNCIL OF INDIA

The Press Council is a mechanism for the Press to regulate itself. The idea is rooted in the concept that in a democratic society the press needs at once to be free and responsible. If the Press is to function effectively as the watchdog of public interest, it must have a secure freedom of expression, unfettered and unhindered by any authority, organised bodies or individuals. But, this claim to press freedom has legitimacy only if it is exercised with a due sense of responsibility. The Press must, therefore, scrupulously adhere to the accepted norms of journalistic ethics and maintain high standards of professional conduct. Where the norms are breached and the freedom is defiled by unprofessional conduct, a way must exist to check and control it. But, the control by Government or official authorities may prove destructive of this freedom.

Therefore, the best way is to let the peers of the profession, assisted by a few learned persons, regulate it through properly structured representative impartial machinery.

A need for such a mechanism has been felt for a long time both by the authorities as well as the Press itself all over the world, and a search for it resulted in the setting up of the first Press Council known as the Court of Honour for the Press in Sweden in 1916. The idea gained quick acceptance in other Scandinavian countries, and later in other parts of Europe, Canada, Asia, Australia and New Zealand. Today, the Press Councils or similar other media bodies are in place in more than four dozen nations.

The Press Council of India was first set up in the year 1966 by the Parliament on the recommendations of the First Press Commission with the object of preserving the freedom of the press and of maintaining and improving the standards of press in India. The present Council functions under the Press Council Act 1978. It is a statutory, quasi-judicial body which acts as a watchdog of the press. It adjudicates the complaints against and by the press for violation of ethics and for violation of the freedom of the press respectively.

The Press Council is headed by a Chairman, who has been, by convention, been a retired judge of the Supreme Court of India. The Chairman is nominated by a Committee consisting of Chairman of Council of States (Rajya Sabha), the Speaker of the House of the People (Lok Sabha), and a person elected from amongst the Members of the Press Council. The Council consists of 28 other members of whom 20 represent the press and are nominated by the press organisations/news agencies recognised and notified by the Council as all India bodies of categories such as editors, working journalists and owners and managers

of newspaper, 5 members are nominated from the two houses of Parliament and 3 represent cultural, literary and legal fields as nominees of the Sahitya Academy, University Grants Commission and the Bar Council of India. The members serve on the Council for a term of three years.

The Council is funded by revenue collected by it as a fee levied on the registered newspapers in the country on the basis of their circulation. No fee is levied on newspapers with circulation less than 5000 copies. The deficit is made good by way of grants by the Central Government, through the Ministry of Information and Broadcasting.

It is one of the most important bodies that sustain democracy as it has supreme power in regards to the media ensuring that freedom of speech is maintained. The Press Council deliberates on the complaints received either by the press or against the press. It may either warn or censure the errant journalists on finding them guilty. The Council is empowered to make observations in respect of conduct of any authority including the Government. If it is considered necessary, it can warn, admonish or censure the newspaper, news agency, the editor or the journalist or disapprove the conduct of the editor or the journalist. The Press Council of India is protected by the constitution and its actions may not be questioned unless it is proved to be in violation of the constitution which makes it an exceedingly powerful body. Notwithstanding the fact that a substantial part of its funds is augmented from the Government, it has full functional autonomy and is independent of Government control in the discharge of its statutory responsibilities.

7.3.1 Functions of the Press Council of India

1. It helps the newspaper to maintain the independence.
2. It builds a code of conduct for the newspapers in accordance with the high professional standards
3. It works to promote technical and other research areas related to the news
4. It helps provide proper training to new journalists
5. It helps to spread the news all over India
6. It promotes the supply of newspaper from one place to another and on time
7. It helps to promote the proper function of production or publication of the newspaper in a proper manner
8. It helps to keep a review of all the functioning, the production and processing of the newspaper.
9. It ensures that maintenance of the taste of the people should be kept in mind and see over both the rights and responsibility of citizenship.

7.3.2 Powers of the Council

1. They have the power to censure any rule which generally violates the journalists' ethics and the public taste.

2. They can hold any inquiry against any editor of the journal if they find that any misconduct has taken place with regard to any matter related to the press.
3. The proceedings should be taken place with regard to the judicial hearing under Section 193 and 228 of the Indian Penal Code.

7.3.3 Complaint Procedure

If we have to make any complaint against the newspaper then the Press Council of India is the best place to start. If the complaint is not resolved by the journalist and the individuals are not satisfied then they can approach the Press Council for justice.

- The complaints should be in writing within two months of the publication of the news on a weekly or daily basis and four months in other cases. It should also be mentioned that the publication is objectionable within the meaning of the Act.
- The copy of the letter should be given to the editor and its reply should also be attached therein. A declaration form should also be attached. In declaration form, it should be clearly mentioned that this case is not pending in any other courts.
- On the other hand if the editor or the journalist feels that he is aggrieved by the action then he can also file a complaint under this Act. The journalist should inform the Council about the reason for the action of the authorities against him. Declaration against any matter going on in any of the courts is also to be mentioned.
- On seeing the complaint, if the Council feels that the matter discloses the sufficient ground then for the inquiry then they will issue a show cause notice to the respondent and then they will consider the matter through the committee on the basis of both the written and the oral evidence. If the council comes to know that the respondent newspaper has violated the norms of journalism then the council while keeping in mind the misconduct which was committed by the newspaper will warn the journalist or will disapprove the journalist of not publishing anything as the case may be.
- When the council takes up the case of misconduct it also directs the government to take the appropriate steps with regard to the grievances of the complainant. The decision of the council will be final; it cannot be challenged in any of the courts. The licence of the journalist can also get cancelled if any misconduct has taken place with regard to them.

7.3.4 Meeting Session

For the meeting of the press, a notice should be issued to every member of the council at least 21 days before the meetings are taking place. The start date of 21 days should be counted from the date of the proceedings.

Questions being raised in such Meetings

A member shall bring a question before the council after giving 10 days' clear notice to the secretary and put an agenda of the meeting as what has to be done in the meeting. A chairman has the power to give rise to that question or can cancel that question. The chairperson also has such powers that he can raise any question without giving prior notice.

Expectation from the Clients

It is expected from the client that only if they feel like any misconduct has taken place then only they should come to the committee otherwise it is of no use. Neither the committee nor any other person has that much time to go through the case which is vague. So there is something which is expected from the customers and they are as follows:

1. The case which they are going to file should be according to the provision as being mentioned in the act.
2. All the news agencies should remit the levy to the council properly.

7.3.6 Guidelines issued by the Press Council of India:

1. Accuracy and Fairness: i) The Press shall avoid publishing inaccurate, baseless, graceless, or misleading material. All sides of the core issue or subject should be reported.

ii) Whenever exposing the wrong doing such reports need to be backed by convincing facts and evidences.

2. Pre-Publication Verification: i) Any report or article of public interest or complaint etc. should be checked for its factual accuracy from other authentic sources.

ii) A document, which forms a basis of a news report, should be preserved at least for six months.

3. Caution against defamatory writings: i) Newspaper should not publish anything which is defamatory or libelous unless after due verification, there is sufficient reason/evidence to believe that it is true and its publication will be for public good.

ii) No derogatory personal remarks against a dead person should be published except in rare cases of public interest. .

iv) Publication of defamatory news by one paper does not give license to others to publish news/information reproducing or repeating the same. .

vi) Freedom of Press does not give license to a newspaper to malign a political leader or by publishing fake and defamatory writings.

4. Public Interest and Public Bodies: As a custodian of public interest, the Press has a right to highlight cases of corruption and irregularities in public bodies but it should be based on convincing evidence. Newspapers should refrain from barbed, stinging and spicy language and ironical/satirical style of comment.

5. Right to Privacy: The Press shall not intrude or invade the privacy of

an individual, unless outweighed by genuine overriding public interest..
{Note: Things concerning a person's home, family, religion, health, sexuality, personal life and private affairs are covered by the concept of PRIVACY.}

6. 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. Minor children and infants who are the offspring of sexual abuse or forcible marriage' or illicit sexual union shall not be identified or photographed.

Intrusion through photography into moments of personal grief shall be avoided.

7. Recording interviews and phone conversation: The Press **shall not tape-record** anyone's conversation without that person's knowledge or consent, except where it is required to protect the journalist in a legal action, or for other compelling good reason. Prior to publication **offensive epithets** used during such conversation should be deleted.

8. Conjecture (Speculation), comment and fact: Newspaper **should not pass on or elevate conjecture**, speculation or comment as a statement of fact.

Cartoons and caricatures **depicting good humour** are to be placed in a special category of news that enjoy more liberal attitude.

9. Headings not to be sensational/provocative: 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.

10. Newspapers to eschew suggestive guilt: Newspapers 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.

11. Caution in criticizing judicial acts and reporting proceedings of a Legislature:

it is open to a newspaper to report pending judicial proceedings, in a **fair, accurate and reasonable manner.**

In case of Legislature newspapers have a duty to report **faithfully** the proceedings of **either House of Parliament or Legislative Assembly** which is open for the media.

Newspapers may make reasonable criticism of a judicial act or the judgment of a court for public good but shall not scandalize (outrage) the court or the judiciary as a whole, or make personal allegations of lack of ability or integrity against a judge.

12. Corrections: When any factual error or mistake is detected or confirmed, the newspaper should publish the correction promptly with apology or expression of regrets in a case of serious lapse.

13. Right of Reply: 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.

14. Obscenity and vulgarity to be eschewed: Newspapers/journalists shall not publish anything which is obscene, vulgar or offensive to public good taste. Newspapers shall not display advertisements which are vulgar or which, through depiction of a woman in nude or lewd posture. The globalisation and liberalisation do not give license to the media to **misuse freedom of the press and to lower the values of the society**. So far one of the duties of the media is to preserve and promote our cultural heritage and social values.

15. Photo Coverage on Terrorist Attack, Communal Clashes and Accidents: While reporting news with regard to terrorist attacks or communal riots, the media should refrain from publishing/telecasting pictures of mangled corpses or any other photographic coverage which may create terror, or revulsion (distaste) or ignite communal excitement among people. It shall avoid presenting acts of violence, armed robberies and terrorist activities in a manner that glorifies their acts.

16. Caste, religion or community references:

In general, the caste identification of a person or a particular class should be avoided. Newspapers are advised against the use of the word 'Scheduled Caste' or 'Harijan' which has been objected to by some. An accused or a victim shall not be described by his caste or community. Newspapers should not publish any fictional literature distorting and portraying the religious or well-known characters in an adverse light offending the vulnerability of large sections of society who hold those characters in high esteem. It is the duty of the newspaper to ensure that the tone, spirit and language of a write up are not objectionable, provocative, against the unity and integrity of the country.

16. Paramount national interest: Newspapers shall restraint **and caution** in presenting any news, comment or information which is

likely to jeopardize, endanger or harm the chief interests of the State and society. **Publication of wrong/incorrect map** is a very serious offense. It adversely affects the territorial integrity of the country and warrants prompt and prominent retraction with regrets.

18. Foreign Relations: Media plays a very important role in moulding public opinion and developing better understanding between countries. Objective reporting so as not to jeopardise friendly bilateral relations is therefore desirable though newspapers may expose misuse of diplomatic immunity.

20. Investigative journalism, its norms and parameters:

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. The investigative reporter should, as a rule, base his story on facts investigated, detected and verified by himself and **not on gossip or on imitative evidence** collected by a third party.

d. The investigative journalist should maintain a **proper balance** between openness and secrecy.

e. The tone of the report and its language should be sober, decent and dignified, and not needlessly offensive, barbed.

21. Confidence to be respected: If information is received from a confidential source, the confidence should be respected. 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 clarifies by way of an appropriate footnote that since the publication of certain matters was in the public interest.

22. Advertisements: Commercial advertisements are information as much as social, economic or political information. What is more, Journalistic respectability demands that advertisements must be clearly distinguishable from news content carried in the newspaper

23. Newspapers to avoid crass commercialism: While newspapers are entitled to ensure, improve or strengthen their financial viability by all **legitimate means**, the Press shall not engage in blundering commercialism

7.4 EDITORS' GUILD OF INDIA

The Editors Guild of India was established in 1977, soon after the Emergency, with the objectives of upholding the freedom of the Press and other mass media, striving for improvement of professional standards, safeguarding editorial independence and taking appropriate steps to implement and further these aims and objectives.

At present, it has over 200 members from national, regional and local newspapers, magazines and electronic media.

Shekhar Gupta is the present president of the guild.

The Editors Guild was founded in 1978 with the twin objectives of protecting press freedom and for raising the standards of editorial leadership of newspapers and magazines. Eminent editors of the day felt that the lack of an organized forum of editors was one of the reasons for the sustained suppression of press freedom during the Emergency. The Editors Guild took up the issues of abuse of press freedom with the Parliament and Executive, and campaigned hard for restoring the press freedom and other freedoms which had been taken away by amendments to the Constitution, executive orders and judicial pronouncements. The freedom to report proceedings of Parliament (Feroze Gandhi Act) which was taken away in 1976 was restored.

The Editors Guild continued to take up the threats to press freedom when the governments of Tamil Nadu and Bihar attempted to bring draconian defamation laws. Similarly, when the central government proposed an even harsher anti-defamation act in 1986, the Editors Guild led the nationwide protests which forced the executive to shun its plans.

In 2001 when the then government brought the Prevention of Terrorism Ordinance, it had provisions like preventive detention on basis of mere suspicion of journalists. The Editors Guild protested vigorously and ensured that when the ordinance was converted into an act of parliament, these threats to press freedom were not there.

The threats to media freedom from non-governmental sources have been resisted strongly by the Editors Guild, especially in militancy affected regions of North, East and North Eastern India's.

At the same time, the Editors Guild has been striving for improving standards of newspaper editors. It has brought a code of ethics of Editors. Whenever there are complaints from editors of harassment from those in authority, the Editors Guild investigates and recommends action to the concerned governments and institutions. When there were large-scale allegations of media bias during the Gujarat riots, the Editors Guild deputed a fact finding team to Gujarat, investigated the complaints, and circulated the findings widely.

7.5 PUBLIC RELATIONS SOCIETY OF INDIA (PRSI)

The national association of PR practitioners was established in 1958 to promote the recognition of public relations as a profession and to formulate and interpret to the public the objectives and the potentialities of public relations as a strategic management function.

The society functioned as an informal body till 1966 when it was registered under the Indian Societies Act XXVI of 1961, with headquarters in Mumbai. The father-figure of professional PR practitioners in India, Kali H. Mody, was the founder President of PRSI from 1966 to 1969.

7.5.1 Major Objectives of Public Relations Society of India (PRSI).

The following were PRSI's key objectives adopted in the memorandum of association:

- To promote Public Relations as a profession.
- To interpret to the public the understanding of the objectives, potentialities and functions of the Public Relations personnel.
- To promote and strive to maintain high standards among the Public Relations practitioners.
- To exchange ideas, experiences and information's on the value of the public Relations practitioners.
- To promote the study and research in Public Relations.

7.5.2 Membership

Anybody, "who devotes the whole or a major portion of his time to the practice of Public Relations" can be a member of the society. With an objective to involve companies, institutions and associations, a special category of corporate members was created. To encourage a larger participation in the PR activity, it also enrolls non-voting members in the "associate and student" category. The society has 20 regional chapters and its membership strength in all categories is more than 2500.

7.5.3 PRSI Organization.

The PRSI has a two-tier structure. It has the National Council at the Center as well as the Regional Chapters at the grassroots levels. The Regional Chapters enroll members, hold meetings and workshops and organize training programs. Each Professional Public Relations Chapter elects its own Chairman, Secretary and members of the executive committee. Each chapter runs under the overall guidance of the National Council.

The National Council elects its own President and other office-bearers. The National President is elected each year at the annual election meeting of the National Council. The National Council has three or more representatives of each chapter. The Chairman and the Secretary of each Chapter are members of the National Council. The National Council meets four times a year in different parts of the country. Often, the National Council meetings are followed by a national seminar hosted by a local Chapter. The National Council prepares guidelines for the Chapters. It also initiates activities relating to education and research and keeps close contact with the Government, Chambers of Commerce, Management Associations, Universities and other educational institutions.

7.5.4 Code of Ethics.

The PRSI adopted a code of ethics in its First All India Public Relations Conference, held in Delhi, in 1968. This Code was earlier adopted, in 1965, by the International Public Relations Associations at Athens, Greece. Thus, it is known as the “Code of Athens” among the world community of Public Relations. The Code is largely based on the United Nations Charter on Human Rights.

7.5.5 PRSI Conferences.

The PRSI had been organizing the All India Public Relations Conference every two years since 1968. In the 1980s, the conference was made an annual event to meet the aspirations of more Chapters wanting to host an All India Conference. The Conference brings in the major users of public relations to present the various uses of public relations in their own environment. Besides, it is an opportunity to educate its own members and members of the allied profession in the effective PR techniques.

Given below are two objectives of the conference:

1. It aims to introduce PR as a management discipline in non-user organizations.
2. It seeks to improve the professional ability of its own members by exposing them to the usage of public relations.

7.6 THE NEWS BROADCASTERS ASSOCIATION (NBA)

NBA represents the private television news & current affairs broadcasters. It is the collective voice of the news & current affairs broadcasters in India. It is an organization funded entirely by its members.

The NBA has presently 29 leading news and current affairs broadcasters (comprising 79 news and current affairs channels) as its members. The NBA presents a unified and credible voice before the Government, on matters that affect the growing industry.

The Office Bearers of NBA for the year 2019-20 are:

1. Mr. Rajat Sharma – President (Chairman & Editor-in-Chief (India TV) – Independent News Service Pvt. Ltd.)
2. Mr. I. Venkat - Vice President (Director - Eenadu Television Pvt. Ltd.)
3. Mrs. Anuradha Prasad Shukla – Honorary Treasurer (Chairperson-cum-Managing Director, News24 Broadcast India Ltd.)

7.7 ADVERTISING STANDARDS COUNCIL OF INDIA (ASCI)

In India, as in several advanced economies, there is only one body for Self-Regulation in Advertising – the ASCI, which is concerned with safeguarding the interests of consumers whilst monitoring/guiding the commercial communications of Practitioners in Advertising on behalf of

advertisers, for advertisements carried by the Media, in their endeavours to influence buying decisions of the Consuming Public.

The Advertising Standards Council of India (ASCI) established in 1985 is a voluntary self-regulatory council, registered as a not-for-profit Company under section 25 of the Indian Cos. Act with the objective of ensuring that all advertising should be legal, decent, honest and truthful along with a sense of social responsibility to the consumer and to the rules of fair competition.

The sponsors of the ASCI, who are its principal members, are firms of considerable repute within industries in India, which comprise advertisers, media, and advertising agencies and other professional or ancillary services connected with advertising practice. The ASCI is not a Government body, nor does it formulate rules for the public or for the relevant industries.

It has adopted a Code for Self-Regulation in Advertising. It is a commitment to honest advertising and to fair competition in the market-place. It stands for the protection of the legitimate interests of consumers and all concerned with advertising – advertisers, media, advertising agencies and others who help in the creation or placement of advertisements. As the Code becomes increasingly accepted and observed pro-actively, three things will begin to happen.

- i. Fewer false, misleading claims
- ii. Fewer unfair advertisements
- iii. Increasing respectability

This only means more freedom for an agency to practise their craft or carry on their business effectively. As a member of ASCI, one can mould the course of Self-Regulation and participate in the protection of healthy, effective advertising. One can have a say, through the Board of Governors, in the further development of the Code and future appointments to the Consumer Complaints Council (CCC). Membership of the ASCI (open only to Firms) entitles one to appoint a nominee to discharge one's function as a member, including standing for election to the Board of Governors and voting at general meetings.

ASCI encourages the public to complain against advertisements which they consider to be false, misleading, offensive or unfair. All of these complaints are evaluated by an independent Consumer Complaints Council (CCC).

7.7.1 Objectives of ASCI:

The main objects to be pursued by the Company on its incorporation are: To monitor, administer and promote standards of advertising practices in India with a view to.

- i. Ensuring the truthfulness and honesty of representations and claims made through advertising and safeguarding against misleading advertising.
- ii. Ensuring that Advertising is not offensive to generally accepted norms and standards of public decency.

- iii. Safeguarding against the indiscriminate use of advertising for the promotion of products or services, which are generally regarded as hazardous to society or to individuals or which are unacceptable to society as a whole.
- iv. Ensuring that advertisements observe fairness in competition and the canons of generally accepted competitive behaviour.
- v. To codify, adopt and from time to time modify the code of advertising practices in India and implement, administer and promote and publicize such a code.
- vi. To provide facilities and machinery in the form of one or more Consumer Complaints Councils having such composition and with such powers as may be prescribed from time to time to examine complaints against advertisements in terms of the Code of Advertising practices and report thereon.
- vii. To give wide publicity to the Code and seek adherence to it of as many as possible of those engaged in advertising.
- viii. To print and publish pamphlets, leaflets, circulars or other literature or material that may be considered desirable for the promotion of or carrying out of the objects of the Company and disseminate it through any medium of communication.

7.7.2 Consumer Complaints Council:

The Board of Governors shall appoint Consumer Complaints Council, the number of members of which shall not be more than twenty one. Out of these 21 members, 12 are from civil society and nine from advertising practitioners. The CCC decides upon the complaints within a period of 4 to 6 weeks.

The Consumer Complaints Council shall examine and investigate the complaints received from the consumers and the general public, including the members of the Company, regarding any breach of the Code of Conduct and/or advertising ethics and recommend the action to be taken in that regard.

7.7.3 Power of the Consumer Complaints Council:

- i. Each Council shall be entitled to receive complaints from the Board of Governors, the Consumers, the general public and members of the Company.
- ii. Each Council shall enquire, investigate and decide upon the complaints received by it within the framework of the Code of Conduct adopted by the Company.
- iii. All the decisions of each Council shall be by simple majority, in writing and may specify the action to be taken in respect of the offending advertisement.

ASCI propagates its Code and a sense of responsibility for its observance amongst advertisers, advertising agencies and others connected with the creation of advertisements, and the media.

ASCI encourages the public to **COMPLAIN** against advertisements with which they may be unhappy for any reason and ensures that each complaint receives a prompt and objective consideration by an impartial committee Consumer Complaints Council (CCC) which takes into account the viewpoint of the advertiser, and an appropriate decision is communicated to all concerned. ASCI endeavours to achieve compliance with its decisions through reasoned persuasion and the power of public opinion.

The Role and Functioning of the ASCI & its Consumer Complaints Council (CCC) in dealing with complaints received from consumers and industry, against ads which are considered as false, misleading, indecent, illegal, leading to unsafe practices, or unfair to competition, and consequently in contravention of the ASCI code for self-regulation in advertising.

If an ad is to be reviewed for its likely impact on the sensibilities of individual viewers of TV, or readers of press publications, it is required to convey to the advertiser concerned, the substantial issues raised in the complaint, in the exact context of the specific ad, as conveyed by the perception of the complainant, and to elicit the appropriate response by way of comments from the advertiser.

Only then will the CCC of the ASCI, be in a position to deliberate meaningfully on the issues involved, and to arrive at a fair and objective conclusion, which would stand the scrutiny of all concerned with the right to freedom of expression, and the freedom of consumers to choose the products /services made available to them in the marketplace.

For this it is required to have a clearly readable copy or clipping of the ad under complaint, with full particulars of name and date of publication, or a printout of an ad or promotion on a website or in case of a T.V. Commercial (TVC), the channel, date and time or programme of airing, and a description of the contents of the TVC, along with a hard copy of the complete complaint preferably signed by the complainant.

The ASCI receives and processes complaints against ads, from a cross section of consumers, the general public and Industry, in the interests of all those who rely on advertising as a commercial communication, and this covers individuals, practitioners in advertising, advertiser firms, media, ad agencies, and ancillary services connected with advertising. As a policy ASCI does not disclose the identity of the complainant to the advertiser.

In the case of complaints which were upheld by the CCC during the past year, over 80% of such ads have been withdrawn or modified appropriately by the advertisers or ad agencies involved, and the concerned media have also confirmed that they would not carry such offending ads/TVC.

ASCI's Mission:

ASCI has one overarching goal- to maintain and enhance the public's confidence in advertising. ASCI seeks to ensure that advertisements

conform to its Code for Self-Regulation which requires advertisements to be:

- i. Truthful and fair to consumers and competitors.
- ii. Within the bounds of generally accepted standards of public decency and propriety.
- iii. Not used indiscriminately for the promotion of products, hazardous or harmful to society or to individuals particularly minors, to a degree unacceptable to society at large.

The Advertising Standards Council of India (ASCI) became more powerful after a recent Government notification in The Gazette of India: Extraordinary {Part II – sec. 3(i)}, on 2 August 2006 by which TV commercials must abide by the Advertising Standards Council of India (ASCI) code. The amendment made in Cable Television ‘Networks (Amendment) Rules, 2006 now states that “(9) No advertisement which violates the Code for Self-Regulation in Advertising, as adopted by the Advertising Standards Council of India (ASCI), Mumbai for public exhibition in India, from time to time, shall be carried in the cable service”. Recent statistics suggest that as many as 85 per cent of the complaints were upheld against TV advertisement. ASCI has now sought the support of the associations concerned such as Indian Broadcasting Foundation (IBF) to persuade TV channels to adhere to ASCI’s code as well as implement the decisions of its CCC in this regard. Many of the advertisers/channels have confirmed in writing to have forthwith complied with the decisions of CCC, either by withdrawing or modifying appropriately the subject advertisements.

7.10 CHECK YOUR PROGRESS

1. When was the Press Council of India first set up?
2. Who is the chairman of the Press Council of India?
The Press Council helps the newspaper to maintain the independence. True or False?
3. The Press Council builds a code of conduct for the newspapers in accordance with the high professional standards. True or False?
When was the Editors’ Guild of India established?
4. Who is the present president of the guild?
When was the Public Relations Society of India PRSI founded?
5. Who was the founder President of PRSI from 1966 to 1969?
6. When was the Advertising Standards Council of India (ASCI) established?
7. ASCI encourages the public to complain against advertisements which they consider to be false, misleading, offensive or unfair. True or False?

7.11 KEY WORDS

Watchdog Journalism	Watchdog journalism is a form of investigative journalism where the author or the publisher fact-checks and interviews political figures and authorities, thereby verifying the validity of their actions and statements.
Editorial	A newspaper article expressing the editor's opinion on a topical issue.
Advertising:	The activity or profession of producing advertisements for commercial products or services.

To sum it up

1. Press Council is a mechanism for the Press to regulate itself.
2. ASCI seeks to ensure that advertisements conform to its Code for Self-Regulation, which requires advertisements to be legal, decent, honest and truthful and not hazardous or harmful while observing fairness in competition.
3. The Public Relations Society of India formulates and interprets the objectives and the potentialities of public relations as a strategic management function to the public.
4. Media freedom from non-governmental sources has been resisted strongly by the Editors Guild

7.12 REFERENCES

Books:

1. Yadav, Shyampal, Journalism through RTI: Information Investigation Impact
2. Kashyap, S.C.(1995), Our Constitution', New Delhi: National Book Trust, India
3. Guha Thakurta, Paranjoy (2012), 'Media Ethics', New Delhi: Oxford University Press
- 4.. Basu D D (2007), 'commentary on the constitution of India', volume 2, 8th edition, Wadhwa and company, Nagpur
5. Bhasin, Lalit (2010) : "Media World and Law", New Delhi : Universal Law Publishing Co. Pvt. Ltd
6. Pathak Juhi, (2014) : "INTRODUCTION TO MEDIA LAWS AND ETHICS", New Delhi Shipra Publication

Online Reading

<http://presscouncil.nic.in/OldWebsite/history.htm>

<https://www.owlgen.in/write-a-brief-note-on-public-relations-society-of-india-prsi/>

<https://www.prsindia.org/tags/press-council-india>

<https://editorsguild.in/about-us/>

<http://www.ascionline.org/>

Videos

<https://www.youtube.com/watch?v=KdrUnd7R9xY>

<https://www.youtube.com/watch?v=U9S17WeTxug>

<https://www.youtube.com/watch?v=g2OXacsno0>

<https://www.youtube.com/channel/UCc1zUc3GvXbmXQeHZHsnjkA>

<https://www.youtube.com/watch?v=EdZ50I3Vozc>

:: STRUCTURE::**8.0 Introduction****8.1 Objectives****8.2 What Is Cyber Law?****8.3 Cybercrime and Cyber security****8.4 Categories of Cyber Crime****8.5 Cyber Law Trends****8.6 Cyber Law and Intellectual Property****8.7 Cyber Law Terms and Laws****8.8 Information Technology Act 2000****8.9 What Section 66A Says?****8.10 Check Your Progress****8.11 Key Words****8.12 References**

8.0 INTRODUCTION

Cybercrimes are increasing day by day. The cyber laws provide legal protections to people using the internet. This unit explains IT Act 2000 and its various provisions along with relevant cases.

8.1 OBJECTIVE

It is expected that this unit will help the learners in understanding Cyber law of India and various cases of IT Act 2000 in India.

8.2 WHAT IS CYBER LAW?

Cyber law is any law that applies to the internet and internet-related technologies. Cyber law is one of the newest areas of the legal system. This is because internet technology develops at such a rapid pace.

Cyber law provides legal protections to people using the internet. This includes both businesses and everyday citizens. Understanding cyber law is of the utmost importance to anyone who uses the internet. Cyber Law has also been referred to as the "law of the internet."

8.3 CYBERCRIME AND CYBERSECURITY

Areas that are related to cyber law include cybercrime and cybersecurity. With the right cybersecurity, businesses and people can protect themselves from cybercrime. Cybersecurity looks to address weaknesses in computers and networks. The International Cybersecurity Standard is known as ISO 27001.

Cybersecurity policy is focused on providing guidance to anyone that might be vulnerable to cybercrime. This includes businesses, individuals, and even the government. Many countries are looking for ways to promote cybersecurity and prevent cybercrime. For instance, the Indian government passed the Information Technology Act in 2000. The main goal of this law is to improve transmission of data over the internet while keeping it safe.

Information is another important way to improve cybersecurity. Businesses, for example, can improve cybersecurity by implementing the following practices:

- Offering training programs to employees.
- Hiring employees who are certified in cybersecurity.
- Being aware of new security threats.

Cybercrimes can be committed against governments, property, and people.

8.4 CATEGORIES OF CYBER CRIME

Generally, there are three major categories of cybercrimes that you need to know about. These categories include:

- **Crimes Against People.** While these crimes occur online, they affect the lives of actual people. Some of these crimes include cyber harassment and stalking, distribution of child pornography, various types of spoofing, credit card fraud, human trafficking, identity theft, and online related libel or slander.
- **Crimes Against Property.** Some online crimes happen against property, such as a computer or server. These crimes include DDOS attacks, hacking, virus transmission, cyber and typo squatting, computer vandalism, copyright infringement, and IPR violations.
- **Crimes Against Government.** When a cybercrime is committed against the government, it is considered an attack on that nation's sovereignty and an act of war. Cybercrimes against the government include hacking, accessing confidential information, cyber warfare, cyber terrorism, and pirated software.

8.5 CYBER LAW TRENDS

Cyber law is increasing in importance every single year. This is because cybercrime is increasing. To fight these crimes, there have been recent trends in cyber law. These trends include the following:

- New and more stringent regulations.
- Reinforcing current laws.
- Increased awareness of privacy issues.
- Cloud computing.
- How virtual currency might be vulnerable to crime.
- Usage of data analytics.

Creating awareness of these issues will be a primary focus of governments and cyber law agencies in the very near future. India, for instance, funded cyber trend research projects in both 2013 and 2014. In addition, India held an international conference related to cyber law in 2014. This was meant to promote awareness and international cooperation.

8.6 CYBER LAW AND INTELLECTUAL PROPERTY

An important part of cyber law is intellectual property. Intellectual property can include areas like inventions, literature, music, and businesses. It now includes digital items that are offered over the internet. IP rights related to cyber law generally fall into the following categories:

- **Copyright.** This is the main form of IP cyber law. Copyrights provide protection to almost any piece of IP you can transmit over the internet. This can include books, music, movies, blogs, and much more.
- **Patents.** Patents are generally used to protect an invention. These are used on the internet for two main reasons. The first is for new software. The second is for new online business methods.
- **Trademarks/Service Marks.** Trademarks and service marks are used the same online as they are in the real world. Trademarks will be used for websites. Service marks are used for websites that provide services.
- **Trade Secrets.** Trade secret laws are used to protect multiple forms of IP. This includes formulas, patterns, and processes. Online businesses can use trade secret protections for many reasons. However, it does not prevent reverse engineering.
- **Domain Disputes.** This is related to trademarks. Specifically, domain disputes are about who owns a web address. For instance, the person who runs a website may not be the person who owns it. Additionally, because domains are cheap, some people buy multiple domains hoping for a big payday.
- **Contracts.** Most people don't think contracts apply online. This is not the case. For example, when you register for a website, you usually have to agree to terms of service. This is a contract.

- **Privacy.** Online businesses are required to protect their customer's privacy. The specific law can depend on your industry. These laws become more important as more and more information is transmitted over the internet.
- **Employment.** Some employee contract terms are linked to cyber law. This is especially true with non-disclosure and non-compete clauses. These two clauses are now often written to include the internet. It can also include how employees use their company email or other digital resources.
- **Defamation.** Slander and libel law has also needed updating because of the internet. Proving defamation was not altered substantially, but it now includes the internet.
- **Data Retention.** Handling data is a primary concern in the internet age. An area where this has become a big issue is in terms of litigation. In lawsuits, it is now common to request electronic records and physical records. However, there are no current laws that require keeping electronic records forever. This is not true for physical records.
- **Jurisdiction.** Jurisdiction is a key part of court cases. Cybercrime has complicated this issue. If a cybercriminal is located in Minnesota and their victim is located in North Carolina, which state has jurisdiction? Different states have different rules about this issue. Also, it can depend on in what court, federal or state, a case was filed.

Protecting IP can be difficult over the internet. An example of this would be the popularity of pirated movies and music. Each business that relies on the internet needs to develop strategies for protecting their IP. Governments can also take part in this process. In 1999, India did just this by updating their IP laws.

8.7 CYBER LAW TERMS AND LAWS

There are three main terms that people need to know related to cyber law.:

1. **Information Technology Law.** These laws refer to digital information. It describes how this information is gathered, stored, and transmitted.
2. **Cyber Law/Internet Law.** These laws cover usage of the internet. This is a newer legal area. Many laws can be undefined and vague.
3. **Computer Law.** This covers a large legal area. It includes both the internet and laws related to computer IP.

There have been many countries that have tried to fight cybercrime with cyber laws:

- **Computer Misuse Act 1990 (Great Britain).** This law is mostly focused on data and computer systems. It includes three sections. Section 1 focuses on the unauthorized use of a computer (hacking). Section 2 covers situations where a Section 1 violation

has occurred and further offenses are likely. Section 3 is for when a computer is altered illegally. This is usually due to a virus or denial of service act.

- **IT Act of 2000 (India).** This act is focused on information technology. This law both outlines offenses like hacking and trojan attacks, as well as possible solutions. One section outlines the use of digital signatures to improve cybersecurity. Some offenses can compound. This increases their potential punishment.
- **The Middle East and Asia.** Countries across these regions use combinations of cyber laws. In certain countries, these laws are used to prevent citizens from accessing certain information.

Other laws related to cyber law that have been passed by countries around the world include electronic signature laws, information technology guidelines, and information technology laws.

8.8 INFORMATION TECHNOLOGY ACT 2000

The Genesis of IT legislation in India: Mid 90's saw an impetus in globalization and computerisation, with more and more nations computerizing their governance, and e-commerce seeing enormous growth. Until then, most of international trade and transactions were done through documents being transmitted through post and by telex only. Evidence and records, until then, were predominantly paper evidence and paper records or other forms of hard-copies only. With much of international trade being done through electronic communication and with email gaining momentum, an urgent and imminent need was felt for recognizing electronic records i.e. the data that is stored in a computer or an external storage attached thereto. The United Nations Commission on International Trade Law (UNCITRAL) adopted the Model Law on e-commerce in 1996. The General Assembly of United Nations passed a resolution in January 1997 inter alia, recommending all States in the UN to give favorable considerations to the said Model Law, which provides for recognition to electronic records and according it the same treatment like a paper communication and record. Objectives of I.T. legislation in India: . It is against this background the Government of India enacted its Information Technology Act 2000 with the objectives as follows, stated in the preface to the Act itself. "to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involve the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies and further to amend the Indian Penal Code, the Indian Evidence Act, 1872, the Bankers' Books Evidence Act, 1891 and the Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto." The Information Technology Act, 2000, was thus passed as the Act No.21 of 2000, got President assent on 9 June and was made effective from 17 October 2000. The Act essentially deals with the following issues: Legal Recognition of

Electronic Documents Legal Recognition of Digital Signatures Offenses and Contraventions Justice Dispensation Systems for cyber crimes. Amendment Act 2008: Being the first legislation in the nation on technology, computers and ecommerce and e-communication, the Act was the subject of extensive debates, elaborate reviews and detailed criticisms, with one arm of the industry criticizing some sections of the Act to be draconian and other stating it is too diluted and lenient. There were some conspicuous omissions too resulting in the investigators relying more and more on the time-tested (one and half century-old) Indian Penal Code even in technology based cases with the I.T. Act also being referred to in the process and the reliance more on IPC rather on the ITA.

Salient Features of I.T Act

The salient features of the I.T Act are as follows –

- Digital signature has been replaced with electronic signature to make it a more technology neutral act.
- It elaborates on offenses, penalties, and breaches.
- It outlines the Justice Dispensation Systems for cyber-crimes.
- It defines in a new section that *cyber café is any facility from where the access to the internet is offered by any person in the ordinary course of business to the members of the public.*
- It provides for the constitution of the Cyber Regulations Advisory Committee.
- It is based on The Indian Penal Code, 1860, The Indian Evidence Act, 1872, The Bankers' Books Evidence Act, 1891, The Reserve Bank of India Act, 1934, etc.
- It adds a provision to Section 81, which states that the provisions of the Act shall have overriding effect. The provision states that *nothing contained in the Act shall restrict any person from exercising any right conferred under the Copyright Act, 1957.*

Most of these types of cybercrimes have been addressed by the IT ACT of 2000 and the IPC. Cybercrimes under the IT ACT include:

- Sec. 65, Tampering with Computer Source Documents.
- Sec. 66, Hacking Computer Systems and Data Alteration.
- Sec. 67, Publishing Obscene Information.
- Sec. 70, Unauthorized Access of Protected Systems.
- Sec. 72, Breach of Confidentiality and Privacy.
- Sec. 73, Publishing False Digital Signature Certificates.

Special Laws and Cybercrimes under the IPC include:

- Sending Threatening Messages by Email, Indian Penal Code (IPC) Sec. 503.
- Sending Defamatory Messages by Email, Indian Penal Code (IPC) Sec. 499
- Forgery of Electronic Records, Indian Penal Code (IPC) Sec. 463
- Bogus Websites & Cyber Fraud, Indian Penal Code (IPC) Sec. 420

- Email Spoofing, Indian Penal Code (IPC) Sec. 463
- Web-Jacking, Indian Penal Code (IPC) Sec. 383
- Email Abuse, Indian Penal Code (IPC) Sec. 500

There are also cybercrimes under the Special Acts, which include:

- Online Sale of Arms Under Arms Act, 1959
- Online Sale of Drugs Under Narcotic Drugs and Psychotropic Substances Act, 1985

(b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device,

(c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages, shall be punishable with imprisonment for a term which may extend to three years and with fine."

Section 66A provides punishment for sending offensive messages through communication services.

These messages may be any information created, transmitted or received on a computer system, resource or device including attachments in the form of...

- Text
- Images
- Audio
- Video
- Any other electronic record which may be transmitted with the message

The law targets messages that...

- Are grossly offensive or menacing
- Proffer false information intending to cause annoyance, inconvenience, intimidation, insult, obstruction, etc.,
- Are intended at deceiving the addressee about the origin of the message

The law was amended in 2008 and received Presidential assent on February 5, 2009.

Penalties, Compensation and Adjudication under Information Technology Act, 2000

Section 43: Where a person without the permission of owner or any other person-in-charge damage the Computer, or Computer System, or Computer Network, the he shall be liable for Penalty and Compensation to such person so affected.

Section 44: Where a person fails to furnish any document, return, report to the controller, or certifying authority, then he shall be liable to pay penalty upto **Rs.1,50,000/-** per failure. Further where a person fails to furnish any information, books or other documents within time specified, then he shall be liable to pay penalty upto **Rs.5,000/-** per day. Further

provided that where a person fails to maintain books of accounts or other records, then he shall be liable to pay penalty upto **Rs.10,000/-** per day.

Offenses under Information Technology Act, 2000

Section 65: Any person tamper, conceal, destroy, or alter any computer source document intentionally, then he shall be liable to pay penalty upto **Rs.2,00,000/-**, or Imprisonment upto **3 years**, or both.

Section 66: Any person dishonestly, or fraudulently does any act as referred in **Section 43**, then he shall be liable to pay penalty upto **Rs.5,00,000/-**, or Imprisonment upto **3 years**, or both.

Section 66B: Any person dishonestly, or fraudulently receives or retains any stolen computer resource or communication device, then he shall be liable to pay penalty upto **Rs.1,00,000/-**, or Imprisonment upto **3 years**, or both.

Section 66C: Any person dishonestly, or fraudulently make use of Electronic Signature, Password or any other Unique Identification Feature of any other person, then he shall be liable to pay penalty upto **Rs.1,00,000/-**, or Imprisonment upto **3 years**, or both.

Section 66D: Any person dishonestly, or fraudulently by means of any communication device or computer resource cheats by personating, then he shall be liable to pay penalty upto **Rs.1,00,000/-**, or Imprisonment upto **3 years**, or both.

Section 66E: Any person intentionally captures, publishes, or transmits image of private area of any person without consent, then he shall be liable to pay penalty upto **Rs.2,00,000/-**, or Imprisonment upto **3 years**, or both.

Section 66F: Any person does any act electronically, or with use of computer with intent to threaten unity, integrity, security, or sovereignty of India, then he shall punishable with **Imprisonment for Life**.

Section 67: Any person publishes, or transmits in electronic form any material which appeals to prurient interest, or if its effect is such as to tend to deprave and corrupt persons who are likely to read, see, or hear matter contained in it, then he shall be liable to pay penalty upto **Rs.5,00,000/-**, or Imprisonment upto **3 years**, or both, And in the event of second or subsequent conviction, he shall be liable to pay penalty upto **Rs.10,00,000/-**, or Imprisonment upto **5 years**, or both.

Section 67A: Any person publishes, or transmits in electronic form any material which contains sexually explicit act, or conduct, then he shall be liable to pay penalty upto **Rs.10,00,000/-**, or Imprisonment upto **5 years**, or both, **And** in the event of second or subsequent conviction, he shall be liable to pay penalty upto **Rs.10,00,000/-**, or Imprisonment upto **7 years**, or both.

Section 68: The Controller may, by order, direct a Certifying Authority or any employee of such Authority to take such measures or cease carrying on such activities as specified in the order if those are necessary to ensure compliance with the provisions of this Act, rules or any regulations made thereunder and if any person who intentionally or

knowingly fails to comply with the order, then he shall be liable to pay penalty upto **Rs.1,00,000/-**, or Imprisonment upto **2 years**, or both.

Section 69: Where the Central Government or a State Government or any of its officers specially authorized by the Central Government or the State Government, as the case may be, in this behalf may, if satisfied that it is necessary or expedient so to do, in the interest of the sovereignty or integrity of India, defense of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offense relating to above or for investigation of any offense, it may with reasons to be recorded in writing, by order, direct any agency of the appropriate Government to intercept, monitor or decrypt or cause to be intercepted or monitored or decrypted any information generated, transmitted, received or stored in any computer resource, Any person who fails to comply with the order, then he shall be liable to Imprisonment of **7 years**, along with the **fine (amount of fine is not specified in the act)**.

Section 70: The appropriate Government may, by notification in the Official Gazette, declare any computer resource which directly or indirectly affects the facility of Critical Information Infrastructure, to be a protected system, Any person who fails to comply with the notification, then he shall be liable to Imprisonment of **10 years**, along with the **fine (amount of fine is not specified in the act)**.

Section 71: Whoever makes any misrepresentation to, or suppresses any material fact from the Controller or the Certifying Authority for obtaining any License or Electronic Signature Certificate, as the case may be, then he shall be liable to pay penalty upto **Rs.1,00,000/-**, or Imprisonment upto **2 years**, or both.

Section 72: If any person who 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, then he shall be liable to pay penalty upto **Rs.1,00,000/-**, or Imprisonment upto **2 years**, or both.

Section 72A: If any person who has secured access to any material containing personal information about another person, with the intent to cause or knowing that he is likely to cause wrongful loss or wrongful gain discloses, without the consent of the person concerned, or in breach of a lawful contract, then he shall be liable to pay penalty upto **Rs.5,00,000/-**, or Imprisonment upto **3 years**, or both.

Section 73: If any person publishes a Electronic Signature Certificate, or make it available to any other person with the knowledge that

- Certifying Authority has not issued it, or
- Subscriber has not accepted it, or
- Certificate has been revoked or suspended

then he shall be liable to pay penalty upto **Rs.1,00,000/-**, or Imprisonment upto **2 years**, or both.

Section 74: If any person knowingly creates, publishes, or otherwise makes available Electronic Signature Certificate for any fraudulent or unlawful purpose, then he shall be liable to pay penalty upto **Rs.1,00,000/-**, or Imprisonment upto **2 years**, or both.

Section 75: If any person have committed an offence, or contravention committed outside India, and if the act or conduct constituting the offence or contravention involves a computer, computer system or computer network located in India, then the **provisions of this Act shall apply also to any offence or contravention committed outside India** by any person **irrespective of his nationality**.

Section 76: Any computer, computer system, floppies, compact disks, tape drives, or any other accessories related thereto, in respect of which any provision of this Act, rules, orders, or regulations made thereunder has been, or is being contravened, shall be **liable to confiscation**. However, if it is proved that such resources were not used in committing fraud then only person in default will be **arrested**.

Section 66A of the Information Technology Act

The Information Technology Act, 2000 was amended in 2008. The amended Act which received the assent of the President on February 5, 2009, contains section 66A.

8.9 WHAT SECTION 66A SAYS?

What Section 66A says:

"Any person who sends, by means of a computer resource or a communication device

(a) any information that is grossly offensive or has menacing character; or
(b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device,

(c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages, shall be punishable with imprisonment for a term which may extend to three years and with fine."

Section 66A provides punishment for sending offensive messages through communication services.

These messages may be any information created, transmitted or received on a computer system, resource or device including attachments in the form of...

- Text
- Images
- Audio
- Video

- Any other electronic record which may be transmitted with the message
- The law targets messages that...
- Are grossly offensive or menacing
 - Proffer false information intending to cause annoyance, inconvenience, intimidation, insult, obstruction, etc.,
 - Are intended at deceiving the addressee about the origin of the message
- The law was amended in 2008 and received Presidential assent on February 5, 2009.

Explanation.— For the purpose of this section, terms “electronic mail” and “electronic mail message” means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, images, audio, video and any other electronic record, which may be transmitted with the message.

The original Act contained 94 sections, divided into 13 chapters and 4 schedules. The laws apply to the whole of India. If a crime involves a computer or network located in India, persons of other nationalities can also be indicted under the law, ^[3]

The Act provides a legal framework for electronic governance by giving recognition to electronic records and digital signatures. It also defines cyber crimes and prescribes penalties for them. The Act directed the formation of a Controller of Certifying Authorities to regulate the issuance of digital signatures. It also established a Cyber Appellate Tribunal to resolve disputes rising from this new law.^[3] The Act also amended various sections of the Indian Penal Code, 1860, the Indian Evidence Act, 1872, the Banker's Book Evidence Act, 1891, and the Reserve Bank of India Act, 1934 to make them compliant with new technologies.

In November 2012, IPS officer Amitabh Thakur and his wife social activist Nutan Thakur, filed a petition in the Lucknow bench of the Allahabad High Court claiming that the Section 66A violated the freedom of speech guaranteed in the Article 19(1)(a) of the Constitution of India. They said that the section was vague and frequently misused.^[24] Also in November 2012, a Delhi-based law student, Shreya Singhal, filed a Public Interest Litigation (PIL) in the Supreme Court of India. She argued that the Section 66A was vaguely phrased, as a result it violated Article 14, 19 (1)(a) and Article 21 of the Constitution. The PIL was accepted on 29 November 2012.^{[25][26]} A similar petition was also filed by the founder of MouthShut.com, Faisal Farooqui,^[27] and NGO Common Cause represented by Prashant Bhushan^[28] In August 2014, the Supreme Court asked the central government to respond to petitions filed by Mouthshut.com and later petition filed by the Internet and Mobile Association of India (IAMAI) which claimed that the IT Act gave the government power to arbitrarily remove user-generated content.

Amendments

A major amendment was made in 2008. It introduced Section 66A which penalized sending "offensive messages". It also introduced Section 69, which gave authorities the power of "interception or monitoring or decryption of any information through any computer resource". Additionally, it introduced provisions addressing child porn, cyber terrorism and voyeurism. The amendment was passed on 22 December 2008 without any debate in Lok Sabha. The next day it was passed by the Rajya Sabha. It was signed into law by President Pratibha Patil, on 5 February 2009.

On 24 March 2015, the Supreme Court of India, gave the verdict that Section 66A is unconstitutional in entirety. The court said that Section 66A of IT Act 2000 is "arbitrarily, excessively and disproportionately invades the right of free speech" provided under Article 19(1) of the Constitution of India. But the Court turned down a plea to strike down sections 69A and 79 of the Act, which deal with the procedure and safeguards for blocking certain websites.

NOTABLE CASES

Section 66

- In February 2001, in one of the first cases, the Delhi police arrested two men running a web-hosting company. The company had shut down a website over non-payment of dues. The owner of the site had claimed that he had already paid and complained to the police. The Delhi police had charged the men for hacking under Section 66 of the IT Act and breach of trust under Section 408 of the Indian Penal Code. The two men had to spend 6 days in Tihar jail waiting for bail. Bhavin Turakhia, chief executive officer of directi.com, said that this interpretation of the law would be problematic for web-hosting companies.
- In February 2017, M/s VouchaGram India Pvt. Ltd, owner of Delhi based Ecommerce Portal www.gyft.com made a Complaint with Hauz Khas Police Station against some hackers from different cities accusing them for IT Act / Theft / Cheating / Misappropriation / Criminal Conspiracy / Criminal Breach of Trust / Cyber Crime of Hacking / Snooping / Tampering with Computer source documents and the Web Site and extending the threats of dire consequences to employees, as a result four hackers were arrested by South Delhi Police for Digital Shoplifting.

Section 66A

- Cartoonist Aseem Trivedi was charged by the cyber crime cell of the Mumbai Police with sedition under section 124 A of the Indian Penal Code, the Prevention of Insults to National Honour Act and section 66(A) of the IT Act on 9 September 2012, for

displaying cartoons that mocked Parliament and corruption on his website and Facebook page. Trivedi's cartoons purportedly depicted Parliament as a giant commode and showed the national emblem with wolves instead of lions. The caricatures were shared on other social media.

- In April 2012, the West Bengal government used Section 66A against a professor of Jadavpur University for circulating emails that mocked chief minister Mamata Banerjee. Ambikesh Mahapatra and his neighbor Subrata Sengupta were arrested for circulating a cartoon lampooning Banerjee that was based on a scene from Satyajit Ray's popular children's detective movie *Sonar Kella* (The Golden Fortress). The cartoon showed Banerjee pointing to the Indian Railways' logo and telling her partyman and railway minister Mukul Roy: 'See Mukul, the Golden Fortress.' To which Roy points to his predecessor Dinesh Trivedi and exclaims: 'That's an evil man!!!' At which Mamata says: 'Evil man, vanish!'
- A Puducherry-based businessman Ravi Srinivasan was arrested by local police following a complaint from former finance minister P. Chidambaram's son, Karti, for posting a tweet, which was critical of him. In his tweet on 20 October 2012, Srinivasan said, "got reports that Karti Chidambaram has amassed more wealth than Vadra." Robert Vadra is Congress president Sonia Gandhi's son-in-law. Nine days later, Srinivasan was arrested and charges were framed against him under Section 66A. The police sought Srinivasan's custody for 15 days, but the court declined the request.
- On 19 November 2012, a 21-year-old girl was arrested from Palghar for posting a message on Facebook criticising the shutdown in Mumbai for the funeral of Bal Thackeray. Another 20-year-old girl was arrested for "liking" the post. They were initially charged under Section 295A of the Indian Penal Code (hurting religious sentiments) and Section 66A of the IT Act. Later, Section 295A was replaced by Section 505(2) (promoting enmity between classes). A group of Shiv Sena workers vandalised a hospital run by the uncle of one of girls. On 31 January 2013, a local court dropped all charges against the girls.
- On 18 March 2015, a teenaged boy was arrested from Bareilly, Uttar Pradesh, for making a post on Facebook insulting politician Azam Khan. The post allegedly contained hate speech against a community and was falsely attributed to Azam Khan by the boy. He was charged under Section 66A of the IT Act, and Sections 153A (promoting enmity between different religions), 504 (intentional insult with intent to provoke breach of peace) and 505 (public mischief) of Indian Penal Code. After the Section 66A was repealed on 24 March, the state government said

that they would continue the prosecution under the remaining charges.

- In May 2012, the cyber crime cell of Mumbai police arrested two Air India cabin crew members, Mayank Mohan Sharma and K.V.J Rao under section 66(A) and 67 of the IT Act for allegedly posting indecent jokes about the prime minister and other politicians and for insulting the national flag. The men were commenting on a strike by Air India pilots. While they claimed to have merely circulated what was already present online, both spent 12 days in jail and were suspended from work till the charges were dropped.
- In May 2012, the cyber crime cell of Mumbai police arrested two Air India cabin crew members, Mayank Mohan Sharma and K.V.J Rao under section 66(A) and 67 of the IT Act for allegedly posting indecent jokes about the prime minister and other politicians and for insulting the national flag. The men were commenting on a strike by Air India pilots. While they claimed to have merely circulated what was already present online, both spent 12 days in jail and were suspended from work till the charges were dropped.
- In what is the most bizarre case of them all, in Ulhasnagar, Maharashtra, a boy was arrested in December 2012 for sending a cake to a girl's house with her picture on top of it. The parents registered a complaint claiming that he had stolen the picture from the girl's social media account and used it without authorization, thereby breaking the law.

Summary:

Cybercrimes are increasing day by day. The cyber laws provide legal protections to people using the internet. This unit explains IT Act 2000 and its various provisions along with relevant cases.

Learning Outcome:

The learners should be able to understand IT Act 2000 and its various provisions along with relevant cases.

Further Reading:

Books

1. 1 CYBER CRIMES &LAWS BY TAXMAN.
2. TECHNOLOGY LAW DECODED by N.S.NAPPINAI by LEXIS NEXIS.
3. "The Information technology Act, 2000- Bare Act- Professional Book Publishers, New Delhi."
4. Prasad T.V.R. Satya, : "Law Relating to Information Technology (Cyber Laws)" 1st edition 2001:- Asia Law House.

Online Reading

<https://cis-india.org/internet-governance/resources/section-66A-information-technology-act>

<http://www.mondaq.com/india/x/13430/IT+internet/Cyberlaw+In+India+The+Information+Technology+Act+2000+Some+Perspectives>

https://en.wikipedia.org/wiki/Information_Technology_Act,_2000

https://www.tutorialspoint.com/information_security_cyber_law/information_technology_act.htm

<https://cis-india.org/internet-governance/blog/section-66-a-information-technology-act-2000-cases>

<https://www.livemint.com/Politics/xnoW0mizd6RYbuBPY2WDnM/Six-cases-where-the-draconian-Section-66A-was-applied.html>

UNIT:9**CINEMATOGRAPH ACT, 1953****:: STRUCTURE::****9.0 Introduction****9.1 Objective****9.2 Censorship of Films In India****9.3 Cinematograph (Amendment) Bill, 2018****9.4 Abbreviated Key Points****9.5 Possible Drawbacks of the Bill, 2018****9.6 The Cinematograph Amendment Bill, 2019****9.7 Check Your Progress****9.8 Keywords****9.9 Reference**

9.0 INTRODUCTION

The unit deals with the censorship of films in India, Cinematograph Act and recent amendments made to it.

9.1 OBJECTIVE

It is expected that the unit will help the learners in understanding the Cinematograph Act, 1953 and amendments made to it.

9.2 CENSORSHIP OF FILMS IN INDIA

I. Introduction

Censorship is defined by the Oxford Dictionary as the '*prohibition or suppression of any part of the news, books, films, etc. that are considered politically unacceptable, obscene, or a threat to security.*' Films are considered an excellent medium of communication with the general public. The evolution of technology has brought a sea of change in the way films have been able to reach the public in every corner of India. Additionally, it has boosted the power of films to significantly contribute

to the cultural and social development of the country. Generally, Press and Films enjoy the same right and status as far as the constitution freedom related to expression and spreading of an idea is concerned. **Article 19(1)** of the *Constitution of India* guarantees freedom of speech and expression. Hence, both Press and Films are regulated under this provision. It is pertinent to note that the above right is not absolute and has certain limitations. Matters that are against foreign relations, public policy, integrity and sovereignty of the State, decency and morality, public order, etc. are certain limitations to the above, as mentioned in the **Article 19(2)** of the Constitution of India.

II Censorship of Films

The *Cinematograph Act, 1952* (the Act), ensures that films fulfil the objectives prescribed by law. In the Act is a provision for the establishment of a *Central Board of Film Certification* (the Board). This is the regulatory body in India that issues a certificate to the makers of films for public exhibition. Once the Board has examined a film, the Board can:

- Sanction the film for unrestricted exhibition;
- Sanction the film for public exhibition limited to adults;
- Direct such modifications and excisions in the film before sanctioning the film to any of the above;
- Refuse to sanction the film for exhibition completely.

One of the first cases where the issue of censorship of film was raised is *K A Abbas v Union of India*, where the Supreme Court of India considered the vital question related to pre-censorship of cinematography in relation to the freedom of speech and expression that is guaranteed under the Constitution of India. It was held by Hidayatullah, C.J, that censorship of films which includes pre-censorship was constitutionally lawful. Though, he added, that unjustified restriction on freedom of expression by the Board should not be exercised. In the case of *S. Rangrajan vs Jagjivan Ram*, Supreme Court faced a similar question, and was of the view that '*if the exhibition of the film could not be validly restricted under Article 19(2), risk of procession and demonstration was not a valid ground to suppress the same.*' The Supreme Court added that it was the State's duty to protect the freedom of expression. The Supreme Court of India in giving its judgment in the case of *Bobby Art International v Om Pal Singh Hoon* was of the opinion that, a film must be judged in its entirety. The court added that where the theme of the film is to condemn violence and degradation, scenes of expletives to advance the message, which was the main intention of the film, is permissible.

III Types of Certifications

There are mainly four kinds of certifications given by the Central Board of Film Certification:

1. Universal (U)

This type of certifications is the Unrestricted Public Exhibition, and the same holds no limitations for the age groups that may watch the same.

They could be family, educational or social oriented themes. This category has fantasy violence and minimal foul language. When a movie is being certified U by the Board, it must ensure that the movie is suitable for a family to watch it together including the children.

2. Parental Guidance (UA)

This type of certification explains that the film is appropriate for all age groups. However, it is in the interest of the children below the age of 12 to be accompanied by their parents. The reason could be that the theme of the movie may not be the most appropriate for the child without the guidance of their parents.

3. Adults Only (A)

As the certification suggests, this type of film is restricted to adults only. Persons above the age of 18 are adults, for the meaning of this certification. The theme may contain disturbing, violent, drug abuse and other related scenes which are not considered suitable for viewing by children who may be influenced by the same negatively. Films that meet the requisites of the abovementioned criteria but are not suitable for exhibition to children or those below the age of 18 shall be certified A.

4. Restricted to Special Class of Persons (S)

This is the last type of the certifications under the board, and the same explains that the films which are rated S are meant for a special class of persons only. For example, doctors. If the Board is of the opinion the with regards to content, nature and the theme of the film is to be restricted to members of a class of persons or any profession, the above certification shall be given to such film.

IV OBJECTIVES OF FILM CERTIFICATION

A. The main objectives of the Board for the above are as follows:

6. To ensure that the medium of the film is responsible. Additionally, to safeguard the sensitivity of standards and value of the society.
7. To ensure that creative freedom and expression are not unjustifiably curbed.
8. To ensure to adapt to the social changes.
9. To ensure the theme of the film provides a healthy and clean entertainment.
10. To ensure that the film is of cinematically an adequate standard and aesthetic value.

B. In pursuance of the above, the Board must ensure that:

1. Activities that anti-social such as violence are not justified or glorified;
2. The way criminals are depicted, and other related words or visuals must not incite the commission of any kind of offence;
3. The scenes showing ridicule and abuse of mentally and physically handicapped, cruelty or abuse of animals, involving children as victims of violence and abuse must not be presented needlessly;

4. Avoidable or pointless scenes of cruelty, horror and violence that are intended to provide entertainment but may have the effect of dehumanizing or desensitizing people are not shown;
5. Scenes that glorify or justify drinking are not shown;
6. Scenes that tend to justify, glamourize or encourage drug addiction are not shown. Additionally, similar scenes for the consumption of tobacco or smoking must not be shown;
7. Human susceptibilities are not offended by obscenity, vulgarity or obscenity;
8. Words with dual meanings that cater to dishonorable instincts are not used;
9. Scenes denigrating or degrading women in any manner is not shown;
10. Scenes that involve sexual violence against women in the form of rape or any other form of molestation are avoided. If the theme of the movie requires so, the same must be reduced to a minimum and no details are to be shown. The same goes for scenes that involve sexual perversion;
11. Words or visuals contemptuous of religious, racial or other groups must not be presented;
12. Words or visuals that promote obscurantist, communal, anti-national and anti-scientific attitude are not shown;
13. The integrity and sovereignty of the country is not called in question;
14. The security of the country is not endangered or jeopardized;
15. Relations with foreign states are not overwrought;
16. Public order is maintained, and not hindered;
17. Words or visuals involving defamation of a body or an individual, or contempt of court are not shown;
18. National emblems and symbols are not presented except according to the provisions of Emblems and Names (Prevention of Improper Use) Act, 1950 (12 of 1950).

C. The Board shall additionally ensure that a film:

1. Is judged as a whole from the perspective of its overall impact; and
2. Is inspected in the light of the period illustrated in the film along with contemporary standards of India and the people who the movie is related to, to ensure that the film does not corrupt the morality and ethics of the audience.

Applying to all of the above categories, the Board shall ensure the titles of each film is carefully scrutinized to ensure they are not vulgar, violating, provocative or offensive to the guidelines mentioned above.

V. CONSTITUTION of the Censor Board

The Board consists of a Chairman and non-official members, all of whom are appointed by the Central Government. It is headquartered in Mumbai,

Maharashtra. Additionally, it has nine Regional offices, namely, Chennai, Bangalore, Hyderabad, New Delhi, Guwahati, Cuttack, Kolkata and Thiruvananthapuram.

Regional Offices, as mentioned above, are assisted by the Advisory Panels. The Advisory Panels, like the Board, are selected by the Central government. The members chosen for the panel are from different walks of life, and they are chosen for a period of 2 years.

It has a two-tier jury system, the Examining Committee and the Revising Committee.

VI. Common Reasons for Censorship or Banning of a Film

In light of the history of why a film has been banned, or parts of it are censored, the main categories for why the same is done are as follows:

1. **Sexuality:** A rigid social structure has been followed in Indian society. Hence, a medium which portrays sexuality regardless of the audio, written or visual form, which has not been fathomed by the society and is concerned a social stigma is banned on the grounds that it might have the effect of undignified morals of Indians.
2. **Politics:** The isolation of political forces is not far when one talks about censorship. The description of an allegorical political scene, directly or indirectly, is banned by the authorized party to it. Overt political overtones are not appreciated by the government and hence is a common reason why certain films are either entirely banned, or such scenes are censored or removed.
3. **Communal Conflict:** Under a heterogeneous nation like India, if a film incites or spurs any type of communal conflict, the same is censored. The aim is to avoid the consequences such a film would have on the audience it intentionally or unintentionally targets. If the state believes that a movie would open a window for riots by a community for the way they have been portrayed in the film, the same is banned by the Board or censored.
4. **Incorrect Portrayal:** Sometimes, a situation arises where a well-known personality objects his own depiction in a medium which would be exhibited, and consequently goes for censoring the same. For more clarity, in a situation where the medium is of biographical nature, and the person on whom it is based does not approve the authenticity of the same, there have been times when the person has sued for the medium not to be released, or be edited and released upon approval of such person.
5. **Religion:** Religion does not appreciate any type of defiance or disobedience towards the values it proliferates. Hence, any medium which directly or indirectly distorts any aspect of the religion including its preaching, values, idols, to name a few, is highly criticized and therefore, censored.
6. **Extreme Violence:** Indubitably, the portrayal of extreme gore and violence may meddle and disturb the human mind. Viewing such scenes may have a negative psychological effect on the mind. If

the Board of a similar opinion that such a scene through any medium may have an underlying negative impact on the viewer, contrary to the entertainment or knowledge such scene tries to bestow, the same may be banned, edited or censored by the Board in public interest.

9.3 CINEMATOGRAPH (AMENDMENT) BILL, 2018

The present Cinematograph Act was enacted in the year 1952. Since then, the Cinema has undergone a radical change, the technology used in film making and even the choices and beliefs of the viewers have undergone a drastic change over the time. Owing to which, there is an imminent need to bring modifications in the law which will regulate, certify and license facets of this ever fluctuating and innovative art form.⁷ To strengthen the concept of artistic freedom and do away with outdated provisions impeding it, Shashi Tharoor, Congress MP introduced the *Cinematograph (Amendment) Bill, 2018* in the Parliament. The primary objective behind the Cinematograph Bill, 2018 is to safeguard the artistic freedom of the artists and filmmakers. The statement of Objects and reasons of the Cinematograph Bill, 2018 states that "the state may regulate artistic freedom only under the grounds enumerated under article 19(2) of the Constitution, not due to the disagreement with the content of the film.

Salient Features of the 2018 Bill:

The Cinematograph Bill, 2018 main aim is to curb the overriding power of the Central Government over CBFC, besides this there are several other changes which might prove to be in favor of the filmmakers. Some of the important features of the bill are:

2. Principles for Guidance in certifying Films

Section 5B of the present Act deals with principles for guidance in certifying films, the Bill provides for introduction of provision 5(B)(2) which states that the Board shall exercise its power to certify a film for public exhibition in accordance with the guidelines mentioned in Schedule I.

3. Central governments revisional powers

The very perilous or the most critical amendment proposed in the bill is omission of Section 6 of the present act. Section 6¹⁰ states that:

"The Central Government may of its own motion at any stage call for the record of any proceeding in relation to any film which is pending before or has been decided by the Board or the Tribunal and after enquiry may pass such order as it deems fit and the Board shall dispose of the matter in conformity with such order."

Besides this, the Section also gives power to the Central Government to direct that a 'certified film' be considered to be an 'uncertified film' and on the basis of this they have the power to restrict the display of the film for a maximum of two months.

It can be said that with the omission of the above mentioned provision CBFC would have the sole authority in sanctioning films for the public exhibition and the Government should not have unbridled powers to suspend the exhibition of films.

4. **Schedule I of the bill**

Part I: Objective of the Guidelines

It aimed at ensuring that children and adults are protected from potentially harmful or otherwise unsuitable content; Audiences, particularly parents and those with responsibility for children, are empowered to make informed viewing decisions; Artistic expression and creative freedom are not unduly curbed in the process of classification of films; The process of certification by Board is responsive, at all times, to social change.

Part II: Category of Certification of the films in

The following categories:

U- film suitable for all persons, regardless of age, and is often family friendly;

U/A 12+ – film suitable for persons above twelve years of age or for a person under the age of twelve with parental guidance;

U/A 15+ – film suitable for persons (adolescents) above fifteen years or for a person under the age of fifteen with parental guidance;

- film suitable for public exhibition, but restricted to adults;

C (A with Caution)- film restricted for adults with the specific purpose of cautioning them that it has more than a reasonable amount of content such as violence, sex, nudity, drugs and other related contents;

S-Film restricted to viewership by members of a profession or any class of persons, having regard to the nature, content and theme of the film.

Part III: General Guidelines for classification of films

These rules give general variables which may impact an order choice at any dimension and regarding any issue viz.

Context: Context in which an issue is exhibited inside a film or video will be given thought

Theme: To consider the theme of a work, however will depend altogether on the treatment of that topic, and particularly the affectability of its introduction.

Tone and Impact: Film ought to be made a judged completely from the perspective of its overall effect.

Target Audience: The arrangement of the film will likewise rely on the intended crowd of the work and the effect of such work on such crowd.

Part IV

Categorization Guidelines based on the parameters of discrimination, Psychotropic Substances, Liquor, Smoking, Tobacco, imitable behaviour, language, nudity, sex, fear, threat and horror and violence.

Part V- Classification of a Film by Board

In respect of the censorship and limitation of the role of CBFC in certifying films, few important points have been proposed in the Bill:-

1. Applicant needs to mention the targeted audience and the classification required while submitting the final cut to the board. Board to inform the Applicant of the likely classification the work will receive and reasons for such decision based on the guidelines.
2. If the applicant is of the view that that the particular classification given by the CBFC is not fit then he shall have the freedom to give effective changes in the film and again submit the same to the board to get the desirable category.
3. If the Board thinks that the film does not meet the requirement to merit classification under any of the categories, it can refuse to give the certification with reasons in writing for such a decision. The Board shall not propose or make any cuts, revisions or modifications to the film to meet any of the classification categories.
4. Due opportunity of being heard to be given to the applicant before an order of refusal of certificate is given. Provided that the applicant shall be given a period of fifteen days, from the date of communication of reasons, to respond and submit his argument in favour of the classification sought.

9.4 ABBREVIATED KEY POINTS

1. Remove the pre-censorship power of the CBFC
2. Restrict the Government's capacity to suspend films
3. Provide classification of confirmation of the film into U, UA 12+, UA 15+, A, C-A, S classifications.
4. Provide criteria for classification.
5. Omission of Section 4(1) (iii) of the present act which empowers the CBFC to direct the applicant to carry out excisions and modifications in the Film as it deems fit before the sanction of the film. Likewise, it seeks omission of Section 5C (1) (e) which grants similar powers to the Film Certification Appellate Tribunal.
6. Section 4 (3) is inserted with the implementation of a new bill which states that "No person apart from the Board shall sanction films for public exhibition".

Regardless of its deficiencies, the 2018 Bill is by all accounts a positive development looking to correct a portion of the age-old and obsolete arrangements of the 1952 Act. It is fascinating to get remarks from partners on their perspectives on the 2018 Bill and whether it has met desires.

9.5 POSSIBLE DRAWBACKS OF THE BILL, 2018

Film is a creative expression of thoughts, stories and opinions, in some cases enlivened by reality occasionally set to music, intended to entrance, interest, or just to entertain the gathering of people. There are only a few other modes of communication that can guarantee equal dimensions of unavoidable impact and nearness in our everyday lives. There is evidence in History that films have started off political

discussion and compromised governments, proclaimed social change making society go astray from age old doctrine and furthermore real life lovers to their death in their misplaced hope of emulating the classic romances.

In light of the above, it is absolutely unsafe for a state to surrender free speech with no limitation. For this reason we must ask how this freedom can and ought to be granted to each person so as to be consistent with the stability of the state. If a speech, book, painting or film might provoke or lead to large scale violence, bloodshed and anarchy, thereby threatening the survival or integrity of the State, perhaps it should not be allowed to circulate freely. In today's India, we believe our heroes to be absolutely perfect. One wonders of the question, whether this was always so? In ancient times, "*Yudhishtir*" and "*Ram*" were capable of deceit and divergent behavior and our ancestors were not surprised or angered to know. But now the situation is such that even on the mildest criticisms through cinema, book or play people get offended.

In a multi-religious society with a history of sectarian violence, artists and writers ought to show some sensitivity in depicting or describing religious icons. But one cannot honestly discuss the lives and legacies of real historical figures, it does not bode well for the health of our democracy. A big example of this was "*Padmavat*", "*Jodha Akbar*" which brought in various troubles with them. The 2018 bill as above discussed seeks to omit many such sections which give overriding power to the government to interfere in CBFC's decision but there is no doubt that too much liberty provided to the artists in some way or the other is going to be a chaotic decision.

The Supreme Court recently in the case of *Viacom 18 Media Private Limited and Ors. v. Union of India And Ors.* held that once an expert body has determined the maintainability of a film in view of its effect on public order, the states cannot refuse such a film for public exhibition on the grounds that it may imperil public order.

The power to refuse a film for public exhibition on the grounds of public order is conferred to the Central Board of Film Certification by virtue of Section 4(1)(iv) read with Section 5B of the Indian Cinematograph Act, 1952 (the act).

Section 4(1)(iv) allows for the refusal of certification of films while Section 5B reads:

“A film shall not be certified for public exhibition if, in the opinion of the authority competent to grant the certificate, the film or any part of it is against the interests of public order”.

A perusal of this provision makes it patent that it is *pari materia* with the restrictions on free speech espoused in Article 19(2) of the Constitution of India (the Constitution). The constitutionality of Section 5B was affirmed in the case of *K.A. Abbas v. Union of India*, wherein the court held:

“With this preliminary discussion we say that censorship in India (and pre-censorship is not different in quality) has full justification in the field of the exhibition of cinema films.”

It is, however, pertinent to note that the constitutionality of Section 5B was only affirmed in response to its incongruence with Article 19(1)(a) of the Constitution which guarantees free speech. In this piece, I shall attempt to explore the constitutionality of Section 5B in terms of the federal structure enshrined in the Constitution.

Seventh Schedule and its Interpretation

Under Article 246(3) of the Constitution, the State Legislature has exclusive power to make laws with respect to any of the matters enumerated in List II of the Seventh Schedule. Entries in the Seventh Schedule are not powers, but fields of legislation.

When the vires of an enactment is impugned, there is an initial presumption of its constitutionality and if there is any difficulty in ascertaining the limits of the legislative power, the difficulty must be resolved, as far as possible in favor of the Legislature putting the most liberal construction of the entry.

Although In the case of *State of West Bengal v. Committee for the Protection of Democratic Rights*, the Apex Court held “.....in a federal structure, the Union is not permitted to encroach upon the legislative powers of a State in respect of the matters specified in List II of the Seventh Schedule.”, in the same case it was also held that by virtue of the principle of federal supremacy where there is an irreconcilable conflict between the Union and State lists, the supremacy of the Parliamentary law will be adopted.

Public Order and the Act

In Entry 1, List II of the Seventh Schedule of the constitution, Public Order, except for the use of any force under the control of the Union, is a state subject. The state legislature is given the plenary authority to legislate on all matters or are necessary for the maintenance of public order.

Entry 60 of List I of the Seventh Schedule confers upon the union the power to certify cinematograph films for public exhibition. In the case of *State of Madras v. Gannon Dunkerley & Co.*, it was held that a matter mentioned in an entry is construed to cover all matters that are ancillary or subsidiary which can reasonably be said to be comprehended in it.

It is argued that the certification of cinematograph films is dependent on the effect these films have on public order and thus public order is ancillary to Entry 60 of List 1. Moreover, in the case of *Naga People’s Movement for Human Rights v. Union of India*, it was contended that the Armed Forces (Special Powers) Act, 1958 insofar as it allowed an officer to use force in the interests of public order, was an encroachment upon

Entry 1 of the State List, the Apex Court held that the act did not deal with public order. Public order falls within the realm of law and order. Further in a slew of cases where a State banned a film after the CBFC's clearance on account of law and order, the Apex Court has held that once an Expert Body (CBFC) has considered the impact of the film on the public and has cleared the film, it is no excuse to say that there may be a law and order situation. One can thus submit that in upholding the authority of the CBFC to certify films for public exhibition based on their purported effects on public order, the Apex Court has implicitly upheld the constitutionality of Section 5B of the act vis-à-vis the federal structure.

It is also pertinent to note that a law is unconstitutional on the grounds of legislating on a subject that is not assigned to the relevant legislature by the distribution of powers made by the Seventh Schedule. The Supreme Court is yet to come across a case that warrants its attention to the constitutionality of the impugned provision as regards its consistency with the federal structure enshrined in the Constitution. When so it is very unlikely that the provision would be struck down as unconstitutional owing to the precedents mentioned hereinabove that favour its constitutionality, however, it would be interesting to see what view the court would take.

9.6 THE CINEMATOGRAPH AMENDMENT BILL, 2019

The Salient features of the amendment bill are:

- The Amendment Bill makes Film Piracy offences punishable with imprisonment up to three years and fines that may extend to 10 lakh or both.
- The amendment clearly states that any person, who without the written authorisation of the copyright owner, uses any recording device to make or transmit a copy of a film, or attempts to do so, or abet the making or transmission of such a copy, will be liable for such a punishment.
- Section 7 of the original Cinematograph Act, 1952 deals with who can watch and exhibit which films and penalties for violating terms and conditions related to the exhibition of board-certified films. The amendment bill adds a new subsection (4) to section 7 of the Cinematograph Act, 1952 with the definition of piracy and the penal provisions for the same.

The Cinematograph Amendment Bill, 2019 aims to tackle film piracy by including the penal provisions for unauthorised camcording and duplication of films. The Bill when passed can build a credible deterrence which would increase industries revenues, boost job creation, fulfil important objectives of India's National Intellectual Property policy and will give relief against piracy and infringing content online. In order to tackle the menace of film piracy, the Amendment Bill also provide for:

- Insertion of new **Section 6 AA** for the prohibition of unauthorized recording

The following section shall be inserted after Section 6A of the Cinematograph Act, 1952.

6AA: "Notwithstanding any law for the time being in force, no person shall without the written authorization of the author be permitted to use any audio visual recording device to knowingly make or transmit or attempt to make or transmit or abet the making or transmission of a copy of a film or a part thereof."

**The expression author shall have the same meaning as assigned to it in the clause (d) of Section 2 of the Copyright Act of 1957.*

Furthermore there has been an amendment proposed in Section 7 to introduce Penal Provisions for violating provisions of Section 6 AA .In Section 7 of the principal Act, after sub-section 1 the following subsection (1A) shall be inserted:

"If any person contravenes the provisions of Section 6AA, he shall be punishable with an imprisonment for a term which may extend to 3 years or with fine which may extend to 10 lakh rupees or with both."

According to the law, No person shall be permitted without the written authorization of the author to use any audio visual recording device to knowingly make or transmit or attempt to make or transmit or abet the making or transmission of a copy of a film or a part thereof.

"There are penal provisions for unauthorized camcording and duplication of films", stated Union Minister Ravi Shankar Prasad in official press release. In light of these it is certain that there would be stricter norms in use of Smartphone, Google glasses and other such electronic devices in theaters.

According to a report by global solution provider in digital platform security and media and entertainment, Irdeto, the Indian media and entertainment sector loses \$2.8 billion of its annual revenue to piracy and India is one of the top five countries for peer-to-peer downloads.

Summary:

The *Cinematograph Act, 1952* (the Act), ensures that films fulfil the objectives prescribed by law. In the Act is a provision for the establishment of a *Central Board of Film Certification* (the Board). This is the regulatory body in India that issues a certificate to the makers of films for public exhibition.

9.8 KEY WORDS

Cinematograph	an apparatus for showing motion-picture films.
Censorship	the suppression or prohibition of any parts of books, films, news, etc. that are considered obscene, politically unacceptable, or a threat to security.

Censor Board	a statutory censorship and classification body under the Ministry of Information and Broadcasting, Government of India. It is tasked with "regulating the public exhibition of films under the provisions of the Cinematograph Act 1952."
Exhibition	a public display of works of art or items of interest, held in an art gallery or museum or at a trade fair.

Learning Outcome

The learners are expected to know the Cinematograph Act 1953 and amendments made to it with reference to Indian Film Industry and various cases.

9.9 REFERENCE

Books:

Basu, D.D. (1980) : "Law of Press in India", New Delhi : LexisNexis Buttersworths.

Bhasin, Lalit (2010) : "Media World and Law", New Delhi : Universal Law Publishing Co. Pvt. Ltd

Natarajan, S., (1962) : "A History of the Press in India", New Delhi : Asian Publisher House

Pathak Juhi, (2014) : "INTRODUCTION TO MEDIA LAWS AND ETHICS", New Delhi Shipra Publication

Online Reading

https://mib.gov.in/sites/default/files/Report_of_Expert_committee.pdf .

https://mib.gov.in/sites/default/files/Shyam_Benegal_committee_Report.pdf

https://mib.gov.in/sites/default/files/Report_of_Expert_committee.pdf

<https://www.medianama.com/wp-content/uploads/Cinematograph-amendment-bill-2018.pdf>

<http://iprmentlaw.com/2018/08/09/the-cinematograph-amendment-bill-2018-salient-features/>

The Cinematograph Act, 1952.

:: STRUCTURE::**10.0 Introduction****10.1 Objectives****10.2 The Constitution Stipulates three Types of emergencies****10.3 Indira Gandhi and the Pre-Emergency Period****10.4 National Emergency and Press Censorship****10.5 Indira's Methods of Press control****10.6 The Print Media's Response to the Emergency****10.7 Indira Gandhi and Free Press System of India****10.8 Restructuring the Mass Media: From Indira to Morarji****10.9 Check Your Progress****10.10 Keywords****10.11 References**

10.0 INTRODUCTION

The unit deals with the provision of emergency in the Indian constitution and how journalism was suppressed and suffocated during the Emergency imposed by Indira Gandhi.

10.1 OBJECTIVES

It is expected that the unit will help the learners in understanding the definition and types of Emergency and Indian constitution

The emergency provisions are contained in part XVIII of the constitution, from articles 352 to 360. National Emergency is mentioned in article 352 and president's rule is mentioned in article 356 of the Indian constitution. During an Emergency, the Central government becomes all powerful and the states go into the total control of the Centre. It converts the federal structure into a unitary one without a formal amendment of the Constitution.

10.2 THE CONSTITUTION STIPULATES THREE TYPES OF EMERGENCIES

A. National Emergency: An emergency due to war, external aggression or armed rebellion (Article 352). This is popularly known as ‘National Emergency’. However, the Constitution employs the expression ‘proclamation of emergency’ to denote an emergency of this type.

- If the president of the state is not satisfied that a grave emergency exists whereby the security of India or any part is threatened whether by war or external aggression or an armed rebellion, then he may proclaim a state of national emergency for the whole of India or a part of India.
- Such a proclamation of emergency may be revoked by the president subsequently.
- The proclamation of emergency made under article 352 may be subjected to the judicial review and its constitutionally can be questioned in a court of law on the grounds of malafide.
- The proclamation made must be approved by both the houses of parliament within one month after the proclamation.
- The effect of the proclamation of emergency is the emergence of the full-fledged Unitary Government.

B. State Emergency: An Emergency due to the failure of the constitutional machinery in the states (Article 356). This is popularly known as ‘President’s Rule’. It is also known by two other names—‘State Emergency’ or ‘constitutional Emergency’. However, the Constitution does not use the word ‘emergency’ for this situation.

- Article 356 provides that if the President, on receipt of a report from the Government of a state or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on by the provisions of the Constitution, the President may issue a proclamation.
- By that proclamation, the president may assume to himself all or any of the powers vested in the Governor and may declare that the powers of the legislature of the State shall be exercisable by the Parliament.
- The proclamation issued under Article 356 must be laid before each House of the Parliament. If the proclamation is not approved by both Houses, it will expire in two months.
- The Proclamation is so approved by Parliament (by simple majority) shall be in operation for six months. However, it may be revoked in between or extended further by the Parliament.

C. Financial Emergency due to a threat to the financial stability or credit of India (Article 360). This type of emergency is never proclaimed in India.

- Article 360 states that if the President is satisfied that a situation has arisen whereby the financial stability or the credit of India or any part thereof is threatened, the President may declare a state of financial emergency.
- During the period such Proclamation is in operation, the executive authority of the Union extends to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions, any such directions may also include:
 1. A provision required the reduction of salaries and allowances of all or any class of person serving a State or the Union.
 2. A provision requiring all Money Bills or other Financial Bills to be reserved for the consideration of the President after they are passed by the legislature of the State.
- A Proclamation issued under Article 360 will remain in force for two months unless before the expiry of the period it is approved by both the Houses of the Parliament.
- A proclamation issued under Article 360 will remain in force for two months unless before the expiry of the period it is approved by both the Houses of the Parliament.
- Once approved it remains in force till revoked by the President.
- No emergency under Article 360 has been issued so far.

10.3 INDIRA GANDHI AND THE PRE-EMERGENCY PERIOD

The success in the Bangladesh Liberation War elevated Mrs. Gandhi's clout and power in office. The power structure within the Congress party also changed. There was the rise of sycophancy, consolidation of the cult leader status for Mrs. Gandhi which was consequently followed by her intolerance to criticism. The "authoritarian streak" in Mrs. Gandhi's rule was also becoming apparent. But despite her triumph in the sphere of foreign policy and her omniscient status in the Indian political scenario, she could not rein in political dissent growing within the country. In 1973 in Gujarat a mass agitation sparked off over shortage of food and rise in food prices. The Nav Nirman movement led to the dissolution of the state legislature and imposition of President's rule in the state. When re-elections were conducted in June 1975, the Congress was defeated by an alliance of the opposition parties. In Bihar, in April 1974, Gandhian leader Jayaprakash Narayan, popularly known as JP threw his weight behind a student agitation against the Congress state government. His call for "total revolution" led to an agitated mass movement. The role and crusade of the JP against the existing political and social system needs to be discussed in a little detail here to understand the situation in the country just before the imposition of Emergency. The Congress found a real challenger in the form of Jayaprakash Narayan, popular as JP in the days after independence. JP was always critical of parliamentary democracy and advocated "party-

less democracy” which according to many was a vague concept and away from the political reality. His call for “Total Revolution” or “Sampoorna Kranti” was also an unclear and “nebulous” concept. As Bipan Chandra, Aditya Mukherjee and Mridula Mukherjee¹² observed “JP at no stage was able to explain what a political system without political parties would involve or how the popular will be expressed or implemented in it.” So though JP was an epitome of integrity, selflessness, sacrifice and champion of civil liberties and social order, his political ideals have been criticized as vague and ill-defined. Yet, arguably, the JP movement was one of the most noteworthy moments in India's political scenario since Independence. As JP drew on the enormous discontent prevalent in the country to force a nation-wide movement against Indira Gandhi, he came to represent the voice of opposition in an era when official opposition had all but disappeared¹³. He came to represent people fed up with three decades of corruption, misrule and ineptitude of the Congress. The main justification of the JP movement was to end corruption in Indian life and politics whose fountainhead was allegedly Indira Gandhi and to defend democracy which was endangered by her dictatorial personality and her authoritarian administrative style. JP often said that Indira Gandhi's continuation in office was “incompatible with the survival of democracy in India.¹⁴” The stage was set for an electoral confrontation between Mrs. Gandhi and JP in the parliamentary elections scheduled after a few months. But a court verdict on 12th June, 1975 changed the entire political situation. Justice Jagmohanlal Sinha of the Allahabad High Court hearing a petition of electoral malpractices convicted Mrs. Gandhi of indulging in corrupt campaigning practices in the parliamentary elections of 1971 and declared her election null and void. The conviction meant she could not hold on to the office of prime minister as well. JP and the opposition seized the occasion, accused her of “clinging to an office corruptly gained” and demanded her immediate resignation. In a rally in the national capital JP and his associates announced a nation-wide civil disobedience movement to force her resignation. In his speech JP asked people to make it impossible for the government to function and asked the armed forces, police personnel and the bureaucracy to refuse to obey orders they considered “illegal and unconstitutional”. Mrs. Gandhi's lightning response was to declare a state of Internal Emergency in the whole country on 26th June, 1975. It was the darkest hour for democracy in post-independent India.

10.4 NATIONAL EMERGENCY AND PRESS CENSORSHIP

During the Summer of 1975, as Indira Gandhi became increasingly more threatened by the mounting criticisms of her government, she declared a state of emergency. Immediately she took control of the press, prohibiting their reporting of all domestic and international news. The government expelled several foreign correspondents (mainly American and British) and withdrew accreditation from more than 40 Indian reporters who normally covered

the capital. In recent years, this has probably been the most important development in the life of the Indian press. From the very beginning of independent India, the Congress Party of India remained in power in one form or another until March 1977. At the inception of national independence, the country adopted democratic principles and pronounced India a democratic socialist nation. However, several incidents that occurred during Indira Gandhi's reign indicated that the country was drifting away from parliamentary democracy. The declaration of a national emergency, which is justified under the Indian Constitution, lasted for about 19 months. The emergency was declared as a result of mounting political pressure exerted upon the government from opposing political parties which were striving to fight corruption, inflation and economic chaos in the country. Indira Gandhi's government, rather than taking this as a political challenge, resorted to declaring a national emergency and imprisoning the opposition party leaders, including all dissenting voices from the media. The fundamental rights of the Indian people were suspended, and strict controls were imposed on freedom of speech and press. According to the Right of Freedom-Article 19(1) of the Indian Constitution, Indians have the right (a) to freedom of speech and expression, (b) to assemble peacefully and without arms, (c) to form associations or unions, (d) to move freely across the length and breadth of the country, (e) to reside or settle in any part of India, (f) to own or dispose of property, and (g) to carry on any lawful trade or occupation.' It is obvious that, unlike the American Constitution or others. In which freedom of the press is mentioned as one of the fundamental rights, the Indian Constitution doesn't specifically mention freedom of the press. However, the fundamental Rights Clause of the Indian Constitution treats freedom of the press as an integral part of the larger "freedom of expression." Based on the First Amendment Act of 1951, the Indian courts, in the past, have considered press freedom as a fundamental right. The second part of Article 19 of the Indian Constitution enumerates limitations on the various types of freedom. It mentions that the "states shall be authorized to make any law restricting the exercise of the freedom of speech in the interest of the security of the state, friendly relations with foreign countries, public order, and decency and good conduct."~ The states have also been authorized to restrict press freedom "in order to check slanderous articles and promotion of disaffection towards or contempt of court."~ Indira Gandhi's government use the "security of the state" and "promotion of disaffection" as its defense for imposing strict control on the press. And with the airwaves already under government ownership, Indira Gandhi successfully controlled the mass communication system in India for over a year and a half. During censorship, most of the nation's domestic dailies, however, gave up the battle for press freedom. Their pages were "filled with fawning accounts of national events, flattering pictures of Gandhi and her ambitious son, and not coincidentally, lucrative government advertising."~ But two tough, prominent publishers of English language dailies, The Indian

Express and The Statesman, fought courageously against Indira Gandhi's opposition of the Indian press. Despite some bold fights and stubborn stands taken up by these publishers, it was quite clear that Indira Gandhi had as strong a grip on the Indian press as she had on Indian politics, at least during the government-imposed emergency. India, a nation which had always cherished democratic principles and had admired Mahatma Gandhi's ideals of a democratic society, was quickly set on the road to dictatorship. For Mahatma Gandhi, freedom of the press was "a dear privilege." He urged the editors to express their ideas fearlessly: We must devise methods of circulating our ideas unless and until the whole press becomes fearless, defies consequences and publishes ideas, even when it is in disagreement with them, just for the purpose of securing that freedom ... It is a negation of one's calling for an editor to have suppressed his best thoughts. However, Indira Gandhi's call made editors suppress their best thoughts, and for the Indian mass media, freedom became a matter of history.

10.5 INDIRA'S METHODS OF PRESS CONTROL

Like other dictators in history, Indira Gandhi's first attempt was to impose "thought control" on the populous. For her, this was to be effectuated not merely by controlling the Indian mass media but also by moulding the media to her own purpose. It has now become a well-known fact that during the emergency Indira Gandhi had a firm grip on the Indian mass media. This was especially true since radio and television in India are government owned and operated; for Indira, there was the simple matter of controlling the newspapers in order to achieve a total control of the mass media. She used at least three methods in manipulating the newspapers: (1) allocation of government advertising; (2) shotgun merger of the news agencies; and (3) use of fear-arousal techniques on newspaper publishers, journalists and individual shareholders. The Indian newspapers depend a great deal on governmental advertising; without such revenues, it would be difficult for many Indian newspapers to stay in business. Unfortunately, this has kept many of them vulnerable to government manipulation. The large scale possibility of such manipulation, however, was not fully demonstrated until Indira Gandhi's government decided to take advantage of this unique circumstance. In the beginning of censorship, when a few leading newspapers such as The Indian Express and The Statesman refused to abide governmental censorship, the government withdrew its advertising support from these newspapers. Later on, this type of financial castigation was used on several other rebellious newspapers. The second and perhaps more profound way of manipulating the news flow resulted from the governmental decision to bring about a shot-gun merger of the four privately-owned Indian news agencies; the main purpose behind this merger was to alter the management and control of the Indian news agencies and thus to control much of the content of the leading newspapers. Since these agencies had been acting as the gatekeepers of

information, it was essential for Indira Gandhi and her Information and Broadcasting Minister, Mr. V.C. Shukla, to control the gatekeepers. To effect such a merger, the government carried through various successful tactics. First of all, pressure was put on the members of boards of these agencies. Then the financial squeeze was applied to the agencies themselves by withholding governmental subsidy. Thirdly, the government introduced the threat of cutting-off the teleprinter services, the lifelines of a news agency. For example, the government-owned Post and Telegraph Department ordered a suspension of services to the United News of India if it resisted the merger. The manipulation of these four news agencies was so effective that hardly a voice was raised to resist the governmental perfidity. Soon after this, Shukla reported to the Indian parliament that these four news agencies accepted the merger "voluntarily."~ A third and an equally effective method applied by Indira Gandhi was to use fear-arousal techniques on the newspaper publishers, editors, reporters and shareholders. Such techniques were imposed by making false charges with regard to tax arrears, possible reductions in newsprint quotas, imprisonment of publishers and their immediate families, threats of shutting down the press, and removal of governmental housing and other facilities for Delhi-based journalists. In any event, after 19 months of national emergency and the control of the mass media, Indira Gandhi became so confident of her continued success that she called for a parliamentary election in March of 1977. Simultaneously, she also removed press censorship. The results of the national election, however, turned out to be frustrating for Indira Gandhi, her son, as well as for some of her closest advisers. An overwhelming public outcry against the atrocities of Indira Gandhi's regime brought about a coalition government of several small political parties. The effects of the Desai government in regard to restoring freedom of the mass media in India will be discussed in the latter section of the paper.

10.6 THE PRINT MEDIA'S RESPONSE TO THE EMERGENCY

With freedom comes the responsibility to uphold that freedom under all circumstances. Sadly, during the Emergency, most of India's domestic dailies gave up the battle for Press freedom after the initial protest. For the first two days there was some semblance of opposition from some section of the print media. Blank editorials appeared as a gesture of protest. Official threats caused these to vanish in no time. Thereafter there was, by and large, meek submission to the drastic curtailment of Press and personal freedoms. As L K Advani famously said, "When Indira Gandhi asked the media to bend, it crawled." Their pages were "filled with fawning accounts of national events, flattering pictures of Mrs. Gandhi and her ambitious son, and not coincidentally, lucrative government advertising" 24 . The Hindustan Times, one of the leading English-language dailies, headed by Mr. K.K. Birla, a prominent Indian

industrialist became a strong supporter of the government during. The Times of India, one third of whose directors were government nominees, soon surrendered its independence and reflected the official line. Political cartoons disappeared overnight and no one dared put out any cartoon of Mrs. Gandhi which was unflattering. The Hindu, in south India, believed discretion to be the better part of valour and acted accordingly. There was support for Emergency from even journalists like Khushwant Singh, who at the time was the editor of "The Illustrated Weekly of India". He observed "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 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.²⁵ " The proprietors, owners and journalists had their own reason for supporting the Emergency. The Board of The Times of India, for example, decided that the paper would not oppose the Emergency, because whatever their opinion of the matter, the law was to be followed and this was the law at that point of time. A senior journalist of the paper Inder Malhotra stated "We cannot speak against it, it was decided, and as it was a privately owned paper, we had to follow suit. A few of us proposed that if we couldn't speak against it, we wouldn't support it either, and that was the final position the paper took²⁶ ." The content of the newspapers also reflected this sanitized and detached approach. "India's Sterile Press", referring to the sterilization drive of the Indira Gandhi government under the supervision of her son Sanjay Gandhi, was filled with ineffectual government handouts of the Ministry of Information and Broadcasting. Most of the reports were equivalent to government propaganda. L. K. Advani observed, "Following the censorship of the Press there was hardly any difference between one paper and another. They were all drab and dull, inane and insipid, mere reproductions of official handouts"²⁷ . Writer Gnani Sankaran who was then a reporter in the Indian Express, Chennai edition opined there was no other option with the newspapers. He wrote, "The Censor wanted to kill newspapers by delaying approvals. Along with letting pages go blank, sometimes innocuous and frivolous stuff like how to make onion raita (salad) had to be printed since political news could not be taken without consent."²⁸ These are certainly cases where the print media's journalistic and ethical standards fell through but at the same time there was very little in terms of content that the newspapers could print bypassing censorship strictures. It was the first time after Independence that pre-censorship on the Press had been imposed on the Indian Press. It implied the government would decide the news and information to be disseminated by the newspapers on all policies, programs and even individuals. So instead of the editors and journalists playing their role as independent watchdogs in the democratic system, the government became the 'gatekeeper' of all news. The

government issued the Central Censorship Order and Guidelines for the Press in the Emergency period. The Central Censorship Order imposed under rule 48 of the Defense of India Rules, 1971, addressed all printers, publishers and editors and prohibited the publication of news, comments, rumours or other reports relating to actions taken by the government without their first being submitted for scrutiny to an authorized government official (the Censor). In the initial days an official from the office the Chief Censor officer was sent to each daily newspaper in the evening²⁹ though later the process was discontinued for obvious logistic reasons. The strictures on the Press sometimes bordered on the ludicrous. Quotations of Rabindranath Tagore, Mahatma Gandhi and Jawaharlal Nehru were banned as they were used against British rule and now may be used out of context against the present government³⁰. Innocuous news' which had little to do with criticism against governmental action or measures were not allowed to be published like the black out of some unpleasant news about the criminal convictions of an actress and of some businessmen. The Censor's scissors were applied arbitrarily and in a few cases the decisions 'bordered on the farcical Of course there were some newspapers who protested tooth and nail against censorship during the Emergency besides many smaller, independent newspapers and journals like Himmat. The Indian Express and The Statesman, fought courageously against Indira Gandhi's dictum on the Indian Press³². The Indian Express Delhi edition on June 28, 1975 carried a blank first editorial and the Financial Express reproduced in large type Rabindranath Tagore's poem "where the mind is without fear and the head held high" concluding with the prayer "Into that heaven of freedom, my Father, let my country awake." A small fortnightly newsmagazine, India Today was launched in October 1975, right in the middle of the Emergency. In the two issues that came out after the declaration of Emergency, Himmat chose to leave its editorials blank. Thereafter, it decided to write until it was informed that it had violated some guidelines ³³. Despite some bold fights and stubborn stands by these print media it was clear that Indira Gandhi had as strong a grip on the Indian Press as she had on Indian politics, during the emergency. The surrendered media said the options available to newspapers and reporters during the Emergency were limited owing to the coercive methods applied by the government. Indu B. Singh has pointed out Mrs. Gandhi used three methods to manipulate the Press: (1) allocation of government advertising; (2) shotgun merger of the news agencies; and (3) use of fear-arousal techniques on newspaper publishers, journalists and individual shareholders³⁴. During the 1970s the Indian newspapers depended a great deal on governmental advertising. Without revenues from this head it was difficult for many Indian newspapers to stay in business. Unfortunately, this kept them vulnerable to government manipulation for years. While this remained a latent worry for the newspapers, the Indira Gandhi government made it evident that it is going to use this against newspapers. As if to reinstate its point the government at the beginning of the imposition of Press censorship,

withdrew its advertising support from The Indian Express and The Statesman when they refused to abide by the governmental censorship. As the emergency continued this kind of financial chastisement was used on other newspapers who failed to toe the government line. The second way that the Indira administration applied to control news flow to newspapers was the merger of the four privately-owned Indian news agencies, Press Trust of India (PTI) and United News of India (UNI) in English and the Samachar Bharti and Hindusthan Samachar in Hindi. The main purpose behind this merger was to alter the management of the Indian news agencies and control much of the content of the newspapers. As Singh pointed out, since these agencies had been acting as the gatekeepers of information, it was essential for Indira Gandhi to control the gatekeepers³⁵ and consequently become the gatekeepers. To effect such a merger, the government carried out several strong-arm tactics. First of all, pressure was put on the members of boards of these agencies. Then the financial squeeze was applied to the agencies themselves by withholding governmental subsidy. Thirdly, the government threatened to cut-off the tele-printer services, the lifeline of a news agency. The government-owned Post and Telegraph Department threatened to impose a suspension of services to the UNI if it resisted the merger. Chitra Kanungo³⁶ added the news agencies were threatened with non-payment of large arrears of subscription due to them by AIR unless they agreed to merge. It goes without saying that the government gained immense power by the merger of the news agencies. The third way in which Mrs. Gandhi's government held the Press with iron fist was direct reprisals if the Press ignored the threats and warnings of the government. There were false charges with regard to tax arrears, threats of reductions in newsprint quotas, imprisonment of publishers and their immediate families, threats of shutting down the Press, and removal of governmental housing and other facilities for Delhi-based journalists. Ramnath Goenka, the proprietor of the Indian Express described his ordeal thus, "The government, acting under the personal directions of Indira Gandhi, abused its authority and subverted lawful processes to liquidate me and my group of companies economically and made me an object of public ridicule and shame". It is widely known that within hours of the declaration of Emergency on the midnight of June 25, 1975, electric supply was cut down at Bahadurshah Zafar Road, the hub of newspapers in New Delhi to prevent the newspapers from printing the breaking news of proclamation of Emergency. Tavleen Singh, a journalist with The Statesman then has revealed how newspapers that were submitted to the censors at Press Information Bureau, New Delhi for 'pre-censorship' were returned so late at night they could be sold before 8 am in the morning, when there were hardly any takers for them. Marcus F. Franda observed Indira Gandhi's justification for the repression of the Indian mass media was based on three major assumptions. (1) economic productivity and social justice are more important than civil liberties and freedom of expression: (2) the Press in India was acting in a manner that

seriously hindered the state in its efforts to promote economic productivity and social justice; and (3) a drastic contraction of civil liberties and Press rights will advance the state's ability to promote those causes. Commenting on this rationale for Press censorship, Henry Hart⁴⁰ wrote: ... It is premature to pose a choice between freedom and economic justice before we know whether the immediate contraction of civil liberties and suspension of elections will further economic productivity and redistribution. This is a predictive question to which social scientists have their contributions to make. So Indira Gandhi's conclusion that suspending civil rights and press liberty will bring forth economic regeneration and growth was simply illogical. Besides these drastic steps the Indira Gandhi government resorted to several related strictures which affected the production and circulation of the print media. On the cut off of electricity service to the Delhi newspapers soon after the declaration of Emergency, the White Paper on the Misuse of Mass Media during the Emergency⁴¹ commented "Conscious that the implementation of censorship may take time, and in the meanwhile the Delhi papers at least may come out with screaming headlines about the cataclysmic events, the government resorted to blatant illegality. Power supply to newspapers (in Delhi) was cut off. According to Delhi Electric Supply Undertaking, oral instructions were received by them from the Lieutenant Government of Delhi that this be done. Most Delhi newspapers were, therefore, unable to bring out their editions on June 26, 1975." The ethical degradation of the Indira Gandhi government in the imposition of the emergency is obvious. But the response of the Press, the majority of it was unbecoming. Talking about the response of the print media in general to the emergency and pre censorship laws, one of the legal luminaries, Soli Sorabjee⁴² observed, "The first and most crucial round of battle for freedom of the Press and civil liberties was lost without a struggle in the first week after the emergency." The absurdity and illegality of the Censor's action was not lost on the newspapers and their editors but barring a valiant few the others were unwilling to challenge it in the court of law. This was unfortunate as contesting in the court of laws proved effective. In the Binod Rau V/S M R Masani case the Bombay High Court in April, 1976 ruled among other things, "if there is a right to praise either an individual or the government, there is equally a right to criticize the individual or the government." The fact of the matter was that fear had struck the print media. Editors were more interested in saving their jobs and printers did not want to risk forfeiture of their presses. This stance of the majority of the print media was thus disapproving. The clamour for Press freedom did not translate into a fight to stave off attack on Press freedom. Ghosh⁴⁴ wrote "At a meeting on June 26, 1975 Indira Gandhi laid down the broad policy in respect of media. At this meeting, it was proposed to abolish the Press Council, fuse the four news agencies into one, review the advertisement policy by the Directorate of Advertising and Visual Publicity (DAVP) with respect to newspapers, withdraw the housing facilities given to journalists and deport the foreign correspondents not

willing to fall in line.” Her despotic stance against the print media was ably implemented by Vidya Charan Shukla, handpicked by Sanjay Gandhi as the Information and Broadcasting minister. As the White Paper on Misuse of Mass Media during the Internal Emergency⁴⁵ underlined, “The press and films, otherwise outside the control of government were made to dance to the tune of the rulers by a set of draconian laws which reduced press freedom to naught and there was consistent abuse of authority in the matter of disbursing advertisement, allocation of newsprint and release of raw stock for films.” The enactment of the Prevention of Publication of Objectionable Matters Act, 1976 proved to be the death knell for Indian journalists. The Act empowered the government to prohibit publications on all grounds pertaining to Article 19 (2). Thus the Act effectively banned all media publicity to anti government criticism or protests against government policies. It also empowered competent authorities to confiscate or shut down printing presses or forfeit security deposits for printing “Objectionable matter” which of course included anything and everything. Most of the Press became apprehensive and restrained and maintained this stance throughout the Emergency period. The media was thus a fettered and dysfunctional institution DURING Emergency.

10.7 INDIRA GANDHI AND FREE PRESS SYSTEM OF INDIA

Since India achieved its independence from Great Britain in 1947, the country has struggled hard to maintain a free and lively press system. Some even believe that freedom of the press in India has steadily increased during the years following the achievement of independence. While referring to the lack of freedom in most of the third world countries, Francis Williams wrote that, except for India, the prospect for press freedom in most of Asia was bleak. “Others like Passin,” Grimes,* Rivett,” and Davison,¹⁴ have also praised the degree of freedom enjoyed by the Indian newspapers. Richard Nixon, in a 1969 study placed India among the top “three” along with Singapore, Malaya and Lebanon. Is India is the world's largest democracy. Therefore, any change in its press freedom can potentially exert a significant influence in other parts of the world. For example, according to a 1975 survey released by Freedom House, a non-profit organization, the percentage of the world's population living in societies with a free press declined from 35 to 19.8 percent in 1975. The principal reason for this decline was the imposition of press censorship in India on June 26, 1975. The report of this survey mentioned, “India's severe restrictions of press and civil rights reduced by 40 percent the number of people in the world living in a democratic society ... That decline represents the worst loss since the organization (Freedom House) began assessing political and civil liberty 24 years ago.”¹⁶ Indira Gandhi's repression of the Indian mass media didn't only reduce the number of people living in free societies but also strengthened

the existing trend of increasing governmental control of mass media in the countries of Asia, Africa and South America. "India was the last of the major poor nations of the world to succumb to this trend, having previously been a democratic island in a sea of authoritarian and military regimes." Indira Gandhi's justification for the repression of the Indian mass media was based on three major assumptions. (1) economic productivity and social justice are more important than civil liberties and freedom of expression; (2) the press in India was acting in a manner that seriously hindered the state in its efforts to promote economic productivity and social justice; and (3) a drastic contraction of civil liberties and press rights will advance the state's ability to promote those causes.¹⁸ Commenting on Indira Gandhi's rationale for press censorship, Henry Hart wrote: ... We do think it premature to pose a choice between freedom and economic justice before we know whether the immediate contraction of civil liberties and suspension of elections will further economic productivity and redistribution. This is a predictive question to which social scientists have their contributions to make.¹⁹ Indira Gandhi's action in this regard does raise an intriguing question. If the control of the press was so vital to creating a climate propitious for rapid economic development, then, why did she wait for over a decade to impose control on the press. Actually, a government White Paper that discussed misuse of mass media during the emergency provides a series of evidence contradicting Indira Gandhi's so-called efforts for enhancing growth and social justice. According to this report, some of the major reasons for imposing strict control on the Indian mass media was: to stamp out dissent; present the "positive picture" of Indira Gandhi; and build up her son, Sanjay Gandhi, as the great leader and her worthy successor.

10.8 RESTRUCTURING THE MASS MEDIA: FROM INDIRA TO MORARJI

Soon after the government of Prime Minister Morarji Desai (popularly known as "Janta Party" government) took over the political power in India, it announced three distinct steps toward restoring freedom of the Indian mass media. These were: (1) to establish a committee to study misuse of mass media during the internal emergency; (2) to establish a working group to study the question of converting All India Radio and Doordarshan (television) into autonomous institutions; and (3) to establish a committee to study the feasibility of restructuring the existing news agency (Samachar). On May 21, 1977, a one-man committee was established; the committee was headed by Mr. K.K. Das, a former secretary of the Ministry of Information and Broadcasting. The committee was asked to look into the following matters: misuse of censorship provisions; harassment of journalists; allegations in regard to certification of films; manipulation of mass media including news agencies; and other relevant matters. The Das committee's report, based

primarily on official records, was submitted to the government on June 22, 1977. The evidence presented in this report suggests strongly that Indira Gandhi's government made a widespread misuse of the mass media.² As mentioned earlier, radio and television in India are government owned and operated. Because of this, the broadcast media succumbed to Indira Gandhi's control much before the print media. A White Paper on Misuse of Mass Media indicates clearly that Indira Gandhi abused All India Radio and Doordarshan (television) for blatant partisan and personal ends mainly in order to crush dissent and promote personality cults.²² In pursuance of its election promise to free broadcast media from official tutelage, the Janta Party government appointed a 12-member working group headed by B.G. Verghese, a famous journalist, in August of 1977. The working group submitted its report to the government in June of 1978. It was recommended in this report that both radio and television broadcasting in India should be placed under a single autonomous corporation called National Broadcasting Trust (NBT) with a highly decentralized structure. The working group noted that the establishment of the trust should take place by an Act of Parliament, pending a constitutional amendment, to ensure the organization's autonomy and independence. The working group also proposed that a 12-member board of trustees should be placed at the apex of the National Broadcasting Trust. The trustees were to be appointed by the president on the recommendation to the prime minister from a list of names forwarded to him by a nominating panel consisting of the Chief Justice of India, the LokPal and the chairman of the Union Public Service Commission. In addition, a licensing board has also been proposed for issuing licenses to franchise stations, such as universities. The licenses would be issued for three years and would be renewable at the end of every three years. In order to ensure financial security and autonomy of the organization, the committee recommended that initially, the government should make up the revenue deficit for five years. Thereafter, the NBT should be self-sufficient (the committee doesn't make it very clear how NBT can become self-sufficient) or should raise additional resources by charging for broadcast time made available to various users, including the central and state government. It is interesting to note that the question of providing complete autonomy to the broadcast media in India was debated even before the last national emergency. About 13 years ago, when Mrs. Gandhi was the Information and Broadcasting Minister, a similar commission (known as Chanda Commission) was established to examine the problems of radio broadcasting in India and to make recommendations to the government. At that time also, Chanda Commission had recommended an autonomous corporation for All India Radio. However, no concrete action was taken on this recommendation.

The critics of the Indian mass media have maintained consistently that the broadcast media must be kept free from governmental influence. However, such need was not realized fully by the public at large until

Indira Gandhi's actions shattered the credibility of the broadcast media. It should be mentioned, however, that an autonomous corporation alone will not be a panacea; the broadcast media must be insured of true independence. It must be kept aloof from governmental intrusion and exploitation. A third and an important step taken by the Desai government in a wave to restore mass media freedom has been related to the restructuring of the only newsagency called Samachar. Through some shrewd political and economic maneuverability, Indira Gandhi's government merged the four privately-owned Indian news agencies. The main purpose of this merger for Indira Gandhi was to control the leading daily newspapers in India. These Indian newspapers, like the newspapers of other countries, were dependent upon the services provided by the four news agencies. The merger actually eliminated professional competition among news agencies and created an absolute monopoly by Samachar. In view of the monopolistic nature of Samachar, Desai's government appointed a 12-member committee on news agencies which was headed by Kuldip Nayar, a noted India journalist. The committee which submitted its report some time ago, has proposed two separate news agencies-Shandesh in English and varta in Hindi. These two news agencies would be carved out of Samachar. Varta has also been proposed to provide news services to India's several regional language newspapers. This proposal has suffered from some harsh criticism. The critics believe that the creation of two separate news agencies for two different language newspapers wouldn't encourage sufficient competition among the news agencies. In their views, there should be at least two news agencies within each language newspaper. It seems essential that the restructuring of Samachar must generate a sufficient amount of healthy competition among the news agencies. Therefore, Nayar's committee report does not fulfill the requirement for creating competitive news agencies. Taking into account the effects of the Desai government for remodeling the Indian mass media, it seems crystal clear that the government had embarked on some of the essential initial steps. However, these steps are still in their infancy. Thus, the task of creating a free and independent mass media system in India is yet to be accomplished.

Summary:

During the Summer of 1975, as Indira Gandhi became increasingly more threatened by the mounting criticisms of her government, she declared a state of emergency. Immediately she took control of the press, prohibiting their reporting of all domestic and international news. The government expelled several foreign correspondents (mainly American and British) and withdrew accreditation from more than 40 Indian reporters who normally covered the capital. In recent years, this has probably been the most important development in the life of the Indian press.

10.10 KEY WORDS

Emergency	an 18-month period from 1975 to 1977 when Prime Minister Indira Gandhi had a state of emergency declared across the country.
Freedom of Press	The principle that communication and expression through various media, including printed and electronic media, especially published materials, should be considered a right to be exercised freely.
Right to Information	is an act of the Parliament of India which sets out the rules and procedures regarding citizens' right to information.

Learning Outcome

The learners will understand how the emergency imposed by Indira Gandhi curbed the freedom of press in India.

10.11 REFERENCES

Books

- R.C. Aggarwala, The Constitutional History of India and National Movement (New Delhi: S. Chan & Co., 1964)
- S. Natrajan, A History of the Press in India (Bombay: Asia Publishing House, 1962)
- Government of India, White Paper on Misuse of Mass Media During the Internal Emergency (New Delhi: Jain Book Agency,

Online Reading

- https://en.wikipedia.org/wiki/State_of_Emergency_in_India
- <http://snschool.yolasite.com/resources/Indian%20media%20system%20during...pdf>
- <https://www.tandfonline.com/doi/abs/10.1080/00947679.2017.12059157>

:: STRUCTURE::**11.0 Introduction****11.1 Objectives****11.2 History of the Right to Information Act****11.3 What does the RTI Act do?****11.4 Who is included in the ambit of ‘Public Authorities’?****11.5 How is the Right to Information Enforced Under the Act?****11.6 What does the Right to Information (Amendment) Bill, 2019 propose?****11.7 Important Judgments on Right to Information****11.8 RTI can't be Denied on the Ground that Information sought is Irrelevant****11.9 Check Your Progress****11.10 Keywords****11.11 References**

11.0 INTRODUCTION

The unit deals with the significance of Right to Information in a democratic setup.

11.1 OBJECTIVE

It is expected that the unit will help the learners in understanding the Right to Information Act, 2005.

11.2 HISTORY OF THE RIGHT TO INFORMATION ACT

It has taken India 82 years to transition from an opaque system of governance, legitimized by the colonial Official Secrets Act, to one

where citizens can demand the right to information. The recent enactment of the Right to Information Act 2005 marks a significant shift for Indian democracy, for the greater the access of citizens to information, the greater will be the responsiveness of government to community needs.

Right To Information is derived from our fundamental right of freedom of speech and expression under Article 19 of the Constitution. If we do not have information on how our Government and Public Institutions function, we cannot express any informed opinion on it. Democracy revolves around the basic idea of Citizens being at the centre of governance. And the freedom of the press is an essential element for a democracy to function. It is thus obvious that the main reason for a free press is to ensure that Citizens are informed. Thus it clearly flows from this, that the Citizens Right To Know is paramount. The Act and its rules define a format for requisitioning information, a time period within which information must be provided, a method of giving the information, some charges for applying and some exemptions of information which will not be given.

The Right to Information (Amendment) Bill, 2019

11.3 WHAT DOES THE RTI ACT DO?

Under the RTI Act, 2005, Public Authorities are required to make disclosures on various aspects of their structure and functioning. This includes: (i) disclosure on their organisation, functions, and structure, (ii) powers and duties of its officers and employees, and (iii) financial information. The intent of such suo moto disclosures is that the public should need minimum recourse through the Act to obtain such information. If such information is not made available, citizens have the right to request it from the Authorities. This may include information in the form of documents, files, or electronic records under the control of the Public Authority. The intent behind the enactment of the Act is to promote transparency and accountability in the working of Public Authorities.

11.4 WHO IS INCLUDED IN THE AMBIT OF ‘PUBLIC AUTHORITIES’?

‘Public Authorities’ include bodies of self-government established under the Constitution, or under any law or government notification. For instance, these include Ministries, public sector undertakings, and regulators. It also includes any entities owned, controlled or substantially financed and non-government organizations substantially financed directly or indirectly by funds provided by the government.

11.5 HOW IS THE RIGHT TO INFORMATION ENFORCED UNDER THE ACT?

The Act has established a three tier structure for enforcing the right to information guaranteed under the Act.

Public Authorities designate some of their officers as Public Information Officers. The first request for information goes to Central/State Assistant Public Information Officer and Central/State Public Information Officer, designated by the Public Authorities. These Officers are required to provide information to an RTI applicant within 30 days of the request. Appeals from their decisions go to an Appellate Authority. Appeals against the order of the Appellate Authority go to the State Information Commission or the Central Information Commission. These Information Commissions consist of a Chief Information Commissioner, and up to 10 Information Commissioners.

11.6 WHAT DOES THE RIGHT TO INFORMATION (AMENDMENT) BILL, 2019 PROPOSE?

The Bill changes the terms and conditions of service of the CIC and Information Commissioners at the centre and in states. Table 1 below compares the provisions of the Act and the Bill.

Table 1: Comparison of the provisions of the Right to Information Act, 2005 and the Right to Information (Amendment) Bill, 2019

Provision	RTI Act, 2005	RTI (Amendment) Bill, 2019
Term	The Chief Information Commissioner (CIC) and Information Commissioners (ICs) (at the central and state level) will hold office for a term of five years.	The Bill removes this provision and states that the central government will notify the term of office for the CIC and the ICs.
Quantum of Salary	The salary of the CIC and ICs (at the central level) will be equivalent to the salary paid to the Chief Election Commissioner and Election Commissioners, respectively. Similarly, the salary of the CIC and ICs (at the state level) will be equivalent to the salary paid to the Election Commissioners and the Chief Secretary to the state government, respectively.	The Bill removes these provisions and states that the salaries, allowances, and other terms and conditions of service of the central and state CIC and ICs will be determined by the central government.
Deductions in Salary	The Act states that at the time of the appointment of the CIC and ICs (at the central and state level), if they are receiving pension or any other retirement benefits for previous	The Bill removes these provisions.

government service, their salaries will be reduced by an amount equal to the pension.

Previous government service includes service under: (i) the central government, (ii) state government, (iii) corporation established under a central or state law, and (iv) company owned or controlled by the central or state government.

Sources: Right to Information Act, 2005; Right to Information (Amendment) Bill, 2019; PRS.

1. How to File RTI?

Every Indian should know about RTI filing. The procedure to **File RTI** is simple and hassle-free.

- Write the application (or get it typed, your choice) on a paper in English/Hindi/the official language of the state. Some states have prescribed a format for RTI applications. Address it to the PIO (Public Information Officer) of the department concerned.
- Ask specific questions. See to it that they are clear and complete, and not confusing whatsoever.
- Write your full name, contact details and address, where you want the information/response to your RTI be sent.
- Take a photocopy of the application for your record. If you're sending the application by post, it's advisable to send it via registered post, as then you will have an acknowledgement of your request's delivery. If you're submitting the application to the PIO in person, remember to take an acknowledgement from him/her.

Some important points:

- The Act is so people-friendly that if an illiterate person approaches a PIO and wants some info under the RTI, he/she can tell his requirement to the PIO and the officer is obliged to write it down for them and read it to them before processing it.
- One need not write the application on a clean sheet of paper. Even a crumpled, old, torn piece of paper will do, so long as your written content on it is legible.
- Until the RTI Act empowered the common man to demand information from the government, only the members of Parliament had the privilege of seeking this information.
- If you are hesitant about sending your RTI application by post and can't take a day off work to catch hold of the PIO concerned, you can go to your post office and submit your application to the assistant PIO. The postal department has appointed many APIOs across its many offices. Their job is to receive RTI applications and forward them to the PIO or appellate authority concerned.

How to file an online RTI?

Currently, Central and a few State government departments have facility for filing **Online RTI**. However, there are multiple independent websites that let you file your application online. They charge you a nominal amount, for which they draft your application and send it to the relevant department. This is as good as sending an RTI application without having to worry about the particulars.

Which government organisations are required to give rti information under rti act?

All government agencies, whether they are under a state government or the Centre, come under the purview of the Act. For example, Municipal Corporations, PSUs (Public Sector Units), Government departments, Ministries at the State as well as Central level, Judiciary, Government owned Companies, Government Universities, Government Schools, Works Departments, Road Authorities, Provident Fund department etc. The list is quite an exhaustive one.

You can ask a government how much money is being spent on renovation of its ministers' bungalows, what their telephone bill or fuel expenditure is. Or you can ask what amount was spent on MLAs'/MPs' foreign trips.

You can ask how much of allocated money your elected representatives have utilized on improving their constituency; you are entitled to ask for even a break-up of the amount spent, project-wise. This RTI information is available because it is the taxpayers' money that is being spent here. Few ministries and departments make online rti replies available to the public. You can see them on the respective websites.

Not only governments and their departments, but also smaller units such as your city corporation or gram panchayat fall under the ambit of RTI. Be it the police, passport office, your electricity/water supply company or even the IRCTC, all are required to furnish RTI information.

Through RTI, we can get copies of government documents such as records, advice/opinions, reports, papers, file notings. Even email communications and data held in electronic form has to be made available to citizens upon an RTI application. We can even go to the department's office and inspect their records and documents, if at all the RTI information is voluminous you can take photocopies, obtain certified copies, take printouts and what not.

Which government departments are exempted from the act?

Twenty-odd organisations are exempted from RTI. But all these entities are related to the country's defense and intelligence, such as RAW, BSF, CRPF, CISF, Intelligence Bureau, National Security Guard etc.

Further, there are some specific instances whereby RTI information cannot be furnished. These instances relate to matters which:

- Would affect national security, sovereignty, strategic, economic and/or scientific interest.
- Have been disallowed by the court to be released.
- Have been disallowed by the court to be released.
- Relates to trade secrets or intellectual property, information which might affect/harm the competitive position of a third party.
- Relates to information under fiduciary relationship.
- Relates to foreign government information.
- Would affect the life/physical safety of any person.
- Would affect the process of an investigation.
- Relates to cabinet papers.
- Relates to personal information without any public interest.

However, RTI law says that any information which cannot be denied to a Member of Parliament or state legislature cannot be denied to any citizen.

4. How to use RTI to solve personal problems?

Be it never-ending delay in dispatch of passport or police dilly-dallying in giving you a **copy of FIR** you might have filed, submit an RTI application asking pointed questions. Highly likely this will be the beginning of the end of your woes. **Pending income tax return, pension's release, withdrawal or transfer of PF, release of Aadhaar card or issuance of property documents or driving license.** Using the RTI tool in any of these scenarios—or other cases involving a government agency—will guarantee you an official response, based on which you can take things further if your issue is not solved.

A citizen can ask government officials reasons for delay in government service requested for. For example, if you have applied for a passport and it has not been delivered. Then one can apply RTI with the following questions:

- Please provide daily progress done on my passport application.
- Please provide names of officers with whom my application has been lying during this period.
- Please inform as per your citizen's charter how many days I should have got my passport.

In the majority of cases, the problem gets resolved. This way you can use RTI to solve many other pending issues and especially the ones where bribes are being asked.

5. How to use RTI to solve problems in the community?

If in your community, you think the facilities are not as expected or you observe some government maintained property in bad condition, you can use RTI to get the government working on it.

For instance, if there is a road in very bad condition you can ask the following questions:

- How much money has been spent on the development of road in past 3 years?

- How was the money spent?
- Please provide a copy of the orders

6. How to solve problems using RTI?

Which Personal Problems can be solved using RTI

- Pending Income Tax return
- Delayed PF withdrawal
- Delayed PF Transfer
- Delayed Passport
- Delayed Aadhar card
- Delayed IRCTC Refund
- Copies of answer sheets
- Property Documents like Occupancy Certificate/Completion Certificate
- Status of FIR
- Status of a complaint
- Status of EPF
- Delay in Scholarship

Which Social Problems can be solved using RTI

- Fix roads with potholes
- Conduct social audit of government projects
- Know how your MP/MLA spent the fund allocated to him
- Know how a particular government project or scheme was implemented

2. How powerful is the RTI Act and how is RTI any different from other anti-corruption laws?

When it comes to RTI, there are watchdogs on multiple levels to ensure the Act is followed in letter and spirit. The Act has employed a 'perform or perish' approach, besides setting up a mechanism to dispense information.

Every government organisation is needed to appoint one employee as a public information officer (PIO). Once a department gets an RTI request, it is the responsibility of the PIO to furnish the information to the applicant within 30 days. Failing to do so means a monetary fine can be imposed on the PIO. The longer a PIO makes an applicant wait, the more the penalty levied on him/her. There have been instances where PIOs have been asked to cough up an amount in thousands of rupees as fine.

Every state has an Information Commission, comprising a Chief Information Commissioner and a few information commissioners. Former judges, IAS, IPS officers of impeccable record are appointed to these positions by the government. Above them in the hierarchy is the Central Information Commission and below them are first and second appellate authorities to see to it that an applicant does get the RTI information he/she has requested.

2. How many days does it take to get an RTI response?

As per law, the RTI information should be provided in 30 days. However, sometimes government records are misplaced or missing. Or the agency you've written to needs to co-ordinate with another department to provide you the information you want. In such situations, the information may take more than 30 days to arrive. In such a case, the PIO concerned needs to send you a written intimation about the possible delay and the reason. If he/she fails to do so and you don't receive the info within 30 days, a penalty can be levied on the PIO if the matter is taken up with appellate authorities.

2. What is the fee for seeking information under the RTI?

For central government departments one needs to pay Rs. 10 with every RTI application. Mode of payment may vary from government to government. While submitting applications in person, some organisations accept cash while some do not. Some ask for Court Fee Stamp, some ask for Indian postal order (IPO). When sending an RTI application by post, we can use an IPO/ court fee stamp of Rs. 10.

Those below poverty line (BPL) do not have to pay Rs. 10 as fee for filing an RTI.

If you've asked the government office to furnish copies of some records, you will need to pay Rs. 2 per page. Once the office receives your request and ascertains the amount you will need to pay towards making copies, you will get intimation via post. You can make the payment by sending a postal order/court fee stamp/demand draft of the said amount.

2. Is the RTI act different for different states?

The central government has come up with the RTI act which is applicable in all states except Jammu and Kashmir which has its own act very similar to the central act.

Each state has an extended central act with state specific rules which contain rules on RTI fees, mode of payment, RTI application form and sometimes a limit on number of words or questions.

11.7 IMPORTANT JUDGMENTS ON RIGHT TO INFORMATION

Information can't be denied on the Ground that File is missing

Case name: Shahzad Singh v. Department of Posts (CIC, 2018)

In the case, the CIC noted that the Respondent Department's claim that concerned files were not traceable proves the fact they had it in their possession, which binds them to provide the information by searching the same. The Commission also observed that frequent reference to 'missing files' as an excuse to deny the information is a major threat to transparency, accountability and also major reason for violation of Right to Information Act, 2005. Millions of RTI applications might have been rejected by PIOs on this ground during the last 11 years of RTI regime.

With "missing files excuse" being around, it will be futile to talk about implementation of Right to Information Act, 2005. The claim of 'missing

files' indicates possibility of deliberate destruction of records to hide the corruption, fraud or immoral practices of public servants, which is a crime under Indian Penal Code.

Other cases on the issue:

Om Prakash v. GNCTD– In the case, CIC noted that *prima facie*, public authority cannot deny the right of the appellant to get an alternative plot, by putting forward an excuse of missing the file. The defense of missing file cannot be accepted even under the Right to Information Act, 2005. The CIC also noted that if the file is really not traceable, it reflects the inefficient and pathetic management of files by the Public Authority. If the file could not be traced in spite of best efforts, it is the duty of the respondent authority to reconstruct the file or develop a mechanism to address the issue raised by the appellant.

Union of India vs. Vishwas Bhamburkar – In this case, the Delhi High Court regarding the plea of the Respondent authority of record being not traceable, has observed that Right to Information Act, 2005 is a progressive legislation aimed at providing the citizens access to the information which before the said Act came into force could not be claimed as a matter of right.

It was also opined that even in the case where it was found that the desired information though available in the record of the government at some point of time, could not be traced despite best efforts made in this regard, the department concerned must necessarily fix the responsibility for the loss of the record and take appropriate departmental action against the officers/officials responsible for loss of the record. **Unless such a course of action is adopted, it would be possible for any department/office, to deny the information which otherwise is not exempted from disclosure, wherever said department/office finds it inconvenient to bring such information into public domain, and that in turn, would necessarily defeat the very objective behind enactment of the Right to Information Act, 2005.**

11.8 RTI CAN'T BE DENIED ON THE GROUND THAT INFORMATION SOUGHT IS IRRELEVANT

Case name: Adesh Kumar v. Union of India (Delhi High Court, 2014)

In the case, the Petitioner was aggrieved by denial of information under the RTI Act by the concerned Public Information Officer in the case.

FIR had been lodged against the Petitioner during his tenure of service and subsequently, a charge sheet against the petitioner was submitted. On receipt of the charge sheet, the Petitioner applied for information under the RTI Act pertaining to sanction of prosecution against him.

However, the requested information was rejected by the CPIO claiming that there was no obligation to provide the same by virtue of Section 8(1)(h) of the RTI Act.

The Delhi High Court while dismissing the Petitioner's plea in the case stated that impugned provision prohibits furnishing of information which

would **impede the process of investigation or apprehension or prosecution of offenders.**

However, the Court held that merely, citing that the information is exempted under Section 8(1)(h) of the RTI Act would not absolve the public authority from discharging its onus as required to claim such exemption.

Further, the Delhi High Court in the case has held that whether the information sought by the petitioner is relevant or necessary, is not relevant or germane in the context of the Act, a citizen has a right to information.

Whether Particulars of FIR can be Disclosed under RTI Act?

Case name: Jiju Lukose v. State of Kerala (Kerala High Court, 2014)

In the case, a public interest litigation (PIL) seeking a direction to upload the copy of the FIR in the website of the police station and to make available copies of the FIR to the accused immediately on registration of the FIR was sought for. The Petitioner had alleged that inspite of the FIR being registered, the petitioner received its copy only after 2 months. Till the petitioner could obtain a copy of the FIR, the petitioner and his family members were in dark about the nature of the allegations levelled against the petitioner.

Petitioner's further contended in the case that in view of the Right to Information Act, 2005 all public officers were under obligation to put all information recorded in the public domain. The FIR which is lodged is to be put on the website of the police station, so that anyone can assess the FIR including a person staying outside the country.

Decision

The CIC in the case held that FIR is a public document, however, where an FIR is covered by the provisions under Section 8(1) of the RTI Act, it need not be disclosed to the citizens till investigation is completed. But it can be claimed by the Informant and the accused as per legal provisions under the Code of Criminal Procedure, 1973 as a matter of legal right.

The provisions in the Code of Criminal Procedure, 1973 are specific to this effect, that is, the supply of a copy of FIR to the accused is contemplated only at a stage after proceedings are being initiated on a police report by the competent Magistrate.

UPSC Marks can't be Disclosed Mechanically under RTI- Supreme Court

Case name: Union Public Service Commission Etc. v. Angesh Kumar & ors. (Supreme Court, 2018)

In this recent case, the Supreme Court has made following observations in context of disclosure of civil service examinations marks under the RTI:

- That weighing the need for transparency and accountability on the one hand and requirement of optimum use of fiscal resources and confidentiality of sensitive information on the other, **information**

sought with regard to marks in Civil Services Exam cannot be directed to be furnished mechanically.

- That furnishing raw marks will cause problems which would not be in public interest. However, if a case is made out where the Court finds that public interest requires furnishing of information, the Court is certainly entitled to so require in a given fact situation.
- That if rules or practice so require, certainly such rule or practice can be enforced.

CIC: Pension Payment can't be denied for Want of Aadhaar Card

Case name: N N Dhumane v. PIO, Department of Posts (CIC, 2018)

The order of CIC in this recent case is a remarkable one as it condemns the act of Department of Posts in denying payment of pension for want of Aadhaar Card. Other key observation made by the CIC in the case was that **payment of pension is a matter of life or liberty under the RTI Act and applications relating to payment of Pension shall be disposed by the Public Information Officers within 48 hours.**

CIC: RTI Information cannot be denied for Lack of Aadhaar Card

Case name: Vishwas Bhamburkar v. PIO, Housing & Urban Development Corporation Ltd. (CIC, 2018)

In this recent case *Vishwas Bhamburkar v. PIO, Housing & Urban Development Corporation Ltd.* taken up by the Chief Information Commission, Munirka, New Delhi (CIC), the CIC was confronted with two centric issues under the Right to Information Act, 2005. One pertaining to **word limit in RTI application** and the other relating to **denial of information on lack of producing identity proof** by the Applicant.

The CIC in the case held that the impugned application was not hit by any exception under the Right to Information Act. That the CPIO in the case raised suspicion about the citizenship of the applicant without explaining why he was suspecting. There was nothing to justify his suspicion. That the CPIO failed to justify the denial of information, as he could not site any clause of exception under Section 8 (exemption from disclosure of information) or Section 9 (grounds for rejection to access in certain cases).

Ministers not Public Authorities under RTI Act- Delhi HC

Case name: Union of India and Anr. v. Central Information Commission and Anr. (CIC, 2017)

The Petitioner in the case challenged CIC's (Central Information Commission) order, whereby the CIC had declared **"the Ministers in the Union Government and all State Governments as 'public authorities' under Section 2(h) of Right to Information Act, 2005.**

RBI can't Deny Information under RTI claiming Fiduciary Relationship

Case name: Reserve Bank of India v. Jayantilal Mistry (Supreme Court, 2015)

In this case, the interesting issue that was raised was *whether all the information sought for under the Right to Information Act, 2005 can be denied by the Reserve Bank of India and other Banks to the public at large on the ground of economic interest, commercial confidence, fiduciary relationship with other Bank on the one hand and the public interest on the other?*

The RBI in the case took the stand that the information sought for was exempted under Section 8(1) (a), (d) and (e) of the Right to Information Act, 2005. Moreover, as the regulator and supervisor of the banking system, the RBI has discretion in the disclosure of such information in public interest.

While allowing the appeal the Supreme Court in the case held that in the case the RBI does not place itself in a fiduciary relationship with the Financial institutions because, the reports of the inspections, statements of the bank, information related to the business obtained by the RBI are not under the pretext of confidence or trust. In this case neither the RBI nor the Banks act in the interest of each other.

The Court also made the following observations:

- RBI is supposed to uphold public interest and not the interest of individual banks. RBI is clearly not in any fiduciary relationship with any bank. RBI has no legal duty to maximize the benefit of any public sector or private sector bank, and thus there is no relationship of 'trust' between them. RBI has a statutory duty to uphold the interest of the public at large, the depositors, the country's economy and the banking sector.
- Thus, RBI ought to act with transparency and not hide information that might embarrass individual banks. It is duty bound to comply with the provisions of the RTI Act and disclose the information sought by the respondents herein. If information is available with a regulatory agency not in fiduciary relationship, there is no reason to withhold the disclosure of the same.
- Since, RTI Act is enacted to empower the common people, the test to determine limits of Section 8 of RTI Act is whether giving information to the general public would be detrimental to the economy.

No RTI Query Can Lie With Regard to Judicial Decisions (Delhi High Court, 2017)

Case name: The Registrar, Supreme Court of India v. R S Misra

In the instant case, the Delhi High Court has rendered an in-depth analysis of RTI applications against any decision passed by the Supreme

Court. The Court has also ruled that RTI Act does not prevail over the Supreme Court Rules (SCR).

Two Years Wait for RTI Response is Flagrant Violation of RTI Act (CIC, 2017)

Case name: Aabid Hussain v. CPIO, Jabalpur

In this case of October 2017, the CIC took a strong note of delay in RTI response by the concerned Department. The CIC remarked as under:

The Commission takes grave exception to the flagrant violation of the RTI Act by the CPIOs of Cantonment Board, Jabalpur and the ignorance of the present CPIO about the pending RTI Applications from the tenure of her predecessor. It is incumbent upon the present CPIO to deal with all such pending RTI Applications and not wait for the Commission to issue notice of hearing to provide reply to RTI Applicants.

IT Returns is “Personal Information”, not under the Purview of RTI Act

Case name: Girish Ramchandra Deshpande vs. Central Information Commission & ors. (Supreme Court, 2012)

In this case, the Apex Court had held that **the details disclosed by a person in his income tax returns are “personal information” which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act**, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information.

Information Available with Public Authority to be provided to Citizen- Delhi HC

Case name: Public Information Officer v. V. Chaudhary

The High Court of Delhi in this recent case has primarily ruled that **Section 11 of the RTI Act cannot be read as a provision proscribing disclosure of information** and that **all information as available with the public authority is required to be provided to the citizen** unless it is exempt from disclosure under Section 8 of the RTI Act.

11.9 KEYWORDS

Delhi High Court

- The Court in the case has ruled that in terms of the RTI Act, all information as available with the public authority is required to be provided to the citizen unless it is exempt from disclosure under Section 8 of the RTI Act or otherwise pertains to the organizations that are excluded from the purview of the RTI Act. Thus, the question whether authentic information is available with another public authority is not a ground to deny the information as sought from a public authority.

- The Petitioner in the case had denied information to the Respondent on the ground that the information sought by the respondent is prohibited under Section 11 of the RTI Act. The Court from the facts and circumstances noted that the petitioner did have the information as sought by the respondent. However, the same was denied to the respondent by referring to Section 11 of the RTI Act. **A plain reading of Section 11 of the RTI Act indicates that the same does not proscribe furnishing of information.**
- Thus, Section 11 of the RTI Act cannot be read as a provision proscribing disclosure of information; it is a provision to enable disclosure of third party information subject to certain safeguards. In this view, the decision of the CPIO denying the information by referring to Section 11 of the RTI Act is wholly unsustainable.

Finally, the Delhi High Court in the case ruled that the information as to unauthorized construction observed by the police authorities cannot be construed as one, which is to be kept confidential in terms of Section 11 of the RTI Act.

11.10 CHECK YOUR PROGRESS

- When was RTI Act, 2005 passed?
- Who is the Joint Secretary in PMO?
- Explain the history of RTI.

Summary:

Right To Information is derived from our fundamental right of freedom of speech and expression under Article 19 of the Constitution. If we do not have information on how our Government and Public Institutions function, we cannot express any informed opinion on it.

Key words:

Fundamental Right:

The learners are expected to understand how significant the Right to Information is in a democratic setup.

11.11 REFERENCES

Online Reading

UNIT: 12**PRINCIPLES OF ETHICAL
JOURNALISM****:: STRUCTURE::****12.0 Introduction****12.1 Objective****12.2 Before and After****12.3 Ask yourself****12.4 Attribution of information/quotes: Ethical dilemma****12.5 Tips for Correct Attribution****12.6 Individual privacy of newsmakers: Where to draw the line****12.7 Media owners and conflict of interest especially****12.8 TV and Print****12.9 Omissions Analysis****12.10 Balance in Reporting: Quotes and counter quotes****12.11 Corrigendum: What, Why, How****12.12 Ethical Disclosure: Advertorials****12.13 Check Your Progress****12.14 Keywords****12.15 References**

12.0 INTRODUCTION

Journalism is the promotion of high ethical standards for the public benefit in journalism based on the principles of truth and accuracy, independence, fairness and impartiality, humanity and accountability by the education and training of journalists and the provision of publication of useful research.

12.1 OBJECTIVE

Section 1 **Bias, Personal Ideology and Objectivity**

- Being a crusader against social ills is generally good, but you can lose perspective.
- A bias toward official voices is necessary, but if it leaves out other voices it's a problem.
- Being sensitive to sources is part of listening well but it can also mean that the journalist is writing for them rather than the public.
- Looking for the extraordinary, the man-bites-dog story, can also lead a journalist to distort what is really going on or is important.
- Subject: There is a bias built into the way journalists pick and cover stories. Certain subjects are routinely covered or ignored. Do some subjects or communities only appear when a crime occurs or when there is a special event or parade?
- Boss: What stories are being done or overdone in order to please the boss?
- Production: What stories are automatic because they are easy to do, but may be trivial or incremental? Or how often does a journalist call certain sources because they know the source will answer their phone or offer a perfect quote?
- Against companies: Turning skepticism into negativity and the assumption that every big and successful institution must be doing something wrong.

- There are also subtler biases as mentioned below.
- Market-oriented bias: This can be a pressure to produce stories that target market segments with desirable demographics for advertisers.
- Covering the bases: This means doing the stories everyone else is going to have in order to cover the bases (and your rear end).
- Balance is a long-honored notion, and can be a useful technique for a story that you may not know much about. But how many sides does it take to balance a story? Is a "balanced" story fair? Is it true to the facts? Should you still give equal space or weight to all sides?
- Political bias is something journalists hear a lot about from the public, but inside the newsroom it's less a topic of conversation. Journalists don't ask and don't tell. They don't know each other's politics. So therefore it isn't a problem. But is that enough? Does not talking about something mean it isn't a problem?

There's another sort of bias worth mentioning, too.

It used to be called “pack journalism.” It has also been called “group think.” It is the storyline that the press corps en masse is telling or repeating. A modern term for it is the master narrative.

Trump is a strong leader. Or he is dumb.

These master narratives can become a kind of trap or rut. The journalist picks facts that illustrate a master narrative, or current stereotype, and ignores other facts.

In the end, making choices requires journalists to think. A journalist needs to be conscious of biases so he or she can know what biases make it into stories.

Tools to manage bias

- Periodically examine yourself for bias building up — understanding what your views are and why you have them is the best way to keep them under control.
- Who do you personally like or dislike? Why?
- How might that be coloring your judgment?
- Read through some of your stories and be self-critical.

12.2 BEFORE AND AFTER

One way Paul Taylor used to test this is a “before and after” tool. When assigned a story that involves some substantial reporting, Taylor used to write the lead at the outset, before he had done any reporting. Then he would test that lead against the one he had written for real at the end of the reporting.

If the final lead was too similar to the one he wrote before doing the reporting, he would know he hadn’t learned very much. That’s a sign the reporter may have only pursued information that confirms his biases, rather than overcoming preconceptions to find new information.

12.3 ASK YOURSELF

Another test is to ask yourself at the beginning of the reporting what biases are at play in the story. Identify them.

- Do any of them help you tell the story?
- Are there any you believe you should not deal with?
- Is there anything you should do in presenting any of these biases that will help the reader understand them?
- What bias do I have going in that I should be wary of?

And ask one other question: What are my points of ignorance going in that I need to note?

12.4 ATTRIBUTION OF INFORMATION/QUOTES: ETHICAL DILEMMA

What Is Attribution?

Attribution means crediting the source where information or a direct quotation was obtained if it wasn't your own firsthand knowledge. Attribution usually includes the full name of the person providing the quoted material or relevant info, and their job title (if needed to show why the source was used).

Why Is Correct Attribution Important?

Proper attribution is important as it gives credit to the person responsible for providing you necessary information, as well as supplying the reader with an objective perspective. If you use quotes or are paraphrasing from an original source, including the speaker's name (or the person's name who provided knowledge) can add credibility to your piece as well as avoid claims of plagiarism.

12.5 TIPS FOR CORRECT ATTRIBUTION

There are different types of attribution that are possible depending on which citation style you're using. The following general rules can help you properly attribute quotes to use within your own writing:

Determine the level of attribution necessary for your source. A person who speaks on the record will have their full name and job title referenced, whereas someone speaking in background might be quoted but without direct attribution. A full quote could also be completely off the record, which means the information obtained cannot be published at all. Establish how much credit the source should or wants to receive before publishing anything with their full name attached.

2. Keep direct quotations word for word. The words within the quotation marks should be the exact words of the person speaking or the written words of the original author. If you're using indirect quotes and putting your source's info in your own words, you won't use quotation marks, but the indirect quotation must still be cited properly.

3. Be mindful of citation styles. For news writing, the full name of the source is included upon first reference, and then just the last name for every subsequent reference. For APA style in-text attributions for direct quotes, the last name, the year of publication, and the page number are put inside parentheses immediately after the end of the quote. MLA style in-text attribution is only the last name and the page number the quote was taken from inside the parentheses. Each style has its own formatting rules, so be aware of what is the proper protocol for your own citations.

4. Use the proper format. For example, a long quote may be formatted as a blockquote—a new paragraph that is separated from the rest of the text. When attributing a long quotation, like from a literary research publication, the speaker or author's name often goes toward the beginning, either before the quote, after the first sentence, or at its first

natural pause. For a short quote, the author's name can go at the end of the quote, with additional attribution tags depending on which format you're citing for.

5. Supply a works cited page. Many publications that cite additional sources provide a works cited page, which contains all of the references so that the reader knows where to look up credentials or additional research.

6. Undisputed facts don't need attribution. If something is a known fact, like "as of 2019, the United States of America has had 45 presidents," it does not need to be attributed to a particular speaker or source of information.

1. "Of the 230 companies we inventoried in 1984, 54 had gone out of business or been taken over by 1987. From 1981 to 1994, we lost 84 percent," said Smith."

Interrupt a quotation of more than one sentence with an attribution following the first sentence to avoid a delay in identifying the speaker or writer: "Of the 230 companies we inventoried in 1984, 54 had gone out of business or been taken over by 1987," said Smith. "From 1981 to 1994, we lost 84 percent."

2. "Echoing the thoughts of his fellow players, Jones perhaps said it best, 'We never wanted to disappoint him under any circumstances.'"

When an attribution consists of a complete thought that sets up the quotation that follows, use a colon rather than a comma, to set the attribution off from the quotation: "Echoing the thoughts of his fellow players, Jones perhaps said it best: 'We never wanted to disappoint him under any circumstances.'"

3. "And while bin Laden's killing has dealt a crippling blow to his terrorist organization, she said, 'Nobody should believe individual al Qaeda leaders cannot be replaced.'"

To provide context for the quotation, the writer has added the paraphrased dependent clause preceding the attribution, uniting the clause and the quotation into an extended sentence. Because this sentence no longer begins with nobody, the word is no longer capitalized: "And while bin Laden's killing has dealt a crippling blow to his terrorist organization, she said, 'nobody should believe individual al Qaeda leaders cannot be replaced.'"

12.6 INDIVIDUAL PRIVACY OF NEWSMAKERS: WHERE TO DRAW THE LINE

Privacy and reporting on personal lives

This section addresses these ethical issues:

What expectations should people have about their own privacy?

How should the potential for harm factor into a journalist's decision-making on privacy?

Should we consider everything on social networks fair game for publishing?

Privacy is not what it used to be. When so many share so much of what they do and think on publicly accessible channels, the boundaries between public and private communications are open to interpretation.

For many journalists, whether and to what degree to report on private aspects of a person's life begins with that person's expectations of privacy.

Celebrities know a loss of privacy is a cost of fame. Politicians and other public servants know their power brings public scrutiny, and they carry that awareness into many of the decisions they make. That doesn't mean, however, that either group doesn't complain at times about what they consider overzealous coverage of their personal lives.

When journalists consider disclosing elements of a person's private life, they should be mindful of any distress it might cause. They should be humble toward their power to disclose it. However, the high public stake in the lives of public figures tends to result in more aggressive reporting of these people's personal lives. Many journalists choose not to report on a suicide, for example, unless it is the suicide of someone in the public eye.

A journalist's attitude toward covering public figures will also inform her decisions about using long lenses, drone photography, photographs through windows and other means of capturing images of such people (see "Photos and Video" module). Some journalists draw a line between spying on a celebrity in a private place where the subject expects not to be seen (e.g., the celebrity's home), and in situations where the newsmaker knows he is being observed (standing in front of a window at home when he knows photographers are outside) or should not expect total privacy (a supposedly private party in the backyard of his estate with 1,000 invited guests).

Ordinary, "private" citizens are another story. When journalists consider reporting on the personal life of someone who does not already live in the public eye, a careful consideration of both the news value of the disclosures and the potential harm those disclosures might cause can serve as a guide.

In most cases, when ordinary people draw the attention of journalists, it is because they are in some way associated with a high-interest issue or event, such as a crime. In these situations, many journalists set certain rules to guard against disclosures that might unfairly damage personal

lives or, worse, turn out to be wrong. Journalists might not publish the name of a suspect until he or she is charged with a crime, for example (laws sometimes determine what can be said, but sometimes the journalist is free to make that decision). Reporters might take extra care around the personal lives of children and teenagers, who are still in the care of their parents and who act with less independence and consciousness than adults. (See the “Children/ Coverage, Images and Video” module.) Or they might not feel a need to further interview or disturb private people who have already spoken to one news organization, or who seem to be under great stress.

Journalists might also make a point of explaining to their interview subject how far the story or images are likely to be distributed and how long they will remain available in archives.

With the advent of social networks, what was once inaccessible conversation between small groups of ordinary people can become very accessible to journalists.

There might be news value to these conversations, particularly if they appear to reflect a buzzworthy trend in public sentiment. But pulling out particular quotes by particular people can raise issues, as it might put a big spotlight on a comment never meant for such exposure.

To some journalists, anything ordinary people share publicly, including on social networks, is publishable, just as anything that occurs in a public space could not be expected to be kept private. To other journalists, what is public and what should be published are two different things, and the act of publishing—publicizing, in effect—is an intentional act that should be treated with care.

The definition of “public” online is also complicated. A public tweet is viewable to anyone who looks for it, but what if the person tweets only to 10 followers? And what about a Facebook post that can be seen by 10 people? 100? 1,000?

Another complication when it comes to material shared online is identity. A profile may say the person is 30. But what if, in fact, she is 16?

Non-public people publish much online that is easily findable. To avoid incorrect or unfair disclosures, many journalists choose to contact people before they report on that material, gathering context. Others, particularly in breaking news situations, rush to publish whatever is found. The difference, for many journalists, is in the news value. Did this person do something that makes traces of his digital life—both text and photos—fair fodder for rampant speculation? The bar, for some, may be higher than it is for others.

12.7 MEDIA OWNERS AND CONFLICT OF INTEREST ESPECIALLY BUSINESS REPORTING

owners of media firms can experience conflicts of interest.

Major media firms also experience conflicts of interest with respect to business: “Media corporations share members of the board of directors with a variety of other large corporations, including banks, investment companies, oil companies, health care and pharmaceutical companies and technology companies”

Section 5 Deception by omission ethical responsibilities of giving the complete picture, not partial information that can be misleading. how to balance this in times of space constraint - both for

12.8 TV AND PRINT

Deceiving by omission, otherwise known as exclusionary detailing, is lying by either omitting certain facts or by failing to correct a misconception. In the case of the former, an example of this would be a car salesman claiming a car to have amazing fuel economy while neglecting to mention that it has no engine and is completely immobile. In the case of the latter, it could be a situation in which a misconception exists that the claimant is aware of but fails to correct, such as a person who wanders around a hospital dressed as a doctor, offering treatment while failing to mention that she is in fact just getting a kick out of pretending to be a doctor.

Media outlets are under pressure to make money, and an easy way to do this is by breaking sensational stories. This can encourage the media to overplay news stories or leave out information that would detract from an otherwise great story.

Omission occurs when important information is not reported or is reported incompletely. We can think of omission as being news that should have been reported but is left out of the news we read, see and hear. When important news is omitted, we get a skewed or biased perspective. Obviously no news organization can cover every newsworthy story from every possible perspective. But news organizations and their reporters do have an obligation to seek the truth and be reasonably comprehensive in their reporting. The information citizens need to make informed decisions comes, to a significant extent, from news organizations. If important stories are ignored, are reported incompletely, or present facts that are not adequately verified, then the obligation to seek the truth is undermined. In these cases the news that is omitted can be as important as the news that is published.

12.9 OMISSIONS ANALYSIS:

It is often said that there are lies, damned lies and statistics. The misuse or misunderstanding of statistics can give us a distorted view of reality. One form of statistical information news organizations frequently use is polling. Polls have become an important part of our political and social discussions, often being used as evidence to promote or undermine a position or idea. One thing that makes them powerful is the appearance of scientific accuracy. Polling firms generally claim their results have a margin of error 3-5%. It is important to keep in mind that the results pollsters get often depend not just on the validity of the polling sample but also on the wording of the questions asked. Questions can be framed to intentionally or unintentionally elicit certain responses. When reading poll results, check to see if the exact questions that were asked are included. If they are not, the apparent results of the poll should be treated with skepticism. If the questions are included, consider other ways they could have been asked. If you can easily come up with a fairer or less biased way to ask the question then, once again, skepticism is in order. Reporters should not simply pass on polling results to their audience without verifying the quality of the polling and noting any polling results that may call into question the current findings. As in their other reporting they have a responsibility, when reporting on poll results, to question and verify. If they don't do so, important information gets omitted. Information that an informed citizenry needs.

12.10 BALANCE IN REPORTING: QUOTES AND COUNTER QUOTES

Balance in journalism is considered one of the most important characteristics of any news piece. Balance means a lack of bias, and it is the ethical imperative of a journalist to transmit the news in an impartial manner. This means that a reporter should, whenever possible, demonstrate the opposing viewpoints at play in a story dynamic; it is important to note that there are often more than two sides to any story. Interview multiple sources for your story. A source is an individual whom you quote in the news piece. A balanced news story contains quotations from at least two individuals. A story on a company going bankrupt, for example, might include viewpoints from company management, employees and members of the community. Talk to the silent majority, or the group of people who may remain silent on an issue. News media often interview people with polar opposite viewpoints -- politics being a prime example -- despite the fact that most people hold a view that they might not express publicly. When the vehemently supportive and opposed are the loud minorities, it is the job of the news media to invoke the silent majority. Avoid unnamed sources whenever possible. In extreme cases, journalists may cite an anonymous source. In certain instances in which privacy is of

extreme importance this may be acceptable, but reporters should generally avoid calling upon sources who are not under pressure to be accountable for what they say.

Write the story from a neutral point of view. It is the job of the journalist to dictate the direction the story goes, so she should determine an angle that does not side with one party. The journalist should let the reader make a decision for himself; rather than assign value, a journalist's job is to present the facts.

12.11 CORRIGENDUM: WHAT, WHY, HOW

The media industry in the recent past has been plagued by quite a few controversies ranging from corporate lobbying to plagiarism.

All newspapers have several checks and measures in place to keep errors at bay. Stories have to undergo several rounds of quality and error checks before they go to print.

The editorial credibility of a newspaper depends on several factors, and the ready willingness to concede and correct mistakes is certainly one of them.

The media mechanism of carrying corrections, both *suo moto* (when someone internally points to an error) and when attention is drawn by a reader is called corrigendum.

They try their best to avoid mistakes. But the fact is that mistakes sometimes do happen. Pushing them under the carpet makes little sense, if they want their readers to trust what they publish.

The credibility of a publication is enhanced if it encourages an internal culture of accepting mistakes and bringing that to the attention of the readers.

Publishing a newspaper or magazine without owning up to one's mistakes is a bit like wearing a shirt without buttoning up. It reflects lack of self-esteem or respect for the reader, indifference, and often arrogance.

12.12 ETHICAL DISCLOSURE: ADVERTORIALS

If they are aiming for it to look like earned editorial content to trick the readers then they are not being ethical. However, it is ethical reasoning if the company is using the advertorial as a creative way to reach a new audience while making it obvious that it is paid media content.

:: STRUCTURE::**13.0 Introduction****13.1 Objectives****13.2 What is Ethical Thinking?****13.2.1 Requirements of ethical thinking****13.2.2 Normativity****13.2.3 Interpersonality****13.2.4 Rationality****13.2.5 Universality and circumstances****13.3 What is moral reasoning?****13.4 What is objectivity? Why is it important****13.5 Importance of neutrality in Reporting****13.6 Ethics in Photojournalism****13.7 Ethical Charter****13.8 Ethics in Digital Media****13.9 Tensions on Two Levels****13.10 Difficult Questions For Digital Media Ethics****13.11 Check Your Progress****13.12 Keywords****13.13 References**

13.0 INTRODUCTION

The unit deals with the essential ethical aspects of journalism and significance of moral reasoning. It will also help them understand the importance of objectivity and neutrality in journalism.

13.1 OBJECTIVE

It is expected that the unit will help the learners in understanding the ethical and moral reasoning for journalists. It also aims to explain the ethics for digital media and photojournalism and citizen journalism.

13.2 WHAT IS ETHICAL THINKING?

Ethical thinking is not wholly distinct from thinking in other disciplines but it cannot simply be reduced to them. In particular, ethical conclusions cannot be unambiguously proved in the way that mathematical theorems can. However, this does not mean that all ethical conclusions are equally valid.

13.2.1 Requirements of ethical thinking

Ethical thinking in professional context has certain requirements. It should be universal, normative, interpersonal, rational, and sensitive to circumstances.

13.2.2 Normativity

Normativity means that ethical reasoning should always lead to a claim how a professional should act in a certain situation. In a broader scope, we may enquire how the rules or conventions in a workplace should be designed to support ethical conduct. Therefore, active ethical thinking is always progressive: it seeks to improve current conditions and prevent problems by developing better policies and by applying pre-emptive measures.

An important dimension of normative ethics is justifying policies or actions. As a rule of thumb, ethical justification is usually based on prevention of harm or protection of rights of a person. For example, a change in the code of conduct of a hospital should always be justified by either of these principles. If the change is targeted at some other good, such as smoothing cooperation or rationalising resources, it should neither conflict with nor impair the realisation of these principles.

13.2.3 Interpersonality

The object of ethical assessment is interpersonal activity: How are one's actions affecting other persons? Actions that affect only the actor herself are not ethically relevant. Instead we can ask if for example self-harming is prudential (which means rational and considered). Non-prudential acts are not unethical: it is not ethically wrong to be unwise, stupid or reckless. Thus self-harming or other non-prudential acts cannot be used as justification for intervention unless there are other pressing ethical duties present (like the duties of a parent or a care-giver). The problem of justifying intervention in a case of self-harming is called the problem of justifying paternalism.

13.2.4 Rationality

Ethical claims should always be logically consistent, compatible with the facts concerning the situation and well grounded in evidence. Common beliefs or gut-feelings are not enough to validate an ethical claim

although emotions should always be taken seriously, because they can serve as a guide to find underlying moral values and standards. Ideally, ethical thinking is critical and constantly assesses common beliefs and justifications for actions.

13.2.5 Universality and circumstances

Ethical rules and principles should be as universal as possible. There are no different ethics for different nations, religions or genders. Thus, ethical claims should be designed without any necessary dependence to disputable religious or ideological beliefs because not everyone shares them.

The relation between universal rules and applying them according to the circumstances is a complicated question. Basically, sensitivity to circumstances means that we should not be too harsh with condemning unethical conduct in a situation where the agent is for example a minor, mentally disabled or under pressing conditions (i.e. self-defence or a doctor making decisions in a lose-lose situation). Similarly, a person consenting to a boxing match cannot blame her opponent for unethical conduct when being hit – even if generally we may consider hitting a person an unethical thing to do. It is always necessary to take into account the context in which ethical decisions have to be made, that is, the reason why it is important to reflect on moral questions in everyday practice.

13.3 WHAT IS MORAL REASONING?

Moral reasoning refers to the processes involved in how individuals think about right and wrong and in how they acquire and apply moral rules and guidelines. The psychological study of morality in general is often referred to as the study of moral reasoning, although moral psychology is now understood as encompassing more than just the reasoning process.

Moral reasoning is a thinking process with the objective of determining whether an idea is right or wrong.

To know whether something is "right" or "wrong" one must first know what that something is intended to accomplish. Thus, to know if "this direction" is the right direction to follow to get to a coffee shop, one must first know where one is, where the coffee shop is, and the terrain between here and there (to avoid blocks, etc).

Or, to know if this action is the right action to take, one must know what one wants to accomplish, where one is, and the environment between here and the accomplished state (for example, to impress my boss, I have to know what is likely to impress him/her, what I, myself, can do at the work-place or where he/she would observe, etc).

Thus, to know if something (an idea, an action, a behavior) is "right" one has to know both what one intends to accomplish and the environment that exists between "here" and "there."

But that alone is not enough! To roam around during the COVID-19 lockdown period without any genuine reason may either result in you catching the virus or you being punished by the police. There is a third consideration: is it good for the people who live around me? The neighbourhood? The city? Our Nation? or The whole world? Only this last reason: Good for all humanity, yields "moral reasoning"

Satisfactory solutions to problems are determined by using this principle. Problems or behaviors are difficult to solve when either the environment or the desired accomplishment are incompletely understood from a global perspective. (Religions face this difficulty.)

Therefore, moral reasoning can not be correctly performed until what is sought and the surrounding world-wide environment is fully understood. An example: is it "right" to use fetal stem cells? Only by first deciding "what" the use is intended to accomplish and if the way of accomplishing this is understood could such a question be answered. This is discussed in Thinking And Moral Problems

13.4 WHAT IS OBJECTIVITY? WHY IS IT IMPORTANT?

Merriam Webster defines objectivity as expressing or dealing with facts or conditions as perceived without distortion by personal feelings, prejudices, or interpretations. Objectivity, as defined by the school of media ethics, means standing so far from the community that you see all events and all viewpoints as equally distant and important, or unimportant for that matter. It is employed by giving equal weight to all viewpoints--or, if not, giving all an interesting twist, within taste. The result is a presentation of facts in a true non-partisan manner, and then standing back to "let the reader decide" which view is true.

If the ideal of objectivity is hard to grasp, then perhaps better words are fair, impartial, neutral or balanced. It is the last concept of balance that is in practice each day for journalists. Each story a journalist writes must present the facts accurately and provide a balanced view of both sides of the issue. For example, if a journalist finds accurate information about the mayor stealing funds from the public, the mayor must be given the opportunity to respond and explain the circumstances.

The notion that journalists must maintain "objectivity" is a relatively new concept. The early American publishers were involved in politics and helped bring about the Revolution.

Objectivity on the part of the media is considered a cornerstone of professional conduct. Basically, it means the media stays neutral when reporting an event. Its components include fairness, disinterestedness, factuality and nonpartisanship.

Following are the "7 Violations of Media Objectivity":

1. Misleading definitions and terminology: By using terminology and definitions in a way that implies accepted fact, the media injects bias under the guise of objectivity.
2. Imbalanced reporting: Media reports frequently skew the picture by presenting only one side of the story.
3. Opinions disguised as news: An objective reporter should not use adjectives or adverbs, unless they are part of a quotation. Also, the source for any facts and opinions should be clear from the report, or alternatively it should be stated that the source is intentionally undisclosed. Even so-called "opinion pieces" must bear a modicum of objectivity.
4. Lack of context: By failing to provide proper context and full background information, journalists can dramatically distort the true picture.
5. Selective omission: By choosing to report certain events over others, the media controls access to information and manipulates public sentiment.
6. Using true facts to draw false conclusions: Media reports frequently use true facts to draw erroneous conclusions.
7. Distortion of facts: In today's competitive media world, reporters frequently do not have the time, inclination or resources to properly verify information before submitting a story for publication.

The principle of objectivity is criticized by advocacy journalists who feel this does a disservice to the public because the goal is not an attempt to find the truth, but instead to cover all sides of an issue. They also point out that objectivity ends up being relative in practice, that even choosing which events to report is an act of partisanship.

13.5 IMPORTANCE OF NEUTRALITY IN REPORTING (POLITICAL IDEOLOGY)

Neutrality means reporting all sides of an issue without favouring any one of them. It can be easiest to attain with domestic stories when all sides share common values, and the controversy is not about the final goal but how to achieve it.

The Press is often referred to as the "Fourth Pillar" or "Fourth Estate" of Democracy because of the notion of the media as a watchdog, as a

guardian of the public interest, and as a conduit between government and the governed.

Media plays a crucial role in shaping a healthy democracy. It makes us aware of various social, political and economic activities happening around the world. It is like a mirror, which reflects the bare truth and harsh realities of life.

News agencies are not political parties; news reporting is not marketing. Our professional function is not to sell a product, promote a position, teach, preach, or be didactic. Our function is to be informative and truthful. Our duty is to present untarnished facts that allow people to form well-informed opinions.

When making a conscious decision to become a journalist, one should be prepared to leave personal convictions at the door and develop the ability to see events through a lens of neutrality, instead of being swayed by background or personal experience. Any alternative approach to news reporting is a betrayal of the fundamental, ethical principles of the profession: impartiality, fairness, and potentially even accuracy.

A journalist has the potential to influence millions of people. The profession can easily be misused to manipulate unsuspecting audiences, as evidenced by the information war in the ongoing Russia-Ukraine conflict. Nevertheless, imposing opinions on others is a breach of free will and failing to provide them with a “complete picture” is a violation of their right to be informed human beings. Consequently, every journalist bears a strict moral responsibility to be impartial. Truly ethical and professional journalism can never have an agenda.

The Reuters Handbook states that journalists must “never identify with any side in an issue, a conflict, or a dispute”; the BBC’s Editorial Guidelines define impartiality as the act of giving “due weight to the many and diverse areas of an argument.” This can be achieved by being open-minded and by representing a wide breadth of opinion in reporting.

Neutrality can be compromised in many ways, even by using non-objective vocabulary. Any one journalist’s failure to be impartial, whether by omitting a main strand of an argument or by engaging in political campaigns outside of working hours, can damage the reputation and legitimacy of an entire news corporation, agency or paper.

Neutrality does not automatically mean that all perspectives must be covered in equal proportion. The BBC encourages its journalists to achieve ‘due weight’, which essentially means that “minority views should not necessarily be given equal weight to the prevailing consensus.” Reuters also states, “the perpetrator of an atrocity or the leader of a fringe political group arguably warrants less space than the victims or mainstream political parties.”

Violating neutrality can also potentially compromise accuracy. Journalists must never knowingly mislead their audiences and must make an effort to pursue the truth. You might be wondering how anyone can

determine what the truth is. The beauty of ethical journalism is that ‘the truth’ often appears in the course of the investigative process.

Unfortunately, increasing commercialization has created stiff competition in media and in order to outdo each other, media houses are not focussing on responsible and serious journalism but openly resorting to “sensational and cheap journalism,” besides promoting the “Paid News” culture. What is even more disturbing is that now most of the media houses in India are under the control of a few vested business and political interests. Hence, the democratic interests of the many are being undermined by the private selfish interests of the powerful few. It may sound far-fetched but it would not be wrong to say that nowadays, most of the media houses’ main purpose is not to serve democracy, but to generate maximum profit for a handful of people.

In some instances, the media is even being used as proxies in the battle between rival political groups, in the process sowing divisiveness rather than consensus, volatile speech instead of sober debate, and suspicion rather than social trust. The impact of media is really noteworthy as it plays an important role in building mass opinion. Selective or excessive coverage can create or kill an issue. Constant repetition of the news, especially sensational news, breeds apathy and insensitivity. It leads to loss of public confidence in the media and in democratic institutions in general.

13.6 ETHICS IN PHOTOJOURNALISM

Photography in its broad forms is not really a subcategory of Journalism. Although a lot of images have historical value in showing the life of a certain time, it is not really dedicated to “inform” society. At its highest form Street Photography has mostly artistic value in documenting human nature in its natural environment. It is not necessarily to tell informative stories or to research mankind in a deep fashion, but scraps on the surface of the people. Names, background and their story doesn’t matter in Street Photography since we don’t interact with our subject or get in contact with them.

On the other hand Documentary Photography gets closer to people in the way that it is all about the story they tell. The purpose of this genre is to show informative stories through a series of images, mostly accompanied with written text. One of the key factors of Social Documentary Photography is honesty and trust. Today’s media is in a very confusing state with accusations of fake news spreading around the world and it’s not really clear what is true and what is altered. There lies a chance for Documentary Photography to simply show unaltered images and build trust.

Nature of Documentary Photography

The purpose of Street or Documentary Photography is to capture candid moments of reality. One principle is to never alter a scene or to influence it unnaturally because that would violate the ethics of photojournalism.

Ideally, we as photographers want to be invisible spectators that can document the world as if we wouldn't be there.

Documentary and Street Photography have a simple duty: show reality. Any deliberate distortion by the photographer that does not fulfill this requirement disqualifies the images as Documentary.

Photojournalists aren't responsible for the suffering of the people they photograph, they are simply the messengers that document life as it is—life is not always pretty. Don't shoot the messenger for translating reality into pixels or cellulose; instead, ask yourself what you can do to change the situation if you feel so strongly about images that show suffering. Photojournalists risk their lives to raise awareness and spread a message that can actually have a bigger impact than the limited help they can offer an individual.

Of course landscape pictures have their own appeal and colorful flowers can be calming. But reality can be rough and it is important to show it to the world.

There is no exploitation in showing reality, whether you like to look at it or simply close your eyes and pretend that the world is a fluffy friendly place. The difference lies in good or bad pictures; pictures that either make a difference, or don't.

Honesty, responsibility, accuracy and truth are the backbone of photojournalism's code of ethics, in accordance with rights and obligations of journalists. These are detailed in documents such as the Charters of Munich or of the National Press Photographers' Association.

13.7 ETHICAL CHARTER

The Charters lay out specifically that photojournalists are expected to:

1. Respect Truth, whatever the consequences for himself/herself.
2. Verify sources
3. Only publish information that can be traced back to its origin
4. Abstain from using any disloyal means to achieve photographs
5. Never pay sources or subjects
6. Treat subjects with respect and dignity and abstain from intruding on private moments of grief unless there is a justifiable and pressing reason for their public disclosure.
7. Never interfere with an event or attempt to change its course
8. Never set up or re-enacted a situation
9. Always write truthful captions.
10. Share with the editor all information he/she has, in order to avoid misinterpretations or wrongful use.
11. Choose publications with care to avoid any editorial misuse.

13.8 ETHICS IN DIGITAL MEDIA

Digital media ethics deals with the distinct ethical problems, practices and norms of digital news media. Digital news media includes online journalism, blogging, digital photojournalism, citizen journalism and social media. It includes questions about how professional journalism should use this ‘new media’ to research and publish stories, as well as how to use text or images provided by citizens.

A central question is to what extent existing media ethics is suitable for today’s and tomorrow’s news media that is immediate, interactive and “always on” – a journalism of amateurs and professionals

We are moving towards a mixed news media – a news media citizen and professional journalism across many media platforms. This new mixed news media requires a new mixed media ethics – guidelines that apply to amateur and professional whether they blog, Tweet, broadcast or write for newspapers. Media ethics needs to be rethought and reinvented for the media of today, not of yesteryear.

13.9 TENSIONS ON TWO LEVELS

The media revolution has created ethical tensions on two levels.

On the first level, there is a tension between traditional journalism and online journalism. The culture of traditional journalism, with its values of accuracy, pre-publication verification, balance, impartiality, and gate-keeping, rubs up against the culture of online journalism which emphasizes immediacy, transparency, partiality, non-professional journalists and post-publication correction.

On the second level, there is a tension between parochial and global journalism. If journalism has a global impact, what are its global responsibilities? Should media ethics reformulate its aims and norms so as to guide a journalism that is now global in reach and impact? What would that look like?

13.10 DIFFICULT QUESTIONS FOR DIGITAL MEDIA ETHICS

WHO IS A JOURNALIST?

The ‘democratization’ of media – technology that allows citizens to engage in journalism and publication of many kinds – blurs the identity of journalists and the idea of what constitutes journalism.

Is a person expressing their opinions on their Facebook site a journalist?

A lack of clarity over who is a journalist leads to definitional disputes over who is doing journalism. That leads to the question: What is journalism?

ANONYMITY

Anonymity is accepted more readily online than in mainstream news media.

Online, many commentary and “chat” areas do not require anonymity. Anonymity is praised as allowing freedom of speech and sometimes helping to expose wrongdoing. Critics say it encourages irresponsible and harmful comments.

The ethical question is: When is anonymity ethically permissible and is it inconsistent for the media to enforce different rules on anonymity for different media platforms? What should be the ethical guidelines for anonymity offline and online?

SPEED, RUMOR AND CORRECTIONS

Reports and images circulate the globe with amazing speed via Twitter, YouTube, Facebook, blogs, cell phones, and email. Speed puts pressure on newsrooms to publish stories before they are adequately checked and verified as to the source of the story and the reliability of the alleged facts. Major news organizations too often pick up rumors online. These false reports could induce panic, cause accidents, prompt military action and so on.

A related problem, created by new media, is how to handle errors and corrections when reports and commentary are constantly being updated. Increasingly, journalists are blogging ‘live’ about sports games, news events, and breaking stories. Inevitably, when one works at this speed, errors are made, from misspelling words to making factual errors. Should news organizations go back and correct all of these mistakes which populate mountains of material? Or should they correct errors later and not leave a trace of the original mistake –what is called “unpublishing?” The ethical challenge is to articulate guidelines for dealing with rumors and corrections in an online world that are consistent with the principles of accuracy, verification, and transparency.

IMPARTIALITY, CONFLICTS OF INTEREST, AND PARTISAN JOURNALISM

New media encourages people to express their opinion and share their thoughts candidly. Many online journalists see themselves as partisans or activists for causes or political movements, and reject the idea of objective or neutral analysis.

Partial or partisan journalism comes in at least two kinds: One kind is an opinion journalism that enjoys commenting upon events and issues, with or without verification. Another form is partisan journalism which uses media as a mouthpiece for political parties and movements.

To make matters more contentious, some of the new exponents of opinion and impartial journalism not only question objectivity, they question the long-standing principle that journalists should be independent from the groups they write about. For example, some partisan journalists reject charges of a journalistic “conflict of interest” when they accept money from groups, or make donations to political parties.

REPORTERS USING SOCIAL MEDIA

Many news organizations encourage their reporters to use social media to gather information and to create a “brand” for themselves by starting their own blog, Facebook page, or Twitter account. However, online commenting can put reporters, especially beat reporters, in trouble with their editors or the people they comment about, especially if the news outlet says it provides impartial reporting.

The ethical challenge is to develop social media guidelines that allow reporters to explore the new media world but also to draw reasonable limits on personal commentary.

CITIZEN JOURNALISTS AND USING CITIZEN CONTENT

As newsroom staff shrink, and the popularity of online news grows, organizations are increasingly able, and willing, to collaborate with citizens in covering disasters, accidents, and other breaking news. Citizens who capture events on their cell phones can transmit text and images to newsrooms.

Newsrooms need to put in place a process for citizen-supplied material, which may be bogus or biased. How shall sources be identified? How much vetting is necessary for different sorts of stories? Should citizen contributors be made aware of the newsroom’s editorial standards?

ETHICS OF IMAGES

Finally, there are the new ethical issues raised by the rise of new image technology. These images include both photographs and video. Citizens and professional journalists have new and easy ways to capture and transmit images, such as cell phones linked to the internet via wireless technology. They have new technologies for altering and manipulating these images.

This convergence of ease of capture, ease of transmission, and ease of manipulation questions the traditional principles of photojournalism which were developed for non-digital capture and transmission of pictures and video.

Laws with regards to Citizen Journalism

Citizen Journalism is the concept of individuals, who are not professional journalists, writing about news or news analysis or reviews, either as per their expertise or areas of interest. Citizen journalists could be bystanders to an event, who choose to report it, or subject experts, who periodically or occasionally write about news related subjects.

In recent times, especially with social media, the concept of citizen journalism is gathering steam. These could be bloggers, social media ‘influencers’, individuals earlier employed with a media house, or a person with an interest in reporting and analysis. These individuals may or may not be paid for this effort.

Anyone with a gadget and an internet connection start a blog and post on social media, information that may also be termed ‘news’ and become

citizen journalists. There are thousands of news sites, and millions of bloggers all over the world.

Concerns about citizen journalism are about reliability, as these individuals are not trained journalists. Opinions are often portrayed as facts, which can be misleading to an average reader who is not trained to differentiate between the two.

However, citizen journalism has been used by traditional media houses too to increase the diversity of news reports and certain nuanced reporting that might be of interest to specific communities. Besides, those arguing in favour of the concept claim it empowers individuals who earlier did not have a medium to share information to do so, resulting in a more democratic media space. It also empowers local communities and even marginalized sections to spread news and awareness about their activities across the world, which are typically left out of the ambit of mainstream media organisations.

Media law applies as much to bloggers and those not paid for their work as it applies to professional journalists and media organisations.

The main media laws that could affect citizen journalists:

- inciting racial, ethnic or religious hatred and violence
- use of copyright materials (see chapter on copyright)
- bringing someone into disrepute and lowering their reputation among their peers; this is defamation and it could result in court action
- identifying certain people working in national security organisations.

Joseph Pulitzer 400w

Media law applies as much to bloggers and those not paid for their work as it applies to professional journalists and media organisations.

Joseph Pulitzer, (born April 10, 1847, Makó, Hungary—died October 29, 1911, Charleston, South Carolina, U.S.), American newspaper editor and publisher who helped to establish the pattern of the modern newspaper. In his time he was one of the most powerful journalists in the United States.

Having been reared in Budapest, Pulitzer sought a military career and emigrated to the United States in 1864 as a recruit for the Union army in the American Civil War (1861–65). After the war he went to St. Louis, Missouri, where in 1868 he became a reporter on a German-language daily newspaper, the *Westliche Post*. In 1871 he bought a share of that paper but soon resold it at a profit. Pulitzer had meanwhile become active in politics, and he was elected to the Missouri state legislature in 1869. In 1871–72 he helped to organize the Liberal Republican Party in Missouri, which nominated Horace Greeley for president in 1872. After the party's subsequent collapse, Pulitzer became and remained a lifelong Democrat.

In 1874 Pulitzer acquired another St. Louis German-language paper, the *Staats-Zeitung*, and advantageously sold its Associated Press franchise to the *St. Louis Globe* (later *Globe-Democrat*). Four years

afterward he gained control of the *St. Louis Dispatch* (founded 1864) and the *Post* (founded 1875) and merged them as the *Post-Dispatch*, soon the city's dominant evening newspaper. On October 5, 1882, Pulitzer's chief editorial writer shot to death a political opponent of the *Post-Dispatch*. Public reprobation and his own ill health prompted Pulitzer to shift his newspaper interests to New York City, where he purchased (May 10, 1883) a morning paper, the *World*, from the financier Jay Gould. He soon turned that paper into the leading journalistic voice of the Democratic Party in the United States. Pulitzer founded the *World's* evening counterpart, the *Evening World*, in 1887.

In his newspapers, Pulitzer combined exposés of political corruption and crusading investigative reporting with publicity stunts, blatant self-advertising, and sensationalistic journalism. In an effort to further attract a mass readership, he also introduced such innovations as comics, sports coverage, women's fashion coverage, and illustrations into his newspapers, thus making them vehicles of entertainment as well as of information.

The *World* eventually became involved in a fierce competition with William Randolph Hearst's *New York Morning Journal*, and the blatant sensationalism that both newspapers resorted to in espousing the Spanish-American War of 1898 led to the coining of the term "yellow journalism" to describe such practices. Failing eyesight and worsening nervous disorders forced Pulitzer to abandon the management of his newspapers in 1887. He gave up his editorship of them in 1890, but he continued to exercise a close watch over their editorial policies.

In his will, Pulitzer endowed the Columbia University School of Journalism (opened 1912) and established the prestigious Pulitzer Prizes, awarded annually since 1917.

Learning Outcome

The learners are expected to know journalistic ethical issues and significance of moral reasoning for a journalist. They should also be aware of the importance of objectivity and neutrality in journalism.

Further Reading:

Ess, Charles. *Digital Media Ethics*. Cambridge: Polity Press, 2009.

Friend, Cecilia and Jane Singer. *Online Journalism Ethics: Traditions and Transitions*. Armonk, N.Y.: M. E. Sharpe, 2007.

Ward, Stephen J. A. "Ethics for the New Mainstream." In *The New Journalist: Roles, Skills, and Critical Thinking*, eds. Paul Benedetti, Tim Currie and Kim Kierans, pp. 313-326. Toronto: Emond Montgomery Publications, 2010.

Ward, Stephen J. A. "Ethics for the New Investigative Newsroom."

Books

Basu, D.D. (1980) : "Law of Press in India", New Delhi : LexisNexis Butterworths.

Bhasin, Lalit (2010) : “Media World and Law”, New Delhi : Universal Law Publishing Co. Pvt. Ltd
Natarajan, S., (1962) : “A History of the Press in India”, New Delhi : Asian Publisher House
Pathak Juhi, (2014) : “INTRODUCTION TO MEDIA LAWS AND ETHICS”, New Delhi Shipra Publication

Online Reading

<https://www.mediaethicsmagazine.com/index.php/browse-back-issues/179-fall-2013-vol-25-no-1/3999003-objectivity-and-advocacy-in-journalism>

<https://www.americanpressinstitute.org/journalism-essentials/bias-objectivity/lost-meaning-objectivity/>

<https://petapixel.com/2017/04/03/the-ethics-of-photojournalism/>

UNIT : 14**WORKING CONDITIONS OF
JOURNALISTS****:: STRUCTURE ::****14.0 INTRODUCTION****14.1 Objectives****14.2 Working Journalists Act (1955)****14.3 Editors Guild of India, Press Council and other relevant
Associations****14.4 Government Accreditation Card****14.5 Majithia Commission (Scope of the commission, its
findings and Recommendations)****14.6 Wage Board and recent revisions****14.7 Dipping ethical standards****14.8 Press Clubs of India (History, purpose, current status)****Ethics of Images****14.9 Check Your Progress****14.10 Keywords****14.11 References**

14.0 INTRODUCTION

While journalism is widely seen as an exciting and challenging profession, journalists work under tough conditions in media organisations across the world. With changing times, the conditioning is worsening. Since the late 20th century the number of employed journalists has gone down significantly and even the remaining journalists have seen sharp decline in their salaries. In traditional media, women journalists,

freelancers and online journalists get lower salaries than the male employees. Studies show that job satisfaction is robust but on the decline. Gone are the days when journalists were comfortably walking the corridors of power, rubbing shoulders with celebrities, enjoying the perks that came with the job. With the internet providing free access to information at a click, journalists need to work really hard under tough conditions to make their place in the industry.

Technology and novel methods of producing and presenting news has significantly changed the profession of journalism.

In the last one year the working conditions of journalists have further worsened because of the coronavirus. They have suffered job losses and there have been virulent attacks on the media across the world. A recent study conducted reveals that three out of four journalists had to work under hostile conditions while covering the pandemic besides salary cut and job losses.

As if that was enough, a survey says three out of five journalists in India face pressure/threat for their reports. They mostly receive such threats on popular social media platforms like Facebook, Twitter and Whatsapp.

14.1 OBJECTIVES

- Understand the Working Journalists' Act
- Know different organisations monitoring the media
- Understand the role of wage boards for journalists

On completing this unit, you will....

Understand the difficult conditions under which journalists have to work

Understand the importance of wage boards

Know the relevance of Press clubs

14.2 WORKING JOURNALISTS ACT (1955)

There are a large number of newspapers and periodicals published in India where thousands of people are employed. Every organisation has its own way of working. To ensure fair deal to the employees, the government of India constituted the Press Commission which made various recommendations by means of legislation to improve the working condition of journalists employed by newspapers. Subsequently the Indian Parliament introduced the working Journalists (Conditions of Service) and Miscellaneous Provisions Bill.

The Working Journalists and Other Newspaper Employees (Conditions of Services & Miscellaneous Provision) Act, 1955 came into existence with the idea to provide welfare measures to regulate service conditions of the working journalists and other employees in newspaper organisations. According to the Act a “working journalist” is one whose principal occupation is that of a journalist either as whole-time or part-time, in, or in relation to, one or more newspaper establishments as an editor, a leader- writer, news-editor, sub-editor, feature-writer, copy-tester, reporter, correspondent, cartoonist, news-photographer and proof-reader.

However, somebody who is employed mainly in a managerial or administrative capacity or employed in a supervisory capacity, is not included in this category.

When the First Press Commission realised that journalists were paid low salaries, it felt it necessary to fix a minimum wage for journalist employees. It recommended the minimum wage that should be paid to them. The Working Journalists and Other Newspaper Employees (Conditions of Services & Miscellaneous Provision) Act, 1955 made the Industrial Disputes Act, 1947 applicable to working journalists. The Act also made the Industrial Employment (Standing Orders) Act, 1946 and the Employees Provident Fund Act, 1952 applicable in every newspaper establishment that employed 20 or more employees. The main provisions of the Act mainly cover:

- Special provisions in respect of certain cases of retrenchment.
- Gratuity payment.
- Work hours.
- Leave rules.
- Fixing or revision of wages for working journalists.
- Enforcement of the recommendations of wage boards and wage tribunals.
- Employees Provident Fund
- Recovery of money due from employer

"Newspaper" - printed periodical work containing public news or comments thereof.

"Newspaper Employees" -- any working journalists and anybody who is employed in any newspaper establishment.

"Newspaper Establishment" -- 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.

"Working Journalists" -- 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-taster, reporter, correspondent, cartoonist, news-photographer and proof-reader, but does not include any such person who;

1. is employed mainly in a managerial or administrative capacity or
2. employed in a supervisory capacity performs, either by the nature of duties attached to his office or by reasons of the power vested in him, and function mainly of a managerial nature

The Act also provisioned that the Central Government shall form separate Wage Board to fix or revise the wages for working journalists and other newspaper employees as and when necessary. Once the Central government receives the recommendations of the Board, it can implement

them on different categories of newspaper establishments as recommended by the Board.

According to the Act, the Wage Board for working journalists consists of two persons each who represent employers and working journalists and three independent persons, including an existing or former Judge of High Court or the Supreme Court who shall be appointed by that Government as the Chairman of the Board. The Wage Board for non-journalist newspaper employees shall consist of two persons representing employers in relation to newspaper establishment, two persons representing non-journalist newspaper employees and 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.

All the Assistant Labour Commissioners of the Labour Department will ensure implementation of recommendations under the Act for their respective districts. Deputy Labour Commissioners will ensure recovery of the amount due to the newspaper employees under the provisions of the Act.

Penalty:

The employer can be punished if he flouts any of the provisions of the Act.

Working hours: The Act envisions that no working journalist shall be required or allowed to work in any newspaper establishment for more than 144 hours during any periods of 4 consecutive weeks, exclusive of time for meals.

- Every working journalist shall be allowed during any period of 7 consecutive days rest for a period of not less than 24 consecutive hours, the period between 10 pm and 6 pm being included therein

The maximum hour of work for any period of consecutive weeks is 144 hours.

14.3 EDITORS GUILD OF INDIA, PRESS COUNCIL AND OTHER RELEVANT ASSOCIATIONS

Editors Guild of India

Founded in 1978 post Emergency, Editors Guild strives to protect press freedom and also raise the standards of editorial leadership of newspapers and magazines. It was felt that the absence of an organized platform of editors was the main reason why press freedom continued to be suppressed during the Emergency. The Editors Guild took up the issues of abuse of press freedom with the Parliament and Executive, worked towards restoring the press freedom taken away by amendments to the Constitution, executive orders and judicial pronouncements during Emergency. The freedom to report proceedings of Parliament (Feroze Gandhi Act) which was taken away in 1976 was restored.

The Editors Guild later took up the threats to press freedom by the governments of Tamil Nadu and Bihar by attempts to bring draconian defamation laws. Similarly, in 1986 when the central government proposed to bring an anti-defamation act, the Editors Guild led nationwide protests forcing the executive to give up its plans.

Again in 2001, the government brought in the Prevention of Terrorism Ordinance which had provisions like preventive detention on the basis of mere suspicion of journalists. The Editors Guild again protested vehemently and ensured press freedom.

The Editors Guild has strongly resisted the threats to media freedom from non-governmental sources, especially in militancy-affected regions of North, East and North Eastern India.

Besides, the Editors Guild also tries to improve standards of newspaper editors. It has its own code of ethics of Editors. Whenever there are complaints from editors of harassment from those in authority, the Editors Guild investigates and recommends action to the concerned governments and institutions. It played an active role after Gujarat riots to counter media bias.

Press Council

A democratic society can thrive only if the press is free and responsible. As the Press functions as the watchdog of public interest, it must have a secure freedom of expression which is not hindered by those in authority. However, this freedom of expression comes with huge responsibility. Unhindered freedom poses the risk of unprofessional conduct by editors and there must be some control over them. As government control will destroy press freedom, it is the Press Council that regulates the Press. It monitors the media and ensures that the Press follows journalistic ethics while maintaining high standards of professional conduct.

Headed by eminent peers of the profession and some experts, Press Council is a structured machinery that regulates the press with its impartial and unbiased outlook.

First founded in 1916 as the Court of Honour for the Press in Sweden, the idea quickly spread to other parts of Europe, Canada, Asia, Australia and New Zealand. Today, more than four dozen nations have the Press Councils or similar media bodies to regulate their press.

In India the Press Council was set up in 1966 by the Parliament on the recommendations of the First Press Commission. Today the Press Council functions under the Press Council Act 1978. It is a statutory, quasi-judicial body which acts as a watchdog of the press.

It is headed by a Chairman, who is mostly a retired judge of the Supreme Court of India. The Chairman is nominated by a committee that includes the Chairman of the Rajya Sabha, the Lok Sabha Speaker and a member of the Press Council.

The Council has 28 members of whom 20 are from the press, 5 are nominated from the two houses of Parliament and 3 from the Sahitya Academy, University Grants Commission and the Bar Council of India. The members have a term of three years.

Press Councils important functions include:

- To help newspaper and news agencies to maintain their independence
- To build a code of conduct for newspapers, news agencies and journalists
- To keep under review any development likely to restrict supply and dissemination of news of public interest and importance
- To monitor development such as concentration of or other aspects of ownership of newspapers and news agencies which may affect the independence of the press.

The Press Council is a powerful body that ensures that freedom of speech is maintained. It takes up complaints received either by the press or against the press. It has the power to either warn or censure the journalists if they are found guilty of wrongdoing. It can make observations on the conduct of any authority including the Government.

It is a fully autonomous body, independent of government control in discharge of its duties and is protected by the Constitution.

The Press Council Act gives the Press Council powers to make observations on any authority including the Government. If it finds a newspaper or news agency has flouted journalistic ethic, it has the power to warn, admonish or censure the newspaper, the news agency, the editor or the journalist for misconduct.

However, PCI powers are restricted as it cannot penalize newspapers, news agencies, editors and journalists for violation of the guidelines. It can only overview the functioning of press media. It cannot review the functioning of electronic media like radio, television and internet media.

Office of Registrar of Newspapers of India

RNI compiles and maintains a register of newspapers and issues certificates of registration to the newspapers. It also is responsible for scrutiny and analysis of annual statements issued by the publishers of newspapers in the country.

RNI is a statutory body of the government of India under the Ministry of Information and Broadcasting.

There are other media regulatory bodies too like the News Broadcasters Association which has devised a Code of Ethics to regulate television content. It can warn, admonish, censure or express disapproval and fine the broadcaster up to Rs. 1 lakh for violation of the Code.

Then there are Broadcast Editors' Association and The Advertising Standards Council of India. However these bodies do not have any statutory powers.

14.4 GOVERNMENT ACCREDITATION CARD

(Powers and responsibilities of a government accreditation card)

The Government of India defines accreditation as “recognition of news media representatives by the Government of India for purpose of access to sources of information in the Government and also to news materials,

written or pictorial, released by the Press Information Bureau and/or other agencies of the Government of India.”

The government gives accreditation to media persons in accordance with the Central Press Accreditation Rules, 1999 (Annexure I), and with due approval of the Central Press Accreditation Committee. CPAC is headed by the Press Information Bureau’s Principal Director General. PIB gives accreditation to journalists from Delhi-NCR while states have their own accreditation procedures.

Accreditation amounts to official recognition of being a media person. It gives the journalist credibility besides easy access to government offices which includes access to restricted areas.

PIB accreditation gives a journalist entry to events involving senior public functionaries such as the President, the Prime Minister, and other ministers. Only a PIB accredited journalist can get entry to these events.

It also helps a journalist discharge professional responsibilities by helping them to protect their sources. The anonymity of sources is an essential principle of journalism across the world.

Accredited journalists need not register or record their presence at the reception, or with any other official in any ministry.

Accreditation also brings certain perks to the journalist like regular access to government updates, custom duty exemption on import of laptops, typewriters and fax machines and other professional equipment, a one-time ex-gratia relief under the Journalist Welfare Scheme, concession on railway tickets and many other government benefits.

They get easy access to press lounges, telephone connections on priority, media tours, grants, residential accommodation etc.

To get accreditation, a journalist must have at least five years of full-time experience. A freelancer must have 15 years’ experience for the same.

However, journalists working in digital media cannot get accreditation cards. The government is however, considering granting accreditation to digital media reporters, camerapersons and videographers too.

PIB also grants press accreditation to foreign journalists on recommendation of the ministry of external Affairs. Only those foreign media persons can get accreditation who live in and around Delhi.

14.5 MAJITHIA COMMISSION (SCOPE OF THE COMMISSION, ITS FINDINGS AND RECOMMENDATIONS)

The Government constituted two wage boards (Majithia Wage Boards), one for working journalists and other for non-journalists newspaper employees in 2007 as sixth Wage Board. The boards were headed by Justice Majithia as per the provisions of The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955. The Majithia Wage Boards submitted their final report to the Government on December 31, 2010.

The recommendations were duly accepted and notified in 2011 by the Central Government in its official gazette thereby giving it a statutory force.

The board felt that working journalists got a paltry sum as salary and recommended that their salaries should be increased up to 200% in some cases. This resulted in huge uproar among publishers and many of them challenged the implementation of the wage board in the Supreme Court in 2014. And though they lost the case and SC asked the newspaper organisations to implement the board's recommendations, most newspapers have failed to do so. They have not paid their employees arrears

The board recommended that every part-time Correspondent/Photographer shall be paid not less than 30-40 per cent of the basic wage plus dearness allowance applicable to a full-time Correspondent/Photographer at similar level.

It recommended that the revised rates of dearness allowance shall be paid according to average all-India Consumer Price Index Number for industrial workers and will become operative with effect from 01-07-2010.

The board also awarded house rent allowance, transport allowance, night shift allowance, hardship allowance, LTA and medical allowance among other allowances.

If implemented, journalists would get a handsome salary. However, newspaper owners did not comply with the SC order and journalists continue to be a lowly paid lot.

14.6 WAGE BOARD AND RECENT REVISIONS

Wage Board for working journalists and non-journalist newspaper employees, introduced the concept of variable pay to achieve twin objectives:

-Like the Sixth Pay Commission, it brought in the concept of variable pay for all the employees working in newspaper establishments and news agencies. The variable pay is the specified percentage of the basic pay drawn by an employee in the newspaper industry. Allowances like HRA, Transport, and Leave Travel Allowance etc. are to be computed by taking the sum total of the revised basic pay and the variable pay applicable to an employee.

-Variable pay recommended by the Wage Boards would be the minimum maintainable for all employees including those working on contract basis and the management would be free to pay more than recommended variable pay subject to performance of the workers and profit of the newspaper establishments.

Majithia Wage Board recommendations for Journalists and Non-Journalists were gazetted on November 11, 2011 under Gazette No 2532 (E). Dearness Allowance Base was kept as an exception to the change in

implementation date, wherein the government maintained that DA was effective from July 1, 2010, only, when the basic pay structures were changed. The Supreme Court upheld the entire recommendation on February 7, 2014 and said that ‘the recommendations are valid in law...there is no valid ground for interference’.

The SC ordered newspaper owners to pay their employees the wages as revised or determined by the wage board from November 11, 2011.

All arrears till March 2014 were to be paid in four equal installments within one year.

However, very few newspapers have paid wages as recommended by the Majithia Board. After the court in 2017 exonerated the newspaper managements of the charge of contempt for failing to implement the recommendations, its judgment bought no significant relief to the journalists.

And when some employees sought relief from court, many of them were sacked from service or forced to withdraw their petition. The case is still pending in the court and it is feared that it may drag on for an indefinite period. What makes the situation even more bizarre is that journalists who play the role of whistle-blowers or watch dogs are themselves the most exploited lot.

Ironically as it may seem, the wage board recommendations and its ratification by the government does not guarantee a hike in wages for the journalist. For example, big print media outlets have been stonewalling paying the new wage recommendations by either flouting or ignoring the law or filing review petitions so that they could buy time and quietly bury the issue. The common man is prone to dubbing journalists as corrupt and spineless but little do they know that the print journalist struggles to make ends meet since the media houses find technical loopholes to not pay arrears and revise their salaries which would instil in the journalist a sense of independence and fair play, where they can oppose injustice meted out to members of the society by taking up their cases and publishing stories of the underdog but such work by journalists is frowned upon by many state governments who are busy slapping defamation cases, sedition charges and getting them behind bars if they dare to question the acts of omissions and commissions by the governments in power. Moreover, in the last five years print journalists have been at the receiving end and more than 200 journalists have been sacked by citing the Covid pandemic and loss of revenue as excuses to downsize the number of reporters print media houses hire.

Additionally, over the past decade journalists have had to face the ignominy of their designations being changed from those of journalists to content Managers and Content Writers. By re-designating journalists and by giving them two to three year contracts, they have been conveniently removed from the purview of getting wage board dues. What further vitiates the atmosphere is that the working journalist act only applies to print journalists and doesn't apply to TV journalists or news portal journalists. Newspaper barons plead with the government that they have

become loss-making organizations and since the young reader doesn't subscribe to physical editions of the newspapers their ad revenues have dwindled and they are busy closing down editions which are not economically viable. The Press council or the Editors' Guild looks the other way when newspaper managements sack journalists without justification. Over time, young professionals refuse to work for newspapers, especially English newspapers since there is very little money involved. After spending roughly 5 lakhs to complete a course in journalism and mass communication, they are not even offered 5000 as internship stipend. While Hindi and vernacular newspapers continue to be the primary source of news for peri-urban and rural areas, they exploit full-time journalists by paying them very low salaries since they know employment opportunities are not easy to come by. This kind of ad hocism rules supreme and journalists have to simply grin and bear it. If they shift to TV or news portals, they are given better salaries maybe but they end up with non-journalistic designations. It is tragic to note that the Working Journalists' Act only applies to print and not to other media streams. This means that news portals and TV news channels exploit the situation since there are no statutes or rules of hiring that have been laid out for payment of monthly wages. Most news portals underpay their journalistic staff because they know they will not be castigated or pulled up since there are no government laws to safeguard the journalists' rights.

14.7 DIPPING ETHICAL STANDARDS

In these trying circumstances, ethical standards become a far cry since the journalist is so poorly paid that he or she looks to curry favours from respective governments. It is common to see journalists shift to government accommodation and once the government in power has allotted them houses, it is simply not possible for the journalist to investigate the working of the government and the malpractices that the minister or the bureaucrat indulges in, without a call to conscience. It is commonly understood that journalists can be bought for a pittance. That is why those who belonged to old world journalism always made it a point to ensure that journalism to them was a commitment and not a profession. But there are temptations and pitfalls that come in the way of fair journalism.

According to veteran political journalist P Raman, "journalists are being made to act as 'clerical coolies' today. In his recent book, 'The Post-truth Media's Survival Sutra: A Footsoldier's Version,' Raman tracks the ups and downs of Indian media. The octogenarian journalist has shared his thoughts on Indian journalism and its future "Nothing special about the year. We felt fed up with the way proprietors were forcing the editors to get duty cuts in machinery imports, plots of land for the company from a state government and relief from FERA cases, and so on. There were many such stories in circulation. Such liaison became part of the editors' job. We simply wanted to preserve our limited journalistic freedom and avoid being the executioners on behalf of the proprietors." When things

have come to such a sorry pass, is there light at the end of the ethical tunnel.

Writing in News Click journalist Neeraj Mishra argues that “journalists are only as good as their conscience and their brands. The bigger the brand, the heavier the weight on their conscience and the weightier their responsibility, to earn revenue for themselves and their brand.

“In an ideal media landscape, which did exist for a while, journalists were less paid but highly respected. Their employers were strong and able to withstand pressure from governments primarily because it takes less money to keep their wheels in operation. There once were idealists both amongst journalists and their employers, but all that has changed today. Salaries have shot up in the last three decades, ad rates have gone up, as has the pressure to deliver revenue or perish, just like in any fast-moving consumer goods market”.

14.8 PRESS CLUBS OF INDIA (HISTORY, PURPOSE, CURRENT STATUS)

Veteran journalist Durga Das came up with the idea to set up the Press Club of India way back in the early 1930s during his visit to London. There he visited the London Press Club and decided to come up with a Press Club in Delhi. Press Club of India was incorporated as a Company on March 10, 1958. Durga Das later became its first president.

Press club is an important institution which strives to uphold freedom of press in the country. The main objective of the press club is to protect the constitutional rights of the media persons in the production and dissemination of news. Press club also focuses on training and educating the journalists by associating with other institutions.

The press club also organises professional, educational and social activities from time to time. It arranges events to help journalists by keeping them updated with the latest development in the field. The idea is to keep on working to improve the standards of press in the country.

The club members enjoy various amenities such as a library, gym, swimming pool, snacks, conference hall, etc. It provides social security to its members.

The club makes efforts to ensure that media persons continue to enjoy the freedom of speech without any hesitation or fear.

Press club works on a charitable basis and it provides social security to all the media people and their families.

It organises events like press conferences and meetings to discuss relevant issues facing the country. It also provides professional solutions to the problems.

Press Club aims to fulfil the need for a common platform of media professionals across the country. It raises the voice of the common people through journalist/media community

All media professionals can seek membership irrespective of where they come from. The platform is open to all journalists from print, electronic,

internet media or any type of organization/work directly related with the news.

As a media professionals club, it advocates professionalism and has no scope for electoral politics and factionalism. It works for the welfare, empowerment and overall development of the member journalists.

A skilled team of club officials takes care of the organization and its administration. It has a Guiding Committee of senior people that guides press Club in policy and important matters. It has a Chief National Convener and three National Deputy In-charge, along with State In-charge, District In-charge, and other allies.

There are primarily two classes of membership – Primary and Privileged. Primary Membership is available for a limited period and can be availed by the eligible journalists.

Privileges

The Club will provides various facilities/ benefits/ privileges to its members:

- Protect and preserve the legal and constitutional rights of journalist members
- Offer professional, educational, social, cultural and recreational activities for members
- Health insurance (including cashless facility) and accident insurance facility to members and their families
- Emergency medical consultation for members
- Emergency legal consultation for members
- Travel facility for members and their families
- Organizing programs, lectures, seminars, refresher courses for professional enhancement of the members
- Provide residential units /flats to members on concessional prices

14.9 CHECK YOUR PROGRESS

1. Journalists work under tough conditions in media organisations across the world. True or false?
A: True
2. Coronavirus has worsened the working conditions of journalists. True or false?
A: True
3. The Working Journalists and Other Newspaper Employees (Conditions of Services & Miscellaneous Provision) Act came into existence in the year ... (Fill in the blanks from the options below)
a-1955 b-951 c-1965 A: (a) 1955
4. The Act was promulgated to regulate service conditions of the working journalists and other employees in newspaper organisations. True or false?
A: True
5. The Act provisioned separate Wage Board for working journalists and non-working journalists. True or false?

- A: True
6. Who ensures implementation of wage board recommendations?
(Choose from options below)
a-Labour commissioner b-Chief minister
c- District magistrate A: (a) Labour commissioner
7. Editors Guild of India was founded in... (Choose from options below)
a-1978 b-1975 c-1979 A: (a) 1978
8. Editors Guild was founded to protect press freedom and raise the standards of editorial leadership. True or false?
A: True
9. Press Council is a structured machinery that regulates the press. True or false?
A: True
10. Majithia wage Board recommendations were notified in ?
a-2011 b-2010 c-2014 A: 2011

14.10 KEYWORDS

Working Journalists' Act	Legislation to improve the working condition of journalists employed by newspapers
Wage Board	A panel constituted by the government to fix or revise the wages for working journalists and other newspaper employees as and when necessary
Editors Guild	Strives to protect press freedom and also raise the standards of editorial leadership of newspapers and magazines
Press Council	Monitors the media and ensures that the Press follows journalistic ethics while maintaining high standards of professional conduct
Majithia Commission	Wage Board for journalists

To sum up (Key takeaway)

- Working conditions of journalists have worsened over time, more so because of the coronavirus
- The Working Journalists and Other Newspaper Employees (Conditions of Services & Miscellaneous Provision) Act, 1955 came into existence to provide welfare measures to regulate service conditions of the working and non-journalists
- Founded in 1978 post Emergency, Editors Guild strives to protect press freedom
- Accreditation amounts to official recognition of being a media person
- Very few newspapers have paid wages as recommended by Majithia Board

14.11 REFERENCES

- A Text Book On Journalism by Swapan kr Mukherjee
- Journalism: Principles and Practice by Tony Harcup
- Handbook of Journalism and Mass Communication by Virbala Aggarwal
- "Media", Encyclopedia of India (vol. 3) by Thomas, Raju G. C.
- Mass Communication in India by Keval J. Kumar

યુનિવર્સિટી ગીત

સ્વાધ્યાય: પરમં તપ:

સ્વાધ્યાય: પરમં તપ:

સ્વાધ્યાય: પરમં તપ:

શિક્ષણ, સંસ્કૃતિ, સદ્ભાવ, દિવ્યબોધનું ધામ,
ડૉ. બાબાસાહેબ આંબેડકર ઓપન યુનિવર્સિટી નામ;
સૌને સૌની પાંખ મળે ને સૌને સૌનું આભ,
દશે દિશામાં સ્મિત વહે, હો દશે દિશે શુભ-લાભ.

અભણ રહી અજ્ઞાનના શાને, અંધકારને પીવો ?
કહે બુદ્ધ આંબેડકર કહે, તું થા તારો દીવો;
શારદીય અજવાળાં પહોંચ્યાં ગુર્જર ગામે ગામ
ધ્રુવતારકની જેમ ઝળહળે એકલવ્યની શાન.

સરસ્વતીના મયૂર તમારે ફળિયે આવી ગહેકે
અંધકારને હડસેલીને ઉજાસનાં ફૂલ મહેંકે;
બંધન નહીં કો' સ્થાન સમયનાં જવું ન ઘરથી દૂર,
ઘર આવી મા હરે શારદા દૈન્યતિમિરનાં પૂર.

સંસ્કારોની સુગંધ મહેંકે, મન મંદિરને ધામે
સુખની ટપાલ પહોંચે સૌને પોતાને સરનામે;
સમાજ કેરે દરિયે હાંકી શિક્ષણ કેરું વહાણ,
આવો કરીએ આપણ સૌ
ભવ્ય રાષ્ટ્રનિર્માણ...
દિવ્ય રાષ્ટ્રનિર્માણ...
ભવ્ય રાષ્ટ્રનિર્માણ

