Course Name – LL.B 3rd 2nd Sem
Subject – Right to Information Law
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Concept Covered – UNIIT-IV (MEDIA & LAW) Complete

1. Legal Dimension of Media

MEDIA & CRIMINAL LAW

While the Constitution provides a guarantee to freedom of speech and expression, which is exercised by the media, the criminal law imposes certain restrictions on that freedom for protecting the social or group interests and public tranquility. Article 19(2) provides certain grounds, based on which the state can impose reasonable restrictions on this freedom. Media-persons are basically under the same obligation as the people in general to abide by general principles of penal law. Media in its exercise of free criticism may slip either intentionally or through its routine activity into any kind of criminal liability under different circumstances. The Indian Penal Code envisages certain crimes which a media person may get entangled into and face prosecution. The right to free speech of Media persons cannot extend to cause sedition, by bringing disrepute of the state, or affect the reputation of individual leading to defamation or represent obscene or base material disturbing the moral and serene atmosphere of society. In case they do so, the criminal provisions of Indian Penal Code are attracted. Thus Defamation, Sedition and Obscenity are the three major areas where the media persons could be vulnerable to face the prosecution.

1. **Media and Crime of Defamation:**

Journalist who defames is liable both in civil law and criminal law. Section 499 Indian Penal Code defines defamation:

Whoever by words either spoken of intended o be read, or buy signs or by visible representation, makes or publishes any imputation concerning any person intending to harm or knowing or having reason to believe that such person, is said, except in cases herein after excepted, to defame that person.

Intention to harm

According to section 499 of the IPC (The Indian Penal Code, 1860), the person who defames another must have done it intending to harm or knowing or having reason to believe that such imputation will harm the reputation.

It is not necessary to prove that the complainant actually suffered directly or indirectly from the scandalous imputation alleged; it is sufficient to show that the accused intended to, knew or had reason to believe, that the imputation made by him would harm the reputation of the complainant, irrespective of whether the harm is actually caused or not. It is not necessary that there should be an intention to harm the reputation. It is sufficient if there was reason to believe that the imputation made would harm the reputation of the complainant. Section 499 of the Indian Penal Code gives four explanations in this regard.

Defamation of the dead

Explanation 1: According to this, the imputation must not only be defamatory of the deceased but it must also be hurtful to the feelings of his near relatives. The question depends upon the harm caused and not the harm intended, for in the case of deceased the latter test is inapplicable.

Defamation of a company or a collection of persons

Explanation 2: A corporation or company could not be liable in respect of a charge of a murder, incest, or adultery because it could not commit those crimes. The words complained of must attack the corporation or company in the method of conducting its affairs; must accuse it of fraud or mismanagement or must attack its financial position

The class defamed must not be too large to cease to be distinct from the memory of certain trade or profession. If a person calls the lawyers as thieves or medical men as a class of cut-throats in disguise or the police force as a hotbed of corruption, there would not be indictable libel-because the class is too large and the generalisation too sweeping to affect any of its composing members.

Defamation by innuendo

Explanation 3 says that when a particular passage is prima facie non-defamatory the complainant can show that it is really defamatory of him from the

circumstances and nature of the publication. Such a passage is called 'innuendo'. The language of irony or sarcasm very often will be better, forcible, and impressive than a bold statement. It is thus necessary for the prosecution to establish that the words, though innocent their appearance, were intended to be said in a libelous sense. So it may be libelous to say of an attorney that he is an honest lawyer meaning thereby he is the reverse of the honest.

Explanation 4 deals with what is considered as harming the reputation. This explanation specifies various ways in which the reputation of a person may be harmed. It says that the imputation must directly or indirectly lower the moral or intellectual character of the person defamed. It includes degradation in caste, community at feasts and so on. During a feast, a Hindu declared that complainant had been excommunicated and was not fit to sit down along with others to have food. It was held that priest was guilty of defamation

Publication

Publication in its primary sense is communication by the defendant to a person other than the defamed. It is the basis of liability in English civil law of defamation i.e., in torts. This principle though not accepted as the basic principle of English Penal Law of defamation is accepted as the basic principle of Indian Penal Code. (Section 499 Expln.4) Words which may have the effect of provoking other persons at whom they are uttered are made punishable under Section 504 of the Indian Penal Code which deals with intentional insults with intent to provoke breach of peace. The gist of the offence in section 499 seems to lie in the tendency of the statements verbal or written to create that degree of pain which is felt by a person who is subjected to unfavorable criticism and comments.

Exceptions

The ten exceptions to Section 499 state cases in which an imputation prima facie defamatory may be excused. They are occasions when a man is allowed to speak out or write matters which would ordinarily be defamatory. Those exceptions are:

1. Imputation of truth for public good,

2. Public conduct of public servants,

3. Public Conduct of public men other than public servants,

4. Comment on cases and conduct of witnesses and others concerned,

5. Merits of cases, decisions and judicial proceedings,

6. Merits of a public performance, literary criticisms,

7. Censure in good faith by one in authority,

8. Complaint to authority,

9. Imputation for protection of interest,

10. Caution in good faith.

It is pointed out that the ninth exception states a general principle of which exceptions 7, 8 and 10 are particular instances so that the last four exceptions really fall under privilege i.e., communication made on privileged occasion that is in the discharge of a duty or protection of an interest in the person who makes it.

In Lingam Gouda V. Basan Gouda Patil C.R. Criminal appeal No.173 of 1927 decided on Sept.22,1927 (Unrep.Bom) it was held: "if one repeats, another writes a libel, and a third approves what is written they are all makers of it, as all who concur and assent to the doing of an unlawful act are guilty; and murdering a person, in which all who are present and encourage the act are guilty, though the sound was given by one only.

Taki Hussain 1884,7 All 205 (222) F.B. Publication legally means communication of defamatory matter, to the third person other than the defamed one. Direct communication to the defamed was held to be no publication under the Code by a majority of the Full Bench of the Allahabad High Court

Balasubramania Mudaliar V. Rajagopalachariar 1944 46 Cr. L.J. 71 - The publisher of a newspaper is responsible for defamatory matter published in such paper whether he knows the contents of such paper or not. The editor of a journal is in no better position than any other ordinary subject with regard to his liability for libel. He is bound to take due care and caution before he makes a libelous statement.

Landmark Cases

In the Supreme Court decision in Harbhajan Singh v. State of Punjab A.I.R.1966 s.C.97 the accused was secretary of Punjab Praja Socialist Party. He wrote a defamatory article in Blitz about Surinder Singh, son of the Chief Minister of Punjab, Pratap Singh Kairon. Two defamatory statements reveal that he is the leader of smugglers and is responsible for a large number of crimes being committed in Punjab State. The statement added that because the culprit happens to be the Chief Minister's son, the cases are always shelved up. 'There was evidence that certain pending cases against some smugglers were withdrawn by the State at the instance of the Chief Minister. The truth of these allegations was not proved beyond the shadow of doubt in the trial of the defamation case.

The accused pleaded that imputation made in good faith and for public good falling under Exception 9 though he has stated in the original trial court that he relied on the truth of his statements falling under the First exception to S.499. Trial Court and High Court found against the accused, even on the plea of 'good faith' under ninth exception, namely on the ground that heehaw not conclusively established the truth of the allegation. High Court sentenced him to undergo three months simple imprisonment and to pay a fine of Rs. 2,000/-. The Supreme Court allowed the appeal of the accused and set aside the order of conviction by holding that in the circumstances of the case that the appellant was entitled to the protection of the Ninth Exception.

Sewakram v. R.K. Karanjia A.I.R. 1981 S.C.1514 During the period of Emergency Sewakram who is a senior lawyer practicing at Bhopal, was placed under detention under Section 3(1)(a)(ii) of the Maintenance of Internal Security Act, 1971 and was lodged at the central Jail Bhopal. There were among other detenues three lady detainees, including Smt. Uma Shukla. She was found to have conceived. She got the pregnancy terminated. In an ex parte confidential inquiry by a Deputy Secretary to the Government (Homes) it was found that the pregnancy was due to illicit relations between Sewakram and Smt. Shukla, the Blitz in its three editions in English, Hindi and Urdu flashed a summary of the report. The story included that (i) there was a mixing of male and female detainees in the central Jail, (ii) Sewakram had the opportunity and access to mix with Smt. Shukla freely and (iii) Smt. Shukla became pregnant by Sewakram. The news item was per

se defamatory. After revocation of Emergency, Mr. Sewakram lodged a criminal complaint for defamation. Mr. Karanjia prayed the Court to order the production of inquiry report, which was rejected by the Magistrate. Mr. Karanjia filed a revision before the High Court, wherein the inquiry report was produced and the High Court quashed the proceedings on the ground that the respondent's case clearly falls within the ambit of exception 9 of S.499. In reaching that conclusion the Court observed that 'it would be abuse of the process of the court if the trial is allowed to proceed which ultimately would turn out to be vexatious proceeding. It was held that the publication of report was for the welfare of the society. A public institution like prison had to be maintained in rigid discipline; the rules did not permit mixing of male prisoners with female prisoners and yet the report said the prison authorities connived at such a thing. The balance of public benefit lay in tits publicity rather than in hushing up the whole episode. The report had further shown that the publication had been honestly made in the belief of the truth of the report and also upon the reasonable ground for such a belief, after the exercise of such means to verify its truth as would be taken by a man of ordinary prudence under similar circumstances.

The case went to Supreme Court on a technical ground whether an appellate court like High Court can quash the original trial of the case where it was not prayed for, and in a miscellaneous application. The majority of Supreme Court bench allowed the appeal. Behraul Islam J. dissented and said that the quashing of original proceeding is correct. The Supreme Court also agreed that the publication of the defamatory statement by Blitz is for public good and thus falls under the exception 9 to S.199

Sections 500,501 and 502 of IPC -1860 prescribe punishments for various defamatory statements

Sec. 500: Whoever defames another shall be published with simple imprisonment for a term which may extend to two years or with fine, or with both.

Sec. 501: Printing or engraving of defamatory matter is made publishable with simple imprisonment for 2 years or with fine or with both.

Sec. 502: Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be

punished with simple imprisonment for a term which may extend to two years or with fine or with both.

Media and Crime of Sedition

> Criticism of government is not sedition. The expression ‘sedition’ generally means defamation of state. But the legal meaning of ‘sedition’ is different.

Definition: Section 124A of the Indian Penal Code defines and punishes sedition as follows:

> Whoever by words, either spoken or written, or by signs, or by visible representations, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.
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> Explanation 1: The expression 'disaffection includes disloyalty and all feelings of enmity.
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> Explanation 2: Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.
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> Explanation 3. Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.
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> **Supreme Court in Kedar Nath case (1962) 2 Cr L J 103, AIR 1962 SC 955 -** Moreover a citizen has a right to say or write whatever he likes about the government; or its measures, by way of criticism, or comment so long as he does not incite people to violence. When he does so and incites people to violence, he loses the constitutional protection of freedom of speech and freedom is different from licence. It further observed that the restrictions

imposed by these provisions cannot but be said to be in the interest of public order and within the ambit of permissible legislative interference. The explanations appended to the main body of section make it clear. It is only when the words used have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activity in the interest of public order. Section 124-A is a proof of this that the Government can be criticised by all legitimate means and the State cannot do anything.

Media and Crime of Obscenity

The society is now reeling under the impact of unending flow of cinema, story, dance and drama through small screen of television and of pornography in its vulgar form in personal computer with World Wide Web. The television with powerful, multi-channel visual splendors is totally occupying the young minds. Its utility in educating, informing and news giving is camouflaged by its misuse in dishing out obscene and indecent stuff in the name of entertainment. Images of women in electronic media, either by way of commercial advertisements or themes of serials or repeated show of films, can straight away influence the young minds.

It is the need of civilized world to protect the human dignity and medium of any kind has to project the image of humanity in decent form. The commodification of women as the object of sex and obscene writing or visual, or sensational theme of a serial or film represents the moral and cultural levels of a society.

While all other media have their own limitations of reach, the TV and Internet have no technological, territorial or literacy limitations. The writing is for those who know to read and write, and the film as such is meant for which they have to pay. TV at present is playing a role of "medium of the medium" by becoming a vehicle for films based on stories and novels. Seeing a cinema in theatre requires preparedness, whereas the TV which has become an inevitable ingredient of either drawing room or bed room, repeats a film either in totally or in part for umpteen number of times without requiring any preparedness on the on the part of audience except to switch on the set. A song and dance part or a fight

sequence is having a tremendous impact because of its repetition in TV, the most powerful and effective vehicle of thoughts at present.

The internet as an information infrastructure, a communicative device, is viewed as a tool for democratising speech on a global basis. Some say that no national law can regulate the net users and TV viewers. Before understanding the effectiveness of any control over distorting image of the women, it is necessary to know the existing legal controls over the media.

Offences affecting public decency and morals, IPC:

Indian Penal Code incorporates offences affecting public decency and morals. S. 292 punishes selling or letting or distributing the objects (book or pamphlet etc) which are lascivious or appeals to the prurient interest or its effect tends to deprave and corrupt persons who are likely to read, see or hear. Section 292 punishes selling of such objects to a person under the age of 20 years. Section 294 punishes public exhibition, selling or singing of obscene object.

Hicklin Test: As quoted in Ranjit D. Udeshi Case by Supreme Court

Validity It has to be decided on the facts and circumstances of each case whether in the context of its surroundings, the questioned act is obscene or not. As stated in **Ranjit D. Udeshi v. State AIR 1965 SC 881** none has so far attempted to define 'obscenity'. In this case, the Supreme Court upheld constitutionality of Section 292 and applied what is known as the Hicklin test as the right test to determine obscenity. The test laid down by the Chief Justice Cockburn in **Queen v. Hicklin,** was referred:

Whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hand a publication of this sort may fall… it is quite certain that it would suggest to the minds of the young of either sex, or even to persons of more advanced years, thoughts of a most impure and libidinous character"

The Supreme Court recently allowed some scenes of female frontal nudity and ghastly rape in the feature film "Bandit Queen" saying that they were essential to explain why Phoolan became a bandit Queen. The Court refused to cancel the

censor certification to the film, saying that the scenes were not obscene. **1996(4) SCC 1**

MEDIA AND TORT LAW DEFAMATION

The media's most dreaded professional hazard is the defamation litigation. In fact a journalist who reports in hurry to meet the deadlines amidst competition, is more vulnerable for both civil suit demanding compensation for defamation and also a criminal charge which if successful might land him in jail. Because the defamation is a two-in-one choice available to every citizen to protect his reputation against defamatory publication made by newspapers. One can either sue for damages and/or also prosecute defamer.

Defamation is a ground on which a constitutional limitation on the right to freedom of the expression, as mentioned Article 19(2) could be legally imposed. Thus the expression "Defamation" has been given constitutional status. This word includes expressions like libel and slander covering many other species of libel, such as obscene libels, seditious libels, and offensive libels and so on. The law of defamation does not infringe the right of freedom of speech guaranteed by article 19(1) (a). It is saved by Article 19(2) as it was included as one of the specific purposes for which a reasonable restriction can be imposed.

The law relating to the tort of defamation, from the point of view of distribution of legislative power, would fall under "actionable wrongs" mentioned in Entry 8 of the Concurrent List in the Eleventh Schedule to the Constitution. Criminal law also falls under the Concurrent List. This would cover the offence of defamation. Questions of defamation frequently arise in regard to newspapers. The particular topic of "newspapers, books and reprinting presses" is also covered by entry 39 of the Concurrent List. Special forms of communication such as wireless, broad casting and the like find a mention in entry 31 of the Union List. The field of legislation relating to defamation is thus within parliament competence.

Defamation is both a crime as well as civil wrong. The criminal law of defamation is codified in India. If state wants to prohibit a particular conduct, it has

to specifically define it and pass a law to prospectively punish such conduct. This is a constitutional right under Article 20(1). However the civil wrong of defamation is not a codified law in India and the rules and principles of liability that are applied by our courts are mostly those borrowed from the common law as explained in UK. Because of this historical background, extensive reference to English law becomes necessary to understand the civil liability for defamation.

A journalist working for any media is supposed to know that he has a duty not to injure the reputation of another person by false publications, with or without intention, because every citizen has a right to reputation. Right to reputation is a facet of the right to life guaranteed under Article 21 of the Constitution. Where any authority in discharge of its duties traverses into the realm of personal reputation, it must provide a chance to the person concerned to have a say in the matter, as decided by the Supreme Court in **State of Bihar v Lal Krishna Advani [(2003) 8 SCC 361]** Noted writer Weir It can be stated that the right of reputation is one of the most important things in a man's life. The right of reputation is a jus in rem, which can be defined as a right, good against the whole world.

Media and Legislature-Privileges of the Legislature

PRIVILEGES IN INDIA : India was ruled by English people for a long time For the proper functioning of the government, they made laws, while adopting their own pattern prevailing in England with certain modifications i.e. they made laws in accordance with situations and circumstances at that time. The system copied or based on English pattern exercised a great influence upon the members of the Constituent Assembly who drafted the Indian Constitution, so, naturally, this Constitution carries with it the British concept of Parliamentary privileges

In India, the privileges, immunities etc. of Parliament and its members are provided under Article 105 and that of State Legislatures under Article 194 of the Constitution '". The position under clause (1) & (2) of Article 105 is that subject to the provisions of the Constitution and the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in the Parliament.

In other respects under clause (3) of Article 105 (As it stands today after 44th Amendment of 1978) the powers, privileges and immunities of each House of Parliament and of its members and committees shall be such as may be defined from time to time by Parliament and until so defined, shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (44th Amendment) Act, 1978. Article 194 (3) contains identical provision in respect of State Legislature.

Under Article 105(3) of the Constitution, therefore, the privileges of our Parliament are identical with those of the House of Commons as they existed on the Jan 26th 1950. The Supreme Court, however, in special reference no 1 of 1964 held that the Parliament can not claim all the privileges as enjoyed by the House of Commons at the Commencement of the Constitution. It can exercise only those privileges of the House of Commons which are incidental to legislative functions.

As a House continues to enjoy the same privileges as it enjoyed at the commencement of the Constitution, the answer to the question that, what were the privileges of parliament and the State Legislature being enjoyed at the commencement of 44 Amendment is that they enjoyed the same privileges which were being enjoyed by House of Commons at the commencement of Constitution.

This amendment, therefore, merely excluded the name or reference of the House of Commons from Article 105 and 194 but retained the same position to continue which was existing at the commencement of the Constitution. The parliamentary privileges restrict the freedom of press and while publishing the reports of proceedings of a House of Parliament or of its committees or on a conduct of a member or members inside or out side the House, a lot of caution is required to be undertaken by the press.

The following privileges of the parliament affect the freedom of press.

(1) Right to Exclude Strangers - The parliament has the privilege to exclude the strangers'. The Speaker or Chairman, as the case may be, whenever, thinks fit under the rules of the House, may order the withdrawl of strangers from any part of the House, including the representatives of the press. The Parliament has not yet exercised these rights. However, it may exclude press whenever holding a secret session though such chances are quite rare. The Parliament is also empowered to

withdraw press cards of any particular journalist if any default is committed by him. The Lok Sabha has, infact, withdrawn press cards twice Once of a special correspondent of Blitz and on another occasion of a special correspondent of Hindustan New Delhi. Any person including a press representative excluded from the House under rule 248 of the House when It sits in a secret session.'

(2) Right to prohibit the publication of its proceedings:

It is another important privilege which has been enforced by the Parliament on various occasions with a specific intention, only to prevent malafide publication of any inaccurate report or expunged portions of any proceeding Unlike England, in India, there is no rule or standing order of the Parliament prohibiting the publication of its proceedings. In **M.S.M. Sharma V. Sri Krishna Sinha A.I.R. 1959 S.C. 395** (**Searchlight case)** the question before the Court was whether the legislature is empowered to prohibit the publication of expunged portion of the proceeding of the House. The Supreme Court gave the answer in affirmative and held that Article 105 (3) and Article 194(3) confer all those powers and privileges on Parliament and State Legislature.

(3) Power to Commit for Contempt:

One of the most important privileges available to Parliament is the power to commit for its contempt and also defined as the '**keystone of Parliamentary privilege**'. The power is identical with that of House of Commons in England. The power to punish for contempt was not available to the legislature under the Government of India Act, 1919. **For the first time Government of India Act, 1935 conferred such powers**. The question is whether the existence of such punitive powers affects the freedom of press. To answer such question it is to be kept in mind the difference between the existence of power and exercise of that power. In India, like the House of Commons, it has been the practice of each of the House to exercise privilege under great limitation and conditions. In majority of the cases the Parliament though oversensitive to its privileges did not take any action when the editor or person making the defamatory statement as the case may be expressed his sincere regret In the Blitz case the editor of the newspaper was reprimanded by the Lok Sabha but the Privilege Committee recognised the right of fair comment and observed as following.

"Nobody would deny the members or as a matter of fact, any citizen, the right of fair comment. But if the comments contain personal attack on individual members of parliament on account of their conduct in Parliament, or if the language of the comment is vulgar or abusive, they can not be deemed to come within the bounds of fair comment or justifiable criticism".

It is, therefore, clear that the privileges of the Parliament as discussed above are of extreme importance for the smooth and proper functioning of the parliament and State Legislatures and whenever, these privileges are violated by the press, it would be guilty of committing contempt of parliament or State Legislature. Under the following circumstances the press has been held guilty of committing the contempt:

(1) Comments in a newspaper casting reflections on the character or proceedings of the House, or of its committees, or member or members collectively and thereby lowering their prestige in the eyes of the public

(2) Pre - mature publication of a motion tabled before the House and of proceedings of a Committee of a House or the proceedings of a meeting thereof by a newspaper before the committee completes its task and presents its report to the house.

(3) Publication of proceedings of a committee of a House before it is presented to the House concerned.

(4) Misreporting of the proceeding of the House, or of a report of a Parliamentary Committee or, of a member of the House by newspaper

(5) Casting aspersions on the impartiality of the speaker attributing malafides to him in discharge of his duties in the House.

(6) Publication of expunged portion of the proceedings of a House

(7) Publication of a document or paper presented to a committee before the committee's report is presented to the House.

(8) Comments on the officers of the House casting reflections

The position of the parliamentary privileges when they are in conflict with the freeedom of press has been settled in re-under Article 143 of the Constitution of India. The advisory opinion of the Supreme Court in this case however has made Article 105 (3) quite ambiguous in its approach as if and when a law is made defining the privileges it would be subject to Article 19 (1) (a) but in case if no law is made then the same provision would yield to parliamentary privileges. However, inspite of the fact that freedom of press is subject to privileges of the House, there are certain enactments which give protection to press against a third party if substantial and true report of the proceeding of either House is published. In 1956 Parliamentary Proceedings (Protection of Publication), Act was passed. Under the Act, no liability, Civil or Criminal, attaches to the publication of proceedings of either Hosue, provided it is true and without malice and also for public good. This Act was repealed in Dec. 1975 during Emergency but re-enacted in April 1977 and currently is the law relating to the publication of proceeding of either House of Parliament. The law also extends to the radio broadcasts. The Act of 1977 therefore, provides immunity from any civil or criminal liability for publishing any proceedings of either Hosue of Parliament, if the following conditions are fulfilled,

(i) The report of the proceedings is substantially true;
(ii) It is not made with malice; and
(iii) It is made for public good.

The protection thus, extended by the aforesaid Act is confined not only to the wrong or offence of defamation but also comprehends any other wrong or offence which might possibly be caused by such publication, eg, obscenity, incitement to an offence, sedition etc. notwithstanding that they are otherwise punishable under Indian Penal Code or any other law in force, in the year 1978 Article 361 - A was inserted into the Constitution through the 44th Constitutional Amendment. The amendement provided the constitutional protection to the Parlimentary Proceedings (Protection of Publication) Act, 1977 and to the similar state enactments.

Media & Judiciary-contempt of Court

Power to punish for contempt of court is given in Articles 129 and 215, Section 228 of Indian Penal Code and in the Contempt of Courts Act 1971. Contempt of

Court is classified in to Civil Contempt and Criminal contempt. Civil Contempt refers to a wilful disobedience of any judgment, decree, order writ or other process of a court or a wilful breach of or undertaking given to the Court. This concept is very clearly defined and does not require much deliberation as opposed to Criminal Contempt. Criminal Contempt has been defined as " the publication (whether by words, spoken or written or by signs, or by visible representations or otherwise) of any matter or the doing of any other act whatsoever which scandalises or tends to scandalise, or lowers or tends to lower the authority of any court or prejudices or interferes or tends to interfere with, the due course of any judicial proceeding or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner. Hence it is seen that as per the definition, whether or not an act or rather the publication of something can be called contempt of court depends a lot on the facts of the case and the discretion of the Court. Hence there have been numerous judgements that have interpreted the provisions.

What amounts to scandalising the court was discussed in the case of Brahma Prakash Sharma Vs State of Uttar Pradesh AIR 1954 SC 10 The Court after examining various decisions of English courts observed that there were two important aspects in this regard.

The first aspect being that the reflection on the conduct or character of a judge in reference to the discharge of his judicial duties would not be contempt if such reflection is made in the exercise of the right of fair and reasonable criticism which every citizen possesses in respect of public acts done in the seat of justice. Secondly, when attacks or comments are made on a judge or judges, disparaging in character and derogatory to their dignity, care should be taken to distinguish between what is a libel on the judge and what amounts really to contempt of court. The fact that a statement is defamatory so far as the judge is concerned does not necessarily make it contempt. The Court held that the position that emerged was that a defamatory attack on a judge may be a libel so far as the judge is concerned and it would be open to him to proceed against the libel or in a proper action if he so chooses. If, however, the publication of the disparaging statement is calculated to interfere with the due course of justice or proper administration of law by such court, it can be punished summarily as contempt. One is a wrong done to the public. It will be an injury to the public if it tends to create an apprehension in the

minds of the people regarding the integrity, ability or fairness of the judge or to deter actual and prospective litigants from placing complete reliance upon the court's administration of justice, or if it is likely to cause embarrassment in the mind of the judge himself in the discharge of his judicial duties. The above judgement was passed in the year 1953, which was well before the Contempt of Court Act came in to force. However the case is important in order to interpret and understand the provisions of the Act. In contrast to the provisions of what constitutes contempt there are many more provisions in the Act that provide situations that do not amount to contempt. It is important to note from the point of view of the media that innocent publication and distribution of matter does not amount to contempt. The important exceptions are fair and accurate report of judicial proceedings and fair criticism of judicial act.

Media and Human Rights

It is here that the media can play a salutary role in creating larger awareness of the concept of human rights, Basic human rights that would constitute the right of every individual to his fundamental freedom without distinction as to race, sex, language or religion.

Human society has developed from Stone Age to space age. But while some nations or societies have developed apace the others seem to be nowhere in the race. The rights which citizens enjoy vary depending upon the economic, social, political and cultural developments.

In view of the fact that there is a revolutionary change and growth in every sphere of life and mainly in the communication and media world, media today, plays a decisive role in the development of society. Thus the role of media in protection of human rights cannot be ignored or minimized. Media is a communicator of the public. Today its role extends not only to giving facts as news, it also analyses and comments on the facts and thus shapes the views of the people. The impact of media on society today is beyond doubt and debate. The media has been setting for the nation its social, political economic and even cultural agenda. With the advent of satellite channels its impact is even sharper and deeper. With twenty-four hours news-channels, people cannot remain neutral to and unaffected by what the channels are serving day and night. It is, therefore, of

paramount importance that the media plays an important and ethical role at all levels and in all parts of the country and the world.

Media and Executive-Official Secrets Act,

The Official Secrets Act, 1923 (OSA) is a comprehensive document relating to official secrets and it defines a number of offences. The Act is aimed at maintaining the security of the State against leakage of secret information, sabotage and the like. It is India's anti-espionage legislation held over from British colonisation. It states clearly that any action which involves helping an enemy state against India is liable. It also states that one cannot approach, inspect, or even pass over a prohibited government site or area. According to this Act, helping the enemy state can be in the form of communicating a sketch, plan, model of an official secret, or of official codes or passwords, to the enemy. The disclosure of any information that is likely to affect the sovereignty and integrity of India, the security of the State, or friendly relations with foreign States, is punishable by this act. The Act is important from the points of view of the Press since many of the acts prohibited by law may be committed by newspapers and journalists, as private individual, while performing their duties.

The OSA, 1923 broadly has two parts – One relating to spying for the enemy (Section 3 & 4). The other relates to unauthorised communication of any other official code or pass words, or any sketch, plan, model, article, note, document or information (Section 5).

Punishments under the Act range from three to fourteen years imprisonment. A person prosecuted under this Act can be charged with the crime even if the action was unintentional and not intended to endanger the security of the state. The Act only empowers persons in positions of authority to handle official secrets, and others who handle it in prohibited areas or outside them are liable for punishment.

In any proceedings against a person for an offence under this Act, the fact that he has been in communication with, or attempted to communicate with a foreign agent, whether within or outside India is relevant and enough to necessitate prosecution. Journalists also have to help members of the police forces above the rank of the sub-Inspector and members of the Armed forces with investigation

regarding an offence, up to and including revealing his sources of information (If required). When a company is seen as the offender under this Act, everyone involved with the management of the company including the board of directors can be liable for punishment. In the case of a newspaper everyone including the editor, publisher and the proprietor can be jailed for an offence.

2.Media in Constitutional Framework

Freedom of Press - Article 19(1)(a)

To preserve the democratic way of life it is essential that people should have the freedom of express their feelings and to make their views known to the people at large. The press, a powerful medium of mass communication, should be free to play its role in building a strong viable society. Denial of freedom of the press to citizens would necessarily undermine the power to influence public opinion and be counter to democracy.

Freedom of press is not specifically mentioned in article 19(1) (a) of the Constitution and what is mentioned there is only freedom of speech and expression. In the Constituent Assembly Debates it was made clear by Dr. Ambedkar, Chairman of the Drafting Committee, that no special mention of the freedom of press was necessary at all as the press and an an individual or a citizen were the same as far as their right of expression was concerned.

The framers of the Indian constitution considered freedom of the press as an essential part of the freedom of speech and expression as guaranteed in Article 19 (1) (a) of the Constitution.
In **Romesh Thaper vs State of Madras** and **Brij Bhushan vs State of Delhi**, the Supreme Court took it for granted the fact that the freedom of the press was an essential part of the right to freedom of speech and expression. It was observed by Patanjali Sastri J. in Romesh Thaper that freedom of speech and expression included propagation of ideas, and that freedom was ensured by the freedom of circulation.

It is clear that the right to freedom of speech and expression carries with it the right to publish and circulate one's ideast, opinions and other views with complete freedom and by resorting to all available means of publication. The right to freedom of the press includes the right to propagate ideas and views and to publish and circulate them. However, the freedom of the press is not absolute, just as the

freedom of expression is not. Public Interest has to be safeguard by article 19(1)(2) which lays down reasonable limitations to the freedom of expression in matters affecting:

a. Sovereignty and integrity of the State
b. Security of the State
c. Friendly relations with foreign countries
d. Public order
e. Decency and morality
f. Contempt of court
g. Defamation
h. Incitement to an offence

Freedom of Press Defined

It is an absence of statutory and administrative control on dissemination of information, ideas, knowledge and thoughts.

The freedom of the press and of expression is guarded by the First Amendment to the US Constitution which specifically lays down that this freedom be in no way abridge by the laws. It is not Indian Leaders were not aware of the US First Amendment or of Jefferson's famous declaration when he said that "Were it left me to decide whether we should have a government without newspaper or newspapers without a government, I should not hesitate a moment to prefer the latter." Jawahar Lal Nehru echoed similar views "I would rather have a completely free press, with all the dangers involved in the wrong use of that freedom, than a suppressed or regulated press." Voltair once said, "I do not agree with a word you say but I defend to death your right to say it."

Mrs. Gandhi has never had much faith in the press. Her misgivings about the press wee first expressed in her address to the International Press Institute Assembly in New Delhi on November 15, 1966, when she blamed the press for for giving wide publicity to student unrest in the country. She said, "How much liberty should the press have in country like India which is engaged in fighting a war against poverty, backwardness, superstition and ignorance." Mrs. Gandhi would not suggest restrictions that might be imposed on the press but said that it was for the leading editions, and journalists of the country to decide. Nine years later when Mrs. Gandhi declared emergency action was taken against the press immediately and complete censorship was imposed.

Kuldip Nayar, a veteran journalist wrote to Mrs. Gandhi soon after she imposed the

emergency, “if newspaper have criticized the government, it is largely because of its sluggish administration, slow progress in the economy field and the gap between promise and performance. My concept of a free press is to ferret out the truth and let the public know.”

To preserve the democratic way of life, it is essential that people should have the freedom to express their feelings to make their views known to the people at large. The press, a powerful media of mass communication should be free to play its role in building a strong viable society. Denial of the freedom of press to citizens would necessarily undermine the power to influence public opinion.

Besides the restrictions imposed on the press by the Constitution, there exists various other laws which further curtail press freedom and the right of the citizen to information as well as the right to freedom of speech and expression. They are all in force in the interest of public order of the sovereignity and security of the state.

Development of the Meaning of Freedom of Press

Historically, the origin of the concept of freedom of press took place in the England. From the earliest times, in the West, persecution for the expression of opinion even in matter relating to science or philosophy was restored to by both the Church and the State, to suppress alleged heresay, corruption of the youth or sedition. Such restraints, through licensing and censorship, came to be accentuated after the invention of printing towards the latter part of the 15th Century, and the appearance of newspaper in the 17th Century, - which demonstrated how powerful the press was as a medium of expression.

Shortly after their emergence, newspaper came to take up the cause of the Opposition against monarchical absolutism, which in turn, led to different methods of suppression. It is in protest against such governmental interference that freedom of the Press was built up in England. Opposition to governmental interference, which had been brewing on for some time, was supported by logical arguments by Milton in his Areopagitica (1644), for instance, that free men must have the ‘liberty to know, to utter, and to argue freely according to conscience, above all liberties’. Any for of censorship was intolerable, whether imposed by a royal decree or by legislation.

In fact, Milton’s Areopagitica was a protest addressed to the Long Parliament which had taken up licensing, after the abolition of the Star Chamber. It was as a result of such agition that the Licensing Act of 1662 was eventually refused to be

renewed by the House of Commons, in 1694, though the reasons given were technical.

The history of Freedom of Press, in England, is thus a triumph of the people against the power of the licensor.

Since there is no written Constitution nor any guarantee of fundamental right in England, the concept of freedom of press, like the wider concept of freedom of expression, has been basically negative.

In other words, freedom of press, in England, means the right to print and publish anything which is not prohibited by law or made an offence, such as sedition, contempt of court, obscenity, defamation, blasphemy.

Status of Freedom of Press in India

In **Romesh Thapar v/s State of Madras**, Patanjali Shastri,CJ, observed that "Freedom of speech & of the press lay at the foundation of all democratic organization, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible." In this case, entry and circulation of the English journal "Cross Road", printed and published in Bombay, was banned by the Government of Madras. The same was held to be violative of the freedom of speech and expression, as "without liberty of circulation, publication would be of little value".

The Hon'ble Supreme Court observed in **Union of India v/s Association for Democratic Reforms**, "One-sided information, disinformation, misinformation and non information, all equally create an uninformed citizenry which makes democracy a farce. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions". In Indian Express Newspapers v/s Union of India, it has been held that the press plays a very significant role in the democratic machinery. The courts have duty to uphold the freedom of press and invalidate all laws and administrative actions that abridge that freedom. Freedom of press has three essential elements. They are:
1. Freedom of access to all sources of information,
2. Freedom of publication, and
3. Freedom of circulation.

There are many instances when the freedom of press has been suppressed by the legislature. In **Sakal Papers v/s Union of India**, the Daily Newspapers (Price and Page) Order, 1960, which fixed the number of pages and size which a newspaper

could publish at a price was held to be violative of freedom of press and not a reasonable restriction under the Article 19(2). Similarly, in Bennett Coleman and Co. v/s Union of India, the validity of the Newsprint Control Order, which fixed the maximum number of pages, was struck down by the Court holding it to be violative of provision of Article 19(1)(a) and not to be reasonable restriction under Article 19(2). The Court also rejected the plea of the Government that it would help small newspapers to grow.

Freedom of Press in India: Constitutional Perspective

In India before Independence, there was no constitutional or statutory guarantee of freedom of an individual or media/press. At most, some common law freedom could be claimed by the press, as observed by the Privy Council in **Channing Arnold v. King Emperor.**

"The freedom of the journalist is an ordinary part of the freedom of the subject and to whatever length, the subject in general may go, so also may the journalist, but apart from statute law his privilege is no other and no higher. The range of his assertions, his criticisms or his comments is as wide as, and no wider than that of any other subject."

With object and views, the Preamble of the Indian Constitution ensures to all citizens inter alia, liberty of thought, expression, belief, faith and worship. The constitutional significance of the freedom of speech consists in the Preamble of Constitution and is transformed as fundamental and human right in Article 19(1)(a) as "freedom of speech and expression.

For achieving the main objects, freedom of the press has been included as part of freedom of speech and expression which is a universally recognized right adopted by the General Assembly of the United Nations Organization on 10th December, 1948. The heart of the declaration contained in Article 19 says as follows:

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

The same view of freedom of holding opinions without interference has been taken by the Supreme Court in Union of India v. Assn. for Democratic Reforms in which the Court has observed as follows: (SCC p. 317, para 38)

"One-sided information, disinformation, misinformation and non information, all

equally create an uninformed citizenry which makes democracy a farce. … Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions."

In India, freedom of press is implied from the freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India. Article 19(1)(a) says that all citizens shall have the right to freedom of speech and expression. But this right is subject to reasonable restrictions imposed on the expression of this right for certain purposes under Article 19(2).

Keeping this view in mind Venkataramiah, J. of the Supreme Court of India in Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India has stated: "In today's free world freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible in a large scale particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate [Government] cannot make responsible judgments. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities."

The above statement of the Supreme Court illustrates that the freedom of press is essential for the proper functioning of the democratic process. Democracy means Government of the people, by the people and for the people; it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matters is absolutely essential. This explains the constitutional viewpoint of the freedom of press in India.

The fundamental principle which was involved in freedom of press is the "people's right to know". It therefore received a generous support from all those who believe in the free flow of the information and participation of the people in the administration; it is the primary duty of all national courts to uphold this freedom and invalidate all laws or administrative actions which interfere with this freedom, are contrary to the constitutional mandate.

Therefore, in view of the observations made by the Hon'ble Supreme Court in various judgments and the views expressed by various jurists, it is crystal clear that

the freedom of the press flows from the freedom of expression which is guaranteed to "all citizens" by Article 19(1)(a). Press stands on no higher footing than any other citizen and cannot claim any privilege (unless conferred specifically by law), as such, as distinct from those of any other citizen. The press cannot be subjected to any special restrictions which could not be imposed on any citizen of the country.

Conclusion

At last it can be concluded that, The Freedom of the Press is nowhere mentioned in the Indian constitution. The Right to Freedom of Speech and Expression is provided in Article 19 of the Indian Constitution. It is believed that Freedom of Speech and Expression in Article 19 of the Indian constitution include freedom of the press.

Freedom of expression enables one to express one's own voices as well as those of others. But freedom of the press must be subject to those restrictions which apply to the freedom of speech and expression. The restrictions mentioned in Art. 19 are defamation, contempt of court, decency or morality, security of the state, friendly relations with other states, incitement to an offence, public order and maintenance of the sovereignty and integrity of India.

The status of freedom of the press is the same as that of an ordinary citizen. The press cannot claim any immunity from taxation, is subject to the same laws regulating industrial relations, and press employees are subject to the same laws regulating industrial employment.

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