

# **LAW AND MEDIA II**

[Basic Topics]

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## 1. INTRODUCTION

*“One of the objects of a newspaper is to understand the popular feeling and give expression to it, another is to arouse among the people certain desirable sentiments, and the third is the fearlessness to expose popular defects.” - Mahatma Gandhi*

Communication is the procedure, which we use to exchange information by various methods and media is the medium or instrument of storing or communicating information. ‘Media’ the popular term inter-alia used as ‘Press’ denotes the print & electronic information carriers -the News Papers & Magazines, Radio, Television and currently includes Internet as new Media. Hailed as the ‘Fourth Estate’, media is the watchdog of the public affairs, informing the society and vice versa, acts as the forum to advocate the views of the society at large to those at the helm of public affairs.

The word *medium* comes from the Latin word *medius* (middle). The word *communication* is derived from the Latin root *communicate*.

Media law covers an area of law which involves media of all types (TV, film, music, publishing, advertising, internet & new media, etc.), and stretches over various legal fields, including but not limited to corporate, finance, intellectual property, publicity and privacy.

Media law is a legal field that refers to the following:

- Advertising
- Broadcasting
- Censorship
- Confidentiality
- Contempt
- Copyright

- Corporate law
- Defamation
- Entertainment
- Freedom of information
- Internet
- Information technology
- Privacy
- Telecommunications

## **2. MEDIA INDUSTRY**

According to a recent news, Indian Media & Entertainment Industry is to touch Rs.1,457 billion by 2016.

In 2011, the Indian Media & Entertainment (M&E) Industry registered a growth of 12 percent over 2010, to reach INR 728 billion. The growth trajectory is backed by strong consumption in Tier 2 and 3 cities, continued growth of regional media, and fast increasing new media business. Overall, the industry is expected to register a CAGR of 15% to touch INR 1,457 billion by 2016.

While television continues to be the dominant medium, sectors such as animation & VFX, digital advertising, and gaming are fast increasing their share in the overall pie. Radio is expected to display a healthy growth rate after the advent of Phase 3. Print, while witnessing a decline in growth rate, will continue to be the second largest medium in the Indian M&E industry. Also, the film industry had a reason to cheer, with multiple movies crossing the INR 100 crore mark in domestic theatrical collections, and INR 30 crore mark in C&S rights.

Advertising spends across all media accounted for INR 300 billion in 2011, contributing to 41 percent of the overall M&E industry's revenues. Advertising revenues witnessed a growth of 13 percent in 2011, as against 17 percent observed in 2010.

In terms of performance, 2011 proved to be a year with mixed results in terms of growth across different sub sectors. The traditional media businesses experienced a slow down compared to last year, especially in the second half of the year. However, the new media segments like Animation and VFX, Online and Gaming businesses witnessed phenomenal growth rates.

The media industry in 2011 in a nutshell -

- **Print:** The print industry grew by 8.3 percent from INR 193 billion in 2010 to INR 209 billion in 2011. The growth was slightly lower than the expectation of 9.5 percent last year due to the challenging macroeconomic environment and reduced advertising spends.
- **Television:** The over-all television industry is estimated to be INR 329 billion in 2011, and is expected to grow at a CAGR of 17 percent over 2011-16, to reach INR 735 billion in 2016. The share of subscription to the total industry revenue is expected to increase from 65 percent in 2011 to 69 percent in 2016. The TV industry continues to have headroom for further growth as television penetration in India is still at approximately 60% of total households.
- **Films:** With several high budget Hindi releases lined up across the year, 2012 is expected to sustain the growth momentum witnessed in 2011. The Indian film industry is projected to grow at a CAGR of 10.1 percent to touch INR 150 Billion in 2016. The industry is estimated to be INR 93 billion in 2011 indicating a growth of 11.5 percent vis-à-vis 2010.
- **Music:** While 2010 was the year of structural shift from physical formats to digital ones, 2011 provided users' viable options of music consumption through different digital platforms. The Indian music industry achieved revenues of INR 9 billion in 2011, registering a growth of 5% over 2010.

- **Radio:** Overall the industry grew at 15 percent in CY 2011 to reach INR 11.5 billion compared to INR 10 billion in CY 2010.
- **New Media:** Digital advertising is expected to grow at a CAGR of 30% from 2011-16; digital ads spend reached approximately 4 percent of total M&E industry advertising revenue in 2011. Growth is largely driven by increase in internet penetration and proliferation of new age devices.
- **Animation & VFX:** Animation, VFX (visual effects) and Post Production industry achieved estimated revenues of INR 31 billion in 2011, a robust growth of 31 percent over 2010. Growth was achieved on the back of increased contract work, higher VFX content in movies, 2D/3D conversion projects.

### **3. HISTORY OF MEDIA LAWS IN INDIA**

When Europeans write on the history of the media, they refer to the Acta diurna of the Roman Empire as closely akin to the newspaper of today. In India the Rock Edicts of Emperor Ashok (c.273-236 BC) engraved on the rocks contain in abundance measures adopted and regulations issued by him. This is not very different from the news content of modern media. In that era when Ashok, the Great, used this technology for communicating his message throughout his vast empire, there is no reference to restrictions on communication imposed by law. However, the Arthashastra written originally in the reign of Chandragupta Maurya (c. 324-300 BC) by Kautilya mentions punishment for spreading false rumours. The Arthashastra and the Rock Edicts also speak of spies and reporters.

Akhbar is the word used for newspapers today in Hindi and Urdu languages and Babur mentions it in such a way as if it is something routine. It was meant to communicate an official announcement by Babur that a tax would be waived on all Muslims if he won the battle and he himself had given up drinking and banned liquor in his dominions. However, there is no reference to any regulation on akhbar. The earliest mention of pre-typographic newspapers is to be found in a contemporary historical work (Muntakhals-ul-Lubab by Khafi Khan) of the later Mughul times. Colonel James

Tod (1782-1835) sent hundreds of original manuscript newspapers of the court of Aurangzeb, sixth of the Great Mughuls to the Royal Asiatic Society in London. The size of these seventeenth-century papers, written in different hands, was 8 inches by 4½ inches. These were considerably free and could report even personal affairs of the emperor. There is no record of any law governing these newspapers. Perhaps, there was neither pre-censorship nor licensing, both being Western institutions.

It was sheer accident, however, that brought printing press to India on 6<sup>th</sup> September 1556. Granting a request from Emperor of Abyssinia, the King of Portugal dispatched in 1556 a printing press and technicians via the Cape route. But the patriarch accompanying the press halted en route at Goa from where his onward journey to Abyssinia was first delayed and later abandoned. He died on 22<sup>nd</sup> December 1562. The press, intended for missionary work in Abyssinia never left Goa, instead, it printed literature for Abyssinia from Goa.

However, there was no press regulation until the British East India Company started ruling a part of India after the Battle of Plassey in 1757. William Bolts, an ex-employee of the British East India Company attempted to start the first newspaper in India in 1766 but was deported. Later a collection of papers on the affairs of India “particularly respecting the state of Bengal and its dependencies” was published in 1773 by J. Almon, London as “Considerations on Indian Affairs” in two volumes with maps and survey reports. In this publication he has been identified as former Judge of the Mayor’s Court of Calcutta.

When newspapers in India were published by only Europeans expulsion of the editor (printer) was ultimate penalty. The Supreme Court of Judicature upheld this power. Every foreigner was required to obtain a licence for his residence in the territories of the Company and if any one incurred the displeasure of the officials by writing or publishing something which was not palatable to them, the licence was cancelled. It appears that growing importance of the Fourth Estate in England and the desire of missionaries to start newspapers in India ultimately led to abolition of pre-censorship in 1818 by Lord Hastings as missionaries of Serampore started the first Indian language

journal Samachar Darpan on 23<sup>rd</sup> May 1818. It became bilingual carrying news in Bengali and English in parallel columns in 1829.

Like censorship, licensing was also a European institution to control the press. It was introduced in Bengal in 1823 through Adam's regulations. The East India Company also issued instruction that no servant of the company should have any connection with a newspaper. This decision was the result of an incident in Bombay (now Mumbai) where a member of the Council of the Governor owned a newspaper. Licensing regulations were replaced by Metcalfe's Act which was applicable to entire territory of the East India Company and required that the printer and publisher of every newspaper declare the location of the premises of its publication.

Licensing was, however, reintroduced in 1857 by Lord Canning and was applied to all kinds of publications. This was the year when Indians fought their war of independence against the East India Company after which the British Crown took over the territories of the Company. In 1860 Indian Penal Code was passed as a general law but laid down offences which any writer, editor or publisher must avoid - the offences of defamation and obscenity.

The next important event in the field of media laws was the enactment of the Press and Registration of Books Act (25 of 1867). This Act is still in force, of course with amendments from time to time. The object of this Act was to provide for the regulation of the printing presses and of periodical containing news, for the preservation of copies of books and for the registration of books. It contains rules for the registration of books. It contains rules for the making of declaration by the keepers of presses and publishers of newspapers (part II); rules regulations for the delivery of books (Part III); penalties (Part IV); registration of book (Part V). Part VI of this Act gave powers to the government to make rules and to exempt books or newspapers from the provisions of this Act. The Act 55 of 1955 added Part VA to provide for appointment of Registrar of Newspapers.

The role of the press during the Wahabi Conspiracy of 1869-70 led to the amendment of the Indian Penal Code (27 of 1870) to incorporate a section on sedition (124-A).

This dealt with a person who “excites or attempts to excite feeling of disaffection to the government established by law in British India.” It came handy to send many freedom fighters to jail for their writings in newspapers. Shortly afterwards, the restrictions imposed by the East India Company prior to 1841 returned to the government officers, though in a milder tone. In 1875, the government passed orders that no officer in the service of the government should be permitted without previous sanction to become the proprietor of any periodical or to edit or manage a periodical. Officers were advised to remain within the limits of ‘temperate and reasonable’ discussion. No document or information should be revealed to the press, which they might come to possess in their official capacity. In cases where doubts, may arise as to whether any engagements of officers with the press were consistent with the discharge of their duties to the government, the decision to that effect would lie with the government.

For the purpose of ascertaining the character of any intended public dramatic performance the Dramatic Performances Act (19 of 1876) was passed as it was suspected that such performances may provoke people against the Government.

When the Indian language press became very bold the Vernacular Press Act 1878 was introduced. It was comprehensive and rigorous, aimed at “better control” of the language press. It empowered any magistrate of a district or a commissioner of police in a presidency town to call upon the printer and publisher of a newspaper to enter into a bond undertaking not to publish certain kind of material, to demand security, and to forfeit, if it was thought fit, such presses and confiscate any printed matter as it deemed objectionable. No printer or publisher against whom such action had been taken could have recourse to a court of law. It was particularly meant to crush Amrit Bazar Patrika, which was bilingual before this Act. But the smart owner foiled this attempt by turning it into an English language paper overnight. The main role in persuading Lord Lytton for the Vernacular Press Act was played by Sir Ashley Eden (1831-1887), the then Lieutenant Governor of Bengal. He was in a fit to crush the Amrita Bazar Patrika. Sir Ashley called the editor of the Amrita Bazar Patrika, Babu Shishir Kumar, and offered: “Let us three, I, you and Kristo Das, govern the province.



Kriso Das has agreed to conduct his paper according to my direction... You will have to do the same thing. I shall contribute to your paper as I do to the Hindoo Patriot. And when you write an article criticizing the government you will have to submit the manuscript to me before publication. In return the government will subscribe to a considerable number of your paper and I shall consult you as I consult Kristo Das in carrying on the administration of province.” Babu Shishir Kumar thanked him and quietly remarked, “Your Honor, there ought to be at least one honest journalist in the land”. Sir Ashley himself remarked, “If there had been only one week’s delay on the part of the proprietors to convert the Patrika into English we would have dealt a deadly blow at it by demanding a heavy bail-bond from them.” When Gladstone who had criticized the Vernacular Press Act, became the prime minister and Lord Ripon the governor-general, and even before the retirement of Sir Ashley Eden the repeal of Vernacular Press Act had become a foregone conclusion. The repealing bill was passed without discussion, on December 7, 1881.

In India telegraph was introduced in 1851 and was very useful to East India Company during 1857. However, the Indian Telegraph Act was passed in 1885. The Government had exclusive privilege under this Act in respect of telegraph and power to grant licenses. The definition of telegraph in this Act is very wide as it later covered all other means of communication depending on electromagnetic waves, thus including teleprinter, telephone, fax, radio and television. It provides for interception of messages and takeover of licensed establishments by the Government in any public emergency or in the interest of public safety.

Section 19 of the Sea Customs Act 1878 gave power to the central government of prohibit or restrict the importation or exportation of goods into or out of India. Section 5 of the Telegraph Act 1885 gave power to the central government or provincial governments of an official specially authorized by the government to take possession of licensed telegraphs and to order interception of telegraphic messages which include as per section 3(1) of the Act telephone messages also. Section 25 of the Indian Post Office Act 1898 confers power on an officer of the post office to intercept during transmission by post goods which have been notified under section 19

of the Sea Customs Act or the import or export of which is otherwise prohibited. Section 26 of the Post Office Act provides power of interception of postal articles on the same lines as section 5 of the Telegraph Act. Thus by the turn of the century the government had wide ranging powers to intercept anything anywhere along all the possible channels.

With Swadeshi Movement and partition of Bengal the opposition of the Government reached its zenith, both in the press and the public. In June 1908 the government passed the Newspaper (Incitement to Offences) Act, which gave power to local authorities to take judicial action against the editor of any newspaper, which indulges in writings calculated to incite rebellion. Nine prosecutions were instituted under this Act and as a result seven presses were confiscated. Then came the Press Act of 1910, which empowered the government to demand security from any newspaper, a provision similar to what existed in the Vernacular Press Act.

British Parliament passed the Copyright Act in 1911. Similar provisions came to India by Indian Copyright Act, 1914 (3 of 1914). It was replaced by a comprehensive legislation only in 1957 by the new Copyright Act (14 of 1957).

In 1918 Government passed the Cinematograph Act (2 of 1918), which was replaced by the Cinematograph Act, 1952 (37 of 1952).

In 1921, the government appointed a committee, with Sir Tej B Bahadur Sapru (1875-1949) as chairman, to look into the then existing press laws. The committee unanimously recommended the repeal of the Newspaper (Incitement of Offences) Act 1908 and the India Press Act 1910. In regard to the Press and Registration of Books Act, the committee recommended that the name of the editor should be inscribed on every issue of the newspaper and the editor should be subjected to the same liabilities as the printer and publisher as regards criminal and civic responsibility, that a person registering under this Act should be a major, that the term of imprisonment in part IV of the Act should be reduced from two years to six months, and that provision should be made for delivery to government of copies of newspapers printed in British India. The committee advocated the retention of powers to seize and

confiscated seditious leaflets and literature. It recommended that the ancillary powers of preventing importation and postal transmission of such literature should be retained. The requisite amendments were carried out by the Press Law (Repeal and Amendment) Act of 1922 (14 of 1922).

In 1922, on the request of the Chamber of Princes, the Princes Protection Bill was introduced in the Legislative Assembly. The Assembly rejected the bill. But the Governor-General, invoking treaty obligations and exercising his special powers under section 67B of the Government of India Act 1919, certified the Bill which became the Indian States (Protection against Disaffection) Act 1922. This Act provided punishment of imprisonment up to 5 years for any person editing, printing or publishing any document which brings into hatred or contempt or excites disaffection towards any prince or chief of a state in India, or the government or administration established in any such state. For material of this nature, the powers of forfeiture under sections 99-A to 99-C of the Criminal Procedure Code and of postal interception under sections 27-B to 27-D of the Indian Post Offices Act were made applicable.

In 1923 the Official Secrets Act was passed in order to update and consolidate the existing provisions of Indian Official Secrets Act of 1889, along the lines of the British Acts of 1911 and 1920. The earlier Act was repealed. Section 5 of this Act, which affects the Press deals with “official secrets” and relates to “wrongful communication of information.”

To meet the situation posed by the civil disobedience movement of 1930, the government promulgated the Indian Press Ordinance to provide for “better control of the press”. This revived the stringent provisions of the repealed Press Act of 1910. Some 130 newspapers had to deposit securities, nine refused to do so and suspended publications. In 1931, the Indian Press (Emergency Powers) Act was passed.

In 1932 the Foreign Relations Act was passed with the object of providing against the publication of statements likely to prejudice the maintenance of friendly relations between the British government and the governments of certain foreign states. The powers of forfeiture under sections 99A-99G of the Criminal Procedure Code and the

postal interception under sections 27B-27D of the Indian Post Offices Act were extended by section 3 of this Act to documents containing matter defamatory of such ruler or his consort of son or principal minister of a state outside but adjoining India.

Indian States (Protection) Act was passed in 1934 to protect the administrations of states in India, which were under the suzerainty of the British crown from activities, which tended to subvert or excite disaffection towards or to obstruct such administration. Section 3 of this Act extended to Press Emergency Act Powers 1931 to protect these states.

Before Independence, the Interim Government appointed the Press Laws Enquiry Committee in March 1947 to examine the press laws. The Committee gave its report on 22 May 1948 after Independence and partition of India. After the report of this committee the Act of 1931 was replaced by Press (Objectionable Matter) Act 1951. However, the mood was so much for freedom of press that it was allowed to lapse in February 1956 and was repealed in 1957. The Indian Constitution gives every citizen fundamental right to freedom of speech and expression and the courts have interpreted that it includes freedom of the press.

Major setback to the freedom of press in India was when Emergency was imposed in June 1975 and censorship was introduced. However, after the defeat of the then ruling party in 1977 General Elections it has not been possible for anybody to follow the example. Press Council advised the Government not to put curbs on the press even in disturbed areas like Jammu and Kashmir. This policy appears to be better than the curbs on the press by Government.

Liberal ethos reinforced after 1977 has affected broadcasting as well. While demand for autonomous corporation to control All India Radio and Doordarshan was accepted and finally Prasar Bharti, an autonomous corporation came into existence from 15 September 1997 after the notification of the Prasar Bharti Act. It has not been possible to come up with a regulator for broadcasting content despite several bills that came to Parliament over the years and private satellite and cable channels are having a field day enjoying more freedom than in any other part of the world.

Though the Government has not allowed news on private radio outfits yet, freedom of print and television channels make India one of the most liberal countries in the world as far as the freedom of media goes. Right to Information Act 2005 has been implemented and this has further extended freedom of media in India.

#### **4. MEDIA LAWS OF INDIA - AN OVERVIEW**

There are many laws that regulate the performance of media in India. Laws related to the mass media have been there since the very beginning. In the time of the British Raj, many laws related to the Press were enacted. In the post-Independence time, the various Governments have enacted many more media related laws.

Media being a very powerful influence on the society is regulated and controlled by various legislations enacted from time to time.

##### **Constitutional Provisions**

The Indian Constitution does not provide freedom for media separately. But there is an indirect provision for media freedom. It gets derived from Article 19(1) (a). This Article guarantees freedom of speech and expression. The freedom of mass media is derived indirectly from this Article. Article 19 of our Constitution deals with the right to freedom and it enumerates certain rights regarding individual freedom of speech and expression etc. These provisions are important and vital, which lie at the very root of liberty.

Article 19 of the Indian constitution lays down -

"All citizens shall have the right to freedom of speech and expression, to assemble peaceably, and without arms, to form associations or unions, to move freely throughout the territory of India, to reside in any part of the territory of India, to acquire hold and dispose of property and to practice any profession or to carry on any occupation, trade or business.

However the right to freedom of speech and expression shall not affect the operation of any existing law or prevent the state from making any law insofar as such law imposes reasonable restrictions on the exercise of that right in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public decency or morality or In relation to contempt of court, defamation or incitement to offence".

## List of Acts and Rules applicable to the media industry -

1. The Press and Registration of Books Act, 1867
2. Registration of Newspapers (Central) Rules, 1956
3. The Press and Registration Appellate Board (Practice and Procedure) Order, 1961
4. The Press Council Act, 1978
5. The Press Council Rules, 1979
6. The Press Council (Procedure for Nomination of Members) Rules, 1978
7. The Press Council (Procedure for Inquiry) (Amendment) Regulations, 2006
8. The Press Council (Procedure for Conduct of Meetings and Business) Regulations, 1979
9. The Press Council of India (Grant of Certified Copies) Regulations, 1999
10. The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955
11. The Working Journalists (Conditions of Service) and Miscellaneous Provisions Rules, 1957
12. The Working Journalists and other Newspaper Employees Tribunal Rules, 1979
13. The Working Journalists (Fixation of Rates of Wages) Act, 1958
14. The Newspaper (Prices and Pages) Act, 1956
15. The Delivery of Books and Newspapers (Public Libraries) Act, 1954
16. The Right to Information Act, 2005
17. The Right to Information (Regulation of Fee and Cost) Rules, 2005
18. The Central Information Commission (Appeal Procedure) Rules, 2005
19. The Central Information Commission (Management) Regulations, 2007
20. The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954
21. The Drugs and Magic Remedies (Objectionable Advertisements) Rules, 1955
22. The Emblems and Names (Prevention of Improper Use) Act, 1950
23. The Emblems and Names (Prevention of Improper Use) Rules, 1982
24. State Emblem of India (Prohibition of Improper Use) Act, 2005
25. State Emblem of India (Regulation of Use) Rules, 2007
26. The Parliamentary Proceedings (Protection of Publication) Act, 1977
27. The Young Persons (Harmful Publications) Act, 1956
28. The Punjab Special Powers (Press) Act, 1956 (Relevant Provisions)
29. Copyright Act, 1957
30. The Dramatic Performances Act, 1876 (Relevant Provisions)
31. The Cinematograph Act, 1952
32. The Cinematograph (Certification) Rules, 1983
33. The Cine-workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981
34. The Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Rules, 1984
35. The Cine-Workers Welfare Cess Act, 1981
36. The Cine-workers Welfare Cess Rules, 1984
37. The Cine-Workers Welfare Fund Act, 1981

38. The Cine-Workers Welfare Fund Rules, 1984
39. The Prasar Bharati (Broadcasting Corporation of India ) Act, 1990
40. The Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007
41. The Sports Broadcast Signals (Mandatory Sharing with Prasar Bharati) Rules, 2007
42. The Cable Television Networks (Regulation) Act, 1995
43. The Cable Television Networks Rules, 1994
44. The Radio, Television and Video Cassette Recorder Sets (Exemption from Licensing Requirements) Rules, 1997
45. The Standards of Quality of Service (Broadcasting and Cable services) (Cable Television - CAS Areas) Regulation, 2006
46. The Indian Telegraph Act, 1885 (Relevant Provisions)
47. The Telecom Regulatory Authority of India Act, 1997
48. The Telecom Regulatory Authority of India (Miscellaneous) Rules, 1999
49. The Telecom Regulatory Authority of India (Period for Filing of Application to Authority) Rules, 1999
50. The Telecommunication Interconnection (Port Charges) Regulation, 2001
51. The TRAI (Levy of Fees and Other Charges for Tariff Plans) Regulations, 2002
52. The Telecom Disputes Settlement and Appellate Tribunal (Form, Verification and the Fee for Filing an Appeal) Rules, 2003
53. The Telecommunication Interconnection (Charges and Revenue Sharing) Regulation, 2001
54. The Telecommunication Interconnection Usage Charges Regulation, 2003
55. The Telecom Regulatory Authority of India (Salaries, Allowances and Other Conditions of Service of Chairperson and Whole-time Members) Rules, 2000
56. The Telecom Regulatory Authority of India (Procedure for Conducting Inquiry Against a Member) Rules, 1999
57. The Telecom Regulatory Authority of India (Annual Report and Returns) Rules, 1999
58. The Telecom Regulatory Authority of India (Form of Annual Statement of Accounts and Records) Rules, 1999
59. The Telecommunication (Broadcasting and Cable Services) Interconnection Regulations, 2004
60. The Telecom Regulatory Authority of India (Access to Information) Regulations, 2005
61. The Common Charter of Telecom Services, 2005
62. The Regulation on Quality of Service of Basic and Cellular Mobile Telephone Services, 2005
63. Quality of Service (Code of Practice for Metering and Billing Accuracy) Regulation, 2006
64. The Standards of Quality of Service (Broadcasting and Cable Services) (Cable Television - CAS Areas) Regulation, 2006
65. The Quality of Service of Broadband Service Regulations, 2006
66. The Telecom Consumers Protection and Redressal of Grievances Regulations, 2007



67. The Telecom Unsolicited Commercial Communications Regulations, 2007
68. The International Telecommunication Access to Essential Facilities at Cable Landing Stations Regulations, 2007
69. The Telecommunication Consumers Education and Protection Fund Regulations, 2007
70. The Direct to Home Broadcasting Services (Standards of Quality of Service and Redressal of Grievances) Regulations, 2007
71. Domestic Leased Circuits Regulations, 2007
72. The Register of Interconnect Agreements Regulations, 1999
73. The Indian Post Office Act, 1898 (Relevant Provisions)
74. The Information Technology Act, 2000 (Relevant Provisions)
75. The Information Technology (Certifying Authorities) Rules, 2000

## 5. LAWS APPLICABLE FOR INFORMATION

### The list of legislations applicable for Information -

- i. Press & Registration of Books Act 1867
- ii. Delivery of Books 'and Newspapers' (Public Libraries) Act, 1954
- iii. Delivery of Books (Public Libraries) Rules, 1955
- iv. Registration of Newspapers (Central) Rules 1956
- v. The Newspaper (Prices and Pages) Act, 1956
- vi. The Young Persons (Harmful Publications) Act, 1956
- vii. The Press and Registration Appellate Board (Practice and Procedure) Order, 1961
- viii. The Parliamentary Proceedings (Protection of Publication) Act, 1977
- ix. Press Council Act, 1978
- x. The Press Council (Procedure for Nomination of Members) Rules, 1978
- xi. The Press Council Rules, 1979
- xii. The Press Council (Procedure for Conduct of Meetings and Business) Regulations, 1979
- xiii. The Press Council of India (Grant of Certified Copies) Regulations, 1999
- xiv. Press Council (Procedure for Inquiry) (Amendment) Regulations, 2006

### The following guidelines and policies are applicable for Information -

- 1) Central Newsmedia Accreditation Guidelines, 1999
- 2) Guidelines for publication of Indian editions of foreign magazines dealing with news and current affairs
- 3) Guidelines for syndication arrangements by newspapers
- 4) Advertisement Policy
- 5) Electronic Media Advertisement Policy
- 6) Guidelines for Empanelment of Audio-Video Producers with DAVP
- 7) Policy guidelines for empanelment of private C&S TV Channels for government advertisements by DAVP and Other duly authorised agencies of the ministry of I&B
- 8) Citizens Charter of Registrar of Newspapers for India
- 9) Guidelines for foreign investment in Indian entities publishing Scientific /Technical /Specialty Magazines/Journals/Periodicals.
- 10) Guidelines for foreign investment in print media news sector/facsimile editions.
- 11) The Press Council of India's Norms of Journalistic Conduct  
The Press Council Act, 1978

The Press Council Act, 1978 was enacted to establish a Press council for the purpose of preserving the freedom of the Press and for maintaining the standards of newspaper and news agencies in India. The Act established the Press Council of India which is a body corporate having perpetual succession, with effect from 1st March 1979. The Press Council of India is empowered to make observations in respect of conduct of any authority including Government, if considered necessary for performance of its functions under the Act. The Council can warn, admonish or censure the newspaper, the news agency, the editor or the journalist or disapprove the conduct of the editor or the journalist if it finds that a newspaper or a news agency has not complied with the standards of journalistic ethics or public taste or that an editor or a working journalist has committed any professional misconduct.

### **Complaints against the Press**

It is open to any person to lodge a complaint with the Press Council against a newspaper for a breach of the recognized ethical canons of journalistic propriety and taste. The complainant need not necessarily be the person aggrieved or directly involved. The alleged breach may be in the publication or non-publication of a news-item or statement, or other material, like cartoons, pictures, photographs, strips or advertisement which are published in a newspaper. Cases can also be initiated by any member of the public against any professional misconduct by an editor, working journalist, staff of a newspaper or engaged in freelance work. There can also be a complaint against any matter transmitted by a news agency by any means whatsoever. By virtue of the Press Council (Procedure for Inquiry) Regulations, 1979, complaint shall be lodged with the Council within the following periods:

- (i) Dailies, News agencies and Weeklies - within 2 months
- (ii) In all other cases - within 4 months

Provided that a relevant publication of an earlier date may be referred to in the complaint

**Write to the editor first**

It is a requirement of the Inquiry Regulations that the complainant should initially write to the editor of the newspaper drawing his attention to what the complainant considers being a breach of journalistic ethics or an offence against public taste. Such prior reference to the editor affords him an opportunity to deal with the matter in the first instance and thus allows the respondent to take such remedial action as he might consider appropriate before the complaint is lodged with the Council. This rule is necessary because it acquaints the editor with the identity of his accuser and the details of the complaint. It is conceivable that in some instance the complainant has been wrongly informed or has misinterpreted the facts. In others, it may be a case of inadvertent error which the editor is only too ready to admit and correct. If the would-be-complainant is satisfied, that would be the end of the matter.

Where, after reference to the newspaper, the person desires to proceed with the complaint, he should enclose with his complaint copies of correspondence with the editor, if no reply has been received from the editor, the fact should be mentioned in the complaint.

The complainant has, in his complaint, to give the name and address of the newspaper, editor or journalist against whom the complaint is directed. A clipping of the matter or news-items complained of, in original or self attested copy (English translation, if the news item(s) is in vernacular) should accompany the complaint. The complainant has to state in what manner the passage or news-items or the material complained of is objectionable. He should also supply other relevant particulars, if any.

In case of a complaint against non-publication of material the complainant will, of course, say how that constitutes a breach of journalistic ethics.

The Council cannot deal with any matter which is *sub-judice* in the court of law. The complainant has to declare that “to the best of his knowledge and belief he has placed all the relevant facts before the Council and that no proceedings are pending in any court of law in respect of any matter alleged in the complaint.” A declaration that “ he shall notify the Council forthwith if during the pendency of

the inquiry before the Council any matter alleged in the complaint becomes the subject matter of any proceedings in a court of law" is also necessary.

### **Complaints regarding oppression to Press freedom**

A newspaper, a journalist or any institution or individual can complain against Central or State Government or any organization or person for interference with free functioning of the press or encroachment on the freedom of the press. Such complaints should contain full particulars of the alleged infringement whereupon the Council shall follow the procedure of inquiry set out herein above so far as may be.

The opinion expressed by the Council serves two useful purposes, namely (i) that any abuse of press freedom does not pass without anybody noticing it or raising a finger of protest, and (ii) that the press should not in its own interest indulge in scurrilous or other objectionable writings-writings such as have been considered below the level of recognized standards of journalistic ethics by a fair minded jury like the Council constituted of the press itself, for it would lead to the very loss of the much prized freedom of the press.

### **Address of the respondent**

It is a requirement of the Inquiry Regulations that the complainant should draw the attention of the respondent(s)/authorities towards the grievances, state how the action/inaction of the respondent authorities amounts to curtailment of the freedom of the press, mention the possible reason for the action/inaction of the respondent(s)/authorities duly supported by documentary evidence and furnish a copy of the letter written to the respondent(s)/authorities.

In case the action of the respondent(s)/authorities is a reprisal measure for writings in the newspaper, critical of the respondent(s), the cuttings of such reports be furnished in original or as self attested copies (English translation, if the news item(s) is in vernacular.

Furnish a copy of the reply, if any received from the respondent(s)/authorities, provided that the Chairman may waive this requirement in his discretion.

By virtue of the Press Council(Procedure for Inquiry) Regulations, 1979, limitation of time is four months from the date of cause of action, provided that the Chairman may condone the delay if he is satisfied that there exist sufficient reasons for such condonation.

The Council cannot deal with any matter which is *sub-judice* in the court of law. The complainant has to declare that “to the best of his knowledge and belief he has placed all the relevant facts before the Council and that no proceedings are pending in any court of law in respect of any matter alleged in the complaint.” A declaration that “ he shall notify the Council forthwith if during the pendency of the inquiry before the Council any matter alleged in the complaint becomes the subject matter of any proceedings in a court of law” is also necessary.

## **6. LAWS APPLICABLE FOR BROADCASTING**

### **The list of legislations applicable for Cable Network -**

- i. Cable Television Networks Regulation Act, 1995
- ii. Cable Television Networks Rules, 1994

### **The list of legislations related to Prasar Bharati -**

- I. Prasar Bharati (Broadcasting Corporation of India) Act, 1990
- II. Prasar Bharati Investment of Money Rules, 2007

### **The list of legislations related to Sports Broadcasting -**

- I. Sports Broadcasting Signals (mandatory Sharing with Prasar Bharati) Act, 2007
- II. Sports Broadcasting Signals (mandatory Sharing with Prasar Bharati) Rules, 2007

### **The following guidelines and policies are applicable for Broadcasting -**

- i. Internet Protocol Television (IPTV) Guidelines
- ii. Direct to Home (DTH) Service Guidelines
- iii. CRS (Community Radio Stations) Guidelines
- iv. Uplinking guidelines
- v. Policy guidelines for Downlinking of TV Channels
- vi. FM Radio Phase-II
- vii. Conditional Access System (CAS)
- viii. Content Regulation on Private TV Channels
- ix. Guidelines for providing Headend-in-the-Sky (HITS) broadcasting service in India
- x. Advertisement of Political Nature on Radio
- xi. Policy guidelines for Internet Protocol Television (IPTV) service in India

- xii. Certification of film songs, film promos etc. for cable service
- xiii. TRAI's DTH Regulation
- xiv. The Code of advertising Practice of the Advertising Standards Council of India
- xv. FM phase II Policy
- xvi. Policy Guidelines for expansion of FM Radio broadcasting services through Private Agencies (Phase-III)
- xvii. Policy Guidelines for setting up Community Radio Stations in India
- xviii. Guidelines to regulate child participation in TV serials, reality shows and advertisements
- xix. Protection of identity of Children in Need of Care and Protection and juveniles in conflict with Law

### **The Cable Television Networks Regulation Act, 1995**

The principal purpose of the Act was to introduce regulatory certainty to the cable market that had emerged in the early 1990s. The statement of objects and reasons declared that cable TV constituted a 'cultural invasion' as cable programmes were predominantly western and alien to Indian culture and way of life. It declared that the lack of regulation had resulted in undesirable programmes and advertisements being shown to Indian viewers without any censorship.

The Cable Television Networks (Regulation) Act, 1995 was enacted for the purpose of regulating the operations of cable television networks in the country so as to bring uniformity in their operations, avoid undesirable programmes from being made available to the viewers as well as to enable the optimal exploitation of the technology which had the potential of making available to the subscribers a vast pool of information and entertainment.

Section 3 of the Act mandates that a cable television network can be operated only by a registered cable operator. In order to register, an entity could be

- an Indian citizen
- an association of individuals whose members are Indian citizens
- a company in which not less than 51 per cent of paid up equity share capital is held by Indian citizens

The Cable Networks Act empowers and authorizes a government officer to seize a cable operator's equipment if the officer has reason to believe that the cable operator is functioning without proper registration.

The Cable Television Networks Rules, 1994 were enacted under the Cable Television Networks (Regulation) Ordinance, 1994. The programme code under Rule 6 lays down restrictions on the content of both programmes and advertisements that can be shown on cable TV. No programme can be shown that:

- ♣ Offends against good taste or decency
- ♣ Contains criticism of friendly countries
- ♣ Contains attack on religions or communities or visuals or words contemptuous of religious groups or which promote communal attitudes
- ♣ Contains anything obscene, defamatory, deliberate, false and suggestive innuendos and half truths
- ♣ Is likely to encourage or incite violence or contains anything against maintenance of law and order or which promote anti-national attitudes
- ♣ Contains anything amounting to contempt of court
- ♣ Contains aspersions against the integrity of the President and Judiciary
- ♣ Contains anything affecting the integrity of the Nation
- ♣ Criticises, maligns or slanders any individual in person or certain groups, segments of social, public and moral life of the country
- ♣ Encourages superstition or blind belief
  - ♣ Denigrates women through the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to women, or is likely to deprave, corrupt or injure the public morality or morals
- ♣ Denigrates children
- ♣ Contains visuals or words which reflect a slandering, ironical and snobbish attitude in the portrayal of certain ethnic, linguistic and regional groups
  - ♣ Is not suitable for unrestricted public exhibition

Rule 7 deals with restrictions on advertisements. The Advertising Code in the Cable Network Rules says that all advertising carried in the cable service have to conform to the laws of the country and should not offend morality, decency and religious susceptibilities of the subscribers. The code says that no advertisement shall be permitted which:

- Derides any race, caste, colour, creed and nationality
- Is against any provision of the Constitution of India



- Tends to incite people to crime, cause disorder or violence, or breach of law or glorifies violence or obscenity in any way
- Presents criminality as desirable
- Exploits the national emblem, or any part of the Constitution or the person or personality of a national leader or a State dignitary
- In its depiction of women violates the constitutional guarantees to all citizens.
- Projects a derogatory image of women.

The Rules say that women should not be portrayed in a manner that emphasises passive, submissive qualities and encourages them to play a subordinate, secondary role in the family and society. The cable operator is supposed to ensure that the portrayal of the female form, in the programmes carried in his cable service, is “tasteful and aesthetic, and is within the well-established norms of good taste and decency”.

Exploits social evils like dowry, child marriage.

- Promotes directly or indirectly production, sale or consumption of cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants, infant milk substitutes, feeding bottle or infant food.

**The Rules prohibit advertisements that**

- Are wholly or mainly of a religious or political nature or directed towards any religious or political end.
- Contain references that hurt religious sentiments.
- Contain references that are likely to lead the public to infer that the product advertised or any of its ingredients has some special or miraculous or super-natural property or quality, which is difficult of being proved.
- Contain pictures and audible matter of the advertisement that are excessively loud
- Endanger the safety of children or creates in them any interest in unhealthy practices or shows them begging or in an undignified or indecent manner
- Contain indecent, vulgar, suggestive, repulsive or offensive themes or treatment
- Contain advertisements that violate the standards of practice for advertising agencies as approved by the Advertising Agencies Association of India, Bombay, from time to time.

### **The Cable Television Networks (Regulation) Amendment Act, 2011**

The Telecom Regulatory Authority of India (TRAI), in its recommendations dated the 5th August, 2010 on "Implementation of Digital Addressable Cable Systems in India" had, inter alia, recommended that "digitalization with addressability be implemented on priority in cable TV services in Non-CAS areas" and, accordingly, recommended a time-frame comprising four phases for switch over from analog system to the digital addressable system (DAS) in the cable TV sector. In view of the above-mentioned recommendations of the TRAI, the Central Government decided to introduce digitalization with addressability in the cable TV services in a phased time bound manner on a pan India basis, leading to complete switch off of analog TV services by the 31st December, 2014.

For the implementation of DAS, certain amendments were required to be made in the aforesaid Act mandating all cable operators to provide programmes of all channels, including free-to-air (FTA) channels, in an encrypted form through DAS in a phased manner at specified areas from specified dates to be notified by the Central Government. It is also mandatory that any such notification should give at least six months time to the cable operators for being able to install the necessary digital equipments for migration and educate the subscribers in this area. In order to protect the interest of consumers, it has been proposed to empower TRAI to specify a package of free-to-air channels, called basic service tier, which shall be offered by every cable operator to the consumers. It is also necessary that every cable operator should offer channels in the basic service tier on a la carte (individual) basis to consumers at a tariff fixed by TRAI.

It has also been considered necessary to carry out certain amendments in the Act for rectifying certain deficiencies noticed during the operation of the Act for the last fifteen years. These, inter alia, include systemization of registration of cable operators, providing right of way to cable operators and permission by public authorities, compulsory transmission of certain channels, inspection of cable network services, prescription of interference standards by the Central Government and empowering the TRAI to specify basic service tier and its tariff.

The Act has come into force from 25<sup>th</sup> day of December 2011.

### **Prasar Bharati (Broadcasting Corporation of India) Act, 1990**

The introduction of the Prasar Bharati Bill in Parliament in May 1979 was the direct result of the recommendations of the B. G. Verghese Committee set up in 1977 after the Internal Emergency declared by the then Prime Minister Indira Gandhi (1975-77). The Bill was allowed to lapse after the Janata party government elected to form the government after the Emergency collapsed and the Congress party returned to power.

The victory of the National Front government in 1989 saw the revival of the Prasar Bharati Bill in a somewhat modified form; the Bill was passed by Parliament and received presidential assent on September 12, 1990. The Act provided for the formation of an autonomous Broadcasting Corporation that would manage Doordarshan and AIR, discharging all powers previously held by the Information and Broadcasting Ministry. The corporation would inherit the capital assets of Doordarshan and AIR and would be managed by a 15-member Prasar Bharati Board, including the Directors-General of the two organisations and two representatives from amongst the employees. The Chair and other members of the Board would be appointed on the recommendations of the selection committee headed by the Vice President. A fifteen-member Broadcasting Council would address public complaints.

The primary duty of the Broadcasting Corporation was to ‘organize and conduct public broadcasting services to inform, educate, and entertain the public’ and to ensure ‘a balanced development’ of broadcasting of radio and television. The Corporation was to be guided by a set of objectives while discharging its functions. These include:

- Upholding the unity and integrity of the country and the values enshrined in the Constitution
- Safeguarding the citizen’s right to be informed freely, truthfully and objectively on all matters of public interest, national or international, and presenting a fair and balanced flow of information including contrasting views without advocating any opinion or ideology of its own

- Paying special attention to the fields of education and spread of literacy, agriculture, rural development, environment, health and family welfare and science and technology.
- Providing adequate coverage to the diverse cultures and languages of the various regions of the country by broadcasting appropriate programmes.
- Providing adequate coverage to sports and games so as to encourage healthy competition and the spirit of sportsmanship.
- Providing appropriate programmes keeping in view the special needs of the youth.
- Informing and stimulating the national consciousness in regard to the status and problems of women and paying special attention to the upliftment of women.
- Promoting social justice and combating exploitation, inequality and such evils as untouchability and advancing the welfare of the weaker sections of the society.
- Safeguarding the rights of the working classes and advancing their welfare
- Serving the rural and weaker sections of the people and those residing in border regions, backward or remote areas.
- Providing suitable programmes keeping in view the special needs of the minorities and tribal communities.
- Taking special steps to protect the interests of children, the blind, the aged, the handicapped and other vulnerable sections of the people.
- Promoting national integration by broadcasting in a manner that facilitates communication in the languages in India; and facilitating the distribution of regional broadcasting services in every State in the languages of that State.
- Providing comprehensive broadcast coverage through the choice of appropriate technology and the best utilisation of the broadcast frequencies available and ensuring high quality reception.
- Promoting research and development activities in order to ensure that radio and television broadcast technology are constantly updated.
- Expanding broadcasting facilities by establishing additional channels of transmission at various levels.
- Ensuring that broadcasting is conducted as a public service to provide and produce programmes.

- Establishing a system for the gathering of news for radio and television;
- Negotiating for the purchase of, or otherwise acquire, programmes and rights or privileges in respect of sports and other events, films, serials, occasions, meetings, functions or incidents of public interest, for broadcasting and to establish procedures for the allocation of such programmes, rights or privileges to the services.
- Establishing and maintain a library or libraries of radio, television and other materials. Conducting or commissioning, from time to time, programmes, audience research, market or technical service, which may be released to such persons and in such manner and subject to such terms and conditions as the Corporation may think fit.

## **7. LAWS APPLICABLE FOR FILMS**

**The list of legislations applicable for films -**

- I. The Cinematograph Act, 1952
- II. The Cinematograph (Certification) Rules, 1983

**The following guidelines and policies are applicable for Films -**

1. Guidelines for import of films
2. Policy for import of Cinematograph films and other films.
3. Revised guidelines for shooting feature films in India by foreign nationals/co-productions.
4. Guidelines to certify Films (CBFC)
5. Policy for certification of films for Film festivals

### **Cinematograph Act, 1952**

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

The Certification process is in accordance with The Cinematograph Act, 1952, The Cinematograph (certification) Rules, 1983, and the guidelines issued by the Central government u/s 5 (B). At present films are certified under 4 categories -

- U - Unrestricted Public Exhibition
- UA - Unrestricted Public Exhibition - but with a word of caution that Parental discretion required for children below 12 years
- A - Restricted to adults
- S - Restricted to any special class of persons

The Cinematograph Act lays down that a film should not be certified if any part of it is against the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or involves defamation or contempt of court or is likely to incite commission of any offence.

Under section 5B(2) the Central Government has issued the following guidelines.

A film is judged in its entirety from the point of view of its overall impact and is examined in the light of the period depicted in the film and the contemporary standards of the country and the people to whom the film relates, provided that the film does not deprave the morality of the audience. Guidelines are applied to the titles of the films also.

1. Objectives of Film Certification

- i) the medium of film remains responsible and sensitive to the values and standards of society;
- ii) artistic expression and creative freedom are not unduly curbed;
- iii) certification is responsible to social changes;
- iv) the medium of film provides clean and healthy entertainment; and
- v) as far as possible, the film is of aesthetic value and cinematically of a good standard.

2. In pursuance of the above objectives, the CBFC shall ensure that

- i) anti social activities such as violence are not glorified or justified.
- ii) the modus operandi of criminals, other visuals or words likely to incite the commission of any offence are not depicted;
- iii) scenes -
  - a. showing involvement of children in violence as victims or perpetrators or as forced witnesses to violence, or showing children as being subjected to any form of child abuse.
  - b. showing abuse or ridicule of physically and mentally handicapped persons; and
  - c. showing cruelty to, or abuse of animals, are not presented needlessly
- iv) pointless or avoidable scenes of violence, cruelty and horror, scenes of violence primarily intended to provide entertainment and such scenes as may have the effect of de-sensitising or de-humanising people are not shown;
- v) scenes which have the effect of justifying or glorifying drinking are not shown;
- vi) scenes tending to encourage, justify or glamorise drug addiction are not shown;
- vii) human sensibilities are not offended by vulgarity, obscenity or depravity;
- viii) such dual meaning words as obviously cater to baser instincts are not allowed;
- ix) scenes degrading or denigrating women in any manner are not presented;
- x) scenes involving sexual violence against women like attempt to rape, rape or any form of molestation or scenes of a similar nature are avoided, and if any such incidence is germane to the theme, they shall be reduced to the minimum and no details are shown
- xi) scenes showing sexual perversions shall be avoided and if such matters are germane to the theme they shall be reduced to the minimum and no details are shown
- xii) visuals or words contemptuous of racial, religious or other groups are not presented
- xiii) visuals or words which promote communal, obscurantist, anti-scientific and anti-national attitude are not presented
- xiv) the sovereignty and integrity of India is not called in question;
- xv) the security of the State is not jeopardized or endangered

- xvi) friendly relations with foreign States are not strained;
- xvii) public order is not endangered
- xviii) visuals or words involving defamation of an individual or a body of individuals, or contempt of court are not presented

**EXPLANATION:** Scenes that tend to create scorn, disgrace or disregard of rules or undermine the dignity of court will come under the term "Contempt of Court" : and

xix) national symbols and emblems are not shown except in accordance with the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950 (12 of 1950)

3. The Board of Film Certification shall also ensure that the film

- i) Is judged in its entirety from the point of view of its overall impact; and
- ii) Is examined in the light of the period depicted in the films and the contemporary standards of the country and the people to which the film relates provided that the film does not deprave the morality of the audience.

4. Films that meet the above - mentioned criteria but are considered unsuitable for exhibition to non-adults shall be certified for exhibition to adult audiences only.

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i) While certifying films for unrestricted public exhibition, the Board shall ensure that the film is suitable for family viewing, that is to say, the film shall be such that all the members of the family including children can view it together.

ii) If the Board, having regard to the nature, content and theme of the film is of the opinion that it is necessary to caution the parents / guardian to consider as to whether any child below the age of twelve years maybe allowed to see such a film, the film shall be certified for unrestricted public exhibition with an endorsement to that effect.

iii) If the Board having regard to the nature, content and theme of the film, is of the opinion that the exhibition of the film should be restricted to



members of any profession or any class of persons, the film shall be certified for public exhibition restricted to the specialized audiences to be specified by the Board in this behalf.

6. The Board shall scrutinize the titles of the films carefully and ensure that they are not provocative, vulgar, offensive or violative of any of the above-mentioned guidelines.

The Central Board of Film Certification is responsible for certifying films. The enforcement of compliance to the provisions of the Cinematograph Act, 1952 is entrusted to the State Governments /Union Territory Administrations, since exhibition of films is a State subject.

The following are the major violations that agitate the minds of the public:

- exhibition of an "A" certified film to a non-adult;
- exhibition of an "S" certified film to persons other than those for whom it is meant;
- exhibition of a film in a form other than the one in which it was certified. Such violations are known as interpolations. Interpolations can be described as follows -
  - re-insertion in the prints of a film, those portions which were deleted by the Board while certifying the film
  - insertion in prints of a film, portions which were never shown to the Board for certification
  - exhibition of "bits" unconnected with the certified film
- exhibition of a film which was refused a certificate (or "banned" in common parlance)
- exhibition of uncertified films with forged certificates of other films
- exhibition of films without CBFC certificate

#### **Violations of Cinematograph act and penalties -**

Section 7 of the Cinematograph Act provides penalties for violation of censorship provisions. Penalty can also be imposed for failure to comply with section 6A which

requires that any person delivering a film to an exhibitor or a distributor will also give to him details of all cuts, certification, title, length and conditions of certification.

A person guilty of violation while exhibiting celluloid films is punishable with imprisonment for a term which may extend to Three years, or with fine which may extend to Rs.1/-lakh, or with both, and with a further fine up to Rs.20,000 for each day for a continuing offence. Similarly, Showing of video films which violate the rules in the manner prescribed in this section will attract imprisonment of not less than three months but which may extend to three years and a fine of not less than Rs.20,000 but which may extend to Rs.1/-lakh and a further fine up to Rs.20,000 for each day for a continuing offence.

Furthermore, the trial court can direct that the offending film be forfeited to the Government. Under Section 7A, any police officer can enter a hall where an offending film is being screened, search the premises and seize the print. Films can also be seized when they are likely to be exhibited in violation of Cinematograph Act.

## 8. OTHER LAWS APPLICABLE TO MEDIA

### 8.1. FDI in media sector

Foreign direct investment (FDI) is that investment, which is made to serve the business interests of the investor in a company, which is in a different nation distinct from the investor's country of origin.

FDI in India is governed by the Consolidated FDI Policy issued by the Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry, Government of India.

#### Print Media

Sl.No.	Activity	% of FDI cap/equity	Entry route
1	Publishing of Newspaper and periodicals dealing with news and current affairs	26% (FDI and investment by NRIs/PIOs/FII)	Government
2	Publication of Indian editions of foreign Magazines dealing with news and current affairs	26% (FDI and investment by NRIs/PIOs/FII)	Government
3	Publishing/printing of Scientific and Technical Magazines/ specialty journals/ periodicals, subject to compliance with the legal framework as applicable and guidelines issued in this regard from time to time by Ministry of Information and Broadcasting.	100%	Government
4	Publication of facsimile edition of foreign newspapers	100%	Government

FDI should be made by the owner of the original foreign newspapers whose facsimile edition is proposed to be brought out in India. Publication of facsimile edition of foreign newspapers can be undertaken only by an entity incorporated or registered in India under the provisions of the Companies Act, 1956. Foreign investment would also be subject to the Guidelines for Publication of Indian editions of foreign magazines dealing with news and current affairs issued by the Ministry of Information & Broadcasting on 4.12.2008. Publication of facsimile edition of foreign newspaper would also be subject to the Guidelines for publication of newspapers and periodicals dealing with news and current affairs and publication of facsimile edition of foreign newspapers issued by Ministry of Information & Broadcasting on 31.3.2006, as amended from time to time.

### Broadcasting

Sl.No.	Activity	% of FDI cap/equity	Entry route
1	Terrestrial Broadcasting FM (FM Radio) subject to such terms and conditions as specified from time to time by Ministry of Information and Broadcasting for grant of permission for setting up of FM Radio Stations	26% (FDI, NRI & PIO investments and portfolio investment)	Government
2	Cable Network, subject to Cable Television Network Rules, 1994 and other conditions as specified from time to time by Ministry of Information and Broadcasting	49% (FDI, NRI & PIO investments and portfolio investment)	Government
3	Direct-to-Home subject to such	49% (FDI, NRI & PIO	Government

	guidelines/terms and conditions as specified from time to time by Ministry of Information and Broadcasting	investments and portfolio investment) - Within this limit, FDI component not to exceed 20%	
4	FDI limit in (HITS) Broadcasting Service is subject to such guidelines/terms and conditions as specified from time to time by Ministry of Information and Broadcasting.	74% (total direct and indirect foreign investment including portfolio and FDI)	Automatic up to 49%; Government route beyond 49% and up to 74%
5	Setting up of Up-linking HUB/ Teleports	49% (FDI & FII)	Government
6	Up-linking a Non-News & Current Affairs TV Channel	100%	Government
7	Up-linking a News & Current Affairs TV Channel subject to the Condition that the portfolio investment from FII/ NRI shall not be Persons acting in concert with FDI investors, as defined In the SEBI(Substantial Acquisition of Shares and Takeovers) Regulations	26% (FDI & FII)	Government

Headend-In-The-Sky (HITS) Broadcasting Service refers to the multichannel downlinking and distribution of television programme in C-Band or Ku Band wherein all the pay channels are downlinked at a central facility (Hub/teleport) and again uplinked to a satellite after encryption of channel. At the cable headend these

encrypted pay channels are downlinked using a single satellite antenna, transmodulated and sent to the subscribers by using a land based transmission system comprising of infrastructure of cable/optical fibres network.

All the activities related to uplinking will be further subject to the condition that the Company permitted to uplink the channel should certify the continued compliance of this requirement through the Company Secretary at the end of each financial year.

FDI for Up-linking TV Channels will be subject to compliance with the Up-linking Policy notified by the Ministry of Information & Broadcasting.

### **Rights of Broadcasting Organisation and of Performers**

Every broadcasting organisation will have a special right to be known as 'broadcast reproduction right' in respect of its broadcasts. The broadcast reproduction right will subsist until twenty-five years from the beginning of the calendar year next following the year in which the broadcast is made. This would prevent any person other than the broadcasting organisation from:

- i) Re-broadcasting what has already been broadcasted
- ii) Causing the broadcast to be seen or heard by the public on payment of charges
- iii) Making any sound/visual recording of the broadcast
- iv) Making any reproduction of such sound recording or visual recording where such initial recording was done without licence or, where it was licensed, for any purpose not envisaged by such licence
- v) Selling or hiring or offering to sell or hire sound/visual recordings.

Where any performer appears or engages in any performance, he will have a special right known as the 'performer's right' in relation to such performance. The performer's right will subsist until fifty years from the beginning of the calendar year next following the year in which the performance is made. These rights are:

- i) No person may make a sound/visual recording of the performer's performances
- ii) Reproduce a sound/visual recording
- iii) Broadcast the performance

iv) Communicate to the public otherwise than by broadcast

No broadcast reproduction right or performer's right will be deemed to be infringed by:-

- The making of any sound recording or visual recording for the private use of the person making such recording, or solely for purposes of bona fide teaching or research; or
- The use, consistent with fair dealing, of excerpts of a performance or of a broadcast in the reporting of current events or for bona fide review, teaching or research; or
- Such other acts, with any necessary adaptations and modifications, which do not constitute infringement of copyright under the Act.

**Broadcasting** means “the dissemination of any form of communication like signs, signals, writing, pictures, images, and sounds of all kinds, by transmission of electromagnetic waves through space or through cables intended to be received by the general public either directly or indirectly through the medium of relay stations and all its grammatical variations and cognate expressions shall be construed accordingly.

To offer most forms of broadcasting, a broadcaster must have two licenses:

- 1) a general license from the MIB to offer telegraph services (under the Telegraph Act), and
- 2) a wireless operating license from the Wireless Planning and Communication (WPC) Wing of the Department of Telecom, (under the Wireless Telegraphy Act).

Most radio and television services are also regulated by the Indian Wireless Telegraphy Act (No 17 of 1933), as they constitute ‘wireless communications’. Section 2(2) and Section 3 regulate wireless communication by requiring users of various types of wireless equipment to obtain wireless licenses for possessing and using the equipment. These licenses are granted by the WPC (Wireless Planning & Coordination Authority) Wing of the Department of Telecommunications (DoT).

Therefore, to offer most kinds of broadcasting services, a broadcasting company must obtain two types of licenses:

- A Grant of Permission (GOPA) to offer broadcast services issued by the Ministry of Information and Broadcasting under the Telegraph Act, 1885.
  - A wireless operating license from the WPC (Wireless Planning & Coordination Authority) Wing of the Ministry of Communication and Information Technology under the Wireless Telegraphy Act, 1933.

## 9. AUTHORITIES REGULATING THE MEDIA INDUSTRY

### i) Ministry of Information and Broadcasting - Government Of

India <http://www.mib.nic.in/default.aspx>

The Ministry of Information & Broadcasting, through the mass communication media consisting of radio, television, films, the press, publications, advertising and traditional mode of dance and drama plays a significant part in helping the people to have access to free flow of information. It also caters to the dissemination of knowledge and entertainment to all sections of society, striking a careful balance between public interest and commercial needs, in its delivery of services. Ministry of Information & Broadcasting is the apex body for formulation and administration of the rules and regulations and laws relating to information, broadcasting, the press and films. This Ministry is responsible for international co-operation in the field of mass media, films and broadcasting and interacts with its foreign counterparts on behalf of Government of India. The mandate of the Ministry of Information & Broadcasting is:

- News Services through All India Radio (AIR) and Doordarshan (DD) for the people
- Development of broadcasting and television.
- Import and export of films.
- Development and promotion of film industry.
- Organisation of film festivals and cultural exchanges for the purpose.
- Advertisement and visual publicity on behalf of the Government of India.
- Handling of press relations to present the policies of Government of India and to get feed-back on the Govt. policies.



- Administration of the Press and Registration of Books Act, 1867 in respect of newspapers.
- Dissemination of information about India within and outside the country through publications on matters of national importance.
- Research, Reference and Training to assist the media units of the Ministry to meet their responsibilities.
  - Use of interpersonal communication and traditional folk art forms for information/ publicity campaigns on public interest issues.
- International co-operation in the field of information & mass media.

**The following comes under the purview of the Ministry of Information and Broadcasting -**

- 1) Broadcasting policy and administration
- 2) Cable television policy
- 3) Radio
- 4) Doordarshan
- 5) Films
- 6) Advertising and visual publicity
- 7) Press
- 8) Publications
- 9) Research and reference
- 10) Various subordinate, autonomous organisations, public sector undertakings

#### **ii) Press Information Bureau**

The Press Information Bureau (PIB) is the nodal agency of the Government to disseminate information to the print and electronic media on government policies, programmes, initiatives and achievements. It functions as an interface between the Government and the media and also provides feedback to the Government on people's reaction as reflected in the media.

PIB has its Headquarters in New Delhi. It is headed by the Principal Director General (Media & Communication) who is assisted by a Director General and eight Additional Director Generals. Besides, the Bureau has Officers in the ranks of Director, Joint Director, Dy. Director, Assistant Director and Media & Communication Officer who are

attached with different Ministries in order of their rank and Ministry's size, importance and sensitivity.

PIB has a dedicated unit for the publicity and media support to the Prime Minister's Office (PMO). The unit functions on 24X7 basis and compiles media reports on all days including holidays for PMO and Cabinet Secretariat.

**iii) Directorate of Advertising & Visual Publicity**

The Directorate of Advertising and Visual Publicity (DAVP), established in 1955, is the nodal multi-media advertising agency of the Government of India. Over the past 56 years, it has been catering to the communication needs of almost all central Ministries/Departments, autonomous bodies and PSUs by providing them single-window cost-effective service. It informs and educates the people, both rural and urban, about the government's policies and programmes and motivates them to participate in developmental activities, through its various vehicles of communication, viz, Print media advertising, Audio Visual advertising, printed publicity, exhibitions, outdoor publicity and mass mailing.

The DAVP is headed by Director General who is assisted by 2 Additional Director Generals and other officials. At its headquarter it consists of a Campaign Wing, Advertising Wing, Printed Publicity Wing, Exhibition Wing, Electronic Data Processing Center, Mass Mailing Unit, Audio-Visual Cell, a Design Studio and Administration and Accounts Wings.

**iv) Registrar of Newspapers for India**

The Office of the Registrar of Newspapers for India, more popularly known as RNI came into being on 1<sup>st</sup> July, 1956, on the recommendation of the First Press Commission in 1953 and by amending the Press and Registration of Books Act 1867. The Press and Registration of Books Act contain the duties and functions of the RNI. On account of some more responsibilities entrusted upon RNI during all these years, the office is performing both statutory as well as some non-statutory functions. Some of the functions are -

- Compilation and maintenance of a Register of Newspapers containing particulars about all the newspapers published.
- Issue of Certificate of Registration to the newspapers published under valid declaration;
- Scrutiny and analysis of annual statements sent by the publishers of newspapers every year under Section 19-D of the Press and Registration of Books Act containing information on circulation, ownership etc;
- Informing the District Magistrates about availability of titles, to intending publishers for filing declaration;
- Ensuring that newspapers are published in accordance with the provisions of the Press and Registration of Books Act 1867 and the Rules made there under.
- Verification under Section 19-F of the PRB Act, of circulation claims furnished by the publishers in their Annual Statements; and
- Preparation and submission to the Government on or before 31<sup>st</sup> December each year, a report containing all available information and statistics about the press in India with particular reference to the emerging trends in circulation and in the direction of common ownership units etc.
- Formulation of Newsprint Allocation Policy - Guidelines and issue of Eligibility Certificate to the newspapers to enable them to import newsprint and to procure indigenous newsprint.
- Assessing and certifying the essential need and requirement of newspaper establishments to import printing and composing machinery and allied materials.

#### **v) Directorate of Field Publicity**

Directorate of Field Publicity with its headquarters in New Delhi is the largest rural oriented interpersonal communication medium in the country. It operates as a two-way channel for dissemination of information among masses and gathering feed back for the Government. It acts as a bridge between the people

and the Government. Established in 1953 as 'Five Year Plan Publicity Organization' with the sole objective of publicity of Five Year Plans, the Directorate assumed its present format and role in 1959 with its publicity scope widened and made all inclusive. Over the years, its areas of operation as also its aims and objectives have been diversified. Briefly they are:- (a) to inform, educate, motivate and involve the people, especially at the grass root level, in the process of development so that the vision of the framers of the Constitution as outlined in its preamble is realized. (b) to generate public opinion for the implementation of developmental programmes and mobilize popular participation in the process of nation building. (c) to keep the public, especially the weaker, the marginalized and the remotely placed people informed about the policies and the programme of the Government and generate awareness on several national and social issues of relevance. (d) to keep the Government informed of the people's reactions to its programmes and policies and their implementation at the field level thereby facilitating corrective measures as and when required.

#### **vi) Press Council of India**

Press Council is a statutory quasi-judicial authority mandated by the Parliament to preserve the freedom of the press and maintain and improve the standards of newspapers and the news agencies in India. It is an autonomous body with equal quasi judicial authority over the authorities and the press persons.

The Council discharges its functions primarily through adjudications on complaint cases received by it, either against the Press for violation of journalistic ethics or by the Press for interference with its freedom. Where the Council is satisfied, after inquiry, that a newspaper or a news agency has offended against the standards of journalistic ethics or public taste or that an editor or working journalist has committed any professional misconduct, the Council may warn, admonish or censure them or disapprove of their conduct. The Council is also empowered to make such observations as it may think in respect of the conduct of any authority, including Government, for interfering

with the freedom of the press. The decisions of the Council are final and cannot be questioned in any court of law.

The Press Council of India has been entrusted by the Parliament with the additional responsibility of functioning as an Appellate Authority under Section 8 (c) under the PRB Act 1867 and the Appellate Board comprising of the Chairman of the Council and another member meet regularly to hear the Appeals before it.

#### **vii) Film Certification Appellate Tribunal**

The Film Certification Appellate Tribunal (FCAT) is a statutory body, constituted vide Section 5D of the Cinematograph Act, 1952 under the Ministry of Information and Broadcasting, Government of India. The Tribunal hears the appeals filed under Section 5C of the Act under which any applicant for a Certificate in respect of a film who is aggrieved by an order of the Central Board of Film Certification (CBFC), can file an Appeal before the Tribunal. The Tribunal has its headquarters in New Delhi. The Tribunal has a Secretary to look after its day to day affairs.

#### **viii) Central Board of Film certification**

Central Board of Film certification (CBFC) with its headquarters at Mumbai is responsible for certifying the films produced in India as well as outside the country suitable for public exhibition. The Board gives four categories of certificates "U" for unrestricted public exhibition, "A" for public exhibition restricted to adults only, "UA" for unrestricted public exhibition with parental guidance for children below the age of 12 and "S" for exhibition to restricted audience such as doctors etc. These certificates are issued through the Regional Offices of the Board located at Bangalore, Calcutta, Chennai, Cuttack, Guwahati, Hyderabad, Mumbai, New Delhi and Thiruvananthapuram. Appeal against the decision of the Board lies with the Film Certification Appellate Tribunal. The enforcement of the penal provisions of the Cinematograph Act, 1952 is with the State Governments/Union Territory Administrations, since exhibition of films is a State subject.

#### **ix) The Advertising Standards Council of India**

The Advertising Standards Council of India (ASCI) is a self regulatory voluntary organization of the advertising industry. It was set up in October 1985. The ASCI and its Consumer Complaints Council deals 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. The representatives of Indian Society of Advertisers, the Advertising Agencies Association of India and the Indian Newspapers Society have set up the Council to self-regulate the content of advertisements. The Code of the Council for Self-Regulation in Advertising specifies that all advertising should be truthful, honest, decent, legal and safe for consumers particularly minors, and fair to the competition.

#### **x) Copyright Board**

The Copyright Board, a quasi-judicial body, was constituted in September 1958. The jurisdiction of the Copyright Board extends to the whole of India. The Board is entrusted with the task of adjudication of disputes pertaining to copyright registration, assignment of copyright, grant of Licenses in respect of works withheld from public, unpublished Indian works, production and publication of translations and works for certain specified purposes. It also hears cases in other miscellaneous matters instituted before it under the Copyright Act, 1957. The meetings of the Board are held in five different zones of the country. This facilitates administration of justice to authors, creators and owners of intellectual property including IP attorney's near their place of location or occupation.

#### **xi) Telecom Regulatory Authority of India**

The entry of private service providers brought with it the inevitable need for independent regulation. The Telecom Regulatory Authority of India (TRAI) was, thus, established with effect from 20th February 1997 by an Act of Parliament, called the Telecom Regulatory Authority of India Act, 1997, to regulate telecom services, including fixation/revision of tariffs for telecom services which were earlier vested in the Central Government. TRAI's mission is to create and nurture conditions for growth

of telecommunications in the country in a manner and at a pace which will enable India to play a leading role in emerging global information society.

One of the main objectives of TRAI is to provide a fair and transparent policy environment which promotes a level playing field and facilitates fair competition.

## 10. CASE LAWS

### i) Sakal Papers Ltd. v. Union of India [4]

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

### ii) K. A. Abbas v. Union of India

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

### iii) Bobby Art International v. Om Pal Singh Hoon

The Supreme Court re-affirmed the afore-mentioned view and upheld the order of the Appellate Tribunal (under the Cinematograph Act) which had followed the Guidelines under the Cinematograph Act and granted an 'A' certificate to a film.

### iv) Hamdard Dawakhana v. Union of India

The Supreme Court was faced with the question as to whether the Drug and Magic Remedies Act, which put restrictions on the advertisements of drugs in certain cases and prohibited advertisements of drugs having magic qualities for curing diseases, was valid as it curbed the freedom of speech and expression of a person by imposing restrictions on advertisements. The Supreme Court held that, an advertisement is no doubt a form of speech and expression but every advertisement is not a matter dealing with the expression of ideas and hence advertisement of a commercial nature cannot fall within the concept of Article 19(1)(a).

v) **Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd.**

A three judge bench of the Supreme Court differed from the view expressed in the Dawakhana case and held that ‘commercial advertisement’ was definitely a part of Article 19(1)(a) as it aimed at the dissemination of information regarding the product. The Court, however, made it clear that the government could regulate commercial advertisements, which are deceptive, unfair, misleading and untruthful.

### **11. MEDIA, LAW AND WOMEN**

Advertisement is the most influential and powerful medium in the commercial society. The Advertising Standards Council’s Code for Self regulation defines an advertisement as a paid-for communication, addressed to the Public or a section of it, the purpose of which is to influence the opinions or behavior of those to whom it is addressed. Any communication which in the normal course would be recognized as an advertisement by the general public would be included in this definition even if it is carried free-of-charge for any reason. “Advertising is an expression intended for the promotion of a product or a service or concept.” The Report of EEC Committee on the Environment, Public Health and Consumer Protection defined advertising thus, “.....the process of persuasion, using paid media, in which purchasers of goods, services or ideas sought. Its primary aim is to convince the consumer to obtain the advertiser’s product/ service and/ or his specific brand. Advertising is thus a commercial message designed to influence consumer behavior.” Advertising is communication. It seeks to convey information to the consumer about a product. It can take any form in any media.



## **Women and Advertisements:**

Women play a very important role in respect to Advertisements:

# As Victims-I subscribe to the view that women models in most cases are exploited.

# As viewers of advertisements in the media

# As, endorsers which again is a dignified way of promoting a product which is usually done by a well known woman.

Use of women to promote a concept or product is going on increasing Women are used in TV commercials as weapon of persuasion. Women in many cultures make the majority of consumption decisions; hence they are important target of these advertisers.

Positive Impact of Advertisements on Women includes Consumer education, Public Service Advertisements which educates women. Advertisements brings awareness about various issues women need to know. For example: the advertisements of contraceptives inform women about safe sex. Advertisements also offer a career to women as models and fashion design. Advertisements do update women on the latest fashion trends; there by making them more stylish and elegant. But, most of the advertisements make women victims of cheap advertising techniques The representing of women in indecent ways for whatever commercial ends, is the worst thing done.

It can be curbed by the following means:

### **Laws**

The Indian Penal Code 1960 contains S. 292 which deals with the sale of obscene books, pamphlet, inter alia representation which shall be deemed to be “lascivious or appeals to the prurient interest”, which can include obscene advertisements. I am including Indian Penal Code as safety legislation to prevent the indecent representation of women in advertisements, because of one logic:

“Indecent Representation of women can be obscene’, which means that a law curbing obscenity can come of help.

“The word, obscenity as the dictionaries tell us, denotes the quality of being obscene which means offensive to modesty or decency; lewd, filthy and repulsive. It cannot be denied that it is an important interest of society to suppress obscenity. There is, of course, some difference between obscenity and pornography in that the latter denotes writings, pictures etc. intended to arouse sexual desire while the former may include writings etc. not intended to do so but which have that tendency. Both, of course, offend against public decency and morals but pornography is obscenity in a more aggravated form”.

In **Ranjit D. Udeshi Vs State of Maharashtra**, the test of obscenity was established. The appellant, a bookseller, sold a copy of the unexpurgated edition of “Lady Chatterley's Lover". He was convicted under s. 292, Indian Penal Code, it was ruled that “ in judging a work, stress should not be laid upon a word here and a word there, or a passage here and a passage there. Though the work as a whole must be considered, the obscene matter must be considered by itself and separately to find out whether it is so gross and its obscenity so decided that it is likely to

deprave and corrupt those whose minds are open to influences of this sort. In this connection the interests of contemporary society and particularly the influence of the impugned book on it must not be overlooked. Where, obscenity and art are mixed, art must so preponderate as to throw the obscenity into a shadow or the obscenity so trivial and insignificant that it can have no effect and may be overlooked. It is necessary that a balance should be maintained between "freedom of speech and expression" and "public decency or morality"; but when the latter is substantially transgressed the former must give way." And in **Chandrakant Kalyandas Kakodar v/s. State of Maharashtra and Ors**, it held that there was no fixed rules to determine obscenity." The concept of obscenity would differ from country to country depending on the standards of morals of contemporary society.

### **The Indecent Representation of Women (Prohibition) Act, 1986:**

The Act punishes the indecent representation of Women , which means "the depiction in any manner of the figure of a woman; her form or body or any part thereof in such way as to have the effect of being indecent, or derogatory to, or denigrating women, or is likely to deprave, corrupt or injure the public morality or morals. It states that no person shall publish or cause to publish or cause to be published or arrange to take part in the publication or exhibition of any advertisement which contains indecent representation of women in any form. 'In the Act, advertisement' includes any notice, circular, label, wrapper or other document and also includes any visible representation made by means of any light, sound, smoke or gas. The Amendment suggested by the National Commission for Women suggests to amend the definition to "advertisement' includes any notice, circular, label, poster, wrapper or other document and also includes any visible representation made by means of any laser light, sound, smoke, gas, fibre, optic electronic or other media" It states that no person shall produce or cause to be produced, sell, let to hire, distribute, circulate or send by post any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure which contains indecent representation of women in any. The Commission has also suggested the addition of the word "Derogatory" along with "indecent".

In Section 6 on Penalty, the words 'and with fine which may extend to two thousand rupees' shall be substituted with the words 'and with fine which may extend to ten thousand rupees' and the words 'in the event of a second or subsequent conviction with imprisonment for a term of not less than six months but which may extend to five years and also with a fine not less than ten thousand rupees but which may extend to one lakh rupees' shall be substituted with the words 'in the event of second or subsequent conviction with imprisonment for a term of not less than six months but which may extend to five years and also with a fine not less than fifty thousand rupees but which may extend to five lakh rupees'.

In the Kamasutra Advertisement, Milind Soman and Madhu Sapre too had faced similar mix of charges. Similar charges were raised against the Editor of Anandabazar Patrika, Aveek Sarkar, and the Publisher in a trial court in Kolkata relating to the reproduction of a nude photograph of

former tennis player Boris Becker and his fiancée in Sportsworld magazine, published by the group in May 1993. According to the National Crime Records Bureau claims a decrease of cases of Indecent Representation of women -decreased by 46.5% (from 2,917 in 2005 to 1,562 in 2006). While it is Andhra Pradesh that has recorded 86.2 percent of cases at in the National level under the Act. In April 2006, a Madurai court issued non-bailable warrants against Sen and Shilpa Shetty for "posing in an obscene manner" in photographs published by a Tamil newspaper. The report stated that the two actresses had failed to comply with earlier summonses for the same reason, hence the issuance of the warrants. The petitioner submitted that the paper had published "very sexy blow-ups and medium blow-ups" in its issues December 2005 and January 2006 issues, and which allegedly violated the Indecent Representation of Women (Prohibition) Act 1986, Young Persons (Harmful Publications) Act 1956, and the Indian Penal Code Section 292 (Sale of Obscene Books). The petitioner further demanded that the images should be confiscated under the terms of the Press and Registration of Book Act 1867.

#### **The Information Technology Act, 2000:**

Section 67 of the IT Act is the most serious legislative measure against pornography. The section reads as under: Whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to one lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to ten years and also with fine which may extend to two lakh rupees. The important ingredients of an offence under section 67 are publishing, or transmitting, or causing to be published, pornographic material in the electronic form.

The wordings of section 67 are wide enough to cover all perpetrators of cyber pornography, be it the Internet service providers, web hosting entities or the persons behind the actual website. The Act prescribes imprisonment of either description for a term which may extend to 5 years and with fine which may extend to Rs. 1 lakh in the case of first conviction and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to 10 years and also with fine which may extend to Rs. 2 lakh.

S.67 thus, aids in the control of advertisements which has found its life in the new media- the Internet. Other female friendly laws include the PNDT Act, S.22 reads thus- S.22. Prohibition of advertisement relating to pre-natal determination of sex and punishment for contravention.- (1) No person, organization, Genetic Counseling Centre, Genetic Laboratory or Genetic Clinic shall issue or cause to be issued any advertisement in any manner regarding facilities of pre-natal determination of sex available at such Centre, Laboratory, Clinic or any other place.

(2) No person or organization shall publish or distribute or cause to be published or distributed any advertisement in any manner regarding facilities of pre-natal determination of sex available at any Genetic Counseling Centre, Genetic Laboratory, Genetic Clinic or any other place.

(3) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees.

In Young Person's (Harmful Publications ) Act,1956, harmful publications "means any book, magazine, pamphlet, leaflet, newspaper or other like publication which consists of stories told with the aid of pictures or without the aid of pictures or wholly in pictures, being stories portraying wholly or mainly

- (i) the commission of offences; or
- (ii) acts of violence or cruelty; or
- (iii) incidents of a repulsive or horrible nature

in such a way that the publication as a whole would tend to corrupt a young person into whose hands it might fall, whether by inciting or encouraging him to commit offences or acts of violence or cruelty or in any other manner whatsoever. Liability is on all who sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, any harmful publication, or for purposes of sale, hire, distribution, public exhibition or circulation, prints, makes or produces or has in his possession any harmful publication, or advertises or makes known by any means whatsoever that any harmful publication can be procured from or through any person.

He shall be punishable with imprisonment which may extend to six months, or with fine, or with.

**Cable Television Networks (Regulation) Act, 1995:**

The Cable Television Networks (Regulation) Act, 1995 prohibits the transmission of advertisements on the cable network which are not in conformity with the Advertisement Code. The Advertisement Code is set out under Rule 7 of the Cable Television Network Rules, 1994. Contravention of these provisions attracts liabilities. The Advertisement Code states that no advertisement shall be permitted which derides any race, caste, color, creed and nationality. In Rule 7 (2) (vi) it states that no advertisement shall be permitted which, "in its depiction of women violates Constitutional guarantee to all citizens. In particular, no advertisement shall be permitted which portrays a derogatory image of women. Women must not be portrayed in a manner that emphasizes passive, submissive qualities and encourages them to play a subordinate, secondary role in family and society. The Cable operator shall ensure that the portrayal of the

female form, in programmes carried in his cable service is tasteful and aesthetic and is with well established norms of good taste and decency.”

The Act further states that no advertisement which exploits social evils like dowry and child marriage must be permitted.

### **Women have inherent right to Dignity:**

The expression 'life' assured in Article 21 of the Constitution does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of living, hygienic conditions in the workplace and leisure." Quality of life covered by Article 21 is something more than the dynamic meaning attached to life and liberty. Right to life includes right to human dignity Right to live with human dignity enshrined in Article 21 derives life breath from the directive principles of State policy .In *Maneka Gandhi V Union of India* , it was ruled that right to life is not merely confined to physical existence but also includes within its ambit the right to live with human dignity. In *Francis Coralie V Union of Territory of Delhi* it was held that means something more than just physical survival and is not confined to protection of any faculty or limb through which life is enjoyed or the soul communicates with the outside world, but includes ‘ the right to live with human dignity”Women are human beings. So every right pertaining to human beings is not alien to women. Women have right to live a dignified life.

In **Chandra Raja Kumari V, Police Commissioner, Hyd**, it had been held that right to live includes right to live with human dignity or decency and therefore holding of beauty contests is repugnant to dignity or decency of women and offends Art 21 of the Constitution.

The Universal Declaration of Human Rights, International Covenant on Civil and Political Rights has recognized that human beings have dignity inseparable from them. Thus, the right to dignity being an inseparable part of right to life guaranteed under the Indian Constitution under Art.21 makes the enforcement of the laws possible by the initiation of a writ petition in the Supreme Court or High Courts under Art.32 and Art.226 respectively.

Article 32 guarantees the enforcement of fundamental rights conferred by Part III of the Constitution by issuing appropriate directions, orders or writs.

### **Governments:**

Government policies can influence the effective implementation of safeguards to the dignity of representation of women. For e.g. see this news item- After Sushma Swaraj, her colleague, Sumitra Mahajan, is now bent on cleaning up the media. The government is planning to extend the ban on “indecent representation” of women in print to the electronic media and the Internet. It is also going to amend the Indecent Representation of Women (Prohibition) Act, passed more than a decade ago, to give it more teeth. “The main aim is to widen the scope of the Act and its

applicability so that it covers depiction of women as sexual objects or in humiliating servility to men in any kind of written, verbal or visual form,” recommends the note prepared by the Department of Women and Child Development.

### **Statutory Bodies**

The National Commission for Women has the power to initiate actions against the indecent Representation of Women. The National Commission for Women's Vision, Strategies and Programmes for the year 2005-2006 had among other goals the goal to curb indecent representation of Women by the media. The NCW had recommended for amendments in the Indecent Representation OF Women (Prohibition) Act, 1986. It has vast powers and do have the duty to safeguard the dignity of women portrayed in a bad light in the media, especially advertisements.

### **Human Rights Commission:**

The National Human Rights Commission and the State Human Rights Commission can look into violations of dignity of women, even in advertisements. S. 2 (d) of the Protection of Human Rights Act, 1993, defines human rights as the rights relating to life, liberty, equality, and dignity of an individual guaranteed in the Constitution or embodied in the international Covenants and enforceable by Courts in India. The NHRC has taken cognizance of certain infringements of dignity of women in advertisements.

### **The Press Council of India:**

The Press Council Of India is a statutory body established by the Press Council Of India Act, 1978, for the purpose of preserving the freedom of the Press and of maintaining and improving the standards of newspapers and news agencies in India. S. 14 of the Act gives the power to censure.

S.14(1) “Where, on receipt of a complaint made to it or otherwise, the Council has reason to believe that a newspaper or news agency has offended against the standards of journalistic ethics or public taste or that an editor or working journalist has committed any professional misconduct, the Council may, after giving the newspaper, or news agency, the editor or journalist concerned an opportunity of being heard, hold an inquiry in such manner as may be provided by regulations made under this Act and, if it is satisfied that it is necessary so to do, it may, for reasons to be recorded in writing, warn, admonish or censure the newspaper, the news agency, the editor or the journalist or disapprove the conduct of the editor or the journalist, as the case may be

“The Press Council of India has been established with the objects of preserving the freedom of the press and of maintaining and improving the standards of newspapers and news agencies in the country. It is to further these objects, that the council is required among other things, to help

newspapers and news agencies to maintain independence; to build up a code of conduct for newspapers agencies and journalists in accordance with high professional standards to ensure on their part the maintenance of high standards of public taste and to foster a due sense of the rights and responsibilities of citizenship and to foster the growth of a sense of responsibility and public service among all those engaged in the profession of journalism. In the Code “-Newspapers should not publish an advertisement containing anything which is unlawful or illegal, or is contrary to good taste or to journalistic ethics or proprieties” in the section elaborately dealing with advertisements, which by the inclusion of the term, “good taste” is to be noted. It also states that “...The editors should insist on their right to have the final say in the acceptance or rejection of advertisements, specially those which border on or cross the line between decency and obscenity. An editor shall be responsible for all matters, including advertisements published in the newspaper. If responsibility is disclaimed, this shall be explicitly stated beforehand.”

In **Ajay Goswami V. Union of India**, is a relevant case which drew provisions from the Indian Penal Code, Indecent Representation of Women (Prohibition) Act etc to challenge the obscene content in newspapers. It also stated that the press Council’s power to censure needs to be reviewed. The Petitioner is a lawyer. Respondent No.1 is Union of India, respondent No.2 is a statutory body, respondent Nos. 3 & 4 are the leading national daily newspapers and respondent No.5 & 6 are news agencies. ‘The petitioner's grievance is that the freedom of speech and expression enjoyed by the newspaper industry is not keeping balance with the protection of children from harmful and disturbing materials. However, the writ petition was dismissed but directed the Government to consider the request of the Press Council to amend the section in public interest.

#### **Other Bodies:**

Other organizations and bodies including NGOs can play an important role in curbing the menace of indecent representation of Women in Advertisements. As a result of a collaborative effort between the National Commission for Women, the various State Commissions in different parts of the country and several non-government organizations working for the empowerment of women, media watch groups are being set up in various cities for continuous and sustained monitoring of portrayal of women in the media.

#### **Self-Regulation:**

Self-regulation is a universally applicable code of practice, drawn up on a co-operative basis by the industry it is designed to control, and expressed in clear, unambiguous terms ; wide publicity for the code to the business concerned and to its customers and potential customers ; -an efficient and consistent monitoring, complaints handling and arbitration procedure which can be followed to investigate and adjudicate apparent breaches of the code and which is provided by the industry concerned. Some self-regulatory codes in the marketing field may be more limited in their application, because they apply only to those companies in membership of the sponsoring trade association. In India we have the Advertising Standards Council of India. Advertising Standards

Council of India is a self regulatory voluntary organization of the advertising industry. The Role and Functioning of the ASCI & its CCC are in dealing with Complaints received from Consumers and Industry, against Advertisements 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.

**People and Society:**

The public can play an important role in curbing the indecent representations of women in advertisements, by objecting to it and by choosing not to remain silent. Cultural as well as religious constraints too cannot be over looked totally by the agencies. The media is the watch dog of justice. Media is accountable to the people. Media can play an important role in protesting the indecent representation of women in the media. Journalists have to make people aware of the laws helping them in this goal, through their writings.

In conclusion, I would like to point out that a mass awakening only can make a change in the attitude of advertisements towards women. Public service Advertisements are doing their part thanks to the Governments and NGOs. But women organizations, police, politicians, social workers, legal activists- all have to join hands to fight those indulging in indecent representation of women in advertisements. Much have to be researched in this field to bring forth a comprehensive piece of legislation or amendments in the existing laws to deal with the vulgar portrayal of women in advertisements. Transnational companies and their advertisements do have a negative persuasive effect on the viewers of our country, especially youngsters.

The advertisements portraying women in a vulgar way, whether it be in hoardings or other in other media, is tolerated and over looked by the people. For. e.g. there is a duty attached to officers under different acts like the Indecent Representation of Women (Prohibition )Act,1986 which can be resorted to remove hoardings with women pictured in a vulgar way. In these circumstances a writ of mandamus can be resorted to. By various cases, the Supreme Court has recognized that the advertisements were in the nature of “commercial speech’, thereby liable to be protected under Art 19(1) (a). But it must be remembered that it is not a blanket protection because of the restrictions which includes inter alia grounds of morality and decency. He also points out that the models as well as the advertising agencies do have a right to livelihood and profession, but the so called social workers and activists and lawyers and media persons should come up to enlighten the society at large about the legal consequences of indecent acts.