

CHAPTER III

IMPORTANT LEGISLATIONS RELATING TO MEDIA IN INDIA

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1. Introduction

In the preceding pages a brief account of the legislations pertaining to the freedom of press are dealt with. The noteworthy fact is that no legislation specifically granted the right to press; as those legislations merely curtailed the freedom of press. A landmark in the history of press, was when for first time ever, the right to press was recognized and secured by the Indian Constitution. The freedom of press does not enjoy an independent status as it is incorporated in the freedom of speech and expression but one should not be misled by this fact, that freedom of press does not enjoy the same status as that of any other fundamental right⁹³. Freedom of press is one of the most coveted right in the entire chapter of Fundamental Rights of the Indian Constitution. This is so because the freedom of press is the backbone of the democracy.

Actually the term “freedom” means no restraint. This means that when we speak about freedom of press there are no restraints on the press. However this is not the meaning of freedom, here the meaning of freedom of press has to be taken in the sense of right to press with reasonable restrictions. Freedom of speech and expression like any other right is circumscribed by restrictions placed under Article 19(2) of the Indian Constitution⁹⁴. History has shown that the government is sometimes very apprehensive of the press and hence tries to curtail the freedom of press. With this object the government has passed a string of legislations which have to fulfill the requirements of Article 19(2). So eventually there are two categories of restrictions placed upon the freedom of speech and expression inclusive of freedom of press, (i) Constitutional restrictions under Article 19(2) (ii) Acts passed by the legislators.

The preceding chapter deals with the Constitutional restrictions under Article 19(2) and the present chapter deals with the legislations which are related to the freedom of press. Some legislations act as limitations on the freedom of press, whereas some legislations protect and promote the press. A few legislations have been analysed in forthcoming pages.

⁹³ *Supra.*, p. 37

⁹⁴ *Supra.*, p 53.

2. Types of legislations

To demarcate the exact nature, scope or the extent of the freedom of press one has to know the limitations or the restrictions which are imposed upon that freedom. Hence the limitations on the freedom of the press are very crucial for culling out the scope of the freedom of press. Apart from the restrictions mentioned in the Constitution, the freedom of press is subjected to restraints by various legislations.

A scrutiny of various legislations points out to the fact that the legislations can be classified into two categories. The criteria used for the classification is the content of the legislation. Based upon this content the legislations are classified into (a) general legislations and (b) specific legislations.

(a) General legislations

When a particular legislation deals with the aspect of freedom of press in totality or generally it can be classified as a general legislation. It means this type of legislation deals with the freedom of press in a general manner imposing general restrictions. To put it in other words, this type of legislation does not deal with any particular or specific aspect related to the press. For example the Indian Penal Code imposes a general limitation of defamation on the freedom of speech and expression inclusive of freedom of press.

(b) Specific legislations

When legislation deals with a specific aspect of the freedom of press, it can be classified as a specific legislation. In this type of legislation the legislature's intent is to deal with a particular or a specific object related to the freedom of press. It means that such a specific legislation deals with explicit elements in the form of restrictions imposed upon the freedom of speech and expression inclusive of freedom of press. For example, the Cinematograph Act 1952 deals with the restrictions imposed upon the cinema that is it deals with a specific aspect of freedom of speech and expression that is cinema.

A few legislations have been analysed according to these criteria.

(3) General legislations

(a) The Indian Penal Code 1860.

The Indian Penal Code is regarded as the substantive criminal law of the land. The object of this code is to identify the offences which are prohibited and prescribe penalties for them. Some of the offences prohibited by this code amounting to misuse of the freedom of speech and expression are sedition and defamation. Section 124 A of the Indian Penal Code states if any person by any words written or spoken or by making any visible signs attempts to bring the feeling of hatred or contempt against the government shall amount to sedition and will be punishable with imprisonment fine or both. This section places a general restraint on the freedom of the speech and expression inclusive of freedom of press. Freedom of press does not include the freedom of projection the feeling of hatred or contempt towards the government. The right to reasonable criticism prevails which does not amount to sedition. The second general restriction imposed by the Indian Penal Code is in the form of defamation. The common misuse of the freedom of the speech and expression which prevails is the offence of defamation. Right of freedom of speech and expression through press does not include the right to injure a person's reputation by making false statements or by visible representations or gestures. Right to freedom of the speech and expression through press does not include the right to defame even a deceased person or company or an association or likewise. Though it seems a general restriction, it is a very vital restriction imposed on the freedom of speech and expression of the press. Further the Indian Penal Code under section 501 prohibits the printing or engraving of defamatory matter. So also selling of such a printed or engraved defamatory substance is an offence under section 502 of the Indian Penal Code.

So it can be stated that the Indian Penal Code imposes two restrictions in the general form on the freedom of speech and expression through press.

(b) The Indian Telegraph Act 1885

The Indian Telegraph Act 1885 is a statute whose main object is to deal with all aspects of telegraph and also to empower the government or any licensed company or person to adopt such measures which are necessary to expedite the telegraph

communication. According to the object and statement of reasons of this statute, it may not have any bearing upon media. To put it in other words, this statute does not have any link with the different aspects of media. However, in the year 2003 the Parliament made an amendment to The Indian Telegraph Act. The amendment of this Act was made to define the term telegraph. The said amendment inserted clause 1(AA) in section 3 of the statute. This amendment was considered to be very important and hence it had retrospective application. According to this amendment, clause 1(AA) which was inserted in clause 1 of section 3, deals with the definition of the term telegraph. The telegraph includes any piece of equipment, appliance or apparatus used to transmit or receive any signals or writing material or images or pictures or any other electromagnetic emissions or radio waves or hertzian waves or any electric or magnetic waves. This clause has broadened the meaning of telegraph so as to include radio within its ambit. The radio is considered to be the most popular agency of media. Hence The Indian Telegraph Act 1885 becomes applicable to freedom of press as far as radio is concerned. The application of this Act to media and press is limited as only the radio is covered under this statute.

(c) The Unlawful Activities (Prevention) Act 1967

The objective of this Act is to secure and promote solidarity, integrity and stability of India. The National Integration Council appointed the Committee on National Integration and National Regionalism, to deal with the national integrity of the state. The Constitutional Sixteenth Amendment Act 1963 empowered the parliament to enact a statute which would contain reasonable restrictions on the fundamental rights, incorporated in Article 19(1) of the Indian Constitution. The reasonable restrictions were to be imposed mainly on the freedom of speech and expression and freedom to assemble peacefully, and form associations and unions. This amendment sought to achieve the object of protecting the sovereignty and integrity of India. In pursuance to the Constitutional Sixteenth Amendment 1963, The Unlawful Activities (Prevention) Act 1967 was enacted.

The object of this statute is to declare any activity in grab of freedom of speech or freedom of association unlawful if it endangers the integrity, or the solidarity or the stability of the state. As this statute prohibits freedom of speech and expression which

hampers the integrity of the state; it acts as a reasonable restriction on the freedom of speech and expression.

The Section 2(f) of the Unlawful Activities (Prevention) Act 1967 deals with the meaning of the term 'unlawful activity'. It states that any individual or association by any act or by words spoken or written, or by any visible representation, endanger the security or the integrity of the state would constitute unlawful activity. The Act further prescribes punishments in the form of imprisonment with or without fine for such unlawful activities.

This piece of criminal legislation is very stringent as it bars the jurisdiction of courts and imposes heavy penalties; but constitutes as reasonable restrictions under 19(2) of the Indian Constitution. According to this statute, freedom of speech and expression does not include the freedom to endanger the security, solidarity, stability and the integrity of India.

This statute has become very important because of the rising terrorist activities. In order to deal with the more severe situation of terrorism the parliament has enacted Unlawful Activities (Prevention) Amendment Act 2008. Unlawful Activities (Prevention) Amendment Act 2008 deals with more serious activities of terrorism and prescribes penalties for them. This statute does not bear a direct relationship with freedom of speech and expression, but deals with unlawful activities; and the term unlawful activities is dealt in Unlawful Activities (Prevention) Act 1967. Both these statutes affect the freedom of speech and expression inclusive of freedom of press and media as they impose restriction on the arena of the said freedoms.

(d) Monopolies and Restrictive Trade Practices Act 1969

India is a welfare state and hence the government has to undertake multifarious activities to promote the welfare of the people. The Indian legal system believes and incorporates equality, the second principle of rule of law as propounded by A.V

Dicey⁹⁵. The essence of equality demands that there should be absence of capitalism. To prevent capitalism monopoly should be prohibited and a market of free competition should prevail. To fulfil this objective the Monopolies and Restrictive Trade Practices Act 1969 was enacted. This statute imposes a reasonable restriction on the freedom of speech and expression. Section 36A of the Monopolies and Restrictive Trade Practices Act 1969 defines unfair trade practice. Among other things unfair trade practice includes any false or misleading representation either orally or in writing or by visible representation. This statute restricts the freedom of speech and expression which misleads a fact by way of false advertisement. The false advertisement is regarded as an unfair trade practice; hence this statute restricts the freedom of speech and expression through advertisement in a general manner.

(e) Information Technology Act 2000.

Today there is a dire need to protect the environment. The press requires a lot of printing and publishing which means a lot of paper is required to carry on the activities of the press. Paper comes from the bark of the trees and many trees have to be cut down in order to procure the required quantity of the paper. If many trees are continuously cut, then definitely the balance of the environment will be tilted. Hence a need was felt to invent alternative approaches to the paper based methods of communication. With the main objective to recognize the alternative approaches to the paper based communications and to legalize the electronic transactions, The Information Technology Act 2000 was enacted. The following are the objects of the Act

- (i) To introduce alternative approaches to the paper based methods of communications.
- (ii) To provide legal protection to electronic commerce.
- (iii) To authenticate the method of electronic records.
- (iv) To legalize electronic governance.
- (v) To provide a legal recognition to digital signatures
- (vi) To attribute and acknowledge the electronic records.

⁹⁵ Dicey A.V; *The law of the Constitution*; 198 (8th edition)

- (vii) To provide the method and procedure for the dispatching of such electronic records.

The Information Technology Act 2000 can be considered as a revolutionary legislation in the history of methods of communication and storage of information. The statute has recognized the technologies to gather and store information. A lot of paper work has been reduced by the introduction of this electronic medium of communication. The said statute has changed the mode of speech and expression and hence it circumscribes the freedom of speech and expression inclusive of press and media.

The Information Technology Act 2000 provides penalties regarding the misuse of any mode of modern technology in the following manner;

- (i) Imprisonment with or without fine for the act of tampering with the computer source document, according to section 65 of the said statute.
- (ii) It imposes heavy fines and imprisonment for the hacking of computer system.
- (iii) Publishing obscene information in the electronic form is also an offence punishable with imprisonment with or without fine.
- (iv) Breach of confidentiality and privacy is also punishable under this statute.
- (v) A person may be punished with or without fine for making misrepresentations or for suppressing any material fact intentionally.

The statute further empowers the controller to issue directions to a subscriber to extend facilities to decrypt information.

The Information Technology (Amendment) Act, 2008, inserts section 69A and 69B in the Information Technology Act. According to section 69 A the government can block the public access of any information through the computer resource if it is against the interest of sovereignty, solidarity and integrity of India.

Section 69B authorizes the government to monitor and collect the traffic data through any computer resource.

To incorporate the provisions of The Information Technology Act, four statutes had to be amended

- (i) By the amendment to the Indian Penal Code 1860. Sections 29, 172, 173, 175, 192, 204, 464, 466, 468, 469, 470, 471, 474, 476 477A were amended.
- (ii) By the amendment to the Indian Evidence Act 1872 sections 3, 17, 22, 22A, 34, 35, 39, 47, 65A, 65B, 67A, 73, 73A, 81A, 85A, 85B, 85C, 88A 90A and 131 were amended.
- (iii) By the amendment to the Bankers Book Evidence Act 1891, sections 2, 2A, were amended.
- (iv) By the amendment to the Reserve Bank of India Act 1934 section 58 was amended.

The point to be made here is that, the amendment of four statutes show the range of wide applicability of The Information Technology Act.

The Information Technology Act 2000 does not deal with the nature and scope or the restrictions on the freedom of speech and expression, inclusive of press and media. But the said statute has changed the mode of speech and expression, inclusive of press and media; and hence the prescribed permissions and limitations placed on this mode are applicable to the freedom of speech and expression. Hence it is stated that the Information Technology Act has brought a revolutionary change in the freedom of press and the media.

All the statutes discussed above do not deal with any particular or specific aspect of freedom of press and hence they are classified as general statutes. These statutes have influenced the freedom of press in an indirect or general manner. The said statutes have either dealt with the nature and scope of the press, or have created a right, or have given a different dimension to the freedom of press, or have changed the mode of expression or have placed a restriction or limitation on the freedom of speech and expression inclusive of freedom of press and media.

So one can safely say that freedom of speech and expressions prevail, only subject to the constitutional restrictions as well as the general statutory restrictions. But these

are not the only restrictions and more restrictions placed by specific statutes are yet to be analysed.

4. Specific Legislations.

Some statutes deal with a particular aspect of the freedom of speech and expression and freedom of press that is such a statute deals with only one dimension or facet of the freedom of press. To put it in other words, it does not deal in totality or with general aspects of the freedom of press. For example The Press and Registration of Books Act 1867 deals only with the regulations related to the printing and publication of the books. It does not deal with any general conditions or aspects of the freedom of press, but deals with a specific aspect of printing and publication of the press. Hence such legislations which deal with a particular condition or aspect related to the freedom of speech and expression inclusive of freedom of press and media are categorized as specific legislations.

(a) The Press and Registration of Books Act 1867

This statute was enacted to regulate the press and newspaper's printing activities. Another important object of the statute was to compel registration of books and printed material in order to make a compilation of the collections of the books. The statute makes the following provisions regarding printing and publishing books and newspapers.

- (i) According to section 3, any printed material including book, or a paper shall contain the name and the place of the printer and the publisher. In *re: G Alavander*⁹⁶, it was stated that the identification clause incorporated in section 3 was not violative of Article 19(1)(a) of the Indian Constitution. If a person violates section 3, he is subjected to punishment under section 12 of the Act with simple imprisonment or fine.
- (ii) Any person who has in his possession the printing press has to make a declaration to the magistrate of the fact of possessing a printing press. If he fails to do so such a person may be subjected to penalty under section

⁹⁶ AIR 1957 Mad 427

13 of the said Act. The punishment is in the form of imprisonment or fine or both.

- (iii) If a person ceased to be a printer or a publisher then he has to make a new declaration that he is not a printer or a publisher any more under section 8 of the Act. If he fails to make a new declaration, he shall be penalized under section 15A of the Act.
- (iv) Section 14 of The Press and Registration of Books Act 1867, a person is penalized for making false or untrue statements regarding the declarations to be made under section 4 and section 8 of the Act.
- (v) Section 11A of the statute demands that the copies of the printer should be delivered to the government as soon as they are published. Section 11B states that the copies of the newspapers should be delivered to press registrar.
- (vi) The press registrar should be appointed under section 19(A) of the Act. The function of the press registrar was to observe a general superintendence and control over the press. Under section 19(B) the registrar is empowered to maintain a register of newspapers.
- (vii) Every publisher of a newspaper had to furnish returns and reports to the registrar under section 19 E of the Act. Omitting to do the person could be punished under section 19 K of the Act.
- (viii) Section 19L imposes penalty for disclosing improper information to the registrar.
- (ix) This Act incorporates the provision for delegated legislation to be made by the state government under section 20. The state government to make necessary rules to bring into effect the objects of The Press and Registration of Books Act 1867.
- (x) Section 20 A of the Act empowers the central government to make the rules for regulating the activities of printing or publishing of newspapers and books. When the rules were made they are to be laid before the parliament for affirmation.

As seen from the above discussion this statute deals in detail with the procedure of printing and publication of newspapers and books. The salient features of The Press and Registration of Books Act 1867 is the

theme of identification of printers and the publishers of the newspapers and books.

It is to be remembered that this statute was enacted by the Britishers, in the pre independence era. The object of the then British Government was to curb and suppress the activities of the press. It was necessary for them to do so because of the rising revolts and tremendous incitement and instigation for the movement of freedom. By this statute the British Government wanted to put check through identification clause on the press. As it would be easier to take action when the names of the printers and publishers known.

The critics of this statute opine that this statute is outdated and the object of this Act to suppress the freedom movement in the pre independence era is not applicable in the post independence era, where India is sovereign democratic state. As the object of the statute is no longer applicable, thus the statute should cease to exist.

The arguments in favour of retaining the statute are as follows,

- (i) The statute does not restrict the freedom of press.
- (ii) The identification clauses incorporated in the statute only protects the interest of publishers and printers. So also the identification of the printers and publishers acts as a check on printing any defamatory, false, seditious or obscene matters.
- (iii) The other procedures related to printing and publishing of the books is merely regulatory and does not in any way curb the ambit of freedom of press.

In the humble opinion of the researcher the object of the statute has no doubt changed, nevertheless the statute is relevant and applicable even in today's times. Another important aspect is this that the statute is not imposing any pre censorship on the press which is a very important aspect in today's times. Apart from putting a few regulatory restraints the statute does not amount to the curtailment of the freedom of press.

(b) The Official Secrets Act 1923

The Official Secrets Act 1923 was enacted in the British era by the British Parliament. Prior to this Act various statutes relating to official secrets prevailed in British India. The first statute enacted was the Indian Official Secrets Act 1889. Its amended version prevailed in the Indian Official Secrets (Amendment) Act 1904. Later the Official Secrets Act 1911 prevailed. Lastly the Official Secrets Act 1923 was enacted which was the cumulative effects of all the above statutes. It seems that the British rulers were very apprehensive regarding the protection of their official secrets. Every now and then, because of the freedom movements and revolts, regarding independence strengthened their fears of their official secrets being leaked; so a series of statutes regarding official secrets were introduced. It appears that the British rulers have given more time and weight age to the protection of secrets rather than to any other issues. This shows that they knew their rule in India was unstable and constantly becoming weak.

The Official Secrets Act 1923 imposes restrictions upon the freedom of speech and expression inclusive of press to a certain extent. The statute states that the following activities will not fall within the scope of the freedom of speech and expression.

- (i) Any act which is prejudicial to the safety and interest of the state which amounts to spying is prohibited under section 3 of the Act. Section 10 of the statute imposes penalties for even harbouring of spies.
- (ii) Any communication with any foreign agents for the commission of certain offences is prohibited and punishable under section 4 of the statute.
- (iii) Any wrongful communication or information amounting to official secret to any person with the view of endangering the sovereignty and integrity of India is Punishable under section 5 of this statute.
- (iv) Any interference or obstruction with the view to mislead the members of police or the armed forces is prohibited and punished under section 7 of the statute.
- (v) Section 8 of the Official Secrets Act 1923 restricts the freedom of speech and expression in a very different manner, that is, it restricts the freedom of

speech and expression, which is in the form of silence. This section makes it a legal duty to impart information regarding the commission of any offence committed by guard, sentry or any patrolling officer. If a person, knowing such a fact does not give information, he is punishable under section 8 of this Act.

- (vi) Section 9 of this Act prohibits incitement to any offence.
- (vii) Another important restriction on the freedom of speech and expression is placed by section 14 of The Official Secrets Act 1923. It states that the proceedings of the court are prohibited from being published in public. So also any publication of any evidence or statements made in the course of the proceedings cannot be published for the sake of security and the safety of the state.

The Official Secrets Act 1923, as analysed above demarcates the ambit of freedom of speech and expression to a considerable extent, for the sake of the protection of official secrets of the state. This statute suffers from a few loopholes.

- (i) The most glaring loophole of the statute is that the word secret is not defined in the statute. The absence of the meaning of the term 'secret' makes it next to impossible to interpret and apply the whole statute. Many a times very vague or a very broad meaning is attributed to the term secret, which causes severe difficulties in knowing the exact scope of freedom of speech and expression in relation of The Official Secrets Act 1923.
- (ii) Another very grave demerit of the statute is that, any information covered under Official Secrets Act 1923 is exempted from The Right to Information Act 2005. This complicates the matter because the term secret is not defined in The Official Secrets Act 1923 and the same secret information is exempted from The Right to Information Act 2005.
- (iii) Lastly it has to be remembered that this statute was passed by the Britishers, whose utmost endeavour was to protect their official secrets to stop the growth of mutiny. But today India is a democracy wherein there is people's participation in the government, and there is

no question of mutiny. So also all the secret information regarding defence forces are protected under the various defence statutes; hence there is no point in protecting the official secrets under a separate statute. It is humbly submitted that The Official Secrets Act 1923, is not applicable in present times, and hence should be repealed.

(c) The Cinematograph Act 1952

Cinemas are considered to be very important means of speech and expression, because cinemas have profound and retaining impact upon the public. This mode of speech and expression is subjected to limitations by various statutes. The major statute which governs the cinemas is The Cinematograph Act 1952. The objects of this statute are the following;

- (i) To certify the movies
- (ii) To classify the movies according to its contents into ‘A’ for adults
‘U’ for unrestricted audience, and
‘U/A’ for universal but under the supervision of adults.
- (iii) To scrutinize the movies
- (iv) To establish a censor board.
- (v) To censor any portion or part of the movie that is deemed to be obscene or immoral, according to the provision of the statute.
- (vi) The statue provide for pre censorship of the films.

According to the Act the Central Government may, by notification in the official Gazette, constitute a Board to be called the Board of Film Certification. This board is constituted of a Chairman and not less than twelve and not more than twenty five other members appointed by the Central Government. This board views the film and certifies the film. The censor board, being a statutory authority has the authority to authorize the film for public viewing.

The constitutional validity of the Act was challenged in *K Abbas v Union of India*⁹⁷, stating that both press and motion pictures derive the right through Article 19(1)(a) of the Constitution. There is no pr censorship on press, then how can there be a

⁹⁷ *Supr.* , p. 52

ensorship on motion pictures, the court answered that the motion pictures have the ability to stir the emotions more than the ordinary press, and hence the censor is needed.

There is also an appellate tribunal to challenge the decision.

However the problem is that the authority of this board is always challenged by the self declared authoritarians of the society. The films despite being passed through the scissor of censors and then was certified for public viewing, still it faces ban either by the state government or due to violent protest made by self declared authoritarians of the society.

The film Water which was based on the poverty and impoverishment of young widows of Varanasi, during 1938 was also the prey for such authoritarians. As per the actual schedule the film was to commence its shooting in 2000. However due to strong protest and the death threats to the producer Deepa Metha, from Hindu fundamentalists, the film was shot on secret locations in Sri Lanka. After the completion of film in 2003, the acquired wide international recognition, but was only released in India in 2006.

The movie Da Vinci Code, even after getting the nod from the Censor board was banned by various states as the Christian community protested, stating that their religious sentiments were hurt. A point here is to be noted that the film did very well in Western Christian countries.

In *Sree Raghavendra Films v Government of Andhra Pradesh and others*⁹⁸ The Telgu Version of the film Bombay was banned by the state government in spite of getting the clearance from the censor board. It was later found out that the authorities, who banned the movie, did not even watch the movie. The court raised the ban on the movie.

⁹⁸ 1995(2) ALD 8

The case of *Life Insurance Corporation of India v. Prof. Manubhai D. Shah*⁹⁹ is no different; here a short film was based on Bhopal gas tragedy. The film was certified as 'U' by the censor board, and had won Golden Lotus award, being the best non-feature film of 1987. Despite of this the Supreme Court the Doordarshan did not telecast it. The reason offered by Doordarshan was that various political parties were raising the objection and claims of the victims were still pending in the court of law. The Supreme Court held that merely, because it is critical of the State Government...is no reason to deny selection and publication of the film.

The same was the fate of kamal Hassan's film, 'Vishwaroopam'. The film was released after it was passed by the censor board. The board had suggested few cuts with which Kamal Hassan had complied. The film was not however released in the state of Tamil Nadu. A special screening was made before the representatives of the state government and further cuts were suggested.

An obvious question which arises now is that about the constitutional validity of the Censor board. The question so posed is because the government and the self declared authoritarians keep on overruling the Censor board.

It is true that the motion picture are capable of stirring the emotions more than the press, and a pre censorship regarding the motion pictures is necessary, but this does not mean that it can be done at whim and wish of the government or the self declared authoritarians. To censor the films there is a proper statutory authority and if it passes the film then it should be displayed without any undue delay.

This statute falls within the restrictions of the Article 19(2) of the Indian Constitution, and hence is regarded as permissible, reasonable restrictions on films.

Apart from the Cinematograph Act 1952, few other statutes also deal with the films and film industries and it would not be out of place to mention a few of them here.

⁹⁹AIR 1993 SC 171

One of them is the Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act 1981. This Act deals with the conditions of the service of the workers of the cine theaters. It imposes certain obligations on the producers and the owners of the theaters and mandates them to comply with certain conditions for the betterment of the cine workers.

Some other similar legislations dealing with the Cine workers is Cine Workers Welfare Cess Act, 1981, and the Cine workers Welfare Fund Act 1981. Both these statutes were enacted to secure the financial support to the cine workers.

The film industry being very seasonal, unpredictable and unstable many a times causes hardships to its employees. The cine workers get remuneration only when the films are made, and in the slack period they are deprived of income. These two legislations secure financial aid and assistance to these cine workers in the form of compulsory income and funds available throughout the year.

The Bombay Police Act 1951 empowers the police to regulate and curtail the exhibition of films under certain circumstances mentioned in the statute.

There are number of legislations which regulate and restrict the production and publication of films in certain circumstances; and such legislations fall within the reasonable restrictions under Article 19(2).

(d) Drug and Magic Remedies (Objectionable Advertisement) Act 1954

The object of the Drug and Magic Remedies (Objectionable Advertisement) Act 1954 was to govern and regulate the advertisement to drugs. Medicine is a profession and cannot be evaluated in the commercial terms and hence a need was felt to regulate the activity of the advertisement related to drugs. At the outset it is important to note that this statute was challenged in *Hamdard Dawakhana v. Union of India*¹⁰⁰ The Supreme Court had given a narrow interpretation of the term speech and expression in

¹⁰⁰ *Supra.*, p. 49

relation with the advertisement; and the commercial advertisements were not included in the freedom of speech and expression- Article 19(1)(a) of the Indian Constitution. Later in the *Tata Press Ltd. v Mahanagar Telephone Nigam Ltd*¹⁰¹, the Supreme Court held that advertisement was a mode of defusing and broadcasting information regarding any product, hence advertisement fell within the ambit of Article 19(1)(a) of the Indian Constitution.

The Drug and Magic Remedies (Objectionable Advertisement) Act 1954 prohibits the advertisement to drugs in the following manner;

- (i) Advertisements related to the curing or treatment of certain deceases, ailments or disorders are prohibited by section 3 of the said statute.
- (ii) Misleading or false or untrue advertisements related to the drugs are prohibited under section 4 of the Act.
- (iii) The advertisement related to any magic remedies pertaining to any ailment, disease or disorder is prohibited under section 5 of the statute.
- (iv) Importing or exporting certain advertisements mentioned under section 3,4 and 5 of the Drug and Magic Remedies (Objectionable Advertisement) Act 1954 are prohibited under section 6 of the same statute.

If any act is committed in contravention to the provisions of the Drug and Magic Remedies (Objectionable Advertisement) Act 1954, the offender is penalized under the section 7 of the same statute.

No doubt that the Drug and Magic Remedies (Objectionable Advertisement) Act 1954 curtails the freedom of speech and expression in relation to advertisements, still the prohibition is only in relation to advertisement relating to the drugs for diseases or misleading or untrue advertisements. Hence this statute is considered as a reasonable restriction falling under Article 19(2) of the Indian Constitution.

Apart from Drug and Magic Remedies (Objectionable Advertisement) Act 1954, an autonomous body viz. Advertisement Standard Council of India controls and regulates the activity of advertisement.

¹⁰¹ *Supra.*, p66

Advertisement Standard Council of India was set up in 1985 to perform the following functions.

- (i) To access and ensure the truthfulness or an honest claim of an advertisement.
- (ii) To prohibit false and misleading advertisements and also to provide safeguards against such advertisements.
- (iii) To scrutinize the advertisement in relation to the offending public standards.
- (iv) To scrutinize whether the advertisement is in conformity with the public decency.
- (v) To provide safeguard against indiscriminate and arbitrary use of advertisements.
- (vi) To prohibit the promotion of hazardous or dangerous products through advertisements.
- (vii) To ensure fair and objective competition in the market of advertisements which give correct and true information to the public and hence such a public can make their choices through the advertisements.

This Advertisement Standard Council of India regulates and governs the advertisements in a reasonable manner, and hence the restrictions placed by them are constitutional.

(e) The Newspaper (Prices and Pages) Act 1956

The Newspaper (Prices and Pages) Act 1956 is the most famous statute in the history of the press. The rules made under this statute was challenged in *Sakal News papers v Union of India*¹⁰² case as well as in *Indian Express Newspapers (Bombay) Pvt. Ltd. V. Union of India*¹⁰³. This statute confers powers on the central government for the following aspects;

- (i) It empowers the central government to regulate the prices of the newspaper in relation to the number of pages.

¹⁰² *Supra.*, p.46

¹⁰³ *Supra.*, p. 64

- (ii) It empowers the government to make rules for the prevention of unfair competition among the newspapers.
- (iii) It also empowers the government to make rules in order to provide fuller opportunities of the freedom of speech and expression of the newspapers that have a smaller or limited circulation.

The object of the statute are no doubt appreciable, however the government chose to make arbitrary rules which were challenged time and again. As clearly seen, this statute confers a wide range of powers to the government. Now it was for the government to use these powers in a wise, reasonable and fair manner. But the history has shown that the government has used the powers conferred by The Newspaper (Prices and Pages) Act 1956, to pursue its own goals, and hence the rules made by the government came in conflict with the freedom o speech and expression incorporated in the Article 19(1)(a) of the Indian Constitution and were declared unconstitutional by the Supreme Court.

(f) The Copyright Act 1957

The Copyright Act 1957 was enacted with the object to prevent the unauthorized economic exploitation of the work done by others, without the consent of the owner of the copyright. This statute is applicable to literary, dramatic, artistic, musical work, sound recording and cinematograph film. This statute deals with wide range of contents, but the present researcher is confining his research only to the limited area of The Copyright Act 1957 which is related to the freedom of speech and expression inclusive of press and media.

The broadcasting is protected under Copyright Act 1957 section 2dd, and hence it acts as a restrictive legislation. However with certain clauses of the section 52, of the said Act, which speaks about the circumstances which do not constitute as the infringement of copy right, the section can in no way is an impediment for right of the press and media.

This balance was clearly shown by the Supreme Court when it came hard on Prasar Bharati and ordered them to stop the live telecast of the matches. However covering the incidence on news channels and few clips are shown, would not amount to the infringement of the copyright.

The copyright law protects the freedom of Speech and expression as it allows the news channels to cover any event as news. However it prohibits any wrongful gains or any wrongful loss for any party in the event the party tries to exploit the work under the garb of freedom of speech and expression.

(g) Prevention of Publication of Objectionable Matter Act, 1976

The Press Commission recommended the establishment of Press Council. It stated that the function of the Press Council were to safeguard and protect the liberties of the press. So also it was the duty of the press Council to evolve and maintain a standard of journalistic ethics. This means that the press council had to lay down the parameters for the printing and publication of any matter. The Press Council would permit the printing and publication of only that matter which was ethical and hence any objectionable matter would be prohibited by the Press Council. So the press Commission was of the opinion that the job of the then The Press (objectionable Matter) Act 1951 would be performed by the Press Council. Hence the Press Commission recommended the repealing of The Press (objectionable Matter) Act 1951; and consequently in 1956, the said statute was repealed.

In years later it was proved that the Press Council was not efficient in prohibiting the printing and publication of objectionable matters. Neither had it laid down any standard of journalistic ethics. The press council had failed to impose a deterrent check on the printing and publishing matter in an undesirable way. Consequently an urgent need was felt to curb the printing and publication of objectionable matters. In pursuance to this need an Ordinance was issued by the President on the 8th December, 1975. The Prevention of Publication of Objectionable Matter Ordinance, 1975 prohibited the printing and publication of following matters.

- (i) Any matter which was against the sovereignty, security, stability and integrity of India.
- (ii) Any matter which would disturb the friendly relations of any foreign state.
- (iii) Any matter which is indecent or immoral in nature.
- (iv) Any matter which is in the form of incitement to offence.
- (v) In the necessary cases if it was in the opinion of the authority's then security could be demanded from the publishers.

In the year of 1976, the said Ordinance was repealed and the Prevention of Publication of Objectionable Matter Act, 1976 was enacted. This statute again acts as a restraint on the freedom of speech and expression inclusive of freedom of press and media.

Section 2 of the Prevention of Publication of Objectionable Matter Act, 1976, states that it includes within the scope of the said statute any book newspaper, newsheet press, document etc.

Section 3 of Prevention of Publication of Objectionable Matter Act, 1976 defines objectionable matters as follows;

- (i) Any visible representations or verbal response which brings hatred or contempt.
- (ii) Any actions or word to constitute incitement to an offence.
- (iii) Any printed material in order to seduce any member of the armed forces.
- (iv) Any printed material which promotes disharmony or injects the feeling of enmity or ill will among the different religious or linguistic sections of the society.
- (v) Any matter which tends to causes fear or alarm among the public or disturbs the public peace or public tranquillity. The freedom of speech and expression inclusive of freedom of press does not extend to the activities mentioned above.

Further the statute empowers the central government any other authority constituted under the Act to prohibit any matter which can be described as

objectionable or prejudicial. If such a matter is already published, then the statute authorizes the government to forfeit such objectionable publication.

The statute further authorized the government to demand security from the press.

As it is clearly evident, this statute conferred very wide sweeping powers on the government. This statute marks a high level mark of censorship. There never had been such a draconic statute enacted before in the history of free press. The fate of such a statute was short lived and the press once again survived freely when this statute was repealed in 1977 by the Janata Government.

(h) Press Council Act 1978

The concept of Press Council has ancient roots, and was established in Sweden in 1916 known as the 'Court Of Honour For Press'. Today this concept is worldwide, and the Press Council prevails in some form or the other in almost all the nations.

In India the Press Council was first established by The Press Council Act 1965. It was established with a view of raising the journalistic standards. During the emergency period, the Press Council Act was repealed and the Press Council was abolished. The Press Council Act was once again enacted, after the Janata Party came into power, immediately after the emergency, in the year 1978. This Act was based on the structure of the Press Council Act 1965.

The functions of the press council are as follows

- (i) To improve the standard of journalism.
- (ii) To inculcate ethics in journalism.
- (iii) To protect and promote the independence of journalism.
- (iv) To improve the standards of news papers and news agencies
- (v) To safeguard the freedom of press.
- (vi) To foster the good taste among the public by improving the standard of journalism.

The Press Council of India enjoys twofold powers

- (i) It enjoys the powers equivalent of the civil court
- (ii) It has the power to censure. By virtue of this power, it can warn, admonish, or censor any content, which the Press Council thinks is violating the journalistic ethics.

The distinct feature of the press council is that it functions independently of the government and keeps the government totally out of the purview of its functioning.

(i) The Prasar Bharati (Broadcasting Corporation of India) Act, 1990

The Prasar Bharati (Broadcasting Corporation of India) Act, 1990 is a milestone in the history of press and media. For the first time in the history of Independent India the government proposed to free two important channels of media (radio and Doordarshan) of the government control. This was a very big step in making these channels independent of government control. In fact this was such a big step that this statute was not implemented for seven years. In 1997 the government actually implemented the statute and provided independency to radio and doorshan the two very influential mediums of broadcasting. Before 1997 the government could influence the news as the broadcasting channels of radio and doordarshan were under the government control. So it is but natural that these channels could not impart free and objective views which were against the government policies. After the independency the radio and the doordarshan channels can broadcast freely and fearlessly any news or program.

The highlighting feature of the Prasar Bharati Act is the establishment of the corporation. The corporation known as Prasar Bharati is established under section 3 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990. The functions and powers of the Prasar Bharati Corporation are enumerated in section 12 of the Act as follows;

- (i) The essential function of the Prasar Bharati is to organize and regulate the public broadcasting.

- (ii) It has to strike a balance between the broadcasting the radio and television regarding development.
- (iii) The Prasar Bharati has to promote the unity and integrity of the nation.
- (iv) The Prasar Bharati has to inculcate the values enshrined in the Indian Constitution while broadcasting.
- (v) It has to ensure that the broadcasting is done objectively freely and fairly in the matters of public interest as well as the national interest.
- (vi) While broadcasting the citizens right to know and information has to be protected.
- (vii) It has to give weightage to the fields of education, agriculture, environment, science and technology and overall development while broadcasting.
- (viii) While broadcasting it has to give ample coverage to diverse cultural activities and linguistic programs.
- (ix) It also has to give due coverage to sports and games so as to encourage healthy competitive aspiration of the public.
- (x) It has to provide appropriate programs to cater to the special needs of the youth, minorities, and the tribal communities.
- (xi) It has to broadcast program to solve the problem of women and help in women empowerment.
- (xii) It also has to promote and secure social justice to the weaker sections of the society. So also it has to help to eradicate exploitation of the weaker section inequality and evils such as It has to protect the interest of the weaker or the backwards sections of the society and also the people staying in remote areas.
- (xiii) It has to take special efforts to protect the interest of the children and abolish child labour. Further it has to protect the vulnerable sections of the society such as the physically and mentally handicapped people.
- (xiv) It has to broadcast the program in such a manner that the national integrity is promoted.
- (xv) It has to ensure the best utilization of the broadcast frequency and high quality reception.
- (xvi) It has to promote the research program to update the broadcasting technology.

- (xvii) It has to expand the broadcasting facilities by establishing additional channels of transmissions at various levels.
- (xviii) It has to take steps to ensure that the broadcasting is conducted as public service.
- (xix) It has to provide a system for gathering news for the radio and television.
- (xx) It has to help in negotiating the purchase or acquiring the rights and privileges in respect of sports events, films serials etc.
- (xxi) It has to establish and maintain libraries of radio and television programs and materials
- (xxii) It has to conduct programs regularly for audience research or for technical services.

These functions of the Prasar Bharati Corporation are evolved by the Corporation in the form of broadcasting code applicable to the All India Radio and all the broadcasting and the television organizations. This code exists in the form of the cardinal principles which have to be ideally followed by all the public communication channels.

This statute is considered as an important landmark for conferring independency on two very important channels of media. Television and radio have the tremendous impact or influence on the public, and hence they are considered as a very potent medium of communication. Prior to 1997, that is the implementation of The Prasar Bharati (Broadcasting Corporation of India) Act, radio and television were under the control of the government; the consequence which is that these mediums of communication were deprived of expressing their views or opinions freely and fearlessly against the government or its policies. Not only this but these channels had to project only the government's views and had to paint the government in a positive angle. After the implementation of The Prasar Bharati (Broadcasting Corporation of India) Act, these channels of public communications became free from government control and therefore were able to freely criticize the government policies. So one can say that The Prasar Bharati (Broadcasting Corporation of India) Act is the real foundation of a democratic state within which a free press exists.

(j) Cable Television Networks (Regulation) Act 1995

Before 1990 the Doordarshan enjoyed the monopoly as far as the broadcasting was concerned even though it was under government control. In 1990 the policy of liberalization was implemented due to which the foreign duties were abolished; because of which the gates were opened to foreign channels. Due to which the Indian viewers got access to foreign channels by satellite transmission. This gave rise to another problem which was that there was no law to regulate either foreign channels shown from satellites or the new channels started in India. On public demand the cable operators telecasted only the foreign channels or the newly started Indian channels. Due to which the programs of Doordarshan were completely sidelined and hence Doordarshan lost its monopoly. To combat this situation The Cable Television Networks (Regulation) Act 1995 was enacted to regulate the cable television. Cable television is not only an important channel of public communication but has wide publicity; its presence is felt in nearly every house. The registering authority constituted under this statute is not only empowered to regulate the cable television but it also has to control, govern and deal with the incidental matters there in.

The term ‘cable operator’ is defined in section 2(aa) of the Cable Television Networks (Regulation) Act; and the term cable service is defined in section 2(b) of the same statute.

Section 3 of the same statute makes the registration of the cable operator mandatory. It also lays down the procedure for registration of the cable operators. Failing to register the cable operator may be subjected to punishment. The compulsory registration is a reasonable restriction on the freedom of communication.

The Cable Television Networks (Regulation) Amendment Act 2008 has amended Section 8 of the said statute as follows;

It states that the cable operators should compulsory re- transmit the programs of Doordarshan channels;

- (i) Two terrestrial channels
- (ii) One regional channel.
- (iii) Both these channels should be broadcasted in prime band.
- (iv) No deletion, or alteration, or modification is permitted while transmitting the said channels.
- (v) According to section 3 the Prasar Bharati Corporation has the power to specify the number and the name of every Doordarshan Channel to be re-transmitted.

This amended section 8 of the said statute puts restriction on the freedom of press and media by way of compulsory transmission of prescribed channels.

Further the section 9 of The Cable Television Networks (Regulation) Act 1995 imposes another reasonable restriction by way of using only the equipments and instruments which are prescribed by Indian Standards Act 1986. This section debars the use of any other sub standard equipments and instruments. If such sub standard equipments and instruments are used then they may be seized and confiscated according to the section 11 of the said statute. Another restriction on the public communication is placed under section 10 of the statute; which prohibits the interference of the cable television network with any authorized telecommunication system. The last restriction placed on the press and media and public communication is mentioned in the section 20 of the statute which prohibits the operation of the cable television network in public interest. As it is known that the concept of 'public interest' is coloured by various dimensions, it becomes difficult to figure out, which dimension it is. But time and again the Indian judiciary has pointed out that the public interest is one of the most important reasonable restrictions falling under Article 19(2) of the Indian Constitution.

(k) Right to Information Act 2005

The very essence of the executive to work in closed chambers has been done away for good with the implementation of Right to Information Act 2005. This statute has put the last nail in the coffin of the doctrine of denial of government records and documents in the so called 'public interest'. Now this very statute opens the gates of

information in public interest. The objects of this statute are very weighty for the prevalence of the healthy democracy.

- (i) The first and foremost object of this statute is to bring transparency in the government operations. Once all the government operations and modes of functioning are put under the public scanner, automatically the government official becomes accountable for their actions. Once the actions of the government officials through the access of the government records and documents are made public, the scope of corruption naturally reduces.
- (ii) The statute not only opens the access to information through the government records, but very importantly confers a legal or a statutory right to information on the citizens. So now getting information from government departments is the legal right of the citizens.
- (iii) This statute was enacted for the prime purpose of the disclosure of the government documents. Up till now there was no access to the government documents, and hence information regarding the government documents could not be scrutinized by public and they had to take the word of the government officer regarding such documents. Now because there is access to government documents, an individual can check, whether any of his right or liberty has been violated.
- (iv) The statute makes the provision for the establishment of the Central Information Commission and the State Information Commission.

Section 3 of the Right to Information Act 2005 confers a legal right on the citizens that is the right to information. The consequence thus being that if the information is denied to the citizen his right is violated and such an individual can take recourse to legal remedies available under the statutes. Further the statute not only confers the right to information on the individual but imposes an obligation on the government authority to furnish the required information under section 4 of the Act. According to section 4 of the Act the authority has to maintain and publish all its records within one hundred and twenty days, after the enactment of this Act. The authority also has to maintain the records stating the particulars of the organs, its functions and duties

Section 6, of the Right to Information Act 2005, states that a request through the electronic media can be made for obtaining the required information and the section

has incorporated a detailed procedure for doing so. The right to information under this statute is circumscribed with the exemptions mentioned under section 8 of the said Act. Disclosure of the information can be denied on following grounds;

- (i) If the information endangers the solidarity and integrity of India.
- (ii) If the publication of the information is denied by the courts of law.
- (iii) The information cannot be revealed if it falls in the doctrine of parliamentary privileges.
- (iv) If the information is regarded as a confidential matter related to commerce or trade secrets.
- (v) Information received from any foreign government related to a national or international issue may not be disclosed.
- (vi) Information which endangers the physical safety of any person or puts a person's life in peril may not be disclosed.
- (vii) Any information which causes hurdle or interference in the process of investigation may not be disclosed.
- (viii) Any cabinet records or records of the secretary or any other related matter will not fall within the scope of this Act.

The disclosure of any document which is prohibited by the Official Secrets Act 1923 may be disclosed under the Right to Information Act. As it is accepted that the public interest of the disclosure of such a document will prevail over the protected interest of not disclosing the same. Here the protected interest has to give way to the public interest as it is of paramount importance and has to prevail over the protected interests.

Section 21 of the Act provides the defence of good faith for any action done in consequence of it. An overriding effect of the Right to Information Act 2005 has an overriding effect over the Official Secrets Act 1923.

The Right to Information Act, 2005 has tremendous impact on the freedom of press and media. This Act has cleared all the impediments which were present in securing, gathering and disseminating information. Barring a few exceptions the media can get

access to any information and communicate it to the public. It can be stated that The Right to Information Act, 2005 has made things easier for press and media. By the virtue of this Act, now it is possible for the media not only, to project more news, but also to give specific and correct information regarding the government policies and action. As a result of this the public can get a clear picture regarding the whereabouts of any public officer. So in the real sense, this Act helps to bring transparency in the governance.

Another important impact of this statute is that it acts as an indirect check on the public authorities. As all its information relating records and documents can be accessible to the public. This makes it compulsory for them to maintain their documents and records according to the prescribed procedure and order.

Another essential feature of this Act is that it has brought accountability of the public authorities.

One more welcome advantage of this statute is that the procedure prescribed there under is very cheap and expedient.

One can say that the Right to Information Act, 2005 has really brought a revolution in the functioning of the government and other public authorities.

The statute in a way acts as a supplementary asset to the press and the media for the broadcasting of news. In the present era of public news it can be said that the Right to Information Act, 2005 is the happening statute of the present times.

5. Statutory bodies

The freedom of press and media is restrained by, first the constitutional reasonable restrictions prevailing in Article 19(2) of the Indian Constitution, secondly by legislative enactments, and lastly by certain autonomous bodies created under those

legislative enactments. Some of these self regulating bodies are empowered to put reasonable restrictions on the press and media, by way of imposing rules or by prescribing procedure to be followed by the press and the channels of the media.

(a) Ministry of Information and Broadcasting

This Department of Information and Broadcasting is not an autonomous body, and is a part of the government but it is regarded as fountain head of media and broadcasting. This is the apex or the head authority for the information and broadcasting service; because of this fact, the Department of Information and Broadcasting is included in this part of the research. This body has to perform many vital functions as follows,

- (i) It has to implement such steps which are necessary for helping the people to have access to information.
- (ii) It has to regulate the channels of mass communications such as the radio, television, press and other publications to communicate information effectively.
- (iii) It has to strike a balance between the public interest and the commercial interest. It has to give equal weightage to both.
- (iv) The foremost function of this department is to make rules and regulations for information and broadcasting of news.
- (v) It has to regulate the services of the All India radio and Doordarshan news.
- (vi) It has to categorize and classify the films which are to be exported and imported.
- (vii) It has to take measures to ensure the rapid growth, progress and development of the film industry.
- (viii) In order to promote cultural exchange in thought and values, the department of information and broadcasting has to conduct and organize film festivals.
- (ix) This department of Information and broadcasting in order to further the government policies has to aid and assist in advertising and visual publicity.

- (x) A very crucial task of this department is to manage the press relations and the government policies which may not be in conformity sometimes. It has to make an attempt to make the government policies acceptable. It also has to get a feedback on the said government policies.
- (xi) For the purpose of The Press and Registration of Books Act 1867 the ministry of the information and broadcasting is a competent authority to regulate and administer the press and newspapers.
- (xii) The main function of this department is to disseminate information of the national importance in relation to India, outside the state as well as within the state.
- (xiii) This department has to hold programs for research and training of the people related to the field of media communication, information and broadcasting.
- (xiv) This department has to promote the methods of communication pertaining to traditional folk art forms in furtherance of publicity related to issues of public interest.
- (xv) This department also has to take steps to promote international cooperation, in respect of information and mass media.

By performing the enumerated functions the Ministry of Information and Broadcasting governs and regulates the press.

(b) Press Council.

The press council is constituted by the Press Council Act 1978¹⁰⁴.

In a way it can be regarded as quasi judicial authority as it has the power of civil court and also has the power of censure. The Press Council governs and regulates the press in a following manner;

- (i) It can make rules to preserve, promote and ensure the freedom of press. It has to maintain the independency of the press.
- (ii) It has to lay down the guiding principles to improve the standard of the newspaper and the news agencies.

¹⁰⁴ *Supra.*, p 92

- (iii) It has to lay down a code of ethical conduct to be followed by the people involved in the news agencies.
- (iv) It has to help and promote the journalists to inculcate professional standards of journalism.
- (v) The Press Council has to undertake such measures so that there is a rise in the standards of public taste and newspapers have to cater to it.
- (vi) It has to create a sense of awareness and responsibilities among the journalists as well as the citizens.
- (vii) It has to promote a sense of fair and an objective value among the journalists so that they regard imparting news is a public service.
- (viii) To scrutinize any activity that is likely to restrict the dissemination of news; which is of public interest and importance.
- (ix) It has to keep vigilance over the newspapers taking any financial assistance from a foreign source, so that the integrity or sovereignty of India is not endangered.
- (x) To keep a watch on the circulation of a foreign newspaper and also has to study the impact of such a circulation.
- (xi) It has to promote a congenial and professional relationship between all the people who are engaged in the printing, and publication process of the newspapers.
- (xii) It has to keep a strict watch on the formation of any monopoly of a newspaper which acts as a threat to the independency of the press.
- (xiii) It has to study and express its opinion in such cases where the central government has asked its opinion on any important matter.
- (xiv) It also has to perform any other duty which is incidental to the above activities.
- (xv) It has the power to warn, admonish, or censure the newspapers.

Under section 8 of the Press Council Act 1978, the Press Council is considered as an Appellate Authority. Under the statute an Appellate Board comprising of the Chairman of the Press Council and other members is constituted. The press council has been given very wide powers and one can get the impression that it is a very powerful body. Howsoever it has been proved, that it is more of an advisory body. It

is like a roaring lion (Press Council) that is set free in the universe of the press, however this lion is deprived of the attacking teeth and hence it only roars.

(c) Press Information Bureau

The Press Information Bureau is another authority which acts as a subtle check on the public communication and the media. The office of its headquarters is situated in New Delhi. The Press Information Bureau comprises of a Director General along with eight other additional Director Generals, headed by the Principal Director General of the department of media and communication. As the Press Information Bureau is constituted of members from the government department, it can be considered as an extended limb of the government.

The following are the functions of the Press Information Bureau

- (i) To communicate to the press and the electronic media, the information related to the government, its policies, plans and schemes.
- (ii) The main function of the Press Information Bureau is to act as a link between the government, media and the public. It has to give a feedback to the government regarding the media's activities and the people's mood and reactions, regarding any of its policies and plans.
- (iii) The Press Information Bureau has a separate and the distinct unit to deal with the issues of the publicity of the Prime Minister's Office. This unit has to compile and supply information regarding the Prime Minister's office, and the Cabinet Secretariat; to the media and press. This separate unit of the Press Information Bureau has to continuously work for all seven days.

It appears that this Press Information Bureau plays a minimal role in governing and regulating the media and the press but plays a major role in acting as a link between the government, media and the public.

(d) Registrar of Newspaper for India

A registrar of the newspapers is constituted under the Press and Registration of Books Act 1867. Registrar of the newspaper is constituted under section 19(a) of the statute. The Registrar of newspapers for India is appointed by the central Government. Other

officers under the general superintendence of the Press Registrar may be appointed by the central government. These officers have to assist the Press Registrar in performing the functions and duties of the office. Such officers who are appointed by the central government have to function in accordance with the orders issued by the Press Registrar; and have to perform the allocated functions.

The main function of the Registrar is to maintain a register of newspapers in the prescribed manner.

The Registrar for newspaper for India regulates the press only to the extent of maintaining the identification and the details of the news papers in the register. The Registrar does not make any rules for the governance of the press.

(e) Telecom Regulatory Authority of India

Telecom Regulatory Authority of India was established under the Telecom Regulatory Authority of India Act 1997 on 20th February 1997. The main object of the Telecom Regulatory Authority is to govern and supervise the telecom services. The following are the functions of the telecom authority.

- (i) It can issue directions regarding tariff and interconnections and Direct to Home services.
- (ii) It can make recommendations regarding the terms and conditions of a license of a service provider.
- (iii) It also has the power to revoke the license.
- (iv) It has the power to regulate the telecom services including the power to fix and revise the tariff regarding the telecom services.
- (v) It has the power to compel the compliance of the terms and conditions of the license.
- (vi) It can also fix the terms and conditions of interconnectivity between the service providers.
- (vii) It also has to take measures to secure the technical compatibility between different service providers.
- (viii) It can also make norms to regulate the revenue derived from the telecommunication services among the different service providers

- (ix) It has to lay down the guidelines to improve the standards of quality with respect to service provided by the service providers.
- (x) It has to check by conducting a survey whether the service providers, provide quality service to the consumers.
- (xi) It has to lay down the rules regarding the period of time of local and long distance circuits of telecommunications.
- (xii) It has to maintain a register containing all the issues related to the interconnectivity agreements
- (xiii) It has to take steps to see that the universal service obligations are effectively complied with.
- (xiv) It may also levy fees and other charges in respect of telecommunication services.
- (xv) It may have to perform any other additional administrative or financial function as may be directed by the central government.

This Telecom Regulatory Authority of India puts reasonable restrictions on freedom of speech and expression by way of telecommunication; by imposing regulatory norms and conditions.

(f) The Advertising Standard Council of India

The Advertising Standard Council of India was established in 1985 with the object to ensure the honesty and truthfulness of the advertisements. It has to ensure whether the advertisement of the product really matches with the characteristics or the contents of the product. The functions of The Advertising Standard Council of India have already been dealt in detail in foregone pages.¹⁰⁵

(g) Directorate of Field Publicity

The office of the Directorate of Field Publicity was established in 1953. It was established to give publicity to the five year plan and hence it was known as “Five Year Plan Publicity Organization”. Later the scope of the functions of this “Five Year Plan Publicity Organization” widened and hence it came to be known as Directorate

¹⁰⁵ *Supra.*, p. 88

of Field Publicity. The powers and the functions of the Directorate of Field Publicity are as follows;

- (i) To inform and publicize the five year plan of the government.
- (ii) To educate the people through the information regarding the plans of the Government.
- (iii) To motivate and ensure the involvement of the people in the role of development.
- (iv) To give special attention to the people who are at the grass root level by informing to them the policies of the government.
- (v) To take those measures which will help to achieve the horizons of development which were set by the founding fathers of the Indian Constitution.
- (vi) To formulate and gather public opinion regarding the government programs.
- (vii) To promote and mobilize public participation in the process of development.
- (viii) To take special efforts to inform the government policies to the weaker sections of the society.
- (ix) To take such measures to ensure the participation of those people who are remotely situated in the society, or those who belong to the marginal section of the society; to help them to be aware and participate in the government program.
- (x) To create a sense of awareness about issues which are of national importance.
- (xi) To communicate information regarding the issues of social relevance to the various sections of the society.
- (xii) To communicate to the government the public opinion regarding its programs and policies. This helps the government implement its programs and policies and also to take some corrective measures if required.

The role of the Directorate of Field Publicity is very crucial as it acts as a two way channel of information; because the government is informed of the public opinion and the public is informed of the government policies. So it can be said that its role is to

act as a bridge or a linkage between the government and public at large. Thus the office of the Directorate of Field Publicity helps in bringing public awareness, education, and abridging the gap between the government and the people.

(h) Central Board of Film Censors

The Cinematograph Act empowers the central government to appoint the Central Board of Film Censors. The original name of this board was ‘Central Board of Film Certification,’ but in 1983 this name was changed and the board was given a new name and was called as the ‘Central Board of Film Censors’. The central board of film censors consists of not less than twelve and not more than twenty five members. The central government appoints the Chairman of the Central Board of Film Censors, and with his advice the central government appoints other members of the Board. Sometimes the central government may appoint honorary members. It is the general practice that such honorary members are remunerated with allowances for attending the meetings of the Censor Board. The Censor Board offices are currently situated at Mumbai, Chennai, Kolkata, and Trivandrum. The headquarters of the Censor board is situated at Mumbai.

The main object for the constitution of this board is to categorize, classify and impose censorship on the films; as well as to certify the films for public exhibition.

The Censor Board classifies the films into four groups of classification

(i) Certification ‘U’

The films which are categorized as ‘U’ are open for public at large, including children to be viewed. Such films are categorized as unrestricted for public exhibition.

(ii) Certification ‘U/A’

These types of films are also to be viewed by all the sections of the public, but in cases of children below the age of twelve, they can view the film, but with parental guidance.

(iii) Certification ‘A’

Such types of films are open to be viewed only by a particular section of the society. Only those members of the society who are in the adult group that is above the age of eighteen years.

(iv) Certification 'S'

This certification 'S' is granted by the board in very rare cases. Such types of films are opened to be viewed by a very limited section of the society for example a film may be opened to be viewed by a particular class of a society, for example only doctors may be allowed to view the film.

These certifications are issued through the regional offices of the censor board which are located in Mumbai, Bengaluru, Kolkata, Chennai, Cuttack, Guwahati, Hyderabad, Trivandrum and New Delhi.

Appeal against the decision of the Censor Board lies with the Film Certificate Appellate Tribunal.

There are many cases relating to the certification of the film which have been discussed earlier. The point to be noted here is that the Censor Board imposes restrictions on the freedom of speech and expression through films, but these restrictions are again falling in the ambit of Article 19(2) of the Indian Constitution.

6. Concluding Remarks

The Indian Constitution under Article 19(2) empowers the government to impose restrictions on freedom of speech and expression. This power to make restrictions is limited by the doctrine of reasonability. That means the restriction on the restrictions to be imposed by the government is the doctrine of reasonability.

The government by invoking its Constitutional authority has enacted a number of legislations which have been dealt in this chapter. These series of legislations by imposing restrictions define the scope and the ambit of right to freedom of speech and expression inclusive of freedom of press.

The right of press is considered to be one of the most crucial rights on which the principle of democracy survives. It is this press which acts as a linkage between the public and the government. The press communicates the public opinion to the government; and communicates to the public the plans, intentions, schemes, program of the government. The government is in a continuance attempt to see that the press communicates to the people only what it wants. The press on the other hand wants to expose the government's political schemes or arbitrary intentions if any. It is because

of this aspect that the government tries to curtail the scope of freedom of press. Some legislations in fact confer and promote the freedom of press, but sometimes a draconian legislation which strips the press of its freedom, for example as in the case of Prevention of Publication of (Objectionable Matter) Act 1976; the fate of such legislations is very short lived and the said the statute had to be repealed the very next year.

The scope of the freedom of press is no doubt demarcated by a number of legislations, but nevertheless, freedom of press is protected and survives freely in the Indian Legal System. Now, one has to see what the press and media do within the prescribed freedom. Hence the next chapter deals with this aspect which is this aspect that what role does the press and media perform within the prescribed fear.