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MASS MEDIA LAWS & IT'S IMPLEMENTATION IN INDIA

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Abstract

Mass Media from ancient times has secured a very important place in this world as Mass Media is not only to provide information to society but enable each and every individual in expressing their opinion and ideas in front of the community. As Society developed, Mass Media also emerged in various different mediums which include Newspaper, magazine, radio, television and New Media and provides different platforms to their users to reach to world with in no time. Seeing the rapid growth of Media culture it become very important to ensure regulation to control the domain so no person can use it in ill-suited manner.

This paper intends to highlight about all the major Media Laws and its related case studies to showcase the implementation pf Media Laws in India

What is Mass Media?

Mass Media refers to a medium of communication through which an individual can access the information of their choice in any manner, i.e. television, radio, newspaper, magazine or internet. Mass Media is diversified into various categories which aim to fulfil the objective of target audience being it informative, education, or entertainment.

What is Law?

According to John Chipman Gray “The law of the state or of any organized body of men is compared of the rules which the court that is judicial organ of the body lays down for the determination of legal rights and duties.”

Introduction to Mass Media Laws in India

The evolution of 'Media Law' in India could be tracked down while British ruled in India. As print media at that time was used as an influential and powerful medium. Print media is said to be the first medium of Mass Media on which the regulatory measures were imposed by Lord Wellesley in 1799 termed as "Press Regulation." In continuation with Press Regulation Act the first ordinance was imposed in 1823 introducing "Licensing of the Press" which stated, whosoever wants to start their press need to issue a previous license from the Government general for all the matter being printed.

Vernacular Press Act, 1878

Vernacular Press Act was introduced by Governor General Lord Lytton in India enacted in the year 1878. The Act specifically mentioned to suppress the freedom of print media published in any local Indian language. The act provided the power to government to restrict the publication of writing, who fall in line. Similar to press Regulation Act, there are similar more laws imposed on media at the time of British era. In which some of the acts are still followed today by making some amendments in it.

Since then Media Law in India is regulatory in nature and amended time to time seeing the scenario of the country. This chapter highlights all the major Media Laws introduced and followed in India.

Major Media Act in India

1) Freedom of Press/Media

Freedom of Press/ Mass Media is safeguarded under the fundamental right provided by the constitution of India, "Freedom of Speech and Expression" in Article 19(1)(a) which states that all citizen shall have the right to express their views pertaining to the limitations mentioned in Article 19 (2), which mention that though every person is free to express his/her opinion in the public but it shall not affect the sovereignty and integrity of the country which include defamation, incitement, contempt of court etc.

According to the Father of Constitution 'BR Ambedkar' press/media was considered as mediator between the government and society so he specifically mentioned in Article 19, "The Press is

another way of stating an individual or a citizen, the press includes no special right which are not to be given to or which are not expressed by the citizen in his individual capacity.”

Cases Related to Freedom of Media

Indian Express vs. Union of India

Citation: 1985 2 SCR 287

Brief Details

Court: Supreme Court of India

Acts involved: Customs Act, 1975; Finance Act, 1981

Bench: Honorable Justice V.C Daga and J.P Devadhar

Decided on: 6th December 1964

Fact of the Case

The petition of this case was filed by the employees of the company who are designated in the publication of the newspaper. The petitioner filed their petition against Government of India on issuing a notification under the Custom Act 1962.

The petitioner argued that imposing such duty/tax on the newsprint would affect the management and publication function of the newspaper and also transgress freedom of speech and Expression under Article 19(1) (a).

Whereas Government of India stated that the cost endured by the newspaper were not relevant in considerations and also contended the exemption granted to newspaper was not justified.

Judgment

Regarding the plea from both the side Supreme Court observe that any of the party were able to prove the side. Neither petitioner were able to prove excessive tax burden nor were the Government of India able to counter it. The court asked Government of India to re-examine the taxation policy and evaluate whether it constituted an excessive burden the newspaper. The government further revise the notification by taking certain facts under consideration.

2) Defamation

‘Defamation’ refers to any affirmation, comment or statement said by anybody with the instinct to harm the reputation of other person is termed as defamation.

Defamation Law is divided into two parts

1) Libel: it is refers to those defamatory statement which are in written or printed form.

- 2) Slander: it is in spoken words or through gestures.

In India defamation is categorized under Criminal Law and the Civil Law

Criminal Law

Defamation in Criminal Law is codified under section 499 of Indian Penal Code. There are 10 exceptions and four explanation for this.

Exceptions

- 1) Imputation of public good should be made or published
- 2) The conduct of a public servant in release of his public function
- 3) The conduct of any person approaching any public question
- 4) Publishing any true report of Court of Justice
- 5) Expressing any opinion regarding the merit of any performance decided by the court of justice or any such proceeding.
- 6) Merits of public performance
- 7) Censure passed in good faith by a person having a lawful authority over another
- 8) Person having lawful authority over the other person with respect to the subject matter of accusation
- 9) Imputation made on other person with the good faith for his protection or for the public good.
- 10) Caution conveyed with a good intention to the other person for public good.

Punishment

The punishment for the criminal offense of defamation are mentioned under section 500 and 501 of Indian Penal Code with imprisonment of two years or more, fine, or with both.

Civil Law

Defamation under Civil Law is in the form of causing harm to the esteem of someone. The allegation differs from each other determined by judge, as defense justification, fair comment privileges.

Cases Related to Defamation

Ram Jethmalani VS Subrammaniam Swamy

Brief details

Defendant Appellant: Subramanyam Swamy

Plaintiff Respondent: Ram Jethmalani

Fact of the case

The case was filed by Ram Jethmalani against Subramaniyam Swami by claiming the charges of Defamation on him. Justice MC Jain Commission of Inquiry was constituted under commission of Inquiry Act 1952 to make an Inquiry on certain related matter:

- a) Assassination: of Rajiv Gandhi in which them Chief Minister of Tamil Nadu, Jayalalitha's summon to the court was being contemplated.
- b) Plaintiff across examined the statement of defendant, in the same defendant made remark against Mr. Jethmalani to the effect that he has two wives.

Judgment

Justice Pradeep Nandra jog held dr. Subramaniyam Swamy guilty for defaming Ram Jethmalani by claiming false allegation on him because of these statements plaintiff respondent has to face criticism from the society. Anyway, such disaster isn't recoverable, said by equity, yet remuneration of Rs 5 lacs allowed for petitioner and against the defendant, thinking about his calling status and his cultural position in the judgment.

3) Official Secret Act 1923

The Official Secret Act was introduced by British government in India in 1923 and was retained after independence. The Act specifies that if any individual of the country (Government employee, bureaucrats, common man) found guilty in sharing 'secret' information to help an enemy nation or a person will be punished by law.

There are several provisions which are covered in the Official secret Act 1923 are

- 1) Penalties for spying
- 2) Communication with foreign agents of certain offenses
- 3) Unfair communication
- 4) Job of sharing information as commission of offences
- 5) Attempts incitements etc.
- 6) Penalty for safeguarding spies

- 7) Search warrants
- 8) Restriction of trial of offences.

Punishment

Any individual who shall found guilty under the prior mentioned offences shall be punished under section 3 with 3 years jail, or with fine, or with both.

Cases related to Official secret Act

State vs. Madhuri Gupta

Citation: 2010 case no.58

Brief details

Petitioner: State

Respondent: Madhuri Gupta

Judge: Pratibha Rani. J

Decided on: 22nd January, 2016

Fact of the case

In State vs. Madhuri Gupta, 'Madhuri' was charged for revealing certain secret information to Pakistan officials. Email as a source of evidence found of her name in which the information related to certain hydroelectric power project in Jammu & Kashmir which was shared with two ISI officials Mubishar Raza Rana and Jamshed.

Judgement

The court found her guilty and held her for offences under section 3, section 3(1) and section 120 B of Indian Penal Code 1860 for spying, communicating and sharing secret information to enemy nation and being a part of criminal activity. The court sentenced her 3 years in jail.

4) The Cinematograph Act 1952

The Cinematograph Act was introduced in India in 1952 by the legislature with the vision to govern the certification of film display. The Censor Board of India with its advisory panel are authorized to examine every film and issue grant of the film certification accordingly.

The certification for the film at present is categorized in 4 categories under the rule of Cinematograph certification, 1983 availing the guidelines

- 1) U- Unrestricted public exhibition

- 2) UA- Unrestricted public exhibition (under parental guidance for below the age of 12 years)
- 3) A- Restricted to Adults
- 4) S- Restricted to special class person

The major objective to implement the Cinematograph Act are:

- ❖ The concept of film shall remain according to the society standard
- ❖ The medium shall provide ethical entertainment
- ❖ Certification is applicable to societal development

Punishment

If a person found guilty of violating the Cinematograph Act and its related provisions, they will be punished under section 6A with imprisonment extended to three years or with fine or with both.

Cases related to Cinematograph Act

Raj Kapoor v. Laxman Singh

Citation: AIR SC 605, 1980

Brief details

Petitioner: Raj Kapoor

Defendant: Laxman Singh

Bench: Justice R. Pathak and VK Iyer

Fact

In Raj Kapoor V. Laxman Singh case, the respondent Laxman Singh file complaint against the petitioner Raj Kapoor on his directed film (Satyam, Shivam, Sundaram) that the title of the film is misleading and against the public morality. The complaint was registered under section 292 of Indian Penal Code, 1860 and the first hearing was done in Trial Court, where by listening the arguments of both the side, Trial Court present the notice to the petitioner

Then the petitioner moved to challenge the judgement of Trial Court. High Court dismissed the appeal of the producer by stating that as movie contain some sensual scene which is not appropriate for public display should be restricted to Central Board of Film Certificate 'A' under section 5(A) of the Cinematograph Act 1952.

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

The Prasar Bharti Act came into force in 1990, after being unitedly passes by parliament and finally implemented in 1997.

The main objective behind passing this Act was to

- ❖ Ensure that every citizen of India shall remain informed, educated and entertain
- ❖ Endorse the unity and integrity of the country
- ❖ To enhance agriculture and health environment
- ❖ To assist the rural and tribal section of the country
- ❖ To conduct regular survey & research for the development of Radio and Television Broadcasting.

Formation of Prasar Bharti Corporation

The composition/formation of Prasar Bharti Corporation was formed under section 3 which consist of a board including

- A chairman
- One executive member
- One finance member
- One personnel member
- Six part-time member
- Director General of Akashvani
- Director General of Doordarshan
- One representative of the union ministry of Information 7 Broadcasting to be nominated by that ministry
- Two representatives of the employees of the corporation

Other salient features of the Act

- ❖ Section 12: Functions and powers of corporation
- ❖ Section 13: Parliamentary committee
- ❖ Section 14: Establishment of Broadcasting Council, term of office and removal etc of members thereof.
- ❖ Section 23: power of central government to give directions
- ❖ Section 24: power of central government to obtain information

- ❖ Section 25: report to parliament in certain matters and recommendations as to action against the board
- ❖ Section 33: power to make regulations
- ❖ Section 34: rules and regulations to be laid before parliament
- ❖ Section 35: power to remove difficulties

Cases related to Prasar Bharti Act

BCCI-Nimbus Prasar Bharati Case

Brief details

Appellant: Nimbus Communication LTD.

Respondent; Prasar Bharati & ANR

Bench: Justice Pradip Nandrajog, Justice Mukta Gupta.

Decided on: 5 April, 2016

Fact

In BCCI-Nimbus vs. Prasar Bharati case, the BCCI and Nimbus Communication Ltd. Moved to Delhi High Court to file a petition against Prasar Bharati Broadcasting Corporation and the Union of India to cipher DoorDarshan satellite transmission of broadcasting live cricket matches throughout India on DoorDarshan Terrestrial and DTH network. Where the Prasar Bharati in their defence highlighted the objective behind the formation of body, by mentioning the objective of public broadcasting is to educate, inform and entertain the society, as mention in section 12(2)(e) of Prasar Bharati Act, 1990.

Hearing the pleas from both the sides, further the court came to the conclusion that under section 3 of the Sport Act 2007, the live feed received by Prasar Bharati rights to DoorDarshan so as to enable the cable TV operators to reach such consumer who have already subscribe to Cable Network.

6) The Cable Television Network Regulation Act, 1995

The need to bring Cable Television Network (Regulation) Act in power, to control the unethical broadcasting of some content. As in early stage of television broadcasting cable operator didn't use to acquire licence for broadcasting programme and they use to telecast any content without any regulation.

Hence, in order to check the flow of networking, Cable Television Networking was publicized by the parliament in 1994, which further formulated in 1995.

Regulations of Cable Television Network

After the arrival of the Act, the cable operators were made mandatory and to regulate the broadcasting content.

Several provisions were made including

1) Registration of cable operators:

Under section 5 of the act, no individual is allowed to operate cable television network till he is registered under this Act

2) Content regulation

Under this provision central government secure power to make an obligation in relation to the transmission of programme through authentic source and also specify about the maximum amount payable to subscriber to the operator.

Under section 5 and 6 of the Act, the advertisement code and programme code have to be followed by the cable operator in compliance with the codes. Under section 7, cable operators need to maintain a register in which information related to transmission of content will be available.

3) Offences and Penalties

According to section 11, section 17 and section 20 of the Act any designated authority acquire power to seize the equipment's of cable operator, restrict the transmission of the programme which are not matching with the ethical grounds of programme broadcasting and hampering the sovereignty and integrity of the country. Under section 16, the cable operator who violates all these provisions will be held liable to imprisonment for a year which can extend to 2 years or extending fine to Rs.1000 or with both.

Amendment

Cable and Television Network Act got amended in 2003, to address the issue of increase in cable charges by cable operator. Government of India at that time assign special task force to handle the matter and prepare a report for it.

Later the task force provide a brief report about the whole issue, which include the concern of

subscriber getting no choice to choose the channel and the irrelevant demand of cable operator of increasing price.

Special task force then introduce Condition Access System (CAS) under this amendment customer can watch there desirable channel for free and if they want to acquire High Definition (HD) version of it, they can pick premium package by paying a very minimal amount.

6) Cyber Law

Cyber Law deals with the security or safety of people who access internet and its related services. It provides regulations on all the criminal activities like hacking, virus, spamming, email bombing, phishing, cyber terrorism etc. which are done through internet and computers. The major regulations of cyber law is found in IT Act 2000

Information and Technology Act 2002

Information and Technology Act came into power to deal with all kind of cybercrime actives which are taking place through electronic commerce platform. The main functions of this Act are to

- ❖ Grant legal recognition to all e communication platforms and digital signature
- ❖ Grant legal permission to the e transfer of funds between the banks and institution
- ❖ Legalise to keep the accounts books in electronic form under the Evidence Act 1891
- ❖ Ease out electronic storage of data

Salient Features of Information Technology Act 2000

- ❖ Verification of electronic records
- ❖ Formal recognition to digital signature
- ❖ Access of electronic records and digital signature in government
- ❖ Maintenance of electronic records
- ❖ Publication of rule in electronic gazette.

Applicability of Information and Technology Act 2000

Section 1(2) of the Act grant power to be applicable in whole country extends to extra territorial jurisdiction. Section 75 of the act mention the offences if committed by someone outside the country involve computer and networks within the country is considered punishable under the Act.

Cases related to cyber Law

Shreya Singhal v. Union of India

Citation: AIR SC 1523, 2015

Brief details

Petitioner: Shreya Singhal

Respondent: Union of India

Bench: J. Chelameswar, Rohinton Fali Nariman

Fact

The case was charged under section 66 A of the IT Act on two women Shaheen Dhada and Rinu Srinivasan in Supreme Court of India, where both women are charged with offense of posting offensive remark on Facebook (Social Application) regarding the demise of a political leader Bal Thackrey. The women in their defence filed a petition challenging article 66 A of IT Act on the ground of violating their right of Freedom of Speech and Expression.

Hearing the plea from both the side, the Supreme Court of India said “every expression used is nebulous in meaning what may be offensive to one may not be offensive to another” hence, section 66 A is not covered under article 19(2) of reasonable restriction.

7) Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954

The Act introduced in India to control the advertisement and promotion of drugs and other magical remedies to provide for matters connected therewith. In this Act prohibition of all such advertisements which promote an unethical environment and mental and physical suffering to any human being or animal strictly will be prohibited from producing.

Thus Act elaborates ‘Magic Remedy’ a talisman mantr kavach or any other charm including miraculous powers, cure, mitigation treatment and other for prevention of any disease for affecting or influencing in any organic function of human beings and animals. Unless recommended by medical professional

Drugs and Cosmetic Act 1940 mentions, no individual/company shall take any part in the publication of any advertisement referring to any drugs used for

- The miscarriage in women
- aintenance of the capacity of human being for sexual urge
- Correction of mensuration disorder in women

- The cure, mitigation, prevention of any disease

Offences and penalties

Any individual who shall found disobeying the rules mentioned under this Act in the case of first conviction, with imprisonment may extend to six months, or with fine, or with both.

Cases related To Magic Remedies Act

Hamdard Dawakhana V. Union of India and Ors.

Citation: AIR, 1167, 1965

Brief details

Petitioner: Hamdard Dawakhana

Respondent: Union of India and O rs.

Decided on: 23/11/1964

Bench: justice Gajendragadka, Justice Nidayadullah, Shah, Sikri Bachawant

Fact

The Hamdard Dawakhana, filed a petition against Union of India by stating the grievance against Drug and Magic Remedies Act, 1954 by mentioning how they are experiencing difficulty in publicity of their product as several objections were raised by the authorities related to the promotion of brand.

The petitioner mentioned about the contravention of section 3 of Drugs and Magic Remedies Act, 1954. The drug controller has stopped the sale of forty of the products mentioned in the petition. Whereas, respondent in their clarification mentioned above the main purpose of the Act which is to prevent people from self-meditating. As the function of Chopra Committee in 1950 was formed mainly for the reason to check the control of such imports, manufacturers and sale in the interest of public.

Hearing the pleas from both the side the Bench keeping in mind about the objective behind the formation of Chopra Committee announce, that the implementation of Act was valid as fundamental rights are granted under Constitution of India.

8) Working Journalist and other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955

The Act was introduced in India after the independence to control some of the conditions of

service fixation of rates of working journalist and other workers affiliated to newspaper establishment. This Act include all the rights and duties of a working journalist that has to be provided by a media organization. It works with only one objective which is to provide good working condition to media house people and help in raising their standard of living.

The statutory provisions of this Act are as follows:

Section 8: Fixation or revision of rates of wages

Section 9: procedure for fixing and revising rates of wages

Section 10: recommendation by Board

Section 11: Powers and Procedure of the Board

Section 12: powers of Central Government to modify as well to enforce the recommendation of the Wage Board

Section 13 AA: Constitution of Tribunal for fixing or revising rates of wage sin respect of working journalists.

Cases Related to Working Journalist Act

Rastradoot Jaipur V. Union of India

Citation:: SCC 96, (1969) WLN 63

Brief details

Petitioner: Rastradoot Newspaper

Respondent: Union of India

Bench: C Vaidialingam, I.D.Dua, J Shelat

Fact

The Writ petitions was filed by the petitioner Rastradoot Jaipur raised to concern about the interim relief awarded by the second wage board of the working journalists had not been initiated by the organization management. The second wage board, pointed out, which had been constituted by the Government of India under the Act to revise the pay-scales of the working employees of media house with effect from 1 May 1964. There being no satisfactory outcome. The concern later handled by labour Departments and the Deputy Labour Commissioner for the settlement the concern raise by the petitioner was then highlighted to the conciliation officer. The Government of Rajasthan thereupon referred the following dispute to the labour court for adjudication:

Conclusion

In today's era, where any individual cannot restrict themselves without the access of media it becomes mandatory to govern 'Media laws' for the security and privacy of their users via any medium (traditional, old, new) the whole objective of the paper is to deal with some of the major laws of media so that the media user will get aware of different legislative affecting the various branches of media communication and educate them about their rights so that they can exercise them within the structure of Law existing in India.

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