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Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmanagarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

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Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



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Mrs.S.Kalpna

Assistant professor of Law

Mrs.S.Kalpna, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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Mass Media Laws- An overview

Authored By-Shankar Vitthal Varude,
LLM-II, Sem-IV,
Roll No.45

Introduction

Mass Media systems of the world vary from each other according to the economy, polity, religion and culture of different societies. In societies, which followed communism and totalitarianism, like the former USSR and China, there were limitations of what the media could say about the government. Almost everything that was said against the State was censored for fear of revolutions. On the other hand, in countries like USA, which have a Bourgeois Democracy, almost everything is allowed.

Shifting our view to the Indian perspective and its system of Parliamentary Democracy, it is true that, the Press is free but subject to certain reasonable restrictions imposed by the Constitution of India, 1950, as amended ("Constitution"). Before the impact of globalization was felt, the mass media was wholly controlled by the government, which let the media project only what the government wanted the public to see and in a way in which it wanted the public to see it. However, with the onset of globalization and privatization, the situation has undergone a humongous change.

Before the invention of communication satellites, communication was mainly in the form of national media, both public and private, in India and abroad. Then came 'transnational media' with the progress of communication technologies like Satellite delivery and ISDN (Integrated Services Digital Network), the outcome: local TV, global films and global information systems.

In such an era of media upsurge, it becomes an absolute necessity to impose certain legal checks and bounds on transmission and communication. In the due course of this article, we would discuss the various aspects of media and the relevant legal checks and bounds governing them.

Historical Perspective Of Mass Media Laws

Mass Media laws in India have a long history and are deeply rooted in the country's colonial experience under British rule. The earliest regulatory measures can be traced back to 1799 when Lord Wellesley promulgated the Press Regulations, which had the effect of imposing pre-censorship on an infant newspaper publishing industry. The onset of 1835 saw the promulgation of the Press Act, which undid most of, the repressive features of earlier legislations on the subject. Thereafter on 18th June 1857, the government passed the 'Gagging Act', which among various other things, introduced compulsory licensing for the owning or running of printing presses; empowered the government to prohibit the publication or circulation of any newspaper, book or other printed material and banned the publication or dissemination of statements or news stories which had a tendency to cause a furore against the government, thereby weakening its authority.

Then followed the 'Press and Registration of Books Act' in 1867 and which continues to remain in force till date. Governor General Lord Lytton promulgated the 'Vernacular Press Act' of 1878 allowing the government to clamp down on the publication of writings deemed seditious and to impose punitive sanctions on printers and publishers who failed to fall in line. In 1908, Lord Minto promulgated the 'Newspapers (Incitement to Offences) Act, 1908 which authorized local authorities to take action against the editor of any newspaper that published matter deemed to

constitute an incitement to rebellion.

However, the most significant day in the history of Media Regulations was the 26th of January 1950 – the day on which the Constitution was brought into force. The colonial experience of the Indians made them realise the crucial significance of the ‘Freedom of Press’. Such freedom was therefore incorporated in the Constitution; to empower the Press to disseminate knowledge to the masses and the Constituent Assembly thus, decided to safeguard this ‘Freedom of Press’ as a fundamental right. Although, the Indian Constitution does not expressly mention the liberty of the press, it is evident that the liberty of the press is included in the freedom of speech and expression under Article 19(1)(a). [1] It is however pertinent to mention that; such freedom is not absolute but is qualified by certain clearly defined limitations under Article 19(2) in the interests of the public.

It is necessary to mention here that, this freedom under Article 19(1)(a) is not only cribbed, cabined and confined to newspapers and periodicals but also includes pamphlets, leaflets, handbills, circulars and every sort of publication which affords a vehicle of information and opinion [2]:

Thus, although the freedom of the press is guaranteed as a fundamental right, it is necessary for us to deal with the various laws governing the different areas of media so as to appreciate the vast expanse of media laws.

Print

“Our freedom depends in large part, on the continuation of a free press, which is the strongest guarantee of a free society.”- Richard M. Schmidt [3]

The Freedom of Press and the Freedom of Expression can be regarded as the very basis of a democratic form of government. Every business enterprise is involved in the laws of the nation, the state and the community in which it operates. Newspaper publishers find themselves more ‘hemmed in’ by legal restrictions than many other businesses do – despite the fact that the freedom of press is protected by the Indian constitution. The various Acts, which have to be taken into consideration when dealing with the regulations imposed upon the Print Media, are:

Ø **The Press and Registration of Books Act, 1867** – This Act regulates printing presses and newspapers and makes registration with an appointed Authority compulsory for all printing presses.

Ø **The Press (Objectionable Matters) Act, 1951** – This enactment provides against the printing and publication of incitement to crime and other objectionable matters.

Ø **The Newspaper (Prices and Pages) Act, 1956** – This statute empowers the Central Government to regulate the price of newspapers in relation to the number of pages and size and also to regulate the allocation of space to be allowed for advertising matter.

When dealing with this statute, it will be worthwhile to mention about the case of Sakal Papers v/s Union of India [4]. In this case, the Daily Newspapers (Price and Control) Order, 1960, which fixed a minimum price and number of pages, which a newspaper is entitled to publish, was challenged as unconstitutional. The State justified the law as a reasonable restriction on a business activity of a citizen. The Supreme Court struck down the Order rejecting the State’s argument. The Court opined that, the right of freedom of speech and expression couldn’t be taken away with the object of placing restrictions on the business activity of the citizens. Freedom of speech can be restricted only on the grounds mentioned in clause (2) of Article 19.

Ø **Defence of India Act, 1962** – This Act came into force during the Emergency proclaimed in 1962. This Act aimed at restricting the Freedom Of The Press to a large extent keeping in mind the unrest prevailing in India in lieu of the war against China. The Act empowered the Central

Government to issue rules with regard to prohibition of publication or communication prejudicial to the civil Defence/military operations, prevention of prejudicial reports and prohibition of printing or publishing any matter in any newspaper.

Ø **Delivery of Books and Newspapers (Public Libraries) Act, 1954** – According to this Act, the publishers of books and newspapers are required to deliver, free of cost, a copy of every published book to the National Library at Calcutta and one copy each to three other public libraries specified by the Central Government.

Ø **The Working Journalists and other Newspaper Employees (Conditions of Service and Miscellaneous Provisions) Act, 1955** – It lays down the minimum standards of service conditions for newspaper employees and journalists.

Ø **Civil Defence Act, 1968** - It allows the Government to make rules for the prohibition of printing and publication of any book, newspaper or other document prejudicial to the Civil Defence.

Ø **Press Council Act, 1978** – Under this Act, the Press Council was reconstituted (after 1976) to maintain and improve the standards of newspaper and news agencies in India.

Although on one hand, the Constitution confers the fundamental right of freedom of the press, Article 105 (2) provides certain restrictions on the publications of the proceedings in Parliament. In the famous Searchlight Case [5], the Supreme Court held that, the publication by a newspaper of certain parts of the speech of members in the House, which were ordered to be expunged by the Speaker constituted a breach of privilege.

Due to the restrictive scope of this Article, it is not possible for us to delve into all the other statutes; however, a few of the legislations, which are worth mentioning are the Contempt of Courts Act, 1971 and The Official Secrets Act, 1923.

Broadcast

The broadcast media was under complete monopoly of the Government of India. Private organizations were involved only in commercial advertising and sponsorships of programmes. However, *in Secretary, Ministry of I&B v. CAB* [6], the Supreme Court clearly differed from the aforementioned monopolistic approach and emphasized that, every citizen has a right to telecast and broadcast to the viewers/listeners any important event through electronic media, television or radio and also provided that the Government had no monopoly over such electronic media as such monopolistic power of the Government was not mentioned anywhere in the Constitution or in any other law prevailing in the country.

This judgment, thus, brought about a great change in the position prevailing in the broadcast media, and such sector became open to the citizens.

Ø The Broadcasting Code, adopted by the Fourth Asian Broadcasting Conference in 1962 listing certain cardinal principles to be followed by the electronic media, is of prime importance so far as laws governing broadcast medium are concerned. Although, the Broadcast Code was chiefly set up to govern the All India Radio, the following cardinal principles have ideally been practiced by all Broadcasting and Television Organization; viz.:-

Ø to ensure the objective presentation of news and fair and unbiased comment

Ø to promote the advancement of education and culture

Ø to raise and maintain high standards of decency and decorum in all programmes

Ø to provide programmes for the young which, by variety and content, will inculcate the principles of good citizenship

Ø to promote communal harmony, religious tolerance and international understanding

Ø to treat controversial public issues in an impartial and dispassionate manner

Ø to respect human rights and dignity

Ø **Cable Television Networks (Regulation) Act, 1995** basically regulates the operation of Cable Television in the territory of India and regulates the subscription rates and the total number of

total subscribers receiving programmes transmitted in the basic tier. In pursuance of the Cable Television Network (Regulation) (Amendment) Bill, 2002, the Central Government may make it obligatory for every cable operator to transmit or retransmit programme of any pay channel through an addressable system as and when the Central Government so notifies. Such notification may also specify the number of free to air channels to be included in the package of channels forming the basic service tier.

Ø **Direct-to-Home Broadcasting** – Direct-to-Home (DTH) Broadcasting Service, refers to distribution of multi-channel TV programmes in Ku Band by using a satellite system and by providing TV signals directly to the subscribers' premises without passing through an intermediary such as a cable operator. The Union Government has decided to permit Direct-to-Home TV service in Ku band in India. [7]

Film - India is one of the largest producers of motion pictures in the world. Encompassing three major spheres of activity – production, distribution and exhibition, the industry has an all-India spread, employing thousands of people and entertaining millions each year. The various laws in force regulating the making and screening of films are: -

The Cinematograph Act, 1952

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

In *K. A. Abbas v. Union of India* [8], the petitioner for the first time challenged the validity of censorship as violative of his fundamental right of speech and expression. The Supreme Court however observed that, pre-censorship of films under the Cinematograph Act was justified under Article 19(2) on the ground that films have to be treated separately from other forms of art and expression because a motion picture was able to stir up emotion more deeply and thus, classification of films between two categories 'A' (for adults only) and 'U' (for all) was brought about [9].

Furthermore, in *Bobby Art International v. Om Pal Singh Hoon*[10], the Supreme Court re-affirmed the afore-mentioned view and upheld the order of the Appellate Tribunal (under the Cinematograph Act) which had followed the Guidelines under the Cinematograph Act and granted an 'A' certificate to a film.

The Copyright Act, 1957

According to this Act, 'copyright' means the exclusive right to commercially exploit the original literary, dramatic, artistic, musical work, sound recordings or cinematographic films as per the wishes of the owner of copyright subject to the restrictions imposed in the Act.

Although this Act, is applicable to all the branches of media, in some areas it is specific to this particular genre. In the case of a Cinematographed film, to do or to authorise the doing of any of the following acts would lead to the infringement of copyright. Those acts are namely:

- To make a copy of the film
- To cause the film, in so far, as it consists of visual images, to be seen in public and in so far as it consists of sounds to be heard in public
- To make any record embodying the recording in any part of the soundtrack associated with the

film by utilizing such sound track

- To communicate the film by radio-diffusion

The Act also makes it a cognizable offence for anyone to sell, hire, distribute, exhibit, possess or view any unauthorised recordings and prescribes severe penalties, including imprisonment, fines as well as confiscation of the equipment used for the purpose of such recording and exhibition. The Amendments to The Copyright Act also prohibit unauthorized transmission of films on the cable television [11]

Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981

This legislation affords a measure of protection to those employed in the industry by imposing certain obligations on motion picture producers and theatre owners concerning the former's condition of service.

Cine Workers Welfare Cess Act, 1981 and the Cine Workers Welfare Fund Act 1981

They seek to create means of financial support to cine employees, the seasonal and unpredictable nature of whose employment often leaves them impoverished and helpless. Besides these, there are also a few local legislations, which affect the film medium; viz.

The Bombay Police Act, 1951

It contains provisions empowering the police to regulate the exhibition of films in the state of Maharashtra (formerly Bombay).

Bombay Cinemas (Regulation) Act, 1953

It provides a scheme for state licensing of cinema theatres and other places where motion pictures are exhibited

The Bombay Entertainments Duty Act, 1923

It imposes a tax on the public exhibition of motion pictures and other forms of entertainment.

Advertising

Advertising communication is a mix of arts and facts subservient to ethical principles. In order to be consumer-oriented, advertisement will have to be truthful and ethical. It should not mislead the consumer. If it so happens, the credibility is lost.

In order to enforce an ethical regulating code, the Advertising Standards Council of India was set up. Inspired by a similar code of the Advertising Standards Authority (ASA) UK, ASCI follows the following basic guidelines in order to achieve the acceptance of fair advertising practices in the interest of the consumer: -

- To ensure the truthfulness and honesty of representations and claims made by advertisements and to safe guard against misleading advertising;
- To ensure that advertisements are not offensive to generally accepted standards of public decency;
- To safeguard against indiscriminate use of advertising for promotion of products which are regarded as hazardous to society or to individuals to a degree or of a type which is unacceptable to society at large; and
- To ensure that advertisements observe fairness in competition so that the consumers need to be informed on choices in the market places and canons of generally accepted competitive behaviour in business are both served.

Few Complaints filed with ASCI

HLL's Clinic All Clear Dandruff shampoo claimed that it had ZPTO, the special ingredient in Clinic All Clear that stops dandruff. This claim was found to be untrue since ZPTO is a micro biocide, when in reality, dandruff is known to be caused by several other factors, besides, microbes. HLL's multi-crore research wing 'clearly overlooked' this aspect. The advertisement has been withdrawn.

Novartis India claimed that their disposable contact lenses ensure there is no protein build-up. This claim was found to be totally false. The truth is that build up is a natural biological phenomenon with all contact lenses. The ad was discontinued.

The other legislations affecting the area of advertising are: -

Drug and Magic Remedies (Objectionable Advertisement) Act, 1954

This Act has been enacted to control the advertisements of drugs in certain cases and to prohibit the advertisement for certain purposes of remedies alleged to possess magic qualities and to provide for matters connected therewith.

In *Hamdard Dawakhana v. Union of India* [12] the Supreme Court was faced with the question as to whether the Drug and Magic Remedies Act, which put restrictions on the advertisements of drugs in certain cases and prohibited advertisements of drugs having magic qualities for curing diseases, was valid as it curbed the freedom of speech and expression of a person by imposing restrictions on advertisements. The Supreme Court held that, an advertisement is no doubt a form of speech and expression but every advertisement is not a matter dealing with the expression of ideas and hence advertisement of a commercial nature cannot fall within the concept of Article 19(1)(a).

However, in *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd* [13], a three judge bench of the Supreme Court differed from the view expressed in the Dawakhana case and held that 'commercial advertisement' was definitely a part of Article 19(1)(a) as it aimed at the dissemination of information regarding the product. The Court, however, made it clear that the government could regulate commercial advertisements, which are deceptive, unfair, misleading and untruthful.

Monopolies and Restrictive Trade Practices Act, 1969

Section 36 A of the Act deals with 5 major Unfair Trade Practices: -

Any misleading, false, and wrong representation either in writing (i.e. in advertisements, warranty, guarantee etc.) or oral (at the time of sale) actual or intended, even if actual injury or loss is not caused to the consumer/buyer constitutes as unfair trade practices;

Sales, where there is element of deception;

All business promotion schemes announcing 'free gifts', 'contests', etc. where any element of deception is involved;

Violation of laws existing for protection of consumers;

Manipulating sales with a view to raising prices.

Parle's mango drink 'Maaza' gave the advertisement of Maaza mango and the MRTP issued a notice against Parle Exports Pvt. Ltd. The advertisement implied that the soft drink was prepared from fresh mango while actually preservatives were added to it. The company had to suspend production pending enquiry.

Conclusion

In this age of media explosion, one cannot simply remain confined to the boundaries of the traditional media. The media world has expanded its dimensions by encompassing within its orbit, the widening vistas of cyber media etc. As a consequence, the laws governing them are also numerous. It is not within the scope of this Article to deal with the whole subject of media laws, but this Article makes a person aware of the various important legislations affecting the various branches of Media Communication, making him aware of his rights and facilitating him to exercise them within the framework of law existing in India and in the end furthering the cause of “Freedom of Speech and Expression” and “Dissemination of Knowledge”.

References:

- [1] CAD, Vol VII page 980 (as per Dr. B.R. Ambedkar); view reiterated by the Supreme Court in Indian Express Newspapers v. Union of India, (1985) 1 SCC 641.
- [2] Lowell v Griffin (1938) 303 US 444; this view was followed and relied upon by the Supreme Court of India in Sakal Papers Ltd. v Union of India, AIR 1962 SC 305.
- [3] Cf. Herbert Lee Williams, Newspaper Organization and Management, 5th Edn., page 347
- [4] AIR 1962 SC 305
- [5] AIR 1959 SC 395
- [6] (1995) 2 SCC 161
- [7] The prohibition on the reception and distribution of television signal in Ku band has been withdrawn by the Government vide notification No. GSR 18 (E) dated 9th January 2001 of the Department of Telecommunications.
- [8] AIR 1971 SC 481
- [9] This view was re-iterated in Life Insurance Corporation of India v. Manu Bhai D. Shah, (1992) 3 SCC 637.
- [10] (1996) 4 SCC 1
- [11] Section 37 of the Copyright Act, 1957
- [12] AIR 1960 SC 554.
- [13] (1995) 5 SCC 139
- [14] www.legalserviceindia.com