



# Media Ethics and Laws

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**Subject: MEDIA ETHICS AND LAWS**

**Credits: 4**

## **SYLLABUS**

### **Introduction to Legal System**

Jurisprudence; Laws: Definition; Sources of Law: Custom; Precedent; Statute; Types of Laws: Criminal; Civil; Tort; History of Indian Media Laws.

### **Judicial Systems in Relation to Media**

Indian Constitution; Freedom of the Press; Structure of Judicial System in India; Supreme Court; High Court; Lower Courts; Introduction to Civil Procedure Code; Introduction to Criminal Procedure Code and Arrest; Trial; Charge; Trials of Different Cases; Judgment; Appeal; Execution; Press Council of India; Press Council Act, 1965, 1978; Press Council and Media Management.

### **Laws, Bills and Acts Related to Media Profession**

Introduction to Indian Penal Code; Publication of Objectionable Materials: Defamation, Legal Procedure in Defamation, Right to Privacy; Introduction to Copyright; Copyright Act, 1957; International Copyright Order, 1999; Obscenity; Indecent Representation of Women (Prohibition) Act, 1986; Prasar Bharati: 1990; Official Secrets Act, 1923; Contempt of Courts Act, 1971; Protection of Civil Rights Act, 1955; Freedom of Information Bill, 1998, 2000; Parliamentary Proceedings Act, 1971; Wireless and Telegraphy Act, 2000; Information Technology Act, 2000.

### **Ethics and Journalistic Professionals**

Introduction to Ethics; Press Council's Norms of Journalistic Conduct; AIR News Policy for Broadcast Media; Broadcasting Code; Rights, Duties and Restrictions of Media Professionals; Politics and Elections; Communal Issues; Financial Reporting; Investigative Reporting; Court Reporting; Reporting Sex Related Offences; Juvenile Crimes; Reporting on the Web; Reporting with Accuracy; Being Fair; Balanced and Impartial; Maintaining Good Taste and Decency; Protecting Confidential Source of Information; Other Duties and Restrictions.

### **Suggested Readings:**

1. History of Press, Press Laws and Communications, BN Ahuja, Surjeet Publications.
2. Mass Media Laws and Regulations in India, Venkat Iyer (Edited), Bahri Sons.
3. Media Ethics, Barrie Macdonald and Michel Petheram, Continuum International Publishing Group

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## Lesson 1

# Jurisprudence

***Dear Student,***

This lesson helps you to enter and appreciate the need for laws to live in a society, understand the concepts of the philosophy of law, and helps you to develop skill for judicial reasoning.

***At the end of this lesson;***

You should be able to understand what is jurisprudence  
You should know the definition of law and justice  
You should get a clear picture of different types of law  
You should know the various sources of laws in India  
You should learn the history of media related laws in India

**The** word jurisprudence derives from the Latin term *juris prudentia*, which means “the study, knowledge, or science of law.” It is a branch of philosophy concerned with the law and the principles that helps courts to make decisions. Thus jurisprudence answers what is law and how to make judicial decisions.

It seeks to analyze, explain, classify, and criticize entire bodies of law. It interprets the laws in the light of the emerging trends in the other branches of studies like, literature, economics, religion, and the social sciences. It reveals the historical, moral, and cultural basis of a particular legal concept. It also deals with the rigidity and flexibility of law.

Jurisprudence is a very abstract concept, and therefore understood differently by different schools of thought. According to Formalists judges identify relevant legal principles, apply them to the facts and context of a case, and logically deduce a rule that will govern the outcome of the dispute. Legal realists on the contrary, believe that judges pass judgment based on their political, economic, and psychological inclinations.

One of the latest developments in jurisprudence is the gender sensitivity. Gender sensitive Jurisprudence makes neutral laws that apply equally with both the sexes. Feminist Jurisprudence originated in the 60's in America. Basis assumption is that the language, logic, and structure of the law are male created and reinforced by male values. Gender sensitive jurisprudence has helped administering justice in a better way when the issues are related to employment, divorce, reproductive rights, rape, domestic violence, and sexual harassment.

### **What is Justice**

There is no universally accepted definition for justice. Generally it is understood to be 'giving a person what is due to him'.



Justice is a social product and differs from group to group. Justice for one society is injustice for another because, it is a function of the assumptions and worldview of groups of people concerning right and wrong. As every worldview or belief system is equally valid and important for that group of people, there is no true and single universal justice.

Justice seeks to establish equilibrium in society when something goes 'wrong', in a way that is administratively feasible and acceptable to all parties, according to a code of law. Thus justice is action oriented.

Justice has to be given by a group that has the legal power vested on them by the society. While capital punishment given by a court is justice, the same order given by a group of people is illegal which is taken up by the same court for delivering justice.

Justice, in a functional form, is the idea that, within the same value system an infringement or a wrong action is entitled to receive a similar or related amount of corrective action within the same system, and that receipt is exempted from being considered wrong. For example, in a society of people having the same value system, where physical assault and stealing are both considered wrong, when physical assault is given as a punishment for stealing that corrective action is not considered wrong.

Sep. 11 attack on World Trade Centre was just for Al-Qaeda and five percent of people in the world, while 99% of Americans and 95% of the world considered it unjust. While around 30% of the world supported the attack on Iraq the majority condemned it, yet it was done.

Iraq once had one of the best health profiles in the world. But after the nine years of UN embargo, the death rate of children under five has been averaging about 5,000 per month, hospitals suffered from chronic shortages of medicines, and about 1.5 million people died of different sickness, all 'sanctioned' by an international agency which works for the welfare of all nations.

By the 'international justice' administered by United States and United Kingdom, starvation, pollution, death and radiation engulfs Iraq. This was to prevent Saddam Hussein from developing weapons of mass destruction, 'genocide to prevent a possible genocide!'



### **What is law?**

John Salmond, an expert in law defines law as those principles applied by state in the administration of justice. He and Thomas Aquinas considered justice as the goal of laws. Thus, laws

are a set of rules for society, designed to protect basic rights and freedom, and to treat everyone fairly. It is a set of obligations to each other to enable society as whole to live in peace and harmony. Laws are either made by individuals through contracts or are imposed on them by a law establishing body.

### **Rights, Rules and Laws**

Rights are born with, or given to an individual, in which he/she takes decision. Some rights are granted by a law making body, and some are taken away.

Rules are guidelines for adherence to certain behavioral patterns. There are rules for games, for social clubs, for sports and for adults in the workplace. There are also rules imposed by morality and custom that play an important role in telling us what we should and should not do.

The state or the court make and enforce laws. Laws offer a fair division of benefits for those who follow it and burdens for those who break it. This creates equilibrium in the society. They regulate the society through principles, procedures and rules.

Thus, “To live” is a right, “those who kill another is punishable with 12 years of imprisonment and fine” is a law, while “Don’t kill others” or “respect life” are rules.

### **Laws and Society**

Laws are inseparable from social life. If people were allowed to choose at random which side of the street to drive on, driving would be dangerous and chaotic. Laws regulating our business affairs help to ensure that people keep their promises. Laws against criminal conduct help to safeguard our personal property and our lives.



Laws resolve disagreements and conflicts among people. “Might is the right” settled the issues in the medieval ages. People now, turn to the law and to institutions like the courts to decide who is the real owner and to make sure that the real owner’s rights are respected.

Laws help form, policies. For example, some laws provide for benefits when workers are injured on the job, entitle them for pensions etc.

Laws make sure liberty and quality of citizen. They ensure that strong groups and individuals do not use their powerful positions in society to take unfair advantage of weaker individuals.

Legal systems are human-made. The laws may be altruistically or egotistically, morally or immorally, divinely or evilly inspired, but they are all brought into existence through human agency, and not some transcendent force. Therefore, people can change it when they seem irrelevant to society.

### **Practical Application of the Lesson**

1. Talk to one lawyer and ask him/her why he/she chose that career.
2. Visit a court premise and ask a person why he/she is present there.
3. Browse the internet seek for definitions of laws, and try to make your own.
4. Write an essay about the need for justice system and submit to the teacher.

## Lesson 2

## Sources of Law

*Dear Student,*

This lesson helps you to get deeper into the study of laws and tell you how laws evolved, how laws are created, and their relationship with society. Of course as you know in an Indian context, and sure, in a media context.

*At the end of this lesson;*

You should be able to tell me

The sources of law  
How laws are enacted in India  
Difference between State laws and Central laws.

**Laws** originate from mainly three sources; Precedent, statute and custom.

### **Precedent**

Precedent means that a question that was dealt with in a certain way continues to be dealt with in that way in similar later situations. Only courts of record can create precedent. Every court is bound by the decisions of courts, which are superior to it in the same hierarchy. Superior courts are generally bound by their own previous decision (an exception is the High Court). Individual judges of courts of the same level in the same hierarchy will usually follow their own earlier decisions.

## Statute

Statute law is made by parliament and any subordinate bodies to which parliament has delegated legislative power. It can last forever or until it is changed. Where statute law and common law conflict, statute law will prevail to the extent of the conflict.

There are three ways of interpreting statutes when they tend to mislead. The literal or plain meaning is accepted, intentions of the law makers are studied into, or studying what led to making the law.

## Custom

Laws evolve out of human consciousness naturally. The customs of communities are expressions of this unwritten law. Thus they form a part of the laws, as they are accepted by the law making bodies of the society.



## *Sources of Indian law*

The fountain source of law in India is the **Constitution** that gives due recognition to statutes, precedents, and customs. **Statutes** – Acts and Laws enacted by Parliament, State Legislatures and Union Territory Legislatures. There is also a vast body of laws known as subordinate legislation in the form of rules, regulations as well as by-laws made by Central and State Governments and local authorities like Municipal Corporations, Municipalities, Gram Panchayats and other local bodies. This subordinate legislation is made under the authority conferred or delegated either by Parliament or State or Union Territory Legislature concerned. The **decisions of the Supreme Court** are binding on all Courts within the territory of India. As India is a land of diversities, local customs and conventions which are not against statute, morality, etc. are to a limited extent also recognized and taken into

account by Courts while administering justice in certain spheres. In certain circumstances, the **customs** followed by particular groups.

### **How Laws are enacted in India**

In India Laws in the form Bills are presented in either Lok sabha or Rajya Sabha. Being passed in both houses it has to be approved by the president of India. Then it becomes a Law and come into force as and when published in the Official Gazette.



Parliament or state legislatures can amend or repeal any law within their respective spheres of competence. However state laws has to abide by the Laws of the parliament.

### **Practical Application of the Lesson**

1. Read the History of Indian Constitution.
2. Study by heart the Preamble of Indian Constitution.
3. Discuss with your friends and learn about differnt customs.
4. Write about various customs in different religions.

## Lesson 3

## Types of Laws

*Dear Student,*

Now, I am sure you know what is the need for laws, and how judges make a decision. Now, it is time that you should learn the types of laws. I believe that it will help you as a media professional, that it will remind you about the importance and repercussions of your actions in your career.

*At the end of this lesson;*

You know how to differentiate a criminal law and a civil law  
You master the art of judicial reasoning  
You know your limits  
You will sense the right path in the profession

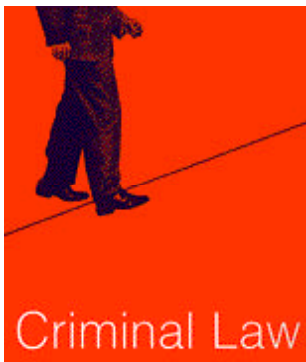
**Laws** are generally categorized into criminal and civil.

- **Criminal laws:** Criminal Laws deal with offense and punishment, designed to protect society as a whole from wrongful actions. For example, Traffic/road laws, laws regarding use of drugs, adulteration of food or drinks, defamation, rape, murder, and theft. These are cases where police can take action. Legal action can be initiated at the compliant of the government, organizations or individuals. The procedure in criminal cases are according to the Criminal Procedure Code (CRPC).

- **Civil Law:** Civil laws help solve problems which occur between individuals or groups. For example, laws related to contract, marriage, employment, and domestic violence. Civil cases are settled by trained legal personnel and courts help solve. The damages claimed by the plaintiff, or the punishment sought by him/her in civil case is finally decided by the judge. Procedure in civil cases are decided by Civil Procedures Code (CPC). The cases could be settled by trained legal personnel or courts.



Sometimes laws are divided under public and private laws based on the application of their application.



- **Public Law:** Public law deals with matters that affect society as a whole. It includes areas of the law that are known as criminal, constitutional and administrative law. These are the laws that deal with the relationship between the individual and the state, or among jurisdictions. For example, if someone breaks a criminal law, it is regarded as a wrong against society as a whole, and the state takes steps to prosecute the offender.

- **Private Law:** Private law, on the other hand, deals with the relationships between individuals in society and is used primarily to settle private disputes. Private law deals with such matters as contracts, property ownership, the rights and obligations of family members, and damage to one's person or property caused by others. When one individual sues another over some private dispute, this is a matter for private law. Private suits are also called "civil" suits.

## ***Tort Laws***

The word tort derives from the Latin word *tortus* which means (twisted) and means ‘wrong’ in French. Tort refers to that body of the law which will allow an injured person to obtain compensation from the person who caused the injury.

Tort is a private or civil wrong for which the wronged person gets redress in a law court. Sir John Salmond in his ‘*Treatise on Jurisprudence*’ defines it as a ‘civil wrong for which the remedy is an action for damages and which is not solely the breach of a contract, or the breach of a trust, or other merely equitable obligation’. Liability is imposed for conduct that unreasonably interferes with the interests of another.

Every person is expected to live without injuring others. When they do so, either intentionally or by negligence, they can be required by a court to pay money to the injured party (“damages”) so that, ultimately, they will suffer the pain caused by their action. Tort also serves as a deterrent by sending a message to the community as to what is unacceptable conduct.

***Tort and Crime are different.*** A crime is a wrong arising from a violation of a public duty, where as tort is a violation of the private duty. For example bribing a public servant is a crime. It is not a tort as nobody is harmed. Stealing a bike is both a crime and tort. The thief is prosecuted for larceny, and the bike owner sues the thief for the value of the bike and discomfort followed.

***Tort and Breach of Contract are different.*** Tort is a result of the violation of obligation created by law, while, Breach of a contract arise from the violation of an obligation created by the agreement of two parties.

**Tort Liability:** Intention of the defendant is of importance to tort case. For the legal existence of intent, the defendant should have known what he was doing, knew about its consequences, and knew the result would occur.

**Tort and Invasion of Privacy:** People have the right to solitude and to be free from unwarranted public exposure. They have the right for maintaining their dignity in public, thus right against defamation; right to have private conversation with people without intrusion or tapping, right against public exposure of private life. Commercially using the name or photo or video of people is a violation, amounting to tort.

#### **Practical Application of the Lesson**

1. Collect from newspapers samples of reports dealing with different laws.
2. Paste them neatly in a report and present it to teacher.
3. Discuss with your friends about the reports.

## Lesson 4

## History of Laws

*Dear Student,*

History again? !! Of course you wonder. There are people who look down on history as a worthless subject. But, we are what we are, because history was what it was. History reminds us where we do stand, and what has been done. It guides us, help us not to repeat the mistakes, and it shapes our future.

*At the end of this lesson;*

You know a short history of law  
You appreciate the struggle for freedom of the press in India  
You get introduced to the everlasting war between media and government  
You are confident and courageous to proclaim the truth

**Laws** evolved naturally. They existed inside the social mind from the very beginning evolved out of the thousands of life experiences of successive generations. They were the soul of legal customs and traditions that helped people of ages settle disputes. They determined what was good and what was bad before the political authorities determined it. Thus laws were not created, but discovered.

Even though the code is not discovered, *Urukagina's Code* (2350 BC), with its harsh laws is mentioned to have existed in Mesopotamia. *Ur-Nammu's Code* (2050 BC) is the earliest known legal code, that speaks about witnesses, damages and punishments. *Hammurabi's Code* (1700

BC) contains 282 clauses based on the principle “An eye for an eye”. The Ten Commandments or *Moses’ Law* (1300 BC) stated in the Bible as given by God guided the personal and social life of the Hebrews. *Manu’s Laws* (1280 -880 BC) set the social structure in India. *Draco’s Law* (621 BC) in Greek was so harsh that the phrase ‘Draconian Law’ derives from it. The *Book of Punishments* in China (536 BC) describes punishments to be given to crimes committed.

Code of Emperor Justinian (AD 529) became the guiding spirit of the law codes to come. He coded the laws in a series of books called *Corpus Juris Civilis*. Many Latin terms and the word justice itself derives from his name.

### **History of Press laws in India**

Press Laws in India had an unbreakable relationship with the struggle for independence. News papers in India were the catalysts that brought out the national spirit of Indians and organized them for a collective demand for independence. The Press Regulations of Lord Wellesly in 1799 tried to control the press. Under Lord Hastings, however these regulations were eased. From 1828 the press began to enjoy greater freedom under Lord Bentinck. Lord Metcalfe, hailed as the Champion of press freedom in India freed further the press through the Press Act – 1835.

The Sepoy Mutiny 1857 changed the situation. The press was perceived to have fuelled the mutiny. Lord Canning introduced what is known as “Gagging Act” on 13<sup>th</sup> June, 1857. According to the Act, press had to get license to function, couldn’t criticize the government, and had to function under fear of punishment. As the mutiny subsided fast, and press found to be adhering to the dictations of the government, the Act was allowed to expire on 12<sup>th</sup> June, 1858.

Sir John Lawrence in 1867 enacted ‘The Press and Registration of Books Act’ which is applicable even today. The law of sedition (1970) that prohibits inciting people for action against government has also found its place in the Indian Penal Code.

Lord Lytton, in 1878 tried to control the press through the Vernacular Press Act, primarily to curb the Nationalist movement. The Act enabled the government to seize the press or materials that was used to print objectionable materials. The press had to deposit a security with the government that could be forfeited if they violated the laws of the government. The Act was repealed by Lord Ripon in 1880.

When Indian National Congress was found, the press began to function all the more freely and went to clash of interests with the government. Lord Curzon in 1899, tried to control the press through additions in the Official Secrets Act 1899, that bound the press from publishing matters about the army and certain matters about administration. They were considered unailable offence.

Lord Minto further chained the press with the Newspapers (Incitement to Offences) Act - 1908. Editors who were found to incite people to rebellion were punished. This led to massive protests against the government. The government retaliated with the Press Act 1910, by which the government could forfeit the security, and seize the printing press. Within the next four years legal action was taken in 355 cases. In 1922, Central Legislative assembly repealed the two Acts.

Gandhi's civil disobedience movement ignited press attacks on government. Government in 1930 brought in the Indian Press Ordinance. With the Gandhi-Irwin Pact, both the disobedience movement and the Ordinance were withdrawn.

Government tried to control the mounting criticism by the press through Indian Press (Emergency Power Act – 1931, and Foreign Relations Act – 1932. The Press could not write anything against the foreign policy of England or the British administration. They could not write about people who disobey or act against colonial interests. The punishments were forfeiting of the security, or seizure of the press. By 1935, securities of 17 newspapers were forfeited, and 256 newspapers had to stop publication.

With the breaking out of second world war things began to change. It was clear that India would be soon independent. All the laws that curbed the freedom of the press began to loose its power. In 1947, India won its independence. Indian constitution favors a free press but also a responsible press.

Jawaharlal Nehru, the first Prime minister of India considered freedom of the press necessary for the development of the country. He stated, “I would rather have a completely free press with all the dangers involved in the wrong use of that freedom than a suppressed or regulated press”.

### **Practical Application of the Lesson**

1. Read any books on law that deals with the history of law.
2. Browse the net and collect information regarding history of laws.
3. Write an essay on the objectives of laws and how they help society to become better.

## Lesson 5

## Indian Constitution

*Dear Student,*

If you worry that we are going away from the subject, I think that is a baseless thought. Constitution of a country is the foundation on which freedom of the citizen rests. It is the corner stone on which the entire judicial system is constructed. So let us learn and appreciate our constitution.

*At the end of this lesson;*

You know the greatness of Indian constitution  
You learn the rights and duties of the citizen  
You study the rights and restrictions of a media professional

**The** Constitution of India is the basic law of the country. Any law inconsistent with or in derogation of the provisions of the constitution is void. It is based on the ideals of justice, social, economic and political, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and fraternity assuring the dignity of the individual and the unity and integrity of the nation.

Drafted by the Constituent Assembly set up soon after the Indian Independence, the Constitution came into force in its entirety on January 26, 1950, bringing into existence the Republic of India. The Constitution derived many of its provisions verbatim from the Government of India Act,

1935, the largest ever law passed by the British Parliament to transfer power from British officials to Indian Politicians subject to numerous safeguards. The same Act had been modified to become the Constitution of the Dominion of India during August 15, 1947 to January 26, 1950.

### **Rights and Duties of the Press**

Constitution does not deal separately about the freedom of the press. Article 19(1)(a) guarantees freedom of speech and expression. The right to express through whatever media thus is the right of the individual. Press is seen as an individual or group of individuals who has something to express, and they are free to do it.

However there are limitations to the freedom of expression. Article 19(2) to 19(6), controls this freedom. The state has the power to restrict it for maintaining the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

As press is treated as a citizen, the press has to accomplish the duties stated in Article 51 as:

1. to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
2. to cherish and follow the noble ideals which inspired our national struggle for freedom;
3. to uphold and protect the sovereignty, unity and integrity of India;
4. to defend the country and render national service when called upon to do so;
5. to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
6. to value and preserve the rich heritage of our composite culture;
7. to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
8. to develop the scientific temper, humanism and the spirit of inquiry and reform;

9. to safeguard public property and to abjure violence;
10. to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

Article 361A protects media professionals from defamation in reporting the proceedings of Parliament accurately.

No person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament or the Legislative Assembly or, as the case may be, either House of the Legislature, of a State, unless the publication is proved to have been made with malice: Provided that nothing in this clause shall apply to the publication of any report of the proceedings of a secret sitting of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State.

This applies in relation to reports or matters broadcast by means of wireless telegraphy as part of any programme or service provided by means of a broadcasting station as it applies in relation to reports or matters published in a newspaper.

This means that the mass media can inform the people about what is happening in the legislatures without fear of being sued for defamation.

### **Practical Application of the Lesson**

1. Buy a personal copy of Indian constitution.
2. Learn by heart the rights and duties of citizens.
3. Write an essay: What are my restrictions as a media professional according to the constitution.

## Lesson 6

## Press Freedom in India

*Dear Student,*

India is a land of freedom. It is a democratic country. We all know that absolute freedom leads to anarchy. As the known saying goes, “Your freedom must stop where my nose begins”. Press needs to be checked. It is better that we have a press free and responsible. The lesson gives you the picture of freedom of the press in India.

*At the end of this lesson;*

You know what is freedom of the Press  
You learn the trends of curtailing the freedom  
You study how to live freely and responsibly as a  
media professional

**Indian** Prime Minister Shri Atal Bihari Vajpayee spoke at the opening ceremony of the World Congress of the International Press Institute (IPI), Jan 26-29, 2001, “A free and responsible press is an important pillar of the republican architecture, as essential for a healthy democracy as the legislature or the judiciary.” IPI chairman Hugo Büttler reaffirmed this view in his speech when he quoted Mahatma Gandhi. “Liberty of speech means that it is unassailable even when the speech hurts,” Büttler said.

Mahatma Gandhi, who was an eminent journalist in his own right, said, “The sole aim of journalist should be service. The newspaper press is a great power, but just as unchained torrent of water submerges the whole countryside and devastates crops, even so an uncontrolled pen serves but to destroy. If the control is from without, it proves more poisonous than want of control. It can be profitable only when exercised from within.”

Pandit Jawaharlal Nehru while defending press freedom, warned of the danger if it is used irresponsibly, “If there is no responsibility and no obligation attached to it, freedom gradually withers away. This is true of a nation’s freedom and it applies as much to the Press as to any other group, organisation or individual.”



*Nehru and Gandhi:  
Two Apostles of Press Freedom*

A free and vigilant Press is vital to restrain corruption and injustice at least to the extent that public opinion can be roused as a result of press investigations and comments.

Information is indispensable for the functioning of a true democracy. People have to be kept informed about current affairs and broad issues — political, social, and economic. Free exchange of ideas and free debate are essentially desirable for the government of a free country.

Press in India has a special role to play as the guardian of democracy. It functions as an extra-parliamentary opposition to strengthen the roots of democracy and democratic institutions and to keep the government in check. It has to guard against the erosion of democratic values and create a vocal public opinion for realising the goal of social and economic justice. Most of the raw material for parliamentary questions, motions, and debates comes from the daily press and this is an important tool on which a member often relies. In fact, it is generally the press that provides the background needed to bring the work of Parliament in tune with the demands of time.

Freedom of the Press is controlled by the nature of ownership. Some editors and journalists cannot have adequate freedom of collecting and disseminating facts and offering comments as they are under the pressure of the capitalist owners. It is further pointed out that free collection and dissemination of facts is not possible in the case of newspapers which depend to a large extent on revenue from advertisements as the advertising interests cannot but influence the presentation of news and comments.

A persistent attempt to curb Press freedom how ever began from 1969 when Indira Gandhi felt that the Press was too critical of her ways and she sought to change its approach. Freedom of the press suffered during the emergency. 'Prevention of Publication of Objectionable Matters Act in 1976' tried to control the press with threat of punishment. After the emergency, the changed government repealed the act in 1977.

From 1980 struggle between the press and the government worsened. In different states it had the same repercussions. In Karnataka major daily offices were blocked so as to prevent their publication on one day and the police practically pleaded helplessness to do anything about the matter. Another former chief Minister compared the press to snakes and scorpions. The Tamil Nadu Government adopted stringent measures and made the "scurrilous" writing a non-bailable offence and also one where imprisonment on conviction is made obligatory as a punishment.

The then Prime Minister Indira Gandhi herself clearly ruled out giving autonomy to All India Radio. She stated that All India Radio is "a Government organ, it is going to remain a Government organ... It is there to project Government policies and Government views. It does not mean we do not give the views of other people, but primarily its function is there to give the views of the Government of India". The Prime Minister justified this by stating that "in no country in the world, in no developing country, do they even allow anybody else to appear or any other viewpoint to be projected'.

Though the Janata Government appointed B. G. Verghese Committee to examine this question, and the Committee recommended the setting up of an autonomous body for taking charge of

broadcasting, the Janata Government, and also the short-lived Lok Dal Government, took no steps to pursue this recommendation and to make All India Radio autonomous and largely free of Government control. This is an adequate indication of the battles that may always have to be fought, whichever party is in power, to ensure that media of mass communication are permitted to operate freely.

The struggle is on the rise. Now what is spoken about is “Freedom with Responsibility,” and “Autonomy with accountability”.

### ***Threats to Press Freedom***

Press Council has enacted procedures to check the threats to press freedom in India. Different activities of the interest groups threatening the freedom of the press, and to make the press to act according to their wishes are:

- Attacking media offices, media personnel, blocking the activities
- Refusing access to information
- Fabricating cases against media professionals
- Harassing and victimizing journalists
- Seizing camera and destroying film by police from a Press Photographer
- Disaccrediting and withdrawing of housing facilities from media professionals
- Favors to media professionals.
- Control over issue of newsprint,
- Control over Electricity supply

### ***Government Control through Discrimination***

Revenue from advertisements is the blood of any media organization. The giving or withholding of advertisements, whether by individuals or by the government as a lever to influence the editorial policy constitutes a threat to and jeopardises the liberty of the Press. This is especially so in case of the government since it is the trustee of public funds and, therefore, bound to utilise them without discrimination.

Advertisements, from any party including the government cannot be claimed as a matter of right by a newspaper. Government can frame its policy of placing advertisements based on objective criteria. But this should be based upon publicly stated principles without taking into consideration the editorial policy of the paper.

If an editor is found guilty of an action, he can be proceeded against personally but this would not justify denial of advertisements to the paper of which he happens to be the editor. This applies to an employee or even the proprietor of a newspaper.

### **Practical Application of the Lesson**

1. Prepare a letter for your friend on his graduation day. Write him how he should go about in his future profession as a journalist. Present a copy of the letter to your teacher, for evaluation.
2. Imagine you are an editor, and government did not give a advertisement to your newspaper to punish you for writing against its policy. Write an editorial.

## Lesson 7

# Structure of Judicial System

*Dear Student,*

Unless we are systematic we cannot do things well and reach the objective faster. Unless an organisation is systematic it cannot render the service it ought to give. This lesson introduces you to the judicial system in India

*At the end of this lesson;*

You know Structure of Judicial system  
You learn the powers of different courts

**One** of the unique features of the Indian Constitution is that, notwithstanding the adoption of a federal system and existence of Central Acts and State Acts in their respective spheres, it has generally provided for a single integrated system of Courts to administer both Union and State laws.

The system of courts is structured like a pyramid. The Supreme Court is the apex court in the country. The High Court stands at the head of the state's judicial administration.

States are divided into districts (*zillas*), and within each district, a judge presides as a district judge over civil cases, and a sessions judge presides over criminal cases. These courts are subordinate to high court.

There is a hierarchy of judicial officials below the district level. Civil cases at the subdistrict level are filed in *munsif* (subdistrict) courts. Lesser criminal cases are entrusted to the courts of subordinate magistrates functioning under the supervisory authority of a district magistrate.

Panchayat Courts also function in some States under various names like Nyaya Panchayat, Panchayat Adalat, Gram Kachheri, etc. to decide civil and criminal disputes of petty and local nature.

This hierarchy of courts is relevant for Filing a case, and Filing an appeal against a decision of a particular court.

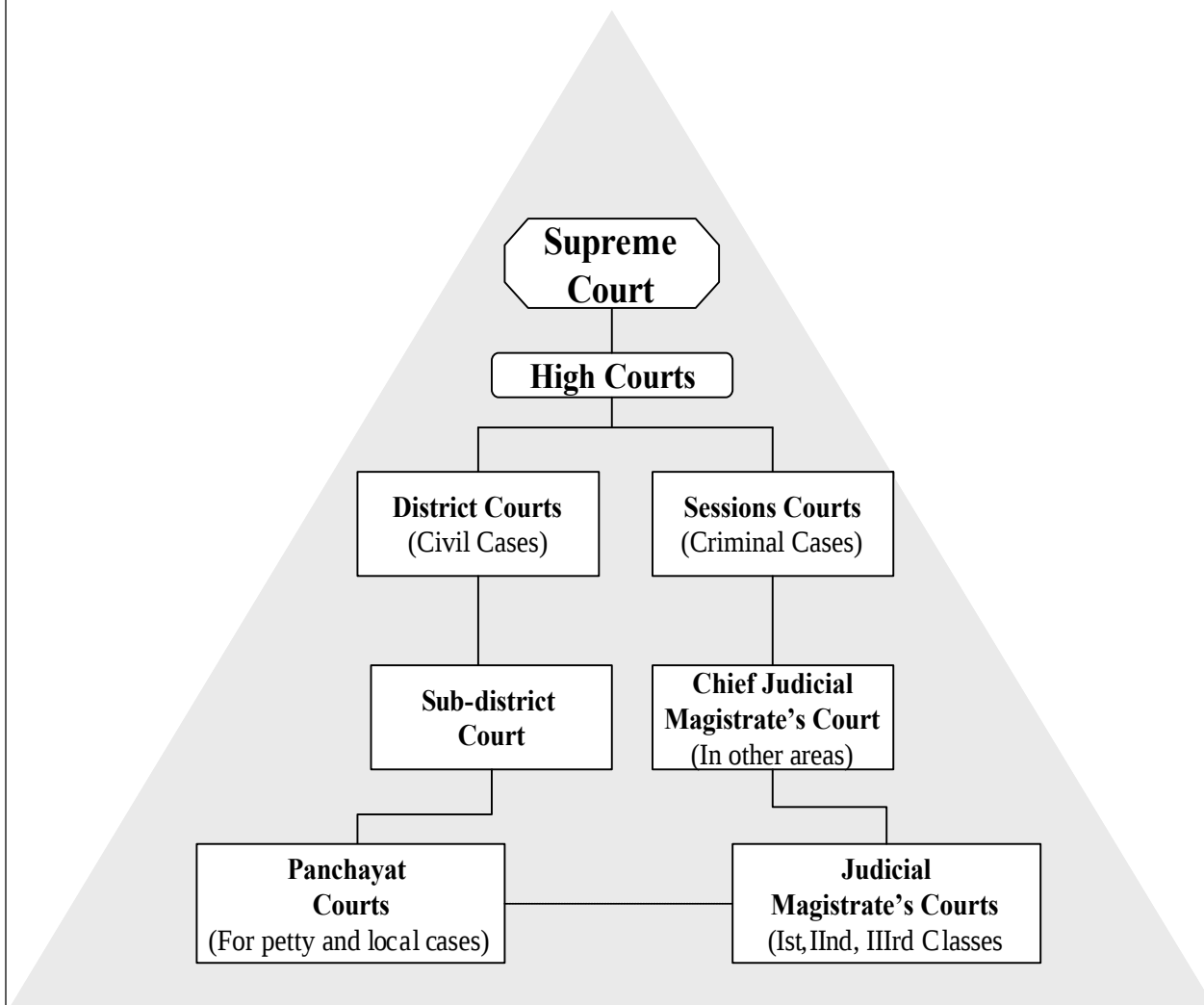


Figure 1. General structure of Indian Courts

## Lesson 8

# Supreme Court of India

*Dear Student,*

Now you start learning in detail about different courts in India.  
First let us study about the Supreme Court.

*At the end of this lesson;*

You know Role, powers and functions of Supreme Court  
You learn to appreciate the Indian Judicial System

**On** the 28th of January, 1950, two days after India became a Sovereign Democratic Republic, the Supreme Court came into being.

The original Constitution of 1950 envisaged a Supreme Court with a Chief Justice and 7 puisne Judges - leaving it to Parliament to increase this number. In the early years, all the Judges of the Supreme Court sat together to hear the cases presented before them. As the work of the court increased and arrears of cases began to cumulate, Parliament increased the number of Judges from 8 in 1950 to 11 in 1956, 14 in 1960, 18 in 1978 and 26 in 1986. As the number of the Judges has increased, they sit in smaller benches of two and three - coming together in larger benches of five and more only when required to do so or to settle a difference of opinion or controversy. The minimum number of judges to hear an appeal involving interpretation of the constitution is five. In other appeals,

the court can decide the number.

A Judge of the Supreme Court cannot be removed from office except by an order of the President passed after an address in each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of members present and voting, and presented to the President in the same Session for such removal on the ground of proved misbehavior or incapacity. A person who has been a Judge of the Supreme Court is debarred from practicing in any court of law or before any other authority in India.

The Supreme Court has original, appellate and advisory jurisdiction. Its exclusive original jurisdiction extends to any dispute between the Government of India and one or more States or between the Government of India and any State or States on one side and one or more States on the other or between two or more States, if and insofar as the dispute involves any question on which the existence or extent of a legal right depends.



*Supreme Court of India*

The Supreme Court of India has sweeping powers and unlimited jurisdictions to vindicate the supremacy of law. It is the ultimate interpreter of the Constitution and the laws of the Union, the states and the local authorities and the protector of the Fundamental Rights guaranteed by the Constitution. Being the guardian of the Constitution, Supreme Court is the final authority to expound the meaning and intend of the Constitution.

As the guardian of constitution and democracy, SC has the power to invalidate the laws made by the Parliament, the highest legislative authority. It can issue writs or orders to any administrative authority in any part of India for preventing any infringement of the Fundamental Rights.

Under Article 71 of the Constitution the Supreme Court has special jurisdiction to enquire into and decide on doubts and disputes in connection with the election of the President and Vice-President of India. Its decision shall be final.

Under Article 137 the Supreme Court has powers to review its own judgments and orders if it finds that it has gone wrong.

Article 345 of the Constitution states that until Parliament by law otherwise provides, all proceedings in the Supreme Court and High Courts shall be in the English language.

And the Supreme Court is also empowered to issue advisory rulings on issues referred to it by the president.

Supreme Court is empowered to issue directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari* to enforce them.

The Supreme Court has been conferred with power to direct transfer of any civil or criminal case from one State High Court to another State High Court or from a Court subordinate to another State High Court. The Supreme Court, if satisfied that cases involving the same or substantially the same questions of law are pending before it and one or more High Courts or before two or more High Courts and that such questions are substantial questions of general importance, may withdraw a case or cases pending before the High Court or High Courts and dispose of all such cases itself.

Some cases where Ms. Jayalalithaa, the Chief Minister of Tamil Nadu, was accused were transferred by SC from Chennai to Karnataka. This was to ensure the absence of unnecessary political pressure on the judiciary.

The Supreme Court functions as a court of record and supervises every high court. It has also a very wide appellate jurisdiction over all Courts and Tribunals in India in as much as it may, in its discretion, grant special leave to appeal under Article 136 of the Constitution from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any Court or Tribunal in the territory of India.

Supreme Court can entertain PUBLIC INTEREST LITIGATION. Any individual or group of persons can either file a Writ Petition at the Filing Counter of the Court or address a letter to Hon'ble the Chief Justice of India highlighting the question of public importance for invoking this jurisdiction. Several matters of public importance have become landmark cases. This concept is unique to the Supreme Court of India only and perhaps no other Court in the world has been exercising this extraordinary jurisdiction.

Supreme Court helps poor people in getting justice through PROVISION OF LEGAL AID. They can apply with necessary documents to the Secretary, and if they are found worthy of it by the Supreme Court Legal Aid Committee, they get free legal aid and an advocate to help them in the case. Persons belonging to middle income group i.e. with income above Rs. 18,000/- but under Rs. 1,20,000/- per annum are also eligible to get legal aid on nominal payments.

Supreme Court appoints AMICUS CURIAE to defend and argue a case, if it feels that the accused is unrepresented. The Court can also appoint amicus curiae in any matter of general public importance or in which the interest of the public at large is involved.

### **Other Court Officials**

**Supreme Court Registry:** The Registry of the Supreme Court is headed by the Registrar General who is assisted by three Registrars, four Additional Registrars, and twelve Joint Registrars. Article 146 of the Constitution deals with the appointments of officers and servants of the Supreme Court Registry.

**Attorney General:** The Attorney General for India is appointed by the President of India under Article 76 of the Constitution and holds office during the pleasure of the President. He must be a person qualified to be appointed as a Judge of the Supreme Court. It is the duty of the Attorney General for India to give advice to the Government of India upon such legal matters and to perform such other duties of legal character as may be referred or assigned to him by the President. In the performance of his duties, he has the right of audience in all Courts in India as well as the right to take part in the proceedings of Parliament without the right to vote. In discharge of his functions, the Attorney General is assisted by a Solicitor General and four Additional Solicitors General.

**Supreme Court Advocates:** There are three categories of Advocates who are entitled to practise law before the Supreme Court of India.

**Senior Advocates:** Advocates who are designated as Senior Advocates by the Supreme Court of India or by any High Court. The Court can designate any Advocate, with his consent, as Senior Advocate if in its opinion by virtue of his ability, standing at the Bar or special knowledge or experience in law the said Advocate is deserving of such distinction. A Senior Advocate is not entitled to appear without an Advocate-on-Record in the Supreme Court or without a junior in any other court or tribunal in India. He is also not entitled to accept instructions to draw pleadings or affidavits, advise on evidence or do any drafting work of an analogous kind in any court or tribunal in India or undertake conveyancing work of any kind whatsoever but this prohibition shall not extend to settling any such matter as aforesaid in consultation with a junior.

**Advocates-on-Record:** are entitled to file any matter or document before the Supreme Court. They can also file an appearance or act for a party in the Supreme Court.

There are other **Advocates** whose names are entered on the roll of any State Bar Council maintained under the Advocates Act, 1961 and they can appear and argue any matter on behalf of a party in the Supreme Court but they are not entitled to file any document or matter before the Court.

## Lesson 9

# High Courts

*Dear Student,*

Here you are introduced to the 18 high courts in India. They are guardians of law in their jurisdiction.

*At the end of this lesson;*

You know Role, powers and functions of the High Courts  
You learn to appreciate the Indian Judicial System

**High** Court stands at the head of a State's judicial administration. There are at present 18 High Courts in the country, three having jurisdiction over more than one state. Among the Union Territories Delhi alone has a High Court of its own. Other six Union Territories come under the jurisdiction of different State High Courts.

The Chief Justice of a High Court is appointed by the President in consultation with the Chief Justice of India and the Governor of the State. The procedure for appointing puisne Judges is the same except that the Chief Justice of the High Court concerned is also consulted. They hold office until the age of 62 years and are removable in the same manner as a Judge of the Supreme Court. President may also exercise the right to transfer high court justices without consultation.

As part of the judicial system, the high courts are institutionally independent of state legislatures and executives.

Each High Court has power to issue to any person within its jurisdiction directions, orders, or writs including writs that are in the nature of habeas corpus, mandamus, prohibition, *quo warranto* and certiorari for enforcement of Fundamental Rights and for any other purpose. This power may also be exercised by any High Court exercising jurisdiction in relation to territories within which the cause of action, wholly or in part, arises for exercise of such power, notwithstanding that the seat of such Government or authority or residence of such person is not within those territories.

Each High Court has powers of superintendence over all Courts within its jurisdiction. It can call for returns from such Courts, make and issue general rules and prescribe forms to regulate their practice and proceedings and determine the manner and form in which book entries and accounts shall be kept.



*High Court of Kerala*

**Advocate General:** There is an Advocate General for each State, appointed by the Governor, who holds office during the pleasure of the Governor. He must be a person qualified to be appointed as a Judge of High Court. His duty is to give advice to State Governments upon such legal matters and to perform such other duties of legal character, as may be referred or assigned to him by the Governor. The Advocate General has the right to speak and take part in the proceedings of the State Legislature without the right to vote.

## Lesson 10

## Lower Courts

*Dear Student,*

You may be wondering the rationale of studying all these. The knowledge about the structure and legal procedures are necessary to report anything related to crime or constitutional issues. In this lesson you learn about various courts functioning under the high courts.

*At the end of this lesson;*

You know Role, powers and functions of lower courts  
You learn to appreciate the Indian Judicial System

**States** are divided into districts (zillas), and within each a judge presides as a district judge over civil cases. A sessions judge presides over criminal cases. The judges are appointed by the governor in consultation with the state's high court. District courts are subordinate to the authority of their high court.

There is a hierarchy of judicial officials below the district level. Many officials are selected through competitive examination by the state's public service commission. Civil cases at the subdistrict level are filed in munsif (subdistrict) courts. Lesser criminal cases are entrusted to the courts of subordinate magistrates functioning under the supervisory authority of a district magistrate. All magistrates are under the supervision of the high court.

At the village level, disputes are frequently resolved by Panchayats or Lok adalats (people's courts). Lok Adalats are voluntary agencies monitored by the State Legal Aid and Advice Boards. They have proved to be a successful alternative forum for resolving of disputes through the conciliatory method. The Legal Services Authorities Act, 1987 provides statutory status to the legal aid movement and it also provides for setting up of Legal Services Authorities at the Central, State and District levels. These authorities will have their own funds. Every award of Lok Adalats shall be deemed to be a decree of a civil court or order of a Tribunal and shall be final and binding on the parties to the dispute. It also provides that in respect of cases decided at a Lok Adalat, the court fee paid by the parties will be refunded.

**District Courts:** These courts are primarily Civil Courts to hear generally the appeals from the courts of original civil jurisdiction in the Districts and Taluk level. However these courts have also been given original civil jurisdiction under many enactments.

**Session Courts:** These courts are primarily criminal courts, with jurisdiction to revise the orders from the subordinate magistrates as well as to try serious offences, as prescribed by law.

There are some special courts operating under the high court. They are:

**Co-Operative Courts:** These courts are courts with original jurisdiction, formed for hearing the cases directly filed under the various Co-Operative Laws, and also in the form of appeal against certain administrative orders of the Co-Operative Registrars and Sub-Registrars. The cases are appealable in Appellate Co-operative courts.

**Labour Courts:** These Courts normally found in every District, are the courts of original jurisdiction under the provisions of various Labour Laws and enactments, including powers to enforce various rules framed under those enactments. Appeals from these courts are heard by Appellate Labour Courts.

**City Civil & Sessions Courts:** These Courts are only in the Presidency Towns of Mumbai, Chennai and Kolkata, and are primarily Civil Courts of original jurisdiction of higher monetary valued suits, however these courts have also been given powers of certain appeals against its subordinate small causes courts. The sessions courts are primarily Criminal Courts, with jurisdiction to revise the orders from the subordinate metropolitan magistrates as well as to try serious offences, as prescribed by law.

**Special Courts:** The governments from time to time also appoint certain Special Courts to try particular matters deemed to be very important for public life, and for expeditiously trying these matters, which are mainly treated as very grave and heinous compared to the actual charges of sections framed against the persons tried, mainly as leading public enemies.

**Military Courts:** Courts in India do not have judicial power over the activities of the armed forces, except when they create problems for the public life, and peace. Every offence committed by army personnel is tried in the military court. These Courts also known for their procedure called Court Marshall, are made in the administrative hierarchy of the army, navy and air force of the nation under various acts governing them individually, and are completely separated from any other procedure or court, though still well within constitution.

**Family Courts:** Established under the Family Court Act (1984), the family courts protect and preserve the institution of marriage and promote the welfare of children and provide for settlement of disputes by conciliation. The Family Courts Act extends to the whole of India except Jammu and Kashmir. Every State Government after consultation with the High Court establishes in every area in the state, a Family Court. One or more judges head it and preference is given to women judges.

The cases are appealable in the High Court. However no appeal lies against a decree or order passed by the Family Court with the consent of the parties under proceedings relating to maintenance of wives, children and parents under the Code of Criminal Procedure.

## **Tribunals**

Tribunals are special courts, which are primarily administrative in nature, yet they hear the appeals and revisions emanating from the judgments and orders of the subordinate officers of the departments.

**a) Income Tax Tribunals:** They hear the Appeals and revisions emanating from the judgments and orders of the subordinate officers of the department, under the provisions of the Income Tax and other relevant laws.

**b) Central Excise Tribunal:** They hear the Appeals and revisions emanating from the judgments and orders of the subordinate officers of the department, under the provisions of the Central Excise Act and other relevant laws.

**c) Sales Tax Tribunals:** They hear the Appeals and revisions emanating from the judgments and orders of the subordinate officers of the department, under the provisions of the Sales Tax and other relevant laws of both the union government as well as various state governments.

**d) Accident Claims Tribunals:** These tribunals try only the claims of the victims of various road and rail accidents. Though there are very few Rail Accident tribunals, however there is generally at least one Motor Accident Claims Tribunals in every district. These courts have a completely different Court Fees structure compared to those of the regular civil courts of original jurisdiction.

**e) Revenue Tribunals:** There are various revenue Tribunals and other subordinate revenue Appellate bodies in the administrative hierarchy of the Revenue Departments of various State Governments to hear the matters pertaining to the land revenue and other relevant laws of various states.

**f) Administrative Tribunals:** The Central Government as well as the State Governments have set up various administrative tribunals for the purpose of conducting various disciplinary

actions against their senior and other employees, as well as for their grievance redressal. These tribunals work under special laws framed, and form an hierarchical pattern for the conduct of their business.

### **Powers of Some Courts**

| <b>Court</b>                                                           | <b>Maximum Punishment</b>                                                                                          |
|------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|
| Supreme Court                                                          | Any sentence authorized by law, including death sentence                                                           |
| High Court                                                             | Any sentence authorized by law, including death sentence.                                                          |
| Sessions Court                                                         | Any sentence authorized by law, including death sentence. But death sentence has to be confirmed by the High Court |
| Chief Judicial Magistrate /<br>Chief Metropolitan Magistrate           | Maximum sentence of 7 years and/or fine                                                                            |
| Judicial Magistrate 1 <sup>st</sup> Class /<br>Metropolitan Magistrate | Maximum sentence of 3 years and/or fine upto Rs. 5000/-                                                            |
| Judicial Magistrate 2 <sup>nd</sup> Class                              | Maximum sentence of 1 year and/or fine upto Rs. 1000/-                                                             |

### **An Evaluation of the Judiciary**

A media professional should have high respect for the judicial system of the country, as it is that body that protects their rights as reporters and guide them when they go wrong. There are many issues taken up by the court from the reports and acted upon for the common good by the courts. In that way media professionals and judiciary work hand in hand with to promote democracy and transparency in the administration. There are also situations when courts take punitive measures against the media. However Press in India had held the judiciary in high esteem so as to consider it as the only machinery that can set the country in the correct track.

However the greatest accusation regarding the judiciary is the delay in the delivery of justice. *Delayed Justice is no Justice*. Supreme Court is reported to have more than 150,000 cases pending in 1990, the high courts had some 2 million cases pending, and the lower courts had a substantially greater backlog. Coupled with public perceptions of politicization, the growing inability of the courts to resolve disputes in time threatens to erode the credibility of the judicial system.

#### **Practical Application of the Lessons (8-10)**

1. Compare the powers of each court and submit to the teacher.
2. Visit a court next to your campus and attend a trial
3. Write your reactions on the Indian Judicial System and submit it to the teacher.

## Lesson 11

## Introduction: Civil Procedure

*Dear Student,*

Well, in this lesson we are entering a new subject area, to study how a civil case begins and ends. Knowing these processes helps you to cover court proceedings better.

*At the end of this lesson;*

You learn how a plaint is made  
You come to know how a civil case is tried in the court

**Judicial** procedure in civil cases is according to the Civil Procedure Code. CPC lays down the Procedure of filing the civil case, Powers of court to pass various orders, Court fees and stamp involved in filing of case, Rights of the parties to a case, viz. plaintiff and defendant, Jurisdiction and parameters within which the civil courts should function, Specific rules for proceedings of a case, Right of Appeals, review or reference.

Each High court decides the pecuniary jurisdiction in such a way so as to decide which suit shall be heard in which type of courts. Some high courts reserve appeals for them and leave all other suits to subordinate courts.

The plaint has to be typed in double line space. Name of the Court, Nature of Complaint, Names and Address of parties in the suit has to be clearly mentioned. Plaintiff also declares that whatever contains in the plaint are true and correct. People those who cannot seek justice by themselves may get help from a lawyer. When specified court fee has been paid the plaint is accepted.

The court decides date for first hearing. On such hearing, the court will decide whether the proceedings should continue or not. If it decides, that the case has no merits, then it will dismiss it there itself, without calling opposite party.

If the court decided to try the plaint, it issues notice to the opposite party, to submit their arguments, and fix a date. Within seven days of the notice, the plaintiff has to submit copies of the plaint intended for the defendant.

The defendant is required to file his “written statement”, i.e. the denial or acceptance of the allegation raised by plaintiff generally within 30 days from date of service of notice. He is further required to appear on the date mentioned in the notice.

If the defendant does not respond in time or fail to come to the court, the court may pass the judgement in his absence. If he makes a written statement, the plaintiff then makes a “Replication”, a reply to the “written statement” of the Defendant. Anything not denied is deemed to be accepted. Once Replication is filed, pleadings are stated to be complete.

Once, the pleadings are complete, then both the parties are given opportunity to produce and file documents, on which they rely, and to substantiate their claims. It is necessary that document should be filed in “original”, and a spare copy should be given to the opposite party.

If needed witnesses are produced and examined in the court by both parties.

Meanwhile issues are framed by the court based on the written documents of both the parties.

Once, the Examination and Cross- Examination of witness is over, and also the admission and denial of documents, then the court will fix a date for final hearing.

Final hearing is based on the issues framed by the court. Both parties with the permission of Court, can amend their pleadings. Whatever is not contained in the pleadings, the court may refuse to listen. Finally, the court shall pass a “final Order”, either on the day of hearing itself, or some other day fixed by the court.

### **Appeal, Reference and Review**

The defendant or the plaintiff may apply for appeal, reference or review of the judgment, he is not satisfied with the justice given. If question arises over the power of the territorial and pecuniary competence of a court passing the challenged judgement and decree, or over the interpretation of law, or substantial question of law, the suit is appealable.

The choice of court of the first appeal depends on the subject matter of the case and its monetary value. A second appeal also is possible in high court if the case involves a substantial question of law.

No provision for appeal exists if the decree / judgement has been passed by the court with the consent of the parties, or the subject matter of the suit is less than RS. 3000/- or, if the judgement is made by a high court judge in a second appeal.

An appeal or review has to be filed within the time allotted for it. Appeal to High Court is within 90 days from the date of decree or order, while appeal to any other court is 30 days from the date of Decree or order.

Appeal has to be made in the prescribed form paying the specified fee.



The mere act of appeal does not guarantee a stay over the execution of the judgment. However, if the appellate court sees sufficient cause to do so, may order the stay of execution of such decree.

When no appeal is provided in the judgment, the plaintiff may submit the plaint for review in the same court. The court may reject or accept the review petition. The reviewed judgment is also appealable.

## Lesson 12

# Introduction: Criminal Procedure

*Dear Student,*

Well, in this lesson you study how a criminal case begins and ends. Knowing these process helps you to cover court proceedings better.

*At the end of this lesson;*

You learn how a arrest is made  
You learn to judge if there was any misuse of law  
by law enforcing authorities

**Code** of Criminal Procedure (CRPC) of 1973 directs the process of investigation, arrest, trial, sentence, appeal, and execution.

### **Arrest of Persons (Ch. V: 41-45)**

Usually arrests are possible with a written order from a magistrate. But, a police officer can arrest the following without an arrest warrant from a magistrate:

- who has been concerned in any cognizable offence,
- against whom a reasonable complaint has been made,
- credible information has been received,
- reasonable suspicion exists,

- proclaimed as an offender,
- Found with anything that cast a suspicion – stolen property, weapons
- obstructs a police officer while in the execution of his duty,
- who has escaped, or attempts to escape, from lawful custody;
- deserter from any of the Armed Forces of the Union;
- punishable act committed abroad
- released convict, committing a breach of promise
- suspect refuses to reveal the identity, may be arrested and be released after giving the identity, and on his executing a bond, secured by a surety or sureties resident in India. If the identity still not known, shall be produced before a magistrate.



Any citizen can arrest and handover any person who commits a non-bailable offence in front of him/her, to a police officer. But if there is no sufficient reason to believe that he has committed any offence, he shall at once be released by the police.

A magistrate can arrest or order the arrest of anyone who commits an offence in his presence within his local jurisdiction.

Permission to arrest members of the Armed forces has to be given by the central government.

### **The Process of Arrest (Ch: 46 – 60)**

The arrest has to be made in a specified manner.

- May use all means necessary to effect the arrest even physical force.
- Can search a place to effect the arrest, even using force, and breaking doors etc.
- Nobody has the right to cause the death of a person in the process of arrest

- Can pursue accused into any place in India.
- Person arrested is to be informed of grounds of arrest and of right to bail.
- Receipt has to be given to the arrested person, if anything is seized him/her.

Whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency.

Weapons seized from the arrested person or through the search, shall be taken to the court or to the officer in charge.

Medical examination of the arrested person at the request of a police officer not below the rank of sub-inspector, if necessary. Examination of a female has to be conducted only by a female registered medical practitioner. A magistrate can order a medical; check-up.

A superior police officer can through a written order ask a subordinate to arrest a person. The police officer has to notify the person to be arrested the substance of the order and, if so required by such person, shall show him the order.

Persons arrested shall be produced before the magistrate within 24 hours of the arrest,

(Except with special order of a Magistrate under section 167), exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court. The police has to report to the magistrate about the case.

No person who has been arrested by a police officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate.

## Lesson 13

## The Trial

*Dear Student,*

In the last lesson you have learnt how the arrest was made. In this lesson you learn how the trial is carried out.

*At the end of this lesson;*

You learn the process of trial in the court  
You come to know the importance of court reporting

**Once** an offence is noticed, there is a protocol to be observed, and procedure to be followed for its trial.

### **Place of Trial (Ch XIII: 177- 189)**

Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. If the offence is committed in many places, a Court having jurisdiction over any of such local areas. But, offences triable together could be pooled to one place for trial.

If the offense is committed by Indians abroad, or foreigners in any ship or aircraft registered in India could be dealt with as if it happened in India. Official correspondence at the consulates of countries involved is advised.

Superior Courts can settle disputes over the jurisdiction of a case.

### **Trial Proceedings (Ch. XVI: 204- 210)**

After the court fees are paid, a written complaint is filed, and a list of the prosecution witnesses has been filed, the Magistrate taking cognizance of an offence and believing that there is sufficient ground for proceeding, can summon on a specified date or produce an arrest warrant to the accused.

Magistrate taking cognizance of a petty offence can summarily dispose of the case under section 260. “Petty offence” means any offence punishable only with fine not exceeding one thousand rupees, but does not include any offence so punishable under the Motor Vehicles Act, 1939, (4 of 1939) or under any other law which provides for convicting the accused person in his absence on a plea of guilty.



*The Trial*

Magistrate can dispense with personal attendance of accused and permit him to appear by his pleader. He can also enforce attendance of the accused in person.

If the amount specified in the summon is not more than 100 rupees, the accused can react to a summon by communicating to him pleading guilty, by post or through a pleader, and pay the fine.

The Magistrate shall give the accused copy of the police report if the proceeding has been instituted on a police report, and other relevant documents for the trial. If the document is voluminous, permission is given to see it personally or through the pleader in Court.

When police investigation is necessary for a case based on a complaint, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation. He shall try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report. If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial.

## Lesson 14

## The Charge

*Dear Student,*

I am very sorry if this runs boring. Think about the lawyers who live with these kind of subjects every minute of their life. Now you know why they look different. Here, you learn how a charge is made.

*At the end of this lesson;*

You learn what is a charge  
You come to know how a charge is made

**Once** a case is accepted by court, a charge is prepared.

**(Ch. XVII: 211- 224)**

**Contents of Charge:** Every charge states the specific offence with which the accused is charged. The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged. The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge. No error appeared in the Charge shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

**Altering the Charge:** Court may alter or add to any charge at any time before judgment is pronounced. Every change shall be read and explained to the accused. Thereafter, Court proceeds with the trial, as if the altered or added charge had been the original charge, immediately, or directs a new trial or adjourn the trial for such period as may be necessary. Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed to re-examine the witnesses, bring new witnesses with the permission of the Court.

**Joinder of Charges:** For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately unless the court permits the accused to face all the trials together. Three offences of same kind within year, or offences that are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code or of any special or local law, may be charged together.



During the judicial process, conviction is based on what is proven. The parties, charges, process of investigation and seriousness of the offence may change.

## Lesson 15

# Trials of Different Cases

*Dear Student,*

Now let us see how a trial is under process. This lesson covers different procedures followed in trying different cases.

*At the end of this lesson;*

You learn different ways of trying different cases  
You come to know various forms of trials

**There** are different procedures of trying a case. The process is based on the nature of the case.

### **The Trial of Different Cases (Ch. XVIII: 225-237)**

When the accused appears or is brought before the Court the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused.

If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

If the Judge, is of opinion that there is ground for presuming that the accused has committed an offence which is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

The judge can also frame in writing a charge against the accused after the trial, which shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

If the accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict him thereon.

If the accused does not plead, or claims shall fix a date for the witnesses, and may, on prosecution, issue any compelling the witness or the



refuses to plead, or to be tried, the Judge examination of the application of the process for attendance of any production of any

document or other thing. On that day, evidences will be taken, witnesses shall be examined, and if the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of **acquittal**.

If not acquitted, the accused shall be called upon to enter on his defence and adduce any evidence he may have in support thereof. The accused can file any written statement, request examining of some witnesses with the permission of the judge

When the examination of the witnesses (if any) for the defence is complete, the prosecutor shall sum up his case and the accused or his pleader shall be entitled to reply: The accused or his pleader can raise any point of law with the permission of the Judge.

After hearing arguments and points of law (if any), the Judge shall give a judgment in the case. If the accused is convicted judge passes sentence on him according to law.

If the accused is proved innocent, the Judge can order compensation to such amount not exceeding one thousand rupees, and it shall be recovered as if it were a fine imposed by a Magistrate. The amount shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided.

#### **Trial of Warrant-Cases by Magistrates (Ch. XIX: 238- 250)**

When, in any warrant-case instituted on a police report, the accused appears or is brought before a Magistrate, and after hearing, if the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

After hearing, if the Magistrate finds the accused has committed an offence triable, he may frame a charge against the accused. The accused pleads guilty after hearing the charge the Magistrate shall record the plea and may, in his discretion, convict him thereon.

If the accused refuses to plead, or does not plead, or claims to be tried, the Judge shall fix a date for the examination of witnesses, and may, on the application of the prosecution, issue any process for compelling the attendance of any witness or the production of any document or other thing.

And the trial follows.

### **Trial of Summons-Cases by Magistrates (Ch. XX: 251-259)**

When in a summons-case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge.

If the accused pleads guilty, the Magistrate shall record the plea as nearly as possible in the words used by the accused and may, in his discretion, convict him thereon.

If not the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence. He can issue a summons to any witness directing him to attend or to produce any document or other thing.

The reasonable expenses of the witness incurred in attending for the purposes of the trial is to be deposited in Court.

After the trial the Magistrate decides whether the accused is convicted or acquitted.

If the complainant does not appear in Court, the Magistrate shall, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day. If complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

If a complainant, at any time before a final order is passed in any case under this Chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint against the accused, or if there be more than one accused, against all or any of them, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused against whom the complaint is so withdrawn.

Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge.

If it appears to the Magistrate that in the interests of justice, the offence should be tried in accordance with the procedure for the trial of warrant-cases, such Magistrate may proceed to re-hear the case accordingly.

### **Summary Trials (Ch XXI: 260 - 265)**

Summary Trials follow the procedure specified in this Code for the trial of summons-case. But, no sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction.

### **Trials of the Imprisoned (Ch. XXII: 266 – 271)**

Whenever, in the course of an inquiry, trial or proceeding, it is necessary that a person confined or detained in a prison should be brought before the Court for answer to a charge of an offence, or for the purpose any proceedings against him, or examine him as a witness, the Court may make an order requiring the officer in charge of the prison to produce such person before the Court answering to the charge or for the purpose of such proceed or, as the case may be, for giving evidence.

The State Government can by general or special order, direct that any person or class of persons shall not be removed from the prison in which he or they may be confined or detained with specific reasons recorded.

Prisoner is to be brought to Court in custody, kept safe and has to be taken back to the prison after the examination. The court also can appoint a commission to examine the accused in the prison.

### **Offences Affecting the Administration of Justice (Ch. XXVI: 340 – 352)**

If any witness or person called to produce a document or thing before a Criminal Court refuses to answer such questions as are put to him or to produce any document or thing in his possession or power which the Court requires him to produce, and does not, after a reasonable opportunity has been given to him so to do, offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant under the hand of the Presiding Magistrate or Judge commit him to the custody of an officer of the Court for any term not exceeding seven days, unless in the meantime, such person consents to be examined and to answer, or to produce the document or thing and in the event of his persisting in his refusal, he may be dealt with according to the provisions of section 345 or section 346.

If any witness being summoned to appear before a Criminal Court is legally bound to appear at a certain place and time in obedience to the summons and without just excuse neglects or refuses to attend at that place or time or departs from the place where he has to attend before the time at which it is lawful for him to depart, and the Court before which the witness is to appear is satisfied that it is expedient

in the interest of Justice that such a witness should be tried summarily, the Court may take cognizance of the offence and after giving the offender an opportunity of showing cause why he should not be punished under this section, sentence him to fine not exceeding one hundred rupees.



## Lesson 16

## The Judgement

*Dear Student,*

Judgement is usually the last in a judicial proceeding. Now let us see how a judgement is made. This lesson covers the procedure of passing a judgement.

*At the end of this lesson;*

You learn what is judgement  
You come to know how a judgement is made

**The** judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open Court by the presiding officer immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders.

Copy of the judgment shall be immediately made available for the perusal of the parties or their pleaders free of cost.

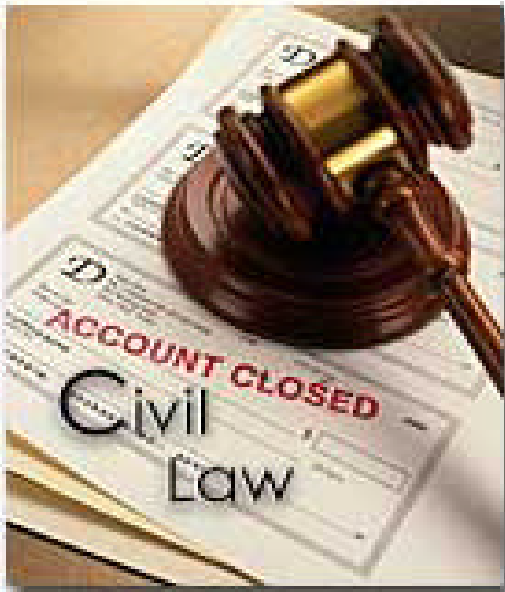
If the accused is in custody, he shall be brought up to hear the judgment pronounced. If the accused is not in custody, he shall be required by the Court to attend to hear the judgment pronounced, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted:

Provided that, where there are more accused than one, and one or more of them do not attend the Court on the date on which judgment is to be pronounced, the presiding officer may, in

order to avoid undue delay in the disposal of the case, pronounce the judgment notwithstanding their absence.

The judgment shall include the offense, specific details of the laws violated, the procedure and the verdict, and the process of executing the verdict. For example, when any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or



imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, Character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three

years) as the Court may direct, and in the meantime to keep the peace and be of good behavior.

No Court, when it has signed its judgment or order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.

### **Death Sentences (Ch. XXVIII: 366 - 371)**

When the Court of Session passes a sentence of death, the proceedings shall be submitted to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court.

Convicted person shall be sent to jail under a warrant. His presence, unless the superior court decides, is not necessary for the trial in the Court.

High court may decide on the sentence, after the appeal period, and if there is an appeal until such appeal is disposed of. Confirmation of the sentence or a new sentence shall be signed by at least two judges. A copy shall be sent to the Session Court.



*Guillotine*

## Lesson 17

## The Appeal

*Dear Student,*

This lesson tells you the process of appeal to change a sentence given from a subordinate court.

*At the end of this lesson;*

You learn what is appeal  
You come to know how appeal is made  
You learn what happens to an appeal

The judgement passed by a subordinate court can be challenged through appeal to a superior court.

### **Appeals (Ch. XXIX: 372 - 393)**

No appeal to lie unless otherwise provided from a Criminal Court. Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held any other Court in which a sentence of imprisonment more than seven years has been against him or against any other person convicted at the same trial may appeal to the High Court.

People convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class, or of the second class, may appeal to the Court of Session.

When an accused person has pleaded guilty and has been convicted on such plea, there shall be no appeal, if the conviction is by a High Court; or if the conviction is by a Court of Session, Metropolitan Magistrate or Magistrate of the first or second class, except as to the extent or legality of the sentence.

In General, unless when the court decides otherwise, there shall be no appeal in petty cases.

If the High Court has, on appeal, reversed an order of acquittal of an accused person and convicted him and sentenced him to death or to imprisonment for life or to imprisonment for a term of ten years or more, he may appeal to the Supreme Court.

When more persons than one are convicted in one trial, and an appealable judgement or order has been passed in respect of any of such persons, all or any of the persons convicted at such trial shall have a right of appeal.

If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court.

The appellate court can dismiss the appeal after examining the petition and finds no sufficient ground for interfering or fix a date for hearing.

Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also if he is in confinement, that he be released on bail, or on his own bond. If the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

High Court may issue a warrant directing that the accused be arrested and brought before it or any Subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal or admit him to bail.

Appellate Court may seek for further evidence and examination of witnesses.

When an appeal is heard by a High Court before a Bench of Judges and they are divided in opinion, the appeal, with their opinions, shall be laid before another Judge of that Court, and that Judge, after such hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow that opinion. He may also judge that the appeal shall be re-heard and decided by a larger Bench of Judges.



Generally Judgments and orders passed by an Appellate Court upon an appeal shall be final.

## Lesson 18

## The Execution

*Dear Student,*

We are coming to the end of these discussions. Execution is the carrying out of the sentence.

*At the end of this lesson;*

You learn how a sentence is executed  
You come to know what is a death sentence  
You learn the process of sending a person to the prison  
YOU learn how the courts levy the fine

**There** is a procedure for executing the sentence, whether it is a death sentence, imprisonment or fine.

**Executing sentences (Ch XXXII: 413 - 435)**

***Death sentence***

If the High Court confirms a death sentence, or gives another order it is carried out by the subordinate courts. If the death is confirmed, the court issues a warrant. If an appeal is filed in Supreme Court, execution is postponed until a decision is made.

If a woman sentenced to death is found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may, if it thinks fit, commute the sentence to imprisonment for life.

## **Imprisonment**

The judge decides where to imprison a person. State government decides which those possible places are.

If the accused is present in the court, the Court forwards a warrant to the jail or other place in which the accused is, or is to be, confined, and, unless the accused is already confined in such jail or other place, shall forward him to such jail or other place, with the warrant:

If the accused is not present in Court when he is sentenced to imprisonment the Court shall issue a warrant for his arrest for the purpose of forwarding him to the jail or other place in which he is to be confined; and in such case, the sentence shall commence on the date of his arrest.

A sentence of imprisonment shall be directed to the officer in charge of the jail or other place in which the prisoner is or is to be, confined.

When a person already undergoing a sentence on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence.



*Agonising solitude*

### **Levy of fine**

When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine through a warrant, by attachment and sale of any movable or immovable property belonging to the offender.

The fine shall be payable either in full on or before a date not more than thirty days from the date of the order, or in two or three installments, of which the first shall be payable on or before a date not more than thirty days from the date of the order and the other or others at an interval or at intervals, as the case may be, of not more than thirty days.

### ***After Execution***

When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it is issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

When any person has been sentenced to punishment for an offence, the appropriate Government may, in consultation with the judge who made the sentence, at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced. The person however if found not adhering to the conditions, could be arrested by any police officer, without warrant and undergo the un-expired portion of the sentence.

### **Practical Application of the Lesson**

1. Visit a prison, talk to some prisoners, console them.
2. You may also plan for an entertainment programme for them.
2. Make a case study of a prisoner if possible, and submit to the teacher

## Lesson 19

## Press Council of India

*Dear Student,*

Press Council of India guides the media professionals. It has judicial powers. Therefore, a thorough knowledge of it will help you to do better in your profession.

*At the end of this lesson;*

You learn the history, and role of Press Council  
You know the importance of the Press Council

**The** press has to be free and responsible in a democracy. The process of ensuring these by government intervention would be disastrous. Therefore an alternate system was needed. The best way is to let the peers of the profession, assisted by a few discerning laymen to regulate it through a properly structured representative impartial machinery. Thus, the Press Council was set up. The first of its kind was established in Sweden in 1916. Soon it spread to other countries.

The First Press Commission (1954) suggested setting up of a Press Council to “safeguard the freedom of the press”, “to ensure on the part of the Press the maintenance of High standards of public taste and to foster due sense of both the rights and responsibilities of citizenship” and “to encourage the growth of sense of responsibility and public service among all those engaged in the

profession of journalism.” The Commission had concluded that the best way of maintaining professional ethics in journalism would be to bring into existence a body with statutory authority, of people principally connected with industry.

As a result of the Press Council Act, 1965, Press Council of India was constituted on 4th July, 1966 as an autonomous, statutory, quasi-judicial body, with Shri Justice J R Mudholkar, then a Judge of the Supreme Court, as Chairman. The Press Council of India is a statutory quasi-judicial body.

## Lesson 20

## Press Council Acts

*Dear Student,*

Press Council Acts of 1965 and 1978 changed the history of media in India. The Media people had a place to file their grievances, people and government had an agency where they could voice their concerns about the functioning of media.

*At the end of this lesson;*

You learn the Acts that established the Press Council  
You study the functions, powers and role of Press Council  
You know limits and freedom of media professional

**There** were two Acts that established the Press Council. The 1965 Act established the Press Council, and the 1978 Act reestablished it.

### **The Press Council Act, 1965**

The Act's goal was to establish a Press Council for the purpose of preserving the freedom of the Press and of maintaining and improving the standards of Newspapers in India. Effective from 12<sup>th</sup> Nov. 1965. It extends to the whole of India except the State of Jammu and Kashmir.

### ***Brief Study of the Act***

The Council consists of a Chairman and twenty-five other members. The Chairman shall be a person nominated by the Chief Justice of India. The members include thirteen working journalists,

of whom not less than six shall be editors of newspapers, six from the management section of the newspapers, three subject experts, two from the House of the People nominated by the speaker and one from the Council of States, chosen by its Chairman.

### **Amendments on the Act**

Acting on grievances, composition of the nominating committee was changed by an amendment of the said Act in 1970, according to which the Chairman and the members from the press were to be nominated by a Nominating Committee consisting of the Chairman of the Rajya Sabha, the Chief Justice of India and the Speaker of the Lok Sabha.

The amending Act of 1970 introduced several other provisions in the Act. The manner of selection of persons of special knowledge or practical experience was specified. It provided that of the three persons to be nominated from among such people, one each shall be nominated by the University Grants Commission, the Bar Council of India and the Sahitya Academy. Out of the six seats for proprietors and managers of newspapers, two each were earmarked for big, medium and small newspapers. The membership of the Council was raised by one to provide a seat for persons managing the news agencies.

No working journalist who owned or carried on the business of management of newspapers could now be nominated in the category of working journalists. Also, it was specified that not more than one person interested in any newspaper or group of newspapers under the same control, could be nominated from the categories of editors, other working journalists, proprietors and managers.

The Nominating Committee was empowered to review any nomination on a representation made to it by any notified association or by any person aggrieved by it or otherwise. The amended Act also barred re-nomination of a retiring member for more than one term. Where any association failed to submit a panel of names when invited to do so, the Nominating Committee could ask for

panels from other associations or persons of the category concerned or nominate members after consultation with such other such individuals or interests concerned as it thought fit.

Under the original Act, the Chairman was nominated by the Chief Justice of India. But, after this amendment, nomination of the Chairman was also left to the Nominating Committee.

The Council set up under the Act of 1965 functioned till December 1975. During the Internal Emergency, the Act was repealed and the Council abolished.

### **The Press Council Act - 1978**

A fresh legislation providing for the establishment of the Council was enacted in 1978 and the institution came to be reviewed in the year 1979 with the very same object of preserving the freedom of the press and of maintaining and improving the standards of Press in India. The present Council is a body corporate having perpetual succession.

Objective of the Act is to establish a Press council for the purpose of preserving the freedom of the Press and of maintaining the standards of newspaper and news agencies in India. Effective from 7<sup>th</sup> Sept. 1978. The revived Press Council was set up on March 1<sup>st</sup>, 1979.

The council shall consist of a chairman and twenty-eight other members. The chairman is nominated by a Committee consisting of the chairman of the council of states (Rajya Sabha), the Speaker of the Houses of the People (Lok Sabha) and a person elected by the members of the council, and the nomination so made shall take effect from the date on which it is notified by the Central Government in the Official Gazette.

The members include thirteen working journalists, of whom not less than six shall be editors of newspapers, six from the management section of the newspapers (two each from big, medium and small newspapers), three subject experts (one each is nominated by UGC, Bar Council of India, and

Sahitya Academy), one representing the news agencies, three from Lok Sabha nominated by the speaker and two from Rajya Sabha, chosen by its Chairman.

The Press Council Act empowers the Press Council to make observations in respect of conduct of any authority including Government, if considered necessary for performance of its functions under the Act. It can warn, admonish or censure the newspaper, the news agency, the editor or the journalist or disapprove the conduct of the editor or the journalist if it finds that a newspaper or a news agency has offended against the standards of journalistic ethics or public taste or that an editor or a working journalist has committed any professional misconduct.

### **Functions**

- to help newspapers to maintain their independence;
- to build up a code of conduct for newspapers news agencies and journalists in accordance with high professional standards;
- to ensure on the part of newspapers news agencies and journalists, the maintenance of high standards of public taste and foster a due sense of both the rights and responsibilities of citizenship;
- to encourage the growth of a sense of responsibility and public service aiming all those engaged in the profession of journalism;
- to keep under review any development likely to restrict the supply and dissemination of news of public interest and importance;
- to keep under review cases of assistance received by any newspaper or news agency in India from any foreign source including such cases as are referred to it by the Central Government or are brought to its notice by any individual, association of persons or any other organization: Provided that nothing in this clause shall preclude the central Government from dealing with any case of assistance received by a newspaper or news agency in India from any foreign source in any other manner it thinks fit;

- to undertake studies of foreign newspapers, including those brought out by any embassy or other representatives in India of a foreign state, their circulation and impact.
- to promote a proper functional relationship among sell classes of persons engaged in the production or publication of newspapers or in news agencies:
- to concern itself developments such as concentration of or other aspects of ownership of newspapers and news agencies which may affect the independence of the Press;
- to indurate such studies as may be entrusted to the council and to espousers its opinion in regard to any matter referred to it by the central government;
- to do such other acts as may be incidental or conducive to the discharge of the above functions.

### **Powers**

Every inquiry held by the Council shall be deemed to be a judicial proceeding. Where, on receipt of a complaint made to it or otherwise, the Council has reason to believe that a newspaper has offended against the standards of journalistic ethics or public taste or that an editor or a working journalist has committed any professional mis-conduct or a breach of the code of journalistic ethics, the Council may, after giving the newspaper, the editor or journalist concerned an opportunity of being heard, hold an inquiry in such manner as may be provided by regulations made under this Act and, if it is satisfied that it is necessary so to do, it may, for reasons to be recorded in writing, censure the newspaper, the editor or journalist, as the case may be.

If the council finds there is no sufficient ground for holding an inquiry the petition is dropped. The decision of the Council shall be final and shall not be questioned in any court of law.

## **General powers**

Every inquiry held by the Council shall be deemed to be a judicial proceeding. The general powers include:

- summoning and enforcing the attendance of persons and examining them on oath;
- requiring the discovery and production of documents;
- requisitioning any public record or copies thereof from any court or office;
- receiving evidence on affidavits;
- issuing commissions for the examination of witnesses or documents.
- any other matter which may be prescribed.

The Council may even make any observation over the conduct of government.

The council may function on the fund it generates through fees, and government support.

No suit or other legal proceeding shall lie against the council or any member thereof or any person acting under the direction of the council in respect of anything which is in good faith done intended to be done under this act.

No suit other legal proceeding shall lie against any newspaper in respect of the publication of any matter therein under the authority of the council.

### **Chairmen of the Press Council**

Justice J R Mudholkar, (November 16, 1966 to March 1, 1968.

Justice N Rajagopala Ayyangar (May 4, 1968 to January 1, 1976),

Justice A N Grover (April 3, 1979 to October 9, 1985),

Justice A N Sen (October 10, 1985 to January 18, 1989)

Justice R S Sarkaria (January 19, 1989 to July 24, 1995)

Justice P B Sawant (July 24, 1995 till date).

## Lesson 21

# Press Council & Media Management

*Dear Student,*

Press Council of India directs the functioning of print media in India. Through various guidelines and landmark judgements it sets the quality of output and administration.

*At the end of this lesson;*

You learn what Press Council had done  
You know how to make quality output, based on the guidelines

**Press** Council of India was successful in directing the press in India. Its vigilant watch over the functioning of media make sure that the press is free to function, at the same time deliver its duties responsibly and accurately.

### Certain Landmark Actions

Since its establishment in 1966, the Council has rendered several momentous adjudications and issued guidelines which may have a lasting impact on the press in the country. The following are some of the important cases in which adjudications have been pronounced.

In the complaint of some Chandigarh journalists against the Chief Minister and the Government of Haryana, the erstwhile Council had to warn the authorities about the use of Council's coercive powers if they failed to respond to the notices sent by the Council.

The Council initiated suo-motu action against seven papers and after due enquiry, while dropping the cases, it observed that restraint by the Press is necessary during the period when the country is passing through a tense phase resulting from conflict over such sensitive issues as communal riots.

The tremendous increase in the number of complaints from 80 in 1979 to 1075 in 1997 is ample proof of the faith expressed by media men and the public alike, in the working, importance and need for a body like the Council at the helm of the fourth estate.

Press Council's Code of Conduct of Journalists guide the journalistic profession to responsible reporting.

### **Harassment of Newsmen**

For bringing to the fore the unsavory conduct of the authorities by way of articles/news in discharge of their professional duties, the journalists have to often bear the brunt. Manhandling, implication in criminal cases, etc. are some of the methods adopted by the authorities to compel pressmen to toe their line. Similarly, threats to life, property and family of the pressmen are also tactics adopted by vindictive militant outfits and anti-social elements to thwart the journalists in their fearless reporting and when they highlight their misdemeanors. The escalating number of cases of harassment of journalists manifests the failure of endeavors to check such violations of human rights. The Council adjudicated a total of 18 such matters recently. Of these, the charges were found to be substantiated in two matters, while five stood dismissed on merits. In three others, the Council dropped inquiry when the respondents concerned made or assured adequate amends. Eight complaints were disposed of for non-prosecution or for the matter having become sub-judice or when no action by the Council was found to be warranted after hearing the parties. The chart that follows makes the position more clear.

### **Facilities to the Press**

The fourth estate i.e. the Press requires some facilities from the authorities for the efficient discharge of its functions and this is where the authorities come to play an important role. Though these facilities cannot be claimed as a right, yet, in granting or distributing the same the authorities as custodians of public funds, have to ensure equality of treatment and fairness amongst similarly situated claimants. The facilities cover a wide range of subjects such as release of advertisements, grant of accreditation, and concession in the purchase of machinery and of other paraphernalia. Misuse of power in granting these facilities or a malafide denial with a view to pressurize the journalists to compromise their independence, is to be viewed with concern.

Complaints to the Council regarding such motivated denial of facilities have been many. However, of the 17 adjudications that fall under this category only four were upheld, while three were rejected on merits. In ten matters the authorities concerned redressed the grievance of the complaining parties. Graphics below clarify the position further.

### **Adjudications Rendered by the Council in Complaints Filed Against the Press**

The prime function of the Press Council of India is to check any downward slide in the standards of the Press and to encourage the growth and maintenance of the ethical canons of journalism. Various malpractices have cropped up in recent times which have degraded the reputation of this noble profession. An analysis of the complaints received in the Council shows that the complaints filed against the press account of almost 60% of the total complaints.

During 2000-2001, the Council received 860 new complaints against the press. Besides, there were 361 matters pending from the previous year. Thus, the Council was to consider in all 1221 complaints against the press during the year under review. Of these, 95 matters were disposed of through adjudications, 712 matters were disposed of at the preliminary stage, either by settling these to the satisfaction of the parties or dismissing the complaints due to lack of sufficient grounds for

action under the Act or on account of non-prosecution, etc. Thus 414 matters were pending in this category at the close of the financial year under review. The detailed text of the adjudications can be seen in the Council's quarterly house journals published in English as well as Hindi.

### **Defamation**

The fundamental objective of journalism is to serve the people with news, views, comments and information on matters of public interest in a fair, accurate and unbiased manner.

However the press at times uses the medium to gratify private spite on personnel greed and avarice by defaming persons/institutions through the columns of the newspapers. This tendency is comparatively higher in the smaller or fly by night newspapers. Defamatory writings against individuals/institutions are published as a reprisal measure due to personal enmity; for blackmailing for money; or some other favours sought from the persons/institutions concerned.

The Council adjudicated 68 complaints this year pertaining to alleged defamatory publications. Of these the press was found guilty of violation of journalistic ethics in 19 cases, while charges were rejected in 16. In 23 matters, the Council was able to bring about reconciliation between parties while 10 complaints were disposed of for failure to pursue charges or on account of matters having become sub-judice or where no action by the Council was found to be warranted after hearing the parties. The following graphics explains the position.

### **Communal, Casteist And Anti-National Writings**

A special responsibility is cast on the press media, with its far-reaching impact on the public mind, especially in view of the turbulent situation prevalent in some parts of the country. Being a powerful medium it is vested with the caliber of influencing and to moulding public opinion and as such it is always expected to concentrate on curbing and controlling all divisive forces and promoting communal unity and national integration through its reporting of views, events and comments. By and large the press, even under trying circumstances, has been discharging its duties creditably. Unfortunately, the Council does receive some complaints with regard to communal writings.

The Council adjudicated two complaints under this category 2000-2001. Of these one was rejected on merits and in one matter directions were given to the respondent. Graphic presentation follows.

### **Press and Morality**

Globalization and liberalization does not give licence to the media to misuse its freedom and to lower the values of the Society. The media performs a distinct role and has nothing in common with other industries and business. So far as this role is concerned, one of the duties of the media is to preserve and promote our cultural heritage and social values. Certain sections of the press have been imitating western culture by publishing vulgar photographs and columns, which boast of no public interest at all. On the contrary such publications affect the adolescent mind in a negative manner. Whenever the Council comes across such instances, it takes suo-motu actions. Apart from this it also adjudicates upon complaints received on such matters.

In six matters, the question of obscenity was adjudicated upon by the Council, of which two were *suo-motu* actions. The charge of offence against public taste and morality against the newspapers concerned was upheld in all the six matters. The chart that follows makes the position more clear.

### **Practical Application of the Lesson**

1. Write an essay on the need for having a press council, and submit it to the teacher
2. Collect any news paper report regarding the press council.

### ***Case Study 1***

The Hindu, Jan 31, 2003

#### **Press Council takes paper to task**

NEW DELHI JAN. 30. Taking to task *The Telegraph* newspaper for showing the bare back of a woman, the Press Council of India today asked the media to “realise” its responsibilities in curbing commercial exploitation of women.

The Council, which initiated a *suo motu* inquiry, following the publication of the photo along with an article captioned ‘Desperately Seeking Susy’, noted that the impugned picture had no relevance whatsoever to the write-up and “its primary aim appeared to be attracting the attention of the readers”.

*The Telegraph*, in its written arguments, had said that the article and photograph were published on the basis of the discovery of “Super Symmetry”...most beautiful theory of particle physics to substantiate the caption of the article “Physicists have laid beauty bare” and, “if read together, the article would not be construed to be obscene.”

The Council felt that the “media has to realise its responsibilities in curbing commercial exploitation of women which is most evident in the advertisement sector”.

“The editorial staff did not pay adequate attention to the responsibility of the press to the society at large.”

While “admonishing” the paper for the lapse, the Council expressed confidence that it would exhibit more caution in future.

The Council also “warned” *Vijetha*, a Telugu newspaper, for “misusing its columns in clear violation of all tenets of journalism and ethical conduct for publishing false, fabricated, motivated and defamatory news items” against a Hyderabad-based firm, a competitor of the paper’s sister firm. —

PTI

## Case Study 2.

### Press Council slams Gujarati dailies for role in riots

R Prema in New Delhi | July 01, 2003 23:55 IST

The Press Council of India on Monday censured two leading Gujarati dailies, *Sandesh* and *Gujarat Samachar*, for publishing ‘scurrilous’ reports during last year’s communal carnage in Gujarat.

The full council met in New Delhi under the chairmanship of Justice K Jayachandra Reddy, a retired Supreme Court judge, and endorsed the findings and recommendations of an inquiry committee.

The inquiry committee had held its sittings in Ahmedabad on April 28 and 29 to examine eight complaints against *Sandesh* and *Gujarat Samachar*.

The committee also examined 16 other complaints against some English newspapers, including *The Hindu*, *The Times of India*, *Hindustan Times*, *The Telegraph* and *Deccan Chronicle*. These complaints were, however, closed with advice to the press to be more diligent in gathering facts and restrained in presenting them.

The committee initially thought of issuing a warning to *Sandesh* and *Gujarat Samachar*, but later decided that the two dailies deserved nothing short of a ‘censure’.

The inquiry committee expressed its ‘displeasure’ over the boycott of its sittings by *Gujarat Samachar*. The paper also did not respond to the council’s notices on five of the six complaints against it.

There were six complaints against *Sandesh* and it sought to take refuge behind the plea that it had carried the reports ‘in good faith’.

As recommended by the committee, the council censured both *Sandesh* and *Gujarat Samachar* “for the infraction of the norms of journalistic conduct in some of the reports”.

The council also chose the occasion to advise the media, including the electronic media, “to introspect on its role in the coverage of these riots, learn from its errors, and ensure that in future at least its reportage serves to douse the passions of divisive forces and encourages the people of this country to rise above the divisions of caste and creed”.

The inquiry committee report, which was endorsed by the full council, pulled up *Sandesh* for being ‘negligent’ in publishing on March 1, 2002, a report titled ‘Dead bodies of two young women found in very distorted condition’.

The report claimed that two girls abducted from the Sabarmati Express had been found dead with their breasts cut off.

*Sandesh*'s defence was that the report was "published in good faith and with an intention to caution and alert the public at large to take precautionary steps and also to protect members of the society after taking necessary note of the news". It also claimed that the same report was carried by several other newspapers.

The inquiry committee noted that "even though the reported incident had been publicly denied and this denial reported by another paper, *Sandesh* did nothing to inform its readers about the same".

*Sandesh* was also censured for another report of March 6, 2002, which said that a group of pilgrims returning from the Hajj were carrying RDX and other explosives for mounting attacks on Hindus. The report had added that terrorists, on orders of Pakistan's Inter-Services Intelligence, were just waiting for the Hajj pilgrims to return to begin their attacks.

The committee held that the report "appeared aimed at creating a sensation in the surcharged atmosphere" as "facts therein did not conform to the information given out by the concerned authorities".

Stopping short of a blanket condemnation of *Sandesh* and *Gujarat Samachar* as suggested by senior journalist Batuk Vohra in an article, the committee said it "did not appreciate the headlines like 'Godhra killings a challenge to the rise of Hindutva' in February 28, 2002, issue of *Gujarat Samachar* or even some of the later reports/articles that exhorted Hindus to rise as a class against the Muslims".

The committee noted that "a greater onus lies in times of crisis on regional media rather than the national media in restoring the faith of the public in the law and order situation and encouraging communal harmony and amity".

Among the complaints received by the Press Council against the two Gujarati dailies was one by the Citizens of Ahmedabad against *Sandesh* for encouraging violence. Other complaints accused both dailies of publishing "misleading and inflammatory reports in March-April 2002 and playing a criminal role in spreading riots in Gujarat after the Godhra violence".

A memorandum from the Citizens of Ahmedabad, which was accepted by the Press Council as a complaint, had cited not one or two, but as many as 17 'bogus' reports and headlines in *Sandesh* written in 'provocative and instigating language'.

The editor of *Sandesh* claimed that these reports were "published by all other newspapers in the state and repeatedly aired on TV channels".

In its conclusion, the council noted that the Gujarat riots gave "a terrible shock to India's fair secular name. It was a national shame. There is no need to reiterate the norms that media has to adhere to in such situation."

## **Conclusion**

The date the Press Council started functioning 16<sup>th</sup> of November (1966) is observed as the National Press Day.

What sets the Press Council of India apart from other parallel institutions worldwide is that while it has been set up under an Act of Parliament, and notwithstanding the fact that a substantial part of its funds comes by way of grants-in-aid from the government, it has full functional autonomy and independence from governmental control in the discharge of its statutory responsibilities.

Another extremely healthy feature of the Press Council of India is the fact that the Press Council of India, unlike other Press Councils the world, adjudicates complaints not only against the Press but also complaints by the Press against governmental and other authorities. In the complaints being lodged against the press for alleged violation of norms of journalistic conduct, about 60% carry charges of defamation. About 25% relate to matters of principle like right to reply, plagiarism, fratricidal tiffs, unauthorized lifting of news from other papers, etc. In the remaining 15% cases, the complainants may be aggrieved over reports that hurt religious, communal and casteist sentiments.

In cases of complaints against authorities, about 65% converge on charges of attempts to intimidate, harass or physically assault the press men, while the remaining allege withdrawal by the State authorities of facilities like accreditation to a journalist which are essential in the discharge of professional duties or malafide denial of State advertisements often on account of unpalatable writings.

During April 1, 2001-March 31, 2002 the Council received 390 complaints, charging the governmental or other authorities with attempts at abridging the free functioning of the print media. Besides 162 matters were pending consideration from the previous year. Of the 552 matters requiring the Council's attention 35 were disposed of by way of adjudication, while 333 were dismissed at the preliminary stage for lack of grounds for inquiry, the said matters being outside the Councils' charter

or having gone to a court of law. 184 matters were under process at the end of the period under review.

Adjudications on complaints under this chapter have been analysed graphically while detailed adjudications have been carried in the Council's quarterly journals, viz. 'The Press Council of India Review' in English and 'Press Parishad Samiksha' in Hindi.



*Newspapers need to be guarded against the pressure groups and unnecessary political intervention*

## Lesson 22

# Introduction: Indian Penal Code

*Dear Student,*

In this chapter you are introduced to Indian Penal Code. It describes the crimes and offences and the punishment that are given to them.

*At the end of this lesson;*

You should be able to understand what is Indian Penal Code  
You should know its importance

A Code is a synthesis of a heterogeneous mass into a comprehensive system. Indian Penal Code is a comprehensive piece of legislation that provides for a large variety of offenses. Separate enactments cover the offences that are not covered in the Code.

From the very olden times, the rule of Dharma guided the justice process. There were different justice systems according to the caste system. Women and Brahmins were exempted from capital punishment. With the advent of Muslim rule judicial process were according to the Muslim laws.

During the colonial period the judicial regulations of Lord Cornwallis (1793) formed the foundations of Indian judicial system. Regulating Act of 1773 formed the supreme Court of India. Indian Councils Act 1861 prepared separate short codes for judicial administration.

During British rule, the English Criminal law with some modifications was in effect in the Presidency towns of Bombay, Calcutta and Madras. In all other places Muslim Criminal Law was in effect.

Indian Penal Code was drafted by the First law Commission headed by Lord Macaulay. It was approved on Oct. 6, 1860, and came into effect on Jan 1, 1862. After the independence it was revised.

## Lesson 23

## Defamation

*Dear Student,*

I know the very term is a caution. I am sure you have heard about it. You better know it better, otherwise you will be defamed.

*At the end of this lesson;*

You should be able to define what is defamation

You must know its importance

You know the impact of defamation

You learn the punishment for defamation

**Defamation** is an infringement on the Right to Reputation of an individual or group of people.

Every person in modern society has an inviolate right to the preservation of his reputation in the society. Therefore any person who intentionally defames him and communicate such matter to a third person infringes his right for social reputation. An injury to reputation is more damaging and disturbing than loss of wealth or property.

Reputation is a part of the personal property of a person. In the case of Kanwar vs State the court observed that, “Nobody can use his freedom of expression as to injure another’s reputation or to indulge in what may be called character assassination.”

Defamation is an intentional false communication, either published or publicly spoken, by words, signs or visible representations, that injures another's reputation or good name. Section 499 of the Indian Penal Code defines Defamation as; "Whoever by words, either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said except in specified cases, to defame the person."

Defamation is distinct from insult, and abuse. Because, insult or abuse is not communicated to a third person with the intention of bringing the other's reputation in public. Some wrongful actions like a banker "dishonouring its customer's cheque in spite of being in funds is not counted as defamation.

### **Types of Defamation**

Defamation is classified into libel and slander. When some defamatory material is written, printed or published, with words, photos, etc, it is libel. When it is communicated through words of mouth, gestures, facial expressions, body movements it is slander.

### **What amounts to Defamation**

Any direct or indirect comment,

- Imputing anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.
- Stating anything that lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loath some state, or in a state generally considered as disgraceful.

- Printing or engraving any matter, knowing or having good reason to believe that such matter is defamatory of any person,
- Selling or offering for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter.

The following are some more examples of defamatory actions:

- publishing that a barrister is a quack lawyer and an imposter
- publishing that a particular woman has been raped or ravished
- publishing that a man is a villain or insane or unfit to be trusted with money
- publishing an obituary notice of a living person
- publishing an unskillful reproduction of an artist's work
- burning a man's effigy
- accuse a doctor/architect/official of incompetence

Some examples for slander are:

- Imputation of crime
- Imputing unchastity or adultery to a woman or girl;
- Imputation of a contagious or infectious disease like leprosy, venereal disease etc. so as to ostracise one from the society
- Reading out a published defamatory statement to a person.

### **What is not Defamation.**

Some actions that might not be considered as defamation are given below. Media professionals may not be punished for defamation if they can prove that their action aimed at;

- Communicating something true for public good. Defendants have to prove that the statements were *true and communicated in good faith for the common good*.

- Expressing in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions,
- Expressing in good faith any opinion whatever respecting the conduct of any person touching any public question,
- Publishing the true report of the proceedings of a Court of Justice, or of the result of any such proceedings.
- Fair comment on the judicial procedure or merits of any cases
- Academic reviews that deals with the material and not attacking the author personally
- Legal and authorized actions
- Accusations made in good faith before the courts or to authorized persons.

A recent judgment of the Indian Supreme Court concluded that a public official cannot recover damages for libel for a defamatory publication about his or her official conduct unless he or she can prove that the publication was both false and made with reckless disregard for the truth.

### ***Privilege***

Statements of some people made in some occasions, however defamatory they might seem to be, may not be considered as a violation of the defamation law.

### ***Absolute Privilege:***

There are certain occasions on which the law regards freedom of speech as essential, and provides a defence of absolute privilege which can never be defeated, no matter how false or malicious the statements may be. The following communications are ‘absolutely privileged’ and protected from defamation proceedings:

- Statements made in either House of Parliament.
- Statements made in the course of judicial proceedings or quasi-judicial proceedings.
- Communications between lawyers and their clients.
- Statements made by officers of state to one another in the course of their official duty.

**Qualified Privilege:** Qualified privilege operates only to protect statements, which are made without malice (ie, spitefully, or with ill-will or recklessness as to whether it was true or false).

- Statements made in pursuance of a legal, moral or social duty, but only if the party making the statement had an interest in communicating it and the recipient had an interest in receiving it.
- Statements made in protection of an interest, eg public interests or the defendant's own interests in property, business or reputation.
- Fair and accurate reports of parliamentary proceedings.

## Lesson 24

# Legal Procedure in a Defamation Case

*Dear Student,*

As you know what is defamation let us get deeper into it by studying the legal procedure in a defamation case.

*At the end of this lesson;*

You should be able to differentiate civil/criminal defamation  
You must know its importance  
You know the limitations of defence

The law of defamation prevents a person from indulging in unnecessary or unwarranted or false criticism rising possibly out of malice or personal vendetta or merely as past time and thereby laying down standards of speech and writing; and at the same time, to encourage and maintain honest, legitimate and true criticism for the benefit of society.

The complaint has to be filed in a court within whose jurisdiction the offence was committed. Thus, the choice of the court has to be based on where the offence was committed, where the defamatory material is available to the public, and if in the context of the internet, the place from where the defamatory matter can be accessed.

Defamation is a criminal offence as well as a civil wrong. Therefore, civil or criminal procedure is followed.

In a civil defamation case, the plaintiff has to prove that the defamatory statement, which the defendant had made, has damaged his reputation in the society, the rationale behind the claim for compensation.

In a criminal defamation, the court has to belief beyond doubt through evidence and police investigation if needed, and then the offender is punished according to Indian Penal Code. In criminal cases damages need not be proved.

When a defamatory statement is printed or published, the author, Editor, Printer, Proprietor, Publisher are liable.

### **What has to be Proven**

Malicious intention of the one who makes the defamatory statement.

The False nature of the imputation

Evidence for defamation, in libel – the printed/published material, in the case of slander – other evidence.

Direct or indirect imputation, that identify or mention the plaintiff.

It is immaterial whether the Defendant meant the Plaintiff or was/was not aware of his existence when publishing the defamatory statement.

The plaintiff must prove that:

- Ø That the statement was defamatory, that kills one's reputation
- Ø That it referred to him, and people could identify him
- Ø That it was published, ie communicated, to a third party.

### **Punishment for defamation**

IPC 500 – 502 states that whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

### **Conclusion**

The Associated Press says, “The chief causes of libel suits are carelessness, and misunderstanding of the law of libel”

### **Libel and media**

In some defamation cases media organizations were asked to pay high compensation

- \$223 million award against the Wall Street Journal
- \$58 million against The Dallas Morning News
- \$34 million against The Philadelphia Inquirer
- \$29 million against Harte-Hanks
- \$18 million against Capital Cities
- \$16 million against a **California weekly**
- \$13.5 million against The Cleveland Plain Dealer
- \$10 million against ABC News.

The compensation amount in some cases was later reduced either by a judge or through negotiation.

### **Practical Application of the Lesson**

1. Submit an essay on : Why I should be careful about defaming others as a media professional
2. Collect some reports on defamation from newspapers

## Lesson 25

## Right to Privacy

*Dear Student,*

As you know every person has a right to privacy. This lesson tells you how far you may 'intrude' into other's privacy.

*At the end of this lesson;*

You should be able to tell what is the right to privacy  
You must know what is trespass  
You know legal issues related to trespass

**People** have a right to lead a life without disturbed by others and noticed by others.

### **Right to Privacy**

Privacy is an intrinsic right of people. Everyone has the right to live their private life, without anyone intervening it. But an all embracing law to guarantee absolute right to privacy cannot be existing, and no where exists; if, press might not be able to function.

Even public figures and politicians have the right to live their private life without noticed by anyone.

Awareness about privacy is on the rise in the international legal environment. United States privacy is a fundamental right. Invasion of privacy is a tort. In United Kingdom nobody has the right

and right to claim damages. In Dianagate case, the papparacy were acquitted in the case, as privacy does not exist legally there.

Article 12 of the Universal Declaration of Human Rights upholds this right. Indian constitution Article 21 says, “No person shall be deprived of his life or personal liberty, except according to procedure established by law.” But there is no general law governing privacy. A bill was passed in Rajyasabha in 1978, giving some provisions to this right, but it lapsed with the dissolution of Loksabha that followed. But Indian Penal Code and other Acts clearly provides punishment for defamatory, indecent, and provocatory reporting.



Mathew Commission has suggested the reintroduction of the bill in the Parliament.

Press Council of India advice journalists not to intrude or invade the privacy of an individual unless outweighed by genuine overriding public interest, not being a prurient or morbid curiosity. So, however, that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by Press and media among others.

The Council states that while reporting crime involving rape, abduction or kidnap of women/ females or sexual assault on children, or raising doubts and questions touching the chastity, personal character and privacy of women, the names, photographs of the victims or other particulars leading to their identity shall not be published. Minor children and infants who are the offspring of sexual abuse or ‘forcible marriage’ or illicit sexual union shall not be identified or photographed.

Further, the Press shall not tape-record anyone’s conversation without that person’s knowledge or consent, except where the recording is necessary to protect the journalist in a legal action, or for other compelling good reason.

### **Right to privacy of Public figures**

The Press Council of India formulated guidelines to achieve a balance between the right to privacy of the public persons and the right of the press to have access to information of public interest and importance. The issue under heated debate at both national and international level and the international conference of the World Association of Press Councils (WAPC) held in April 1998 in Delhi, stressed that there is a need for reconciliation between three competing constitutional values at play on this count, viz: (a) an individual's right to privacy, (b) freedom of the press, and (c) the people's right to know about public figures in public interest.

The Council has prepared a report on the issue and framed the guidelines as follows:-

“Right to privacy is an inviolable human right. However, the degree of privacy differs from person to person and from situation to situation. The public person who functions under public gaze as an emissary/representative of the public cannot expect to be afforded the same degree of privacy as a private person. His acts and conduct are of public interest (‘public interest’ being distinct and separate from ‘of interest to the public’) even if conducted in private may be brought to public knowledge through the medium of the press. The press has, however, a corresponding duty to ensure that the information about such acts and conduct of public interest of the public person is obtained through fair means, is properly verified and then reported accurately. For obtaining the information in respect of acts done or conducted away from public gaze, the press is not expected to use surveill devices. For obtaining information about private talks and discussions, while the press is expected not to badger the public persons, the public persons are also expected to bring more openness in their functioning and co-operate with the press in its duty of informing the public about the acts of their representatives”.

## ***Trespass***



There are situations when the media professionals are in a dilemma whether to violate a law for the common good. For example, trespassing into a chemical plant to study the environmental issues connected with it, or secretly video graphing what happens in a public office using a hidden camera.

The Atomic Energy Act 1962 prohibits (Section 19) unauthorized entry of any person into any prohibited areas, and make any report, photograph, sketch, etc. Those who violate this shall be punishable (Section 24) with imprisonment upto five years, with or without fine.

### **Practical Application of the Lesson**

1. Make a list of places that you will need a prior permission to enter
2. Make a list of possible photographs you may make of others without their permission

## Lesson 26

# Introduction to Copyright

*Dear Student,*

Well students, our writing should be something original. We may be inspired by other's style and language, but let's not stop there. We have to develop our own style of writing and communicating.

*At the end of this lesson;*

You should be able to tell what is copyright  
You know the status of copyright in India

**India** is one of the largest producers and exporters of copyright materials. In order to protect the authors and performers government enacted Copyright Act - 1957 (amended in 1999), the Copyright Rules - 1958 (amended in 1995), and the International Copyright Order, 1999.

Copyright is a legal right to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. It gives them a blanket right over the production, reproduction, adaptation and translation of the work. It also gives broadcasting organizations 'broadcast reproduction right' and bestows on performers 'performer's right'.

Copyright piracy is a theft of the intellectual properties of a person, and therefore is a crime. According to the National Crime Records Bureau there is a rise of awareness and action against infringement of copyrights in India.

### **Situation in India**

|                                  | <b><u>1997</u></b> | <b><u>1998</u></b> |
|----------------------------------|--------------------|--------------------|
| <b>Cases Registered</b>          | 479                | 802                |
| <b>Number of people arrested</b> | 794                | 980                |
| <b>Value of Seizure</b>          | 2.88 crore         | 7.48 crore         |

The overall piracy rate in India is 20 percent, which is lower than that exists in Russia and China. Analysis of the data from IFPI and Nasscom, indicate that in 1996 the software piracy rate in China and Russia is 96% and 91% respectively as compared to India's 60%.

### **Extent (%) of Copyright violation in different countries**

|                | <b>Audio Products (1995)</b> | <b>Softwares (1996)</b> |
|----------------|------------------------------|-------------------------|
| United States  | 3.0                          | 27.0                    |
| United Kingdom | 1.0                          | 34.0                    |
| <b>India</b>   | <b>30.0</b>                  | <b>60.0</b>             |
| China          | 54.0                         | 96.0                    |
| Russia         | 73.0                         | 91.0                    |

### **Securing the Copyrights**

The copyright office, established in January 1958, registers different classes of works.

The Copyright Board, a quasi-judicial body, was constituted in September 1958 to settle copyright disputes. The jurisdiction of the Copyright Board extends to the whole of India.

Copyright Enforcement Advisory Council (CEAC) set up on November 6, 1991 to further educate people about copyrights through seminars.

Nodal Officers are designated to enforce copyright laws.

Adhering to the Copyright (Amendment) Act, 1994 separate copyright societies were set up for Film, Music, and Sound Recordings.

Intellectual Property Rights are taught in the Universities.

Financial aid is given to copyright societies.

## Lesson 27

## Copyright Act - 1957

*Dear Student,*

Copyright Act tells you how you shall go about using intellectual property rights.

*At the end of this lesson;*

You should be able to tell importance of this Act  
You know important sections of the Act

**Copyright** Act states that a work shall be published or performed in public, only with the license of the owner of the copyright. In the case of a work of joint authorship, the conditions conferring copyright specified in this sub-section shall be satisfied by all the authors of the work. Copyright is defined as the exclusive right:

(a) in the case of a literary, dramatic or musical work,

- to reproduce the work in any medium
- to issue copies
- to perform in public
- to translate;
- to adapt;

(b) in the case of a computer programme,-

- to do any of the acts specified in clause (a)
- to sell or rent

(c) in the case of an artistic work,-

- to do any of the acts specified in clause (a)
- to reproduce the work in different dimensions

(d) in the case of a cinematograph film,-

- to make photographs from the original
- to sell or rent
- to communicate the film to the public;

(e) in the case of a sound recording-

- to make any other sound recording embodying it;
- to sell or rent
- to communicate the sound recording to the public.

### **Ownership of the Copyright (Ch IV. 17-21)**

Generally the author of a work shall be the first owner of the copyright.

The author of a work has the right to claim authorship of the work and to restrain or claim damages in respect of any distortion, mutilation, modification or other acts in relation to the said work which is done before the expiration of the term of copyright if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation. Moral rights are available to the authors even after the economic rights are assigned.

The author of a speech is the one generally who delivers it except when the speech is given on behalf of someone. For example B writes a speech for A. Since A cannot give it personally C delivers it. The author of the speech is Mr. A.

The owner may assign anyone or any organization the copyright partially or wholly, the full or part term, with the territorial extent. The assignment of copyright in any work shall also specify the amount of royalty payable, if any, to the author or his legal heirs during the currency of the assignment and the assignment shall be subject to revision, extension or termination on terms mutually agreed upon by the parties. If no specifics are mentioned in the terms, the copyright is understood to be given for five years and within India.

The Copyright Board may cancel an agreement, if there is a complaint from the original author, and it is proven that the person who has the copyright has not exercised the rights and broke the terms.

The author of a work may relinquish all or any of the rights comprised in the copyright in the work by giving notice in the prescribed form to the Registrar of Copyrights.

The owner of the copyright shall have a resale share right, a percentage fixed either by the parties involved or by the Copyright Board.

### **Criteria for Getting a Copyright in India**

In order to qualify for copyright the works, apart from being original, should also satisfy the following conditions, (except in the case of foreign works.):

- Ø The work is first published in India.
- Ø Where the work is first published outside India the author, at the date of publication must be a citizen of India. If the publication was made after the author's death the author must have been at the time of his death a citizen of India.
- Ø In the case of unpublished work the author is on the date of making of the work a citizen of India or domiciled in India.
- Ø In the case of an architectural work of art, the work is located in India.

### ***Copyright and Journalistic Writings***

In the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work.

There is no copyright over news. However, there is copyright over the way in which a news item is reported.

#### **Term of copyright (Ch V. 22-29)**

Copyright is protected for a limited period of time. The general rule is that copyright lasts for 60 years. In the case of original literary, dramatic, musical and artistic works the 60-year period is counted from the year following the death of the author. In the case of cinematograph films, sound recordings, photographs, posthumous publications, anonymous and pseudonymous publications, works of government and works of international organisations, the 60-year period is counted from the date of publication.



#### **Copyright for Translation (Ch VI. 32)**

Any person may apply to the Copyright Board for a license to produce and publish a translation of a literary or dramatic work in any language after a period of seven years from the first publication of the work. Translation into Indian languages is possible after a period of three years from the first

publication of such work, if such translation is required for the purposes of teaching, scholarship or research. If the work is not in general use in any developed country, such application may be made after a period of one year from such publication.

### **Copyright Societies (Ch. VII. 33-36)**

Associations that existed before the Copyright (Amendment) Act, 1994, and new associations that carry on the business of issuing or granting licenses in respect of any work in which copyright subsists or in respect of any other rights conferred by this Act, has to register themselves as copyright societies to the Registrar of Copyrights. The status may be cancelled if it is proven that the functioning of the society is detrimental to the spirit of the act. The societies are managed by the owners of copyright.

### **Rights of Broadcasters and Performers (Ch VIII. 37-38)**

Every broadcasting organization enjoys “broadcast reproduction right” according to this Act. The right subsists until 50 years from the beginning of the calendar year next following the year in which the broadcast is made.

During this period, no person or any other organization shall re-broadcast the broadcasts, cause the broadcast to be heard or seen by the public on payment of any charges, make any sound recording or visual recording of the broadcast; or sell or hire such sound or visual recordings.

Performers enjoy a 50 years right over what they perform from the beginning of the calendar year next following the year in which the performance is made. Anybody who sound records it, or video records it, or performs it without the consent of the performer, violates this right.

But any of these activities if aimed at personal copy, teaching, research, review, do not go against this act.

### **Infringement of Copyrights (Ch XI. 51 - 53)**

Any person who without a license obtained from either the owner of the work or the Registrar of Copyrights, who permits any place for communication of a copyrighted material for profit, knowing that it is an infringement, hires, rents, sells or buys or except for personal use is a violation of copyright.

The following are some of the commonly known acts involving infringement of copyright:

- Ø Making infringing copies for sale or hire or selling or letting them for hire;
- Ø Permitting any place for the performance of works in public where such performance constitutes infringement of copyright;
- Ø Distributing infringing copies for the purpose of trade or to such an extent so as to affect prejudicially the interest of the owner of copyright ;
- Ø Public exhibition of infringing copies by way of trade; and
- Ø Importation of infringing copies into India.

### **Exceptions**

Subject to certain conditions, a fair deal for research, study, criticism, review and news reporting, as well as use of works in library and schools and in the legislatures, is permitted without specific permission of the copyright owners. In order to protect the interests of users, some exemptions have been prescribed in respect of specific uses of works enjoying copyright. Some of the exemptions are the uses of the work

- Ø for the purpose of instruction or private study,
- Ø for criticism or review, research,
- Ø for reporting current events,
- Ø in connection with judicial proceeding,
- Ø performance by an amateur club or society if the performance is given to a non-paying audience.

A fair dealing with a literary, dramatic, musical or artistic work for the purpose of reporting current events in a newspaper, magazine or similar periodical, or by broadcast or in a cinematograph film or by means of photographs. But, the publication of a compilation of addresses or speeches delivered in public is not a fair dealing of such work within the meaning of this clause.

The publication in a collection, mainly composed of non-copyright matter, bona fide intended for the use of educational institutions, and so described in the title and in any advertisement issued by or on behalf of the publisher, of short passages from published literary or dramatic works, not themselves published for the use of educational institutions, in which copyright subsists: PROVIDED that not more than two such passages from works by the same author are published by the same publisher during any period of five years.

Libraries can make not more than three copies of a book (including a pamphlet, sheet of music, map, chart or plan) by or under the direction of the person in charge of a public library for the use of the library if such book is not available for sale in India.

Translation of publication of Matters published in any Official Gazette, Acts of the Legislature, reports of any committee, commission, council, board or other like body appointed by the government if such report has been laid on the Table of the Legislature, unless the reproduction or publication of such report is prohibited by the government, court Judgments unless prohibited by court, is permitted

### **Civil remedies for infringement of copyright (Ch XII, XIII. 55- 70)**

Any person who knowingly infringes or abets the infringement of the copyright in any work commits criminal offence under Section 63 of the Copyright Act.

When copyright in any work has been infringed, the owner of the copyright shall, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right.

Every suit or other civil proceeding arising in respect of the infringement of copyright in any work or the infringement of any other right shall be instituted in the district court having jurisdiction. No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under the Copyright Act.

The minimum punishment for infringement of copyright is imprisonment for six months with the minimum fine of Rs. 50,000/-. In the case of a second and subsequent conviction the minimum punishment is imprisonment for one year and fine of Rs. one lakh.

Any person who knowingly makes, or has in his possession, any plate for the purpose of making infringing copies of any work in which copyright subsists shall be punishable with imprisonment which may extend to two years and shall also be liable to fine.

The Registrar of Copyrights may stop importation of copies of materials made abroad but which have copyright in India. The office may make a search in any ship, place in this regard. If copies confiscated, shall be delivered to the owner of the copyright.

Any police officer, not below the rank of a sub inspector, may, if he is satisfied that an offence in respect of the infringement of copyright in any work has been, is being, or is likely to be committed, seize without warrant, all copies of the work and all plates used for the purpose of making infringing copies of the work, wherever found, and all copies and plates so seized shall, as soon as practicable be produced before a magistrate.

The court shall order return copies of the work, or all plates be delivered up to the owner of the copyright.

## Lesson 28

# International Copyright Order - 1999

*Dear Student,*

International Copyright Order protects the right across nations. You have to take care about the intellectual rights of the writers from abroad too.

*At the end of this lesson;*

You should be able to tell importance of this Act  
You know important sections of the Act

**India** is a member of the World Intellectual Property Organization (WIPO), a specialized agency of the United Nations which deals with copyright and other intellectual property rights, and plays an important role in all its deliberations. During 1999, delegations from India participated in the four WIPO meetings at Geneva and many other conventions, which helped India to argue for the protection of its national interests in copyright and related rights. India in November and December 1991, organized two regional countries seminar to have common understanding on copyright.

Copyright and neighboring rights now form part of the TRIPS (Trade Related Aspects of Intellectual Property Rights) Agreement, 1994 which came into force on 1 January, 1995. The membership of the following Conventions and Agreements ensures that Indian copyright holders get rights in those other countries who are members of these treaties.

India, further is a member of:

- Berne Convention for the protection of Literary and Artistic Works since 1 April, 1928 (The convention concluded in 1886 was revised in 1896, 1908, 1928, 1948, 1967, 1971 and was amended in 1979).
- Universal Copyright Convention (UCC), under the auspices of UNESCO, since 20 October, 1957 (The UCC was adopted at Geneva in 1952, came into force from 16 September, 1955 and was revised at Paris in July 1971).
- Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of their Phonograms, since 12 February, 1975 (The convention was adopted at Geneva in 29<sup>th</sup> October 1971 and came into force from 18 April, 1973).
- Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties and Additional Protocol, since 31 October, 1983, with some reservations.

India extended the provisions of the copyrights of Indian works to all writers performers and the like from the member countries under very limited conditions. The works are considered as if it was first published in India.

The term of copyright in a work shall not exceed that which is enjoyed by it in the member countries of above-mentioned conventions. If published simultaneously in many member countries, the country whose laws grant the shortest term of copyright to such a work is counted.

(‘Phonogram’ means any exclusively aural fixation of sounds of a performance or other sounds. ‘Record’ means any disc, tape, perforated roll or other device in which sounds are embodied so as to be capable of being reproduced there from, other than a sound-track associated with a cinematograph film.)

## Lesson 29

## Obscenity & Bad Taste

*Dear Student,*

International Copyright Order protects the right across nations. You have to take care about the intellectual rights of the writers from abroad too.

*At the end of this lesson;*

You should be able to tell importance of this Act  
You know important sections of the Act

**Obscenity** in English law it is an indictable misdemeanour to show an obscene exhibition or to publish any obscene matter, whether it be in writing or by pictures, effigy or otherwise.

The precise meaning of “obscene” is, however, decidedly ambiguous. It has been defined as “something offensive to modesty or decency, or expressing or suggesting unchaste or lustful ideas or being impure, indecent or lewd.”

The term ‘obscene’ has eluded definition. There are no rigid parameters to judge the concept of ‘obscene and indecent’. This is because the definition changes with time and circumstances.

What was considered obscene in the last century or even 10 years back is not necessarily so today. Thus, Indian courts have taken a slightly flexible stand with respect to the definition of ‘obscene’.

### **Legal definition**

The Indian Penal Code vide section 292 defines the term obscene and provides for punishment for distributing any such object. Section 292 (1) defines obscene as “a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely having regard to all relevant circumstances to read, see or hear the matter contained or embodied in it.” Further subsection (2) provides for the penal consequence in the following manner.”

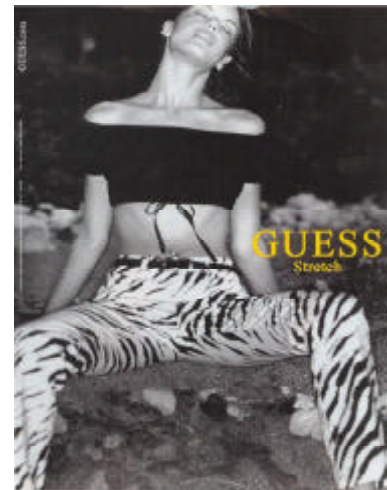
### **Punishment**

IPC Sections 292 - 294 of the Indian Penal Code make obscenity a criminal offence. Though the sections are not directly related to offences against women, they can be used in cases of indecent representation of women.

The offence shall be punished on first conviction with imprisonment of either description for a term which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees.”

Earlier, the possession under the section related to conscious possession. Thus, a person who did not know he is in possession of the obscene material could not be punished.

However, now the Supreme Court has changed the stand of law on the point. The Court said that knowledge of obscenity need not be an ingredient of the offence.



It is not required that prosecution must prove guilty intention to possess or possess for sale by positive evidence.

Thus, a court will presume that the owner of the shop is guilty if the book is sold on his behalf and later found to be obscene unless he can prove that the sale was without his knowledge or consent.

### **Obscenity and Bad Taste**

The meaning of bad taste varies according to the context. For a journalist it implies that “which on grounds of decency or propriety he should not publish”. Where a matter has “a tendency to stimulate sex feelings” its publication in a journal meant for the lay public, young or old, undesirable. Exploitation of sex falls short good taste. Public taste is to be judged in relation to the environment, milieu as well notions of taste prevailing in contemporary society.

The basic test of obscenity is whether the matter is so gross or vulgar that it is likely to deprave or corrupt. Another test is whether depiction of the scene and language used can be regarded s filthy, repulsive, dirty or lewd.

Whether a story is obscene or not, will depend on such factors as literary or cultural nature of the magazine, and the social theme of the story. The relevancy of a picture to the subject matter of a magazine or a paper has a bearing on the question whether the matter published falls below the standards of public taste. One of the relevant factors for judging whether the picture falls below the standard of public taste will be the purpose or nature of the magazine - whether it relates to art, painting, medicine, research or reform of sex.

The Press Council expressed concern over the increasing instances of obscene advertisements in the print media. It was opposed to censorship but favoured preventive steps to check any obscene material at pre-publication stage. Since most of such advertisements are routed through advertising agencies, the Council felt that this task should not be difficult if these agencies were to exercise more caution and restrain in preparing and releasing the advertisements that may be considered objectionable

to family viewing by an average citizen. It felt that the Association of Advertising Agencies of India as an Umbrella organisation of all these advertising agencies could play a very meaningful and positive role in the matter and sought its cooperation to contain advertisements that are likely to damage the socio-cultural ethos of the country in the longer run. The Council appealed to the newspapers also to carefully scrutinize the advertisements received by them either directly from the advertisers or through the advertising agencies and exercise a self-restraint by rejecting such advertisements as may be considered obscene and objectionable. It has also reiterated the following guidelines framed by it to counter against obscene publication.

“Newspapers shall not display advertisements which are vulgar or which through depiction of a woman in nude or lewd posture, provoke lecherous attention of males as if she herself was commercial commodity for sale”.

Whether a picture is obscene or not, is to be judged in relation to three tests; namely

- (i) Is it vulgar and indecent?
- (ii) Is it a piece of mere pornography?
- (iii) Is its publication meant merely to make money by titillating the sex feeling of adolescents and among whom it is intended to circulate? In other words, does it constitute an unwholesome exploitation for commercial gain.

Other relevant considerations are whether the picture is relevant to the subject matter of the magazine. That is to say, whether its publication serves any preponderating social or public purpose, in relation to art, painting, medicine, research or reform of sex.

Press council advises media professionals not to sensationalize stories of atrocities on women in their reports. Efforts of the media should be directed towards highlighting the positive achievements of women; and obscenity and vulgarity in reports have to be avoided.

## Lesson 30

# Indecent Representation of Women Act - 1986

*Dear Student,*

Every society has some values kept so sacred to the social mind. In India women are considered with a 'mother image'. But in recent times there is trend to present women as 'object of pleasure' 'salable commodity' etc. This act condemns this and punishes those who do it.

*At the end of this lesson;*

You should be able to tell importance of this Act  
You know important sections of the Act

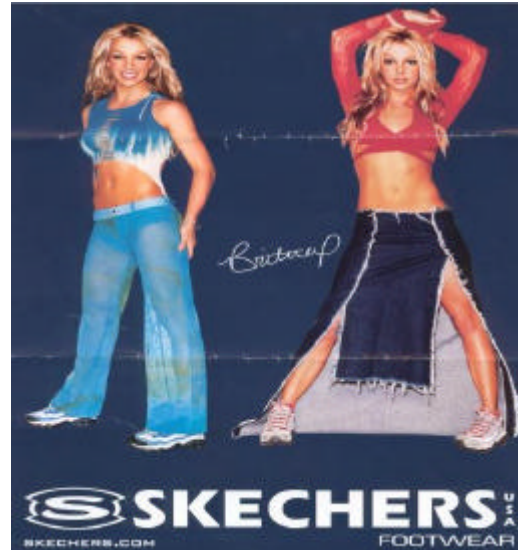
**Indecent** Representation Of Women (Prohibition) Act, 1986 was enacted on 23<sup>rd</sup> December 1986. It covers the whole of India except the State of Jammu and Kashmir. It aims at prohibiting indecent representation of women in advertisements or in publications, writings, paintings, figures or in any other manner.

The Act defines “Indecent representation of women” as the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to, or denigrating, women, or is likely to deprave, corrupt or injure the public morality or morals.

### **Brief study of the Act**

The Act states that no person shall publish, or cause to be published, or arrange or take part in the publication or exhibition of, any advertisement, which contains indecent representation of women in any form.

No person shall produce or cause to be produced, sell, let to hire, distribute, circulate or send by post any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure which contains indecent representation of women in any form. Except when the goal of such action is for the public good, in the interest of science, literature, art, or learning or other objects of general concern; or used for religious purposes.



Any authorized government official can search any place in relation to violation of this act, if needed with force, seize materials or documents without warrant. However search in a private dwelling house needs a warrant. No suit, prosecution or other legal proceeding shall lie against the Central Government or any State Government or any officer of the Central Government or any State Government for anything which is in good faith done or intended to be done under this Act. The official has to report it to the Report nearest Magistrate and take his orders as to the custody of the seized materials.

Anyone who violates this act, may be imprisoned upto two years, fined upto two thousand rupees. In the event of a second or subsequent conviction, imprisonment between six months to five years and a fine between ten thousand rupees to one lakh rupees. The offence is bailable.

## Lesson 31

## Prasar Bharati Act - 1990

*Dear Student,*

Media that enjoys complete freedom is dream of most of the people in a democracy. Prasar Bharati Act directs the way how to lead the media into this freedom.

*At the end of this lesson;*

You should be able to tell importance of this Act  
You know important sections of the Act

**Media** have to be free to be credible, and competent. Too much political pressure and intervention usually makes the media to be a puppet in the hands of politicians and pressure groups. Media in a democracy at the same time should not be that free to do anything that may go against the concept of a welfare state.

Therefore, the question autonomy with accountability, or accountability without autonomy, or autonomy without accountability is of prime importance. India needs a free and objective media. Greater accountability increases political involvement, and greater autonomy may decrease credibility.

With the technological development government's ability to enforce regulations, is weakening. Technology challenges, defeats broadcasting controls and regulations. With the advent of cable TV, Direct-to-home TV, the Internet and a convergence in communication modes, there is no foolproof way to control the movement of data, information and entertainment.

All India Radio and Doordarshan were under direct control of the government between 1959-1997. The 1990 Prasar Bharati Act was implemented in 1997 via an ordinance by the U.P. government's Jaipal Reddy. But in May 1998, it was allowed to lapse by his successor, Sushma Swaraj, demanding more accountability. Swaraj's successor, Mahajan, stayed with her decision. Since then, Prasar Bharati has acting CEOs. Other vacancies on the Board exist from the summer of 1998 — including the vital posts of chairman, and member finance. There are no director generals for AIR or DD either. Prasar Bharati struggles to live.

The problem lies with not 'accountability. Because, there is an I&B nominee on the Board and an I&B parliamentary standing committee; an annual report has to be submitted to Parliament; and there's always the Comptroller and Auditor General. Problem lies with political interference in appointments.

### **Brief Study of the Prasar Bharati Act, 1990**

The Prasar Bharati Act aims at establishing a Broadcasting Corporation for India, to be known as Prasar Bharti. All property, assets, debts, obligations and liabilities incurred, all contracts entered into, cases of akashvani and Doordarshan, shall be transferred to management of the corporation. The corporation is free of Income tax.

The corporation shall function under the government, functioning under its directions, submitting information to government whenever asked for, accounts are auditable by government, and government grants are assured.

The primary duty of the corporation is to organize and conduct public broadcasting service to inform, educate and entertain the public and to ensure a balanced development of broadcasting on radio and television;

Ø upholding the unity and integrity of the country and the values enshrined in the constitution;

- Ø safeguarding the citizen's right to be informed freely, truthfully and objectively on all matters of public interest, national or international, and presenting a fair and balanced flow of information including contrasting views without advocating any opinion or ideology of its own;
- Ø paying special attention to the fields of education and spread of literacy, agriculture, rural development, environment, health and family welfare and science and technology;
- Ø providing adequate coverage to the diverse cultures and languages of the various regions of the country by broadcasting appropriate programmes;
- Ø providing adequate coverage of sports and games so as to encourage healthy competition and the spirit of sportsmanship;
- Ø providing appropriate programmes keeping in view the special needs of the youth; informing and stimulating the national consciousness in regard to the status and problems of women and paying special attention to the upliftment of women;
- Ø promoting social justice and combating exploitation, inequality and such evils as untouchability and advancing the welfare of the weaker sections of the society;
- Ø safeguarding the rights of the working classes and advancing their welfare;
- Ø serving the rural and weaker sections of the people and those residing in border regions, backward or remote areas;
- Ø providing suitable programmes keeping in view the special needs of the minorities and tribal communities;
- Ø taking special steps to protect the interests of children, the blind, the aged, the handicapped and other vulnerable sections of the people;
- Ø promoting national integration by broadcasting in a manner that facilitates communication in the languages in India; and facilitating the distribution of regional broadcasting services in every state in the languages of that state;

- Ø providing comprehensive broadcast coverage through the choice of appropriate technology and the best utilization of the broadcast frequencies available and ensuring high quality reception;
- Ø promoting research and development activities in order to ensure that radio and television broadcast technology are constantly updated; and
- Ø expanding broadcasting facilities by establishing additional channels of transmission at various levels.

To this end, the corporation may take any steps to

- Ø to ensure that broadcasting is conducted as a public service to provide and produce programmes;
- Ø to establish a system for the gathering of news for radio and television;
- Ø to negotiate for purchase of, or otherwise acquire, programmes and rights or privileges in respect of sports and other events, films, serials, occasions, meetings, functions or incidents of public interest, for broadcasting and to establish procedures for the allocation of such programmes, rights or privileges to the service;
- Ø to establish and maintain a library of libraries of radio, television and other materials;
- Ø to conduct or commission, from time to time, programmes, audience research, market or technical service, which may be released to such persons and in such manner and subject to such terms and conditions as the corporation may think fit;
- Ø to provide such other services as may be specified by regulations.

The corporation in accordance with the terms and conditions specified by the government, may arrange reimbursement of expenses by the central government for the broadcasts made by organizations outside India.

To ensure the objectives are met, the central government shall have the power to determine the maximum limit of broadcast time in respect of the advertisement.

The corporation shall be subject to no civil liability on the ground merely that it failed to comply with any of the provisions of this section.

The corporation shall have the power to determine and levy fees and other service charges for or in respect of the advertisements and such programmes within the range set by the government.

### **Parliamentary committee**

There shall be constituted a committee consisting of 22 members of parliament, of whom 15 from the House of the People to be elected by the members thereof and seven from the Council of States to be elected by the members thereof in accordance with the system of proportional representation by means of the single transferable vote, to oversee that the corporation discharges its functions in accordance with the provisions of this act and, in particular, the objectives set out in section 12 and submit a report thereon to parliament. The committee shall function in accordance with such rules as may be made by the speaker of the House of the People.

### **Broadcasting Council**

A Broadcasting Council shall receive and consider complaints and advise the corporation in the discharge of its functions.

The broadcasting council shall consist of a president and 10 other members to be appointed by the President of India from amongst persons of eminence in public life; and four members of parliament, of whom two from the House of the People to be nominated by the speaker thereof and two from the Council of States to be nominated by the chairman.

The broadcasting council may constitute such number of regional councils as it may deem necessary to aid and assist the council in the discharge of its functions.

### **Other Regulations**

No suit or other legal proceeding shall lie against the corporation, the chairman or any other member or officer or other employee thereof the president or a member of the broadcasting council or a member of a regional council or a recruitment board for anything which is in good faith done or intended to be done on pursuance of this act or of any ruled or regulations made there under.

## Lesson 32

# Official Secrets Act - 1923

*Dear Student,*

We as people of India have to love our country and contribute the best to its integrity and security. This act warns us, that if we go against this norm we will be punished.

*At the end of this lesson;*

You should be able to tell importance of this Act  
You know important sections of the Act

**The** Official Secrets Act was enacted 2<sup>nd</sup> April, 1923. It extends to the whole of India and applies also to servants of the Government and to citizens of India outside India.

One of the most important threats for the national security is the leak of official secrets to foreign countries or groups that work against the integrity of the country. To combat the nefarious acts of government officials and others in spying and leaking the strategic secrets, Indian Official Secrets Act, 1889 was enacted. The Act was amended in 1904. The British version of the Act (1911) was enforced in India. Existence of two acts of the same nature led to conflicts and administrative difficulties. A consolidated Bill was passed in the Legislature in 1923 and received the assent on 2nd April, 1923.

If an unauthorized person reports or communicates any material and it is detrimental to the safety and security of the nation, or steals, makes and stores sketches of vital importance to the country, violates the official secrets act.

Such acts will be considered as spying and punishable with three to 14 years of imprisonment.

If anyone misleads, interferes with, obstructs in the duties of the members of the Armed Forces, shall be punishable with imprisonment with or without fine.

It is the duty of any citizen, to share any information of vital importance with army or police voluntarily or when asked for. Any person who attempts to commit or abets the commission of an offence under this Act shall be punishable with punishment.

If any person knowingly harbors any person whom he knows or has reasonable grounds for supposing to be a person who is about to commit or who has committed an offence that pertains to national security, he shall be guilty of an offence under this section.

Any place that is suspected to be harboring persons who work against the security of the country, or a possible meeting ground can be searched, if necessary with force, with search and arrest warrant from the court.

No court below the rank of District or Presidency Magistrate shall try any offence under this Act. The trial could be held in anywhere in India, if court wishes *in camera*. But passing of sentence shall in any case take place in public.

If the person committing an offence under this Act. is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

## Lesson 33

# Contempt of Courts Act - 1971

*Dear Student,*

Courts protect and guard our rights. In turn, we have an obligation not to do anything that will defame the court. This act tells us about it.

*At the end of this lesson;*

You should be able to tell importance of this Act  
You know important sections of the Act

**Origin** of the law of contempt in India can be traced to the English law, where courts punished those who scandalized the court or the judges. The first Indian statute on Contempt of Courts Act was passed in 1926. The Act aimed at limiting the powers of certain courts in punishing contempt of courts.

The Act and all such Acts of Contempt of Court that were in effect in some of the States were replaced by the Contempt of Courts Act, 1952.

Lok Sabha in 1960 decided to scrutinize the Act so as to see it in light of Freedom of Expression of the Individual and of the need for safeguarding the status and dignity of courts and interests of administration of justice.

Accordingly a committee was set up on July 29, 1961 under the chairmanship of the late H N Sanyal, and it submitted its report on February 28, 1963. The Joint Select Committee of Parliament on Contempt of Courts examined the issue in detail and a new bill, the Contempt of Courts Bill, 1968 was prepared by the committee.

The Contempt of Courts Act, 1952 was repealed, and the Contempt of Courts Act, 1971 was passed by the Parliament in December 1971 and it came into force December 24, 1971. It extends to the whole of India, except to the state of Jammu and Kashmir, except to the extent to which the provisions of this Act relate to contempt of the Supreme Court.

### **Brief Study of the Act**

Contempt of Courts Act empowers the courts to punish any wilful disobedience to, or disregard of, a court order or any misconduct in the presence of a court; action that interferes with a judge's ability to administer justice or that insults the dignity of the court.

The objective of the Act is to keep the administration of justice pure and undefiled. While the dignity of the court is to be maintained at all costs, the contempt jurisdiction, which is of a special nature, should be sparingly used.

The Act differentiates Civil and Criminal Contempt of Court. 'Civil contempt' means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court. 'Criminal contempt' means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court, or prejudices, or interferes or tends to interfere with the due course of any judicial proceeding, or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

Any willful or deliberate or reckless disobedience to the orders of the court to do or abstain from doing any act or breach of any undertaking given to the court is prima-facie civil contempt. Non-caring of the warrant issued by the criminal court amounts to criminal contempt. Breach of an injunction, or breach of an undertaking given to a court by a person in a civil proceeding amounts to contempt.

A judge, magistrate or other persons act in judicially shall also be liable for contempt of his own court or of any other court in the same manner as any other individual.

Any contempt of *Nyaya Panchayats* or other village courts, by whatever name known, for the administration of justice, established under any law, is not punishable with this Act.

### **Guidelines to Media Professionals**

The law relating to contempt of court is well settled. Any act done or writing published which is calculated to bring a court or a judge into contempt, or to lower his authority, or to interfere with the due course of justice or the lawful process of the court, is a contempt of court.

Comment on pending case or abuse of a party may amount to contempt when the case is tried by a judge. Judges by reason of their office are precluded from entering into any controversy in columns of the public press. There is no special principle attached to the press to comment, criticize or investigate the facts of any case of the prejudice of the trial of the case. No editor has a right to assume the role of investigator to try to prejudice the court against any person.

Contempt by speech or writing may be by scandalising the court itself, or by abusing parties to actions, or by prejudicing mankind in favour of or against a party before the cause is heard. It is incumbent upon courts of justice to preserve their proceedings from being misrepresented, for prejudicing the mind of the people against persons concerned as parties in causes before the cause is finally heard has pernicious consequences.

Speech or writings misrepresenting the proceedings of the court or prejudicing the public for or against a party or involving reflections on parties to a proceeding amount to contempt. To make a speech tending to influence the result of a pending trial, whether civil or criminal is a grave contempt. Comments on pending proceedings, if emanating from the parties or their lawyers, are generally a more serious contempt than those coming from independent sources.

If a person was ignorant that the proceeding was pending, and commit an act that amounts to contempt of court, he shall not be guilty. A comment, when the civil or criminal proceeding is not pending at the time of publication shall not be deemed to constitute contempt of court. Any one who distribute any publication without knowing that it contained matters amounting to contempt of court is not guilty.

A person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding or any fair comment on the merits of any case which has been heard and finally decided. It is essential for the healthy administration of justice.

*Thus,*

It is to be noted that the liberty of free expression is not to be compounded with a license to make unfounded allegations of corruption against judiciary. If it is, it is abuse of that right.

A defence of truth or justification is not available to the publisher of a newspaper in proceedings for contempt of court.

Court and legal reporting must be true, accurate and without malice.

While reproducing the court proceedings, no words may be added, omitted or substituted.

Criticism has to be reasonable and offered for the public good. The criticism of a judge must take the form of reasonable argument or exploitation; must be made in good faith and free from the

imputation of improper motives. Criticism on judgments must be done without casting aspersions on the judges and the courts and without adverse comments amounting to scandalizing the courts.

A complaint or report about a judicial officer of his dishonesty, partiality or other conduct unbecoming of a court, made to an authority to whom it is subordinate, is not contempt of court if all reasonable care is taken by the makers to keep it confidential. Immunity is provided to a citizen making such complaints in good faith to the high court.

A person shall not be guilty of contempt of court for publishing a fair and accurate report of judicial proceedings before any court sitting in chambers or in camera except when prohibited by the Court.

### **Exceptions to Contempt of Court**

Making a statement without knowing that the case was pending with the court.

Making a statement on a case that is not pending in the court,

A Fair criticism on the judicial proceedings

Distributing material without knowing that it contains a contempt for the court,

A true report on the judicial proceedings

Complaint against the presiding officers of subordinate courts to superior courts in good faith.

### **Contempt Procedure**

When it is alleged, or appears to the Supreme Court or the High Court upon its own view, that a person has been guilty of contempt committed in its presence or hearing, the court may cause such person to be detained in custody, and, at any time before the rising of the court, on the same day, or as early as possible thereafter, shall -

- (a) Cause him to be informed in writing of the contempt with which he is charged.
- (b) Afford him an opportunity to make his defence to the charge,
- (c) After taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed, either forthwith or after adjournment, to determine the matter of the charge, and
- (d) Make such order for the punishment or discharge of such person as may be just.

### **Punishment for contempt of court**

Person alleged with contempt of court is informed, given opportunity for defense, punished or discharged.

Every case of criminal contempt under section 15 shall be heard and determined by a bench of not less than two judges. However, a single judge can also deal with criminal contempts committed in facie curium; In re: court on its own motion.

No court shall initiate any proceedings if contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.

The court is guided by its own procedure to be followed in the facts and circumstances of each individual case and to see that the condemner is getting full opportunity to make his defence.

A contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

### **Apology**

The accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court. The court can, even when accepts the apology, commit an offender to prison or otherwise punish him.

## Lesson 34

# Protection of Civil Rights Act - 1955

*Dear Student,*

Media has a duty to reform the society. It has to fight against the social evils that divide people and discriminate groups. This act tells us about it.

*At the end of this lesson;*

You should be able to tell importance of this Act  
You know important sections of the Act

**Even** after decades Indian constitution promised equality to all its citizens, one fifth of its population remains subject to the tyranny of ‘tradition’, which attributes higher status to some animals than some human beings.

The Constitution of India had “abolished” untouchability, but discrimination on the basis of caste still continues in many parts of the country. In many places Dalits work the land owned by the upper castes as bonded labourers, and they cannot draw water from the same well or bathe in the same pond as them. They cannot drink from the same glass as a higher caste person even at a teashop or worship in the same temple. They cannot be buried in the same place after death. Upper caste people often attack, kill, rape the women of the lower caste. Not a day goes by when a newspaper or television channel does not report an incident on the atrocities against the so called ‘untouchables’.

The Protection of Civil Rights Act, 1955, the S.C./S.T. (Prevention of Atrocities) Act, 1989, and the Protection of Human Rights Act, 1993, try to establish the equality of citizen legally.

The ideals of the constitution and the objectives of these acts will be accomplished only when people, and the media professionals adhere to the philosophy of these acts. Social reformers, public relations officials, politicians, bureaucrats, the judiciary, print and electronic media, civic bodies, NGOs must make all-out efforts to sensitise the people on the issue.

Protection of Civil Rights Act upholds the equality and dignity of citizens of India, aiming to eradicate the preaching and practice of “Untouchability”. The act was in effect 8<sup>th</sup> May, 1955. It extends to the whole of India. The Act defines “civil rights” as any right accruing to a person by reason of the abolition of “untouchability” by article 17 of the Constitution.

### **A media study**

- Five dalit men were lynched and burnt to death in front of a police station in Jhajjar in Haryana. The police sent a cow for post-mortem to decide whether they deserved to die or not.
- Three Dalit students at Delhi University’s top ranking Hindu College were battered with fists and beaten with rods, the local police station was reluctant to file a complaint.
- The entire Dalit population of a village in Gujarat’s Amreli district was subjected to an economic boycott — no water supply, no essential commodities, no employment, no freedom to leave the village. The District Collector did nothing.
- In Betul district, Madhya Pradesh, a woman member of a panchayat was raped by upper caste men and paraded naked with bells tied around her neck. This was ‘punishment’ because she was having a relationship with a man. Nothing has been done to the men who raped her.

And so it goes on, everyday, somewhere or the other in India.

### **Brief Study of the Act**

Imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees May be given to anyone:

- Whoever on the ground of “untouchability” prevents any person from entering any place of public worship, or from worshipping or offering prayers or performing any religious service in any place of public worship which is open to other persons professing the same religion, or any section thereof,
- Whoever on the ground of “untouchability” prevents anyone access to any public places, markets, hospitals, educational institutions, transport facilities, public services, employment, owning places, using jewels, consumer goods etc.
- Discrimination, harassment, boycott, injury or insults or attempts to insult, on the ground of “untouchability” a member of a Scheduled Caste or encourages it. Anyone who supports untouchability, and justifies it.
- Whoever denies the rights and privileges of anyone who refuses to practice untouchability,
- Whoever compels any person, on the ground of “untouchability” to do any scavenging or sweeping or to remove any carcass or to flay any animal or to remove the umbilical cord or to do any other job of a similar nature, shall be deemed to have enforced a disability arising out of “untouchability”

Whoever commits any offence against the person or property of any individual as a reprisal or revenge for his having exercised any right accruing to him by reason of the abolition of “untouchability”, shall be punishable with imprisonment for a term which shall not be less than two years and also with fine.

Where the manager or trustee of a place of public worship or any educational institution or hostel which is in receipt of a grant of land or money from the government is convicted of an offence under this Act and such conviction is not reversed or quashed in any appeal or revision, the Government may, if in its opinion the circumstances of the case warrant such a course, direct the suspension or resumption of the whole or any part of such grant.

A public servant who willfully neglects the investigation of any offence punishable under this Act shall be deemed to have abetted an offence punishable under this Act.

Whoever having already been convicted of an offence under this Act or of an abetment of such offence is again convicted of any such offence or abetment, shall, on conviction, be punishable-

- For the second offence, with imprisonment for a term of not less than six months and not more than one year, and also with fine which shall be not less than two hundred rupees and not more than five hundred rupees.
- For the third offence or any offence subsequent to the third offence, with imprisonment for a term of not less than one year and not more than two years, and also with fine which shall be not less than five hundred rupees and not more than one thousand rupees.

## **RACISM AND CASTEISM :**

### **Role of the Media to Make single Human Family**

The word Caste originates from Portuguese meaning breed, and now defined by the Encyclopedia of Social Sciences as, “an endogamous and hereditary subdivision of ethnic group occupying a position of superior or inferior rank or social esteem in comparison with such other divisions,” the caste system in India is one of the most rigid and defining social institutions in the world.

Having existed for nearly 3,000 years the system dictates the lives and roles of Indians by assigning specific social class and status. This system of defining caste from birth has created a rigid barrier of mobility within the country.

Those of lower castes (the Dalits) are often subject to intense discrimination and are not given the privilege of basic human rights. While efforts have been made, including laws prohibiting discrimination based on caste, in a society as governed by customs as India is, it is difficult to persuade a society to relinquish traditional methods and thought.

Racism refers to differentiating and discriminating humans based on the origin or appearance like color.

Martin Luther King in his speech, 'I Have a Dream' delivered in August 1963 in Washington, DC, stated: "I have a dream that my four little children will one day live in a nation where they will not be judged by the colour of their skin but by the content of their character."

In India there are movements like Aryanism, Dravidianism and Tribalism, that further divide the people.

The media has a definite role here. The Media has to instill in the people the sense of oneness, nationalism and humanism, whereby people forgetting the invisible and visible boundaries that divide them, join hands to make the country into a developed and integral group of humans.

## Lesson 35

# Freedom of Information Bill

*Dear Student,*

Access to information is essential to the efficient functioning of any media system. Freedom of Information Bill (1998, 2000) assures this right.

*At the end of this lesson;*

You should be able to tell importance of this Bill  
You know important sections of the Bill

**The** fundamental right of freedom of speech and expression is meaningless without authentic requisite information about issues and subjects on which opinions are to be formed and expressed. The right to information is, therefore, implicit in the right to free speech and is as much fundamental. Parliament has now enabled the citizens to exercise their fundamental right of free speech and information (Press Information Bureau, 2003)

As a result of the discussions in the Chief Ministers' Conference on "Effective and Responsive Government" held in 1997 at New Delhi, appointed a commission under the chairmanship of Shri H.D. Shourie to examine the feasibility and need for either full-fledged Right to Information Act. The Committee submitted its Report in May 1997 along with a draft Freedom of Information Bill to the Government.

In 1999, Ram Jethmalani, Minister for Urban Development, passed an administrative order that any citizen would be entitled to inspect and take photocopies of any file in his ministry. But, the Cabinet Secretary, on the instructions of the Prime Minister, restrained Jethmalani from giving effect to his order.

Three successive Union Governments examined a Draft Bill. The 38th Report of the Parliamentary Committee endorsed the Shourie Bill in 1998. The Press Council put pressure through its own Draft Bill from 1998 seeking to access a much wider information in public and private hands. The draft bill was introduced in the Indian legislature with changes in 1998.

However the bill was not to be easily passed, because to be completely open to public scrutiny is a nightmare to any government. A changed version was - The Freedom of Information Bill 2000 - emerged from these gestations. President of the country on May 15, 2000 recommended presenting the bill in the parliament. The bill sent to the Standing Committee on Home Affairs whose Report has emerged in July 2001.

Finally in November, 2002, when no legislation was forthcoming even many months after the report of the select committee had already been submitted, the Supreme Court directed that if the legislation was not passed before the next date of hearing (in January, 2003) the court would consider the matter on merits and pass orders. It was further directed that even if the legislation were passed, the court would examine whether it was in conformity with the right to information as declared by the court.

Freedom of Information Act, 2002 was passed by the Parliament in December, 2002.

### **Freedom of Information Bill -1998**

The object of the Bill was to guarantee every citizen access to information under the control of public authorities, “consistent with the public interest,” in order to promote openness, transparency, and accountability.

The draft suggested that decision regarding release of an information should be taken based on need for the citizen and need of the country to keep it as a secret. It maintained that

- Disclosure of information should be the rule and secrecy the exception;
- The exceptions should be clearly defined; and
- There should be an independent mechanism for adjudication of disputes between the citizens and the public authorities.

The Bill makes it mandatory for the PIO to either provide the information or reject the request within 30 days of the request being made except in cases where an additional fee is required for various reasons. While rejecting a request, the PIO has to give the reasons for such a rejection, the period within which the appeal shall be preferred and the particulars of the appellate authority. The Bill also provides for a second appeal. The original draft had provision for free release of information when the matter was of great importance to general public.

The Bill also bars any “suit, prosecution or other legal proceeding” against any person for anything which is done in good faith or intended to be done under this Act. In a further contrast to the Official Secrets Act, the Section 27 of the Bill provides: “No court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise or than by way of an appeal under this Act.”

Twelve categories of information has been classified as secret and exempted from being disclosed. The classified categories range from the obvious such as information that would affect the sovereignty, integrity or security of the state to the ambiguous: information that would “prejudicially affect the conduct of Centre-state relations.” Information in relation to state security, international relations, law and order, intelligence activities, and public and individual safety were some of the exemptions.

Every public authority is under a duty to “maintain all its records” and to publish the “particulars of its organisation, functions and duties.” In addition, every public authority must appoint “one or more” Public Information Officers to deal with requests for information and to render reasonable assistance to requesters. Requests for information will ordinarily be in writing but, where this is not possible, the Public Information Officer, may render all reasonable assistance to the person making the request orally to reduce it in writing.

Interestingly, one of the security and intelligence organisations whose operations are not barred from public scrutiny is the Central Bureau of Investigation which does not figure in the organisations covered by the Schedule such as the Intelligence Bureau, Research and Analysis Wing and Directorate of Revenue Intelligence.

The government is to appoint Public Information Officers wherever it is needed.

### **The Freedom of Information Act - 2000**

The bill aimed to provide for freedom to every citizen to secure access to information under the control of public authorities, consistent with public interest, in order to promote openness, transparency and accountability in administration.

The Act suggests every public authority to maintain the records systematically, for access and duplication, publishing at intervals, about the organizations, decisions, policies etc.

The Act recommends appointments of public information officers to deal with requests for information, to assist the public in making requests, and to provide information. The Bill makes it mandatory for the PIO to either provide the information or reject the request within 30 days of the request being made except in cases where an additional fee is required for various reasons. While rejecting a request, the PIO has to give the reasons for such a rejection, the period within which the appeal shall be preferred and the particulars of the appellate authority. The Bill also provides for a second appeal.

Requests for Information may be refused if the information is too voluminous and demands high resources, too general, kept for publication within 30 days, already published and available for public, invades the privacy of any person.

But, information relating to the following are exempted from disclosure.

1. information, the disclosure of which would prejudicially affect the sovereignty and integrity of India, security of the state, strategic scientific or economic interest of India or conduct of international relations;
2. information, the disclosure of which would prejudicially affect public safety and order, detection and investigation of an offence or which may lead to an incitement to commit an offence or prejudicially affect fair trial or adjudication of a pending case;
3. information, the disclosure of which would prejudicially affect the conduct of centre-state relations, including information exchanged in confidence between the central and state governments or any of their authorities or agencies;
4. cabinet papers including records of deliberations of the council of ministers, secretaries and other officers;
5. minutes or records of advice including legal advice, opinions or recommendations made by any officer of a public authority during the decision-making process prior to the executive decision or policy formulation;
6. trade or commercial secrets protected by law or information, the disclosure of which would prejudicially affect the legitimate economic and commercial interests or the competitive position of a public authority; or would cause unfair gain or loss to any person; and
7. information, the disclosure of which may result in the breach of privileges of parliament or the legislature of a state, or contravention of a lawful order of a court.

Access may be given to parts that could be given to public when it is a part of information that are exempted from public scrutiny.

Information considered confidential regarding a third party could be given to public with the permission of the third party, unless when the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

Decisions of the PIO's are appealable.

The Provisions of Official Secrets Act, 1923 (19 of 1923), and every other act in force shall cease to be operative to the extent to which they are inconsistent with the provisions of this act.

The Act also bars any “suit, prosecution or other legal proceeding” against any person for anything which is done in good faith or intended to be done under this Act. In a further contrast to the Official Secrets Act, the Section 27 of the Bill provides: “No court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise or than by way of an appeal under this Act.”

The Act also applies to the intelligence and security organizations — Intelligence Bureau, Research and Analysis Wing of the Cabinet Secretariat, Directorate of Revenue Intelligence, Central Economic Intelligence Bureau, Directorate of Enforcement, Narcotics Control Bureau. Interestingly, Central Bureau of Investigation does not appear in this list.

The government can make necessary rules to implement the act. The government also free to make changes in the Act.

With the passage of the Bill, India is now among the 20 countries to have legislated a measure, which is in the direction of providing transparency, openness and accountability in government functioning. Even though the need for right to information has been widely recognized in the country, there was no specific law to assure the public access to information. In many quarters, fears have been expressed about the possible impact of such a law and the costs it might impose on public agencies in terms of time and money.

## Lesson 36

# Parliamentary Proceedings Act - 1977

*Dear Student,*

As we belong to a democratic country, we have every right to report whatever happens in the parliament accurately.

*At the end of this lesson;*

You should be able to tell importance of this Act  
You know important sections of the Act

**In** order to strengthen the basis of democratic Government which is the Parliament and opinion of the people therein, it is of paramount importance that proceedings in Parliament shall be communicated to the public. For this purpose, newspapers and other mass publicity media should be afforded the privilege of publishing substantially true reports of proceedings in Parliament without being exposed to any civil or criminal action.

Under this Act no person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament unless the publication is proved to have been made with malice.

This Act shall apply in relation to reports or matters broadcast by means of a wireless telegraphy as part of any programme or service provided by means of a broadcasting station situate within the territories to which this act extends as it applies in relation to reports or matters published in a newspaper.

## Lesson 37

# Wireless and Telegraphy Act

*Dear Student,*

Wireless and Telegraphy Act tells us the guidelines in using wireless and telegraphy equipment.

*At the end of this lesson;*

You should be able to tell importance of this Act  
You know important sections of the Act

**Objective** of the Act was to regulate the possession of wireless telegraphy apparatus.

It extends to the whole of India. Passed in Sept. 1933.

No person shall possess wireless telegraphy apparatus except under and in accordance with a license issued under this Act, and permitted by the Central government. The telegraph authority constituted under the Indian Telegraph Act, 1885, is the licensing authority.

Whoever illegally possesses any wireless telegraphy apparatus, shall be punished, in the case of the first offence, with fine which may extend to one hundred rupees, and, in the case of a second or subsequent offence, with fine which may extend to two hundred and fifty rupees. But possessing wireless transmitter thus, is punishable with imprisonment which may extend to three years, or with fine which may extend to one thousand rupees, or with both. The apparatus has to be confiscated.

Any officer specially empowered by the Central Government in this behalf may search any building, vessel or place in which he has reason to believe that any wireless telegraphy apparatus, is kept or concealed, and take possession thereof.

The Act enables the government to create any laws in relation to the act regarding the possession, use and regulations of use of the apparatus.

## Lesson 38

# Information Technology Act - 2000

*Dear Student,*

In these days characterised by internet hacking and information stealing, India bans any of such activities under this Act..

*At the end of this lesson;*

You should be able to tell importance of this Act  
You know important sections of the Act

**Aim** of the Act is to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as “electronic commerce”, which involve the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies and further to amend the Indian Penal Code, the Indian Evidence Act, 1872, the Bankers’ Books Evidence Act, 1891 and the Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto.

The Act is adapted from the UN Model Law on Electronic Commerce agreed upon by nations 30th January, 1997.

### **Brief Study of the Act**

Information Technology Act, 2000 extends to whole of India and under certain situations, to outside India. It came into effect 9<sup>th</sup> June, 2000.

Subscribers may authenticate an electronic record by affixing his digital signature through asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record. (“hash function” means an algorithm mapping or translation of one sequence of bits into another, generally smaller). If information or matter is authenticated by means of digital signature affixed in such manner as may be prescribed by the Central Government, it legally accepted.

Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is rendered or made available in an electronic form; and accessible so as to be usable for a subsequent reference.

Payment applications licenses etc. could be done electronically, in accordance with the prescription of the government.

Documents could be retained in electronic form for reference, and evidence.

Any matter could be published for the public in electronic form.

However, it is not mandatory to do all transactions of publication in electronic form.

Prove for a transfer of electronic matter or document is when there exists an acknowledgement either electronic or in any other form.

Where any security procedure has been applied to an electronic record at a specific point of time. then such record shall be deemed to be a secure electronic record from such point of time to the time of verification.

**A Controller of Certifying Authorities**, and deputies to be appointed by government to manage these processes. The Controller may perform all or any of the following functions, namely:—

1. exercising supervision over the activities of the Certifying Authorities;
2. certifying public keys of the Certifying Authorities;
3. laying down the standards to be maintained by the Certifying Authorities;
4. specifying the qualifications and experience which employees of the Certifying Authorities should possess;
5. specifying the conditions subject to which the Certifying Authorities shall conduct their business;
6. specifying the contents of written, printed or visual materials and advertisements that may be distributed or used in respect of a Digital Signature Certificate and the public key;
7. specifying the form and content of a Digital Signature Certificate and the key,
8. specifying the form and manner in which accounts shall be maintained by the Certifying Authorities;
9. specifying the terms and conditions subject to which auditors may be appointed and the remuneration to be paid to them;
10. facilitating the establishment of any electronic system by a Certifying Authority either solely or jointly with other Certifying Authorities and regulation of such systems;
11. specifying the manner in which the Certifying Authorities shall conduct their dealings with the subscribers;
12. resolving any conflict of interests between the Certifying Authorities and the subscribers;
13. laying down the duties of the Certifying Authorities;
14. maintaining a data base containing the disclosure record of every Certifying Authority containing such particulars as may be specified by regulations, which shall be accessible to public.

The controller may recognize or de-recognize any foreign Certifying Authority as a Certifying Authority. He shall be the repository of all Digital Signature Certificates issued under this Act.

He shall issue non-transferable Digital Signature Certificates to those eligible according to the terms and conditions set by the government. He has the power to license, deny license, or cancel it to any applicant citing the reasons.

Every Certifying Authority shall display its license at a conspicuous place of the premises in which it carries on its business.

The Controller may, in writing, authorize the Deputy Controller, Assistant Controller or any officer to exercise any of the powers of the Controller under this Chapter.

He has the responsibility and power to investigate any contraventions. He has access to any computer system, any apparatus, data or any other material connected with such system, for the purpose of searching or causing a search to be made for obtaining any information or data contained in or available to such computer system. The Controller or any person authorised by him may, by order, direct any person in charge of, or otherwise concerned with the operation of, the computer system, data apparatus or material, to provide him with such reasonable technical and other assistance as he may consider necessary.

Every Certifying Authority whose license is suspended or revoked shall immediately after such suspension or revocation, surrender the license to the Controller. Those who fail shall be punished with imprisonment which may extend up to six months or a fine which may extend up to ten thousand rupees or with both.

He has the power to direct, guide, refer to judicial proceedings.

### **Cyber Appellate Tribunals**

The Central Government shall establish Cyber Regulations Appellate Tribunal, and a person qualified to be a Judge of a High Court as the Residing Officer of the Tribunal for a term of five years. His actions shall not be questioned based on any possible defect in the Constitution of the Tribunal.

All proceedings under this Act are judicial. While adjudging the quantum of compensation under this Chapter, the adjudicating officer shall have due regard to the amount of gain of unfair advantage, wherever quantifiable, made as a result of the default; the amount of loss caused to any person as a result of the default; the repetitive nature of the default

The Cyber Appellate Tribunal shall not be bound by the procedure laid down by the Code of civil Procedure, 1908 but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Cyber Appellate Tribunal shall have powers to regulate its own procedure including the place at which it shall have its sittings.

The Cyber Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit:

- summoning and enforcing the attendance of any person and examining him on oath;
- requiring the discovery and production of documents or other electronic records;
- receiving evidence on affidavits;
- issuing commissions for the examination of witnesses or documents;
- reviewing its decisions;
- dismissing an application for default or deciding it *ex pane*;
- any other matter which may be prescribed.

No court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under this Act or the Cyber Appellate Tribunal constituted under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Any person aggrieved by any decision or order of the Cyber Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Cyber Appellate Tribunal to him on any question of fact or law arising out of such order.

### **Offences and Penalties**

If any person without permission of the owner or any other person who is in charge of a computer, computer system or computer network, access, changes, copies, destroys, virus, etc, shall be liable to pay damages by way of compensation not exceeding one crore rupees to the person so affected.

Those who fail to furnish any document, or report to the Controller or the Certifying Authority as required, shall be liable to a penalty not exceeding one lakh and fifty thousand rupees for each such failure.

Whoever contravenes any rules or regulations of this Act, for which no penalty has been separately provided, shall be liable to pay a compensation not exceeding twenty-five thousand rupees to the person affected by such contravention or a penalty not exceeding twenty-five thousand rupees.

Whoever knowingly or intentionally conceals, destroys or alters or intentionally or knowingly causes another to conceal, destroy or alter any computer source code used for a computer, computer programme, computer system or computer network, when the computer source code is required to be kept or maintained by law for the time being in force, shall be punishable with imprisonment up to three years, or with fine which may extend up to two lakh rupees, or with both.

Whoever with the intent to cause or knowing that he is likely to cause change information residing in a computer resource (hacking) shall be punished with imprisonment up to three years, or with fine which may extend upto two lakh rupees, or with both.

Whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to one lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to ten years and also with fine which may extend to two lakh rupees.

Whoever makes any misrepresentation to, or suppresses any material fact from, the Controller or the Certifying Authority for obtaining any licence or Digital Signature Certificate, as the case may be. shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

Any person who secures access to any electronic record, book, register, correspondence, information, document or other material without the consent of the person concerned discloses such electronic record, book, register, correspondence, information, document or other material to any other person shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

Any unauthorized person who publishes digital signature certificates shall be punished with imprisonment for a term, which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

Whoever knowingly creates, publishes or otherwise makes available a Digital Signature Certificate for any fraudulent or unlawful purpose shall be punished with imprisonment for a term, which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

The provisions of this Act shall apply also to any offence or contravention committed outside India by any person irrespective of his nationality.

Any computer, computer system, floppies, compact disks, tape drives or any other accessories related thereto, in respect of which any provision of this Act, rules, orders or regulations has been or is being contravened, shall be liable to confiscation.

Police officer not below the rank of Deputy Superintendent of Police shall investigate any offence under this Act. Authorized by the Central Government in this behalf may enter any public place and search and arrest without warrant any person found therein who is reasonably suspected or having committed or of committing or of being about to commit any offence under this Act.

No person providing any service as a network service provider shall be liable under this Act, rules or regulations if he proves that the offence or contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence or contravention.

The government can make laws with regard to the Act, direct and guide state governments in effecting the provisions. It can make necessary amendments.

No suit, prosecution or other legal proceeding shall lie against the Central Government, the State Government, the Controller or any person acting on behalf of him, the Presiding Officer, adjudicating officers and the staff of the Cyber Appellate Tribunal for anything which is in good faith done or intended to be done in pursuance of this Act or any rule, regulation or order made.

## Lesson 39

## Introduction to Ethics

*Dear Student,*

I am sure this word puzzle you. Yes we learn something when we are confused. This lesson is aimed at bringing you to the essence of being ethical.

*At the end of this lesson;*

You should be able to define what is ethics  
You know what is its role in media

The word 'Ethics' stems from the term 'ethos', which for Aristotle, was "the speaker's personal character when the speech is so spoken as to make us think him credible." Ethics is concerned with principles and ideas that regulate an individual's behavior.

The Macquarie Dictionary defines ethics as, "A system of moral principles by which human actions and proposals may be judged good or bad or right or wrong." The Webster's New Collegiate Dictionary defines ethics as "a set of principles ... conforming to accepted professional standards of conduct."

Another definition of ethics is, "A set of standards by which a particular group decides to regulate its behavior — to distinguish between what is legitimate or acceptable in pursuit of their aims and what is not."

Ethics refers to principles that define behavior as right, good and proper. Such principles do not always dictate a single “moral” course of action, but provide a means of evaluating and deciding among competing options.

### **Values, Principles and Ethics**

Values are personal and local while ethics is universal. People know what is good and wrong based on religious beliefs, cultural norms, family background, personal experiences, laws, organizational values, professional norms and political habits. These may not serve to make ethical decisions, because, because they are not universal.

The terms “ethics” and “values” are not interchangeable. Ethics is concerned with how a moral person should behave, whereas values are the inner judgments that determine how a person actually behaves. Most values, however, have nothing to do with ethics. For instance, the desire for health and wealth are values, but not ethical values.

Ethical values like trustworthiness, respect, responsibility, fairness, caring and citizenship eternally remain the same while values change. Values in democracy is not the same as values to be followed under a dictatorship. Thus, values change faster than ethics.

Principles are the guidelines when values are translated for behavioral adjustments. For example, honesty, is translated to tell the truth, don’t deceive, be candid, keep the promise, possess not what is not due etc. Thus, principles are “dos” and “don’ts” that arise out of the values.

Ethics is involved in putting principles into action. Consistency between what we say we value and what our actions say we value is a matter of integrity.

Ethics is also about self-restraint:

- Not doing what you have the power to do.
- Not doing what you have the right to do.
- Not doing what you want to do.

Advantages of being ethical:

- Inner harmony and peace.
- Social Approval and respect
- Integral social development

Obstacles to be ethical

- Priority to personal advantage than common good

### **Introduction to Media Ethics**

Ethical communication is that which allows others to grow to their fullest potential, in which value of the other individual is emphasized and felt, and in which both parties in the communication exchange are trusted, respected and appreciated, and a positive communication climate is established.

Ethical Communication is fair, accurate, honest, truthful, responsible, independent and decent. Truth is its guiding principle. The message is presented in a fair, accurate and unbiased manner.

Ethical communication is telling the whole truth fairly, freely and fearlessly.

Being ethical does not mean passive, but dynamic. They criticize the government society constructively to make them better.

Being ethical is not being completely open. At times the source of news has to be kept confidential when there is a clear reason to do so.

Being ethical as a communicator is to tell the truth as it is, not manipulated by technology, personal interest or biased by pressure groups, impartially, with professional disinterestedness.

Being ethical also mean thinking universally. Some information if it does eternal good for the entire society has to be kept hidden, according to the social commitment.

Ethical communicator does not plagiarize words or images.

Being ethical means accepting nothing of value from news sources or others outside the profession. Gifts and free or reduced-rate travel, entertainment, products and lodging should not be accepted. Expenses in connection with news reporting should be paid by the newspaper.

Being ethical means remaining free of associations and activities that may compromise integrity or damage credibility.

Communication action should not primarily be aimed at for rewards.

Communication shall not degrades individuals and humanity through distortion, intimidation, coercion, and violence and through the expression of intolerance and hatred.

Ethical communication respects privacy and confidentiality.

Communicators with ethics take responsibility for the short- and long-term consequences of their own

Avoid undercover or other surreptitious methods of gathering information except when traditional open methods will not yield information vital to the public. Use of such methods should be explained as part of the story

Avoid stereotyping by race, gender, age, religion, ethnicity, geography, sexual orientation, disability, physical appearance or social status.

Give voice to the voiceless; official and unofficial sources of information can be equally valid.

Be sensitive when seeking or using interviews or photographs of those affected by tragedy or grief, victims of sexual crimes, especially when they are minors. Be cautious about identifying juvenile suspects or victims of sex crimes.

Journalists are accountable to their readers, listeners, viewers and each other. Admit mistakes and correct them promptly. A journalist shall rectify promptly any harmful inaccuracies, ensure that correction and apologies receive due prominence and afford the right of reply to persons criticized when the issue is of sufficient importance.

A journalist shall strive to ensure that the information he/ she disseminates is fair and accurate, avoid the expression of comment and conjecture as established fact and falsification by distortion, selection or misrepresentation.

The press must not, even where the law does not prohibit it, identify children under the age of 16 who are involved in cases concerning sexual offences, whether as victims or as witnesses.

The journalist shall do the utmost to rectify any published information which is found to be harmfully inaccurate.

## Lesson 40

# Press Council: Norms of Journalistic Conduct

*Dear Student,*

These norms are clear guidelines for the journalists. These would inspire you to write fairly, fearlessly and freely.

*At the end of this lesson;*

You should be able to remember them  
You should follow them

**Section** 13 of the Press Council Act, 1978, suggests formulation of a guide for the journalists. Accordingly in 1984 and 1986 two sets of codes were formulated. In 1992, the Council brought out “A Guide to Journalistic Ethics” containing principles of journalistic ethics.

The Guide suggests a way of steering safely and responsibly through the minefield of legal, moral and ethical problems which confront the editors, journalists and owners of newspapers. It is not a compilation of cast-iron principles but contains broad general principles, which, if applied with due discernment and adaptation to varying circumstances of each case, will help the journalists to self-regulate the conduct of their profession along the path of professional rectitude. These are by no means exhaustive nor are they meant to obtain a rigidity which could hinder the unfettered working of the Press.

The fundamental objective of journalism is to serve the people with news, views, comments and information on matters of public interest in a fair, accurate, unbiased, sober and decent manner. Towards this end, the press is expected to conduct itself in keeping with certain norms of professionalism universally recognised. The norms enunciated below and other specific guidelines appended thereafter, when applied with due discernment and adaptation to the varying circumstance of each case, will help the journalist to self-regulate his or her conduct.

Some of the broad principles evolved by the Council in course of its adjudication on various subjects both in respect of standards of journalism and the freedom of the Press are summarized below:

1. **Accuracy and fairness:** The press shall eschew publication of inaccurate, baseless, graceless, misleading or distorted material. All sides of the core issue or subject should be reported. Unjustified rumours and surmises should not be set forth as facts.
2. **Pre-publication verification :** On receipt of a report or article of public interest and benefit containing imputations or comments against a citizen, the editor should check with due care and attention its factual accuracy - apart from other authentic sources with the person or the organisation concerned to elicit his / her or its version, comments or reaction and publish the same with due amendments in the report where necessary. In the event of lack or absence of response, a footnote to that effect should be appended to the report.
3. **Caution against defamatory writings:** A newspaper should not publish anything which is manifestly defamatory or libellous against any individual organisation unless after due care and checking, they have sufficient reason to believe that it is true and its publication will be for public good.
4. Truth is no defence for publishing derogatory, scurrilous and defamatory material against a private citizen where no public interest is involved.
5. No personal remarks which may be considered or construed to be derogatory in nature against a dead person should be published except in rare cases of public interest, as the dead person cannot possibly contradict or deny those remarks.

6. The press shall not rely on objectionable past behaviour of a citizen for basing the scathing comments with reference to fresh action of that person. If public good requires such reference, the press should make pre-publication inquiries from the authorities concerned about the follow-up action, if any, in regard to those adverse actions.

7. The press has a duty, discretion and right to serve the public interest by drawing reader's attention to citizens of doubtful antecedents and of questionable character but as responsible journalists they should observe due restraint and caution in hazarding their own opinion or conclusion in branding these persons as 'cheats' or 'killers' etc. The cardinal principle being that the guilt of a person should be established by proof of facts alleged and not by proof of the bad character of the accused. In the zest to expose, the press should not exceed the limits of ethical caution and fair comments.

8. Where the impugned publication are manifestly injurious to the reputation of the complainant, the onus shall be on the respondent to show that they were true or to establish that they constituted for comment made in good faith and for public good.

**9. Parameters of the right of the press to comment on the acts and conduct of public officials :** So far as the government, local authority and other organs / institutions exercising governmental power are concerned, they cannot maintain a suit for damages for acts and conduct relevant to the discharge of their official duties unless the official establishes that the publication was made with reckless disregard for the truth. However, the judiciary which is protected by the power to punish for contempt of court and the parliament and legislatures, protected as their privileges are by Articles 105 and 194 respectively, of the constitution of India, represent exception to this rule.

10. Publication of news or comments / information on public officials conducting investigations should have a tendency to help the commission of offences or to impede the prevention or detection of offences or prosecution of the guilty. The investigative agency is also under a corresponding obligation not to leak out or disclose such information or indulge in disinformation.

11. The Official Secrets Act, 1923 or any other similar enactment or provision having the force of law equally bind the press or media though there is no law empowering the state or its officials to prohibit, or to impose a prior restraint upon the press / media.
12. Cartoons and caricatures in depicting good humour are to be placed in a special category of news that enjoy more liberal attitude.
13. **Right to privacy :** The press shall not intrude or invade the privacy of an individual unless outweighed by genuine overriding public interest, not being a prurient or morbid curiosity. So, however, that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. Explanation: Things concerning a person's home, family, religion, health, sexuality, personal life and private affairs are covered by the concept of privacy excepting where any of these impinges upon the public or public interest.
14. Caution against identification: While reporting crime involving rape, abduction or kidnap of women / females or sexual assault on children, or raising doubts and questions touching the chastity, personal character and privacy of women, the names, photographs of the victims or other particulars leading to their identity shall not be published.
15. Minor children and infants who are the offspring of sexual abuse or 'forcible marriage' or illicit sexual union shall not be identified or photographed.
16. **Recording interviews and phone conversation :** The press shall not tape-record anyone's conversation without that person's knowledge or consent, except where the recording is necessary to protect the journalist in a legal action, or for other compelling good reason.
17. The press shall, prior to publication, delete offensive epithets used by an interviewer in conversation with the pressperson.
18. Intrusion through photography into moments of personal grief shall be avoided. However, photography of victims of accidents or natural calamity may be in larger public interest.

**19. Conjecture, comment and fact :** A newspaper should not pass on or elevate conjecture, speculation or comment as a statement of fact. All these categories should be distinctly stated.

**20. Newspapers to eschew suggestive guilt :** Newspapers should eschew suggestive guilt by association. They should not name or identify the family or relatives or associates of a person convicted or accused of a crime, when they are totally innocent and a reference to them is not relevant to the matter reported.

21. It is contrary to the norms of journalism for a paper to identify itself with and project the case of any one party in the case of any controversy / dispute.

**22. Corrections :** When any factual error or mistake is detected or confirmed, the newspaper should publish the correction promptly with due prominence and with apology or expression of regrets in a case of serious lapse.

**23. Right of reply :** The newspaper should promptly and with due prominence, publish either in full or with due editing, free of cost, at the instance of the person affected or feeling aggrieved / or concerned by the impugned publication, a contradiction / reply / clarification or rejoinder sent to the editor in the form of a letter or note. If the editor doubts the truth or factual accuracy of the contradiction / reply / clarification or rejoinder, he shall be at liberty to add separately at the end a brief editorial comment doubting its veracity, but only when this doubt is reasonably founded on unimpeachable documentary or other evidential material in his / her possession. This is a concession which has to be availed of sparingly with due discretion and caution in appropriate cases.

24. However, where the reply / contradiction or rejoinder is being published in compliance with the discretion of the Press Council, it is permissible to append a brief editorial note to that effect.

25. Right of rejoinder cannot be claimed through the medium of press conference, as publication of a news of a conference is within the discretionary powers of an editor.

26. Freedom of the press involves the readers' right to know all sides of an issue of public interest. An editor, therefore, shall not refuse to publish the reply or rejoinder merely on the ground that in his opinion the story published in the newspaper was true. That is an issue to be left to the judgement of the readers. It also does not behove an editor to show contempt towards a reader.

27. **Letters to editor:** An editor who decides to open his columns for letters on a controversial subject, is not obliged to publish all the letters received in regard to that subject. He is entitled to select and publish only some of them either in entirety or the gist thereof. However, in exercising this discretion, he must make an honest endeavour to ensure that what is published is not one-sided but represents a fair balance between the views for and against with respect to the principal issue in controversy.

28. In the event of rejoinder upon rejoinder being sent by two parties on a controversial subject, the editor has the discretion to decide at which stage to close the continuing column.

29. **Obscenity and vulgarity to be eschewed:** Newspapers / journalists shall not publish anything which is obscene, vulgar or offensive to public good taste.

30. Newspapers shall not display advertisements which are vulgar or which, through depiction of a woman in nude or lewd posture, provoke lecherous attention of males as if she herself was a commercial commodity for sale.

31. Whether a picture is obscene or not, is to be judged in relation to three tests; namely

- Is it vulgar and indecent?
- Is it a piece of mere pornography?
- Is its publication meant merely to make money by titillating the sex feelings of adolescents and among whom it is intended to circulate? In other words, does it constitute an unwholesome exploitation for commercial gain. Other relevant considerations are whether the picture is relevant to the subject matter of the magazine. That is to say, whether its publication serves any preponderating social or public purpose, in relation to art, painting, medicine, research or reform of sex.

**32. Violence not to be glorified:** Newspapers / journalists shall avoid presenting acts of violence, armed robberies and terrorist activities in a manner that glorifies the perpetrators' acts, declarations or death in the eyes of the public.

**33. Glorification / encouragement of social evils to be eschewed:** Newspapers shall not allow their columns to be misused for writings which have a tendency to encourage or glorify social evils like *sati pratha* or ostentatious celebrations.

**34. Covering communal disputes / clashes:** News, views or comments relating to communal or religious disputes / clashes shall be published after proper verification of facts and presented with due caution and restraint in a manner which is conducive to the creation of an atmosphere congenial to communal harmony, amity and peace. Sensational, provocative and alarming headlines are to be avoided. Acts of communal violence or vandalism shall be reported in a manner as may not undermine the people's confidence in the law and order machinery of the state. Giving community-wise figures of the victims of communal riot, or writing about the incident in a style which is likely to inflame passions, aggravate the tension, or accentuate the strained relations between the communities / religious groups concerned, or which has a potential to exacerbate the trouble, shall be avoided.

**35. Headings not to be sensational / provocative and must justify the matter printed under them:** In general and particularly in the context of communal disputes or clashes - a. Provocative and sensational headlines are to be avoided; b. Headings must reflect and justify the matter printed under them; c. Headings containing allegations made in statements should either identify the body or the source making it or at least carry quotation marks.

**36. Caste, religion or community references:** In general, the caste identification of a person or a particular class should be avoided, particularly when in the context it conveys a sense or attributes a conduct or practice derogatory to that caste.

**37.** Newspapers are advised against the use of word 'scheduled caste' or 'harijan' which has been objected to by some persons.

38. An accused or a victim shall not be described by his caste or community when the same does not have anything to do with the offence or the crime and plays no part either in the identification of any accused or proceeding, if there be any.
39. Newspapers should not publish any fictional literature distorting and portraying religious characters in an adverse light, transgressing the norms of literary taste and offending the religious susceptibilities of large sections of society who hold those characters in high esteem, invested with attributes of the virtuous and lofty.
40. Commercial exploitation of the name of prophets, seers or deities is repugnant to journalistic ethics and good taste.
41. **Reporting on natural calamities:** Facts and data relating to spread of epidemics or natural calamities shall be checked up thoroughly from authentic sources and then published with due restraint in a manner bereft of sensationalism, exaggeration, surmises or unverified facts.
42. **Paramount national interest:** Newspapers shall, as a matter of self-regulation, exercise due restraint and caution in presenting any news, comment or information which is likely to jeopardise, endanger or harm the paramount interests of the state and society, or the rights of individuals with respect to which reasonable restrictions may be imposed by law on the right to freedom of speech and expression under clause (2) of Article 19 of the constitution of India.
43. Publication of wrong / incorrect map is a very serious offence, whatever the reason, as it adversely affects the territorial integrity of the country and warrants prompt and prominent retraction with regrets.
44. **Newspapers may expose misuse of diplomatic immunity:** The media shall make every possible effort to build bridges of co-operation, friendly relations and better understanding between India and foreign states. At the same time, it is the duty of a newspaper to expose any misuse or undue advantage of the diplomatic immunities.

**45. Investigative journalism, its norms and parameters:** Investigative reporting has three basic elements. a. It has to be the work of the reporter, not of others he is reporting; b. The subject should be of public importance for the reader to know; c. An attempt is being made to hide the truth from the people.

- The first norm follows as a necessary corollary from (a) that the investigative reporter should, as a rule, base his story on facts investigated, detected and verified by himself and not on hearsay or on derivative evidence collected by a third party, not checked up from direct, authentic sources by the reporter himself.
- There being a conflict between the factors which require openness and those which necessitate secrecy, the investigative journalist should strike and maintain in his report a proper balance between openness on the one hand and secrecy on the other, placing the public good above everything. The investigative journalist should resist the temptation of quickies or quick gains conjured up from half-baked incomplete, doubtful facts, not fully checked up and verified from authentic sources by the reporter himself.
- Imaginary facts, or ferreting out or conjecturing the non-existent should be scrupulously avoided. Facts, facts and yet more facts are vital and they should be checked and cross-checked whenever possible until the moment the paper goes to press.
- The newspaper must adopt strict standards of fairness and accuracy of facts. Findings should be presented in an objective manner, without exaggerating or distorting, that would stand up in a court of law, if necessary.
- The reporter must not approach the matter or the issue under investigation, in a manner as though he were the prosecutor or counsel for the prosecution. The reporter's approach should be fair, accurate and balanced. All facts properly checked up, both for and against the core issues, should be distinctly and separately stated, free from any one-sided inferences or unfair comments. The tone and tenor of the report and its language should be sober, decent

and dignified, and not needlessly offensive, barbed, derisive or castigatory, particularly while commenting on the version of the person whose alleged activity or misconduct is being investigated. Nor should the investigative reporter conduct the proceedings and pronounce his verdict of guilt or innocence against the person whose alleged criminal acts and conduct were investigated, in a manner as if he were a court trying the accused.

- In all proceedings including the investigation, presentation and publication of the report, the investigative journalist's newspaper should be guided by the paramount principle of criminal jurisprudence, that a person is innocent unless the offence alleged against him is proved beyond doubt by independent, reliable evidence.
- The private life, even of a public figure, is his own. Exposition or invasion of his personal privacy or private life is not permissible unless there is clear evidence that the wrong-doings in question have a reasonable nexus with the misuse of his public position or power and has an adverse impact on public interest.
- Though the legal provisions of criminal procedure do not in terms, apply to investigating proceedings by a journalist, the fundamental principles underlying them can be adopted as a guide on grounds of equity, ethics and good conscience.

**46. Confidence to be respected :** If information is received from a confidential source, the confidence should be respected. The journalist cannot be compelled by the Press Council to disclose such source; but it shall not be regarded as a breach of journalistic ethics if the source is voluntarily disclosed in proceedings before the council by the journalist who considers it necessary to repel effectively a charge against him / her. This rule requiring a newspaper not to publish matters disclosed to it in confidence, is not applicable where:

- consent of the source is subsequently obtained; or
- the editor clarified by way of an appropriate footnote that since the publication of certain matters were in the public interest, the information in question was being published although it had been made 'off the record'.

**47. Caution in criticising judicial acts:** Excepting where the court sits ‘in-camera’ or directs otherwise, it is open to a newspaper to report pending judicial proceedings, in a fair, accurate and reasonable manner. But it shall not publish anything—which, in its direct and immediate effect, creates a substantial risk of obstructing, impeding or prejudicing seriously the due administration of justice; or—is in the nature of a running commentary or debate, or records the paper’s own findings, conjectures, reflection or comments on issues, sub judice and which may amount to arrogation to the newspaper the functions of the court; or—regarding the personal character of the accused standing trial on a charge of committing a crime. The newspaper shall not as a matter of caution, publish or comment on evidence collected as a result of investigative journalism, when, after the accused is arrested and charged, the court becomes seized of the case. Nor should they reveal, comment upon or evaluate a confession allegedly made by the accused.

48. While newspapers may, in the public interest, make reasonable criticism of a judicial act or the judgement of a court for public good; they shall not cast scurrilous aspersions on, or impute improper motives, or personal bias to the judge. Nor shall they scandalise the court or the judiciary as a whole, or make personal allegations of lack of ability or integrity against a judge.

49. The newspaper shall, as a matter of caution, avoid unfair and unwarranted criticism which, by innuendo, attributes to a judge extraneous consideration for performing an act in due course of his / her judicial functions, even if such criticism does not strictly amount to criminal contempt of court.

**50. Newspapers to avoid crass commercialism:** While newspapers are entitled to ensure, improve or strengthen their financial viability by all legitimate means, the press shall not engage in crass commercialism or unseemly cut-throat commercial competition with their rivals in a manner repugnant to high professional standards and good taste.

51. Predatory price wars / trade competition among newspapers, laced with tones disparaging the products of each other, initiated and carried on in print, assume the colour of unfair ‘trade’ practice, repugnant to journalistic ethics. The question as when it assumes such an unethical character, is one of the fact depending on the circumstances of each case.

**52. Plagiarism:** Using or passing off the writings or ideas of another as one's own, without crediting the source, is an offence against the ethics of journalism.

**53. Unauthorised lifting of news:** The practice of lifting news from other newspapers publishing them subsequently as their own, ill-comports the high standards of journalism. To remove its unethicity, the 'lifting' newspaper must duly acknowledge the source of the report. The position of features articles is different from 'news'. Feature articles shall not be lifted without permission and proper acknowledgement.

54. The press shall not reproduce in any form offending portions or excerpts from a proscribed book.

**55. Non-return of unsolicited material:** A paper is not bound to return unsolicited material sent for consideration of publication. However, when the same is accompanied by a stamped envelope, the paper should make all efforts to return it.

**56. Advertisements:** Commercial advertisements are information as much as social, economic or political information. What is more, advertisements shape attitude and ways of life at least as much as other kinds of information and comment. Journalistic propriety demands that advertisements must be clearly distinguishable from editorial matters carried in the newspaper.

57. A newspaper shall not publish anything which has a tendency to malign wholesale or hurt the religious sentiments of any community or section of society.

58. Advertisements which offend the provisions of the Drugs and Magical Remedies (Objectionable Advertisement) Act, 1954, should be rejected.

59. Newspapers should not publish an advertisement containing anything which is unlawful or illegal, or is contrary to good taste or to journalistic ethics or proprieties.

60. Newspapers while publishing advertisements, shall specify the amount received by them. The rationale behind this is that advertisements should be charged at rates usually chargeable by a newspaper since payment of more than the normal rates would amount to a subsidy to the paper.

61. Publication of dummy advertisements that have neither been paid for, nor authorised by the advertisers, constitute breach of journalistic ethics.
62. Deliberate failure to publish an advertisement in all the copies of a newspaper offends against the standards of journalistic ethics and constitutes gross professional misconduct.
63. There should be no lack of vigilance or a communication gap between the advertisement department and the editorial department of a newspaper in the matter of considering the propriety or otherwise of an advertisement received for publication.
64. The editors should insist on their right to have the final say in the acceptance or rejection of advertisements, specially those which border on or cross the line between decency and obscenity.
65. An editor shall be responsible for all matters, including advertisements published in the newspaper. If responsibility is disclaimed, this shall be explicitly stated beforehand.

## Lesson 41

# AIR Policy Broadcasting Code

*Dear Student,*

These are guidelines for electronic media management. These will help you in the media field to be both ethical and creative.

*At the end of this lesson;*

You should be able to remember them  
You should follow them

The Prasar Bharati Corporation consists of two wings namely All India Radio and Doordarshan. Commercials were introduced on AIR on 1st November, 1967 and on Doordarshan on 1st January, 1976. Both AIR and Doordarshan have served as an effective instrument for advertisers to publicise their goods and services. As a public service broadcasting organisation, AIR and Doordarshan has responsibility to ensure that the advertisements either in terms of contents, tone or treatment, do not mislead the listeners and viewers as well as the consumers or are not repugnant to good taste.

The earning of commercial revenue is not the sole criteria of the Prasar Bharati. Thus the code has stricter provisions and the main features of the code are as follows:

- Ø Tobacco products including 'Pan Masala' and liquors are not permitted.
- Ø The goods and services advertised should be in consonance with the laws of the country enacted to protect the rights of the consumers.
- Ø The commercial should never project a derogatory image of women and should not endanger the safety of children.

**Programme code:**

The General Broadcasting Code which is otherwise called Programme Code for both AIR and Doordarshan prohibits the following:

1. Criticism of friendly countries;
2. Attack on religions or communities.
3. Anything obscene or defamatory.
4. Incitement to violence or anything against maintenance of law and order.
5. Anything amounting to contempt of court.
6. Aspersions against the integrity of the President and Judiciary.
7. Anything affecting the integrity of the Nation, and criticism by name of any person.

**AIR Code**

Broadcast on All India Radio by individuals will not permit:

1. Criticism of friendly countries;
2. Attack on religions or communities;
3. Anything obscene or defamatory;
4. Incitement to violence or anything against maintenance of law and order;
5. Anything amounting to contempt of court;

6. Aspersions against the integrity of the President, Governors and the Judiciary.
7. Attack on a political party by name;
8. Hostile criticism of any State or the Center;
9. Anything showing disrespect to the Constitution or advocating change in the Constitution by violence; but advocating changes in a constitutional way should not be debarred.
10. Appeal for funds except for the Prime Minister's National Relief Fund, at a time of External Emergency or if the Country is faced with a natural calamity such a floods, earthquake or cyclone.
11. Direct publicity for or on behalf of an individual or organization which is likely to benefit only that individual or organization.
12. Trade names in broadcasts which amount to advertising directly (except in Commercial Services).

### **CODE OF CONDUCT FOR TELEVISION/RADIO BROADCASTS IN CONNECTION WITH ELECTIONS**

The Election Commission (EC) recognises the significance of television and radio in the coverage of elections. Their reach is widespread and impact substantial. On the one hand, the electronic media can be misused to favour one party or another. But on the other hand, the EC recognises that electronic media can, if used properly be an important source of information for voters across the country. It can provide the widest first hand education for voters on political parties, their symbols, various leaders and different issues in the election. This is why electronic media all over the world is the single biggest source of information of voters in terms of debates, campaign, coverage etc.

It is essential therefore that a model code of conduct is established for electronic media both to ensure that it is not misused as well as to ensure that it be used in the best interest of democracy and the voter.

Listed below are the Dos and Don'ts for election coverage on electronic media.

### **DON'Ts**

There should be no coverage of any election speeches or other material that incites violence, against one religion, against one language, against one group etc.

In any constituency, only one candidate should not be projected. While it is not necessary to cover every single candidate (as some constituencies may have several candidates), at least the more important candidates should be covered in any reports from a constituency.

The following could be covered in a balanced and fair manner:-

- Ø Campaigning and excerpts from campaign speeches.
- Ø Symbols, banners, flags and other campaign materials of parties.
- Ø Results of opinion polls by non-political, professional organisations with a proven track record.
- Ø Party manifestoes (critical analysis of which is also perfectly legitimate.)
- Ø Candidates and their views in different constituencies across the country.
- Ø The positions taken by the main parties on different issues important to the electorate.
- Ø Debates between major parties and candidates.
- Ø Analysis of previous voting patterns, victory margins, swings etc.

By 'balanced and fair' it is meant that among the major political parties:-

- Ø No political parties should be given substantially more coverage than others. The 'balance' need not be achieved in any single day or in a single story, but over a reasonable period of time, say one week.
- Ø Balance does not mean each party must get exactly the same air time to the last second, but parties should be given broadly the same amount of time.
- Ø Balance implies that to no reasonable person should it appear that one political party is being projected to the exclusion of others.

Procedures:

- Ø All producers must record a copy of their programme off air for use as reference in case of any disputes.
- Ø The EC shall be the final arbiter in any dispute.

The final interpretation of any disputed passage or story should be with the Election Commission .In Case of disagreement with the broadcaster, one authority could be nominated by the Election Commission who could take a decision immediately when approached.

Opinion/Gallop Polls are not to be published/broadcast during the period 48hrs before each phase of polling till the completion of the phase of polling. Exit poll results are not to be published/broadcast before the completion of each phase of polling.

## Lesson 42

# Rights, Duties & Restrictions of Media Professionals

*Dear Student,*

These lesson talks about various rights and duties of media professionals. It also emphasizes on the restrictions.

*At the end of this lesson;*

You should be able to remember them  
You should follow them

The fundamental objective of journalism is to serve the people with news, views, comments and information on matters of public interest in a fair, accurate, unbiased, sober and decent manner. The Press is expected to conduct itself in keeping with certain norms of professionalism, and ethics.

A journalist must seek and speak the truth, for they are the voice of the voiceless millions. He is not a mere writer, but a voice of change. A voice to tell people the reality of the world where they live in. Yes it is indeed a responsible profession, he has right to access any information, for he the watchdog of the society. But over the years its been very evident that his hands are tied by the forces of power.

Even though the debate whether a free press is a myth or reality continues, here in this chapter we will discuss various rights and different forms of restrictions a journalist has to face.

### **On Reporting Politics, Elections**

Reports on Politics is most often hard news for any newspaper. This section of news attracts the highest readership in any country. To be objective, unbiased and impartial in doing political coverage is really challenging for any newspaper. Very few newspapers can swim across the current of political and government pressure.

Making readers aware of what happens in politics is necessary in democracy. Interpreting the political events in a way as to make the readers take decisions for actively participating in the democratic process is thus important.

But the way the news is presented, the prioritization, can be based on the political affiliation of a media organization. Thus, politicians and pressure groups make use of the media to achieve their political interests.

This becomes very clear during elections. There could be a tendency for the media organizations to take sides.

The challenge here is to remain objective, balanced and fair. Giving equal voice to the parties, candidates, philosophies make it possible.

### **Guidelines on ‘Pre-poll’ and ‘Exit-polls’ Survey**

The Press Council advises newspapers not to allow their forum to be used for distortions and manipulations of the elections and should not allow themselves to be exploited by the interested parties.

This has become necessary to emphasize today since the print media is sought to be increasingly exploited by the interested individuals and groups to misguide and mislead the unwary voters by subtle and not so subtle propaganda on casteist, religious and ethnic basis as well as by the use of sophisticated means like the alleged pre-poll surveys. While the communal and seditious propaganda is not difficult to detect in many cases, the interested use of the pre-poll survey, sometimes deliberately

planted, is not so easy to uncover. The Press Council, therefore, suggests that whenever the newspapers publish pre-poll surveys, they should take care to preface them conspicuously by indicating the institutions which have carried such surveys, the individuals and organisations which have commissioned the surveys, the size and nature of sample selected, the method of selection of the sample for the findings and the possible margin of error in the findings.

Further in the event of staggered poll dates, the media is seen to carry exit-poll surveys of the polls already held. This is likely to influence the voters where the polling is yet to commence. With a view to ensure that the electoral process is kept pure and the voters' minds are not influenced by any external factors, it is necessary that the media does not publish the exit-poll surveys till the last polls is held. Therefore, no newspaper shall publish exit-poll surveys, however, genuine they may be, till last of the polls is over.

### **Reporting Communal Issues**

Scurrilous and inflammatory attacks should not be made on communities and individuals. Any news on communal events based on rumours will be violative of the journalistic ethics. Similarly, distorted reporting making important omissions will not be correct. While it is the legitimate function of the Press to draw attention to the genuine grievance of any community with a view to seeking redress in a peaceful and legal manner, there should be no invention or exaggeration of grievances, particularly those which tend to promote communal discord.

It will be highly conducive to the creation of a healthy and peaceful atmosphere if sensational, provocative and alarming headlines are avoided, and acts of violence or vandalism are reported in such a manner as may not undermine people's confidence in law and order machinery of the State and may at the same time have the effect of discouraging and condemning such activities.

Defaming a community is a serious matter and ascribing to it a vile, anti-national activity is reprehensible and amounts to journalistic impropriety.

There is no impropriety in publishing historical facts in order to warn the present generation against repetition of past mistakes even though these mistakes may not be palatable to a particular community.

There is no objection in making statements about religious communities if they are couched in temperate language and are not exaggerated or incorrect.

News, views or comments relating to communal or religious disputes/clashes shall be published after proper verification of facts and presented with due caution and restraint in a manner which is conducive to the creation of an atmosphere congenial to communal harmony, amity and peace.

Sensational, provocative and alarming headlines are to be avoided. Acts of communal violence or vandalism shall be reported in a manner as may not undermine the people's confidence in the law and order machinery of the State.

Giving community-wise figures of the victims of communal riot, or writing about the incident in a style which is likely to inflame passions, aggravate the tension, or accentuate the strained relations between the communities/religious groups concerned, or which has a potential to exacerbate the trouble, shall be avoided.

### **Caste Related Media coverage**

In general, the caste identification of a person or a particular class should be avoided, particularly when in the context it conveys a sense or attributes a conduct or practice derogatory to that caste.

Newspapers are advised against the use of word 'Scheduled Caste' or 'Harijan' which has been objected to by some persons.

An accused or a victim shall not be described by his caste or community when the same does not have anything to do with the offence or the crime and plays no part either in the identification of any accused or proceeding, if there be any.

Journalist/Newspaper should not publish any fictional literature distorting and portraying the religious characters in an adverse light transgression of the norms of literary taste and offending the religious susceptibilities of large sections of society who hold those characters in high esteem, invested with attributes of the virtuous and lofty.

### **On Financial Reporting**

The Press Council of India advises reporters/financial journalists/newspaper establishments to refrain from receiving any gift/grants/concessions/facilities, etc., either in cash or kind which are likely to compromise free and unbiased reporting on financial matters.

Financial journalists enjoy considerable influence over readers' minds and, therefore, they owe it to them to present a balanced and objective view of the financial dealings, status and prospects of a company. It observed that some companies are given excessive news coverage in the newspapers/magazines because they have issued advertisements to that print media. Sometimes, adverse reports are published of those companies which do not give advertisements to the newspapers or magazines. Again, when a media is not happy with any company/management for whatever reason, the negative aspects of the company are highlighted, while in the reverse situation, no negative aspects are brought to light. Some companies are also known to give gifts, loans, discounts, preferential shares, etc., to certain financial journalists to receive favourable and positive reports of the companies. At the same time, there is no mechanism for investors' education or for raising public opinion against such unhealthy practices.

The Press Council feeling concerned over the malpractice in the Corporate Sector and after holding detailed deliberations and discussions with the representatives financial institutions and journalists, has recommended the guidelines enumerated below for observance by the financial journalists:

The financial journalists should not accept gifts, loans, trips, discounts, preferential shares or other considerations which compromise or are likely to compromise his position.

It should be mentioned prominently in the report about any company that the report is based on information given by the company or the financial sponsors of the company.

When the trips are sponsored for visiting establishments of a company, the author of the report who has availed of the trip must state invariably that the visit was sponsored by the company concerned and that it had also extended the hospitality as the case may be.

No matter related to the company should be published without verifying the facts from the company and the source of such report should also be disclosed.

A reporter who exposes a scam or brings out a report for promotion of a good project, should be encouraged and awarded.

A journalist who has financial interests such as share holdings, stock holdings, etc., in a company, should not report on that company.

No newspaper owner, editor or anybody connected with a newspaper should use his relations with the newspaper to promote his other business interests.

Whenever there is an indictment of a particular advertising agency or advertiser by the Advertising Council of India, the newspaper in which the advertisement was published must publish the news of indictment prominently.

### ***Making Personal Profit***

A journalist shall not take private advantage of information gained in the course of his/ her duties, before the information is public knowledge.

Even where the law does not prohibit it, journalists must not use for their own profit financial information they receive in advance of its general publication, nor should they pass such information to others.

They must not write about shares or securities in whose performance they know that they or their close families have a significant financial interest without disclosing the interest to the editor or financial editor.

They must not buy or sell, directly or through nominees or agents, shares or securities about which they have written recently or about which they intend to write in the near future.

### **On Investigative Reporting**

People have the right to know what is not known especially if the information is relevant to them. Investigative journalism is a kind reporting based on indepth investigation, research and analysis. The subjects are corruption, crimes, rackets, covert actions of politicians and business firms etc.

The investigative reports have to be based on facts investigated, detected and verified by the journalist himself and not on hearsay or on derivative evidence collected by a third party, not checked up from direct, authentic sources by the reporter himself.

The investigative journalist should strike and maintain in his report a proper balance between openness on the one hand and secrecy on the other, placing the public good above everything.

The investigative journalist should resist the temptation of quickies or quick gains conjured up from half-baked incomplete, doubtful facts, not fully checked up and verified from authentic sources by the reporter himself.

Imaginary facts, or ferreting out or conjecturing the non-existent should be scrupulously avoided. Facts and yet more facts are vital and they should be checked and cross-checked whenever possible until the moment the paper goes to Press.

The reporter must not approach the matter or the issue under investigation, in a manner as though he were the prosecutor or counsel for the prosecution. But the approach should be fair,

accurate and balanced. All facts properly checked up, both for and against the core issues, should be distinctly and separately stated, free from any one-sided inferences or unfair comments.

In all proceedings including the investigation, presentation and publication of the report, the investigative journalist newspaper should be guided by the paramount principle of criminal jurisprudence, that a person is innocent unless the offence alleged against him is proved beyond doubt by independent, reliable evidence.

### **On Court Reporting**

Reporting on Court proceedings and judgments is a way of legal education and social corrective measures undertaken by the media organization.

**What to Report:** Like all events are not newsworthy, all the cases are not worthy to be reported. Cases that attracts readership, sensational cases, involvement of eminent people, could be reported. Importance to a case shall be based on its impact on the public to make the society better. Follow ups reports are necessary. But a landmark judgment in an ordinary case is worthy to be reported.

**The Reporter:** A court reporter should have a through knowledge of legal framework. Further, he has to do a lot of homework before he starts to pen down. One golden rule a reporter should always keep in his mind is that, he is writing for the common man. So whatever legal language a court uses, court reporter has to modify it in to simple language, without losing the content meaning.

**Power of the Court:** Courts can take any action to protect them from unnecessary criticism and subject of public debate. Courts have the power to either close proceedings altogether or make orders about what can or cannot be reported. Because, details of a case may affect another case about to begin or someone may be placed at risk through their personal details being made public. There may be good reason for a court to exercise such power. Generally TV cameras are not yet

permitted in most courts and the media has to conduct itself in accordance with the law and court protocols. Courts can punish reporters of media organizations if they seem to publish matters that contempt courts.

**Beware of Contempt of Court:** No unfair comment shall be passed about any decisions by the court. Any inaccurate report may amount to a contempt of court.

The journalist has to take great care while reporting judicial matters. None of the reports shall amount to a contempt of court. Because one misinterpreted word or phrase could land him and his organisation under heavy loss.

He can't express any thing on the court proceedings nor his comments are welcomed. But fair criticism of the judiciary is welcomed.

But it shall not publish anything which, in its direct and immediate effect, creates a substantial risk of obstructing, impeding or prejudicing seriously the due administration of justice; is in the nature of a running commentary or debate, or records the paper's own findings conjectures, reflection or comments on issues, sub judice and which may amount to arrogation to the newspaper the functions of the court; regarding the personal character of the accused standing trial on a charge of committing a crime.

Identities of victims of sexual abuse, details about the personal matters that come before a family court, personal hints about the jury has to be avoided, or reported with the permission of the court.

Judicial proceedings in the open court can be reported but proceedings in the in camera can be reported only with permission.

Reporting what people say outside the court carries some risk - the court offers no protection and if what is said tends to interfere with the administration of justice, contempt of court charges may result and if it is defamatory a writ may be issued by those defamed.

Reports on court proceedings should be fair and accurate. Allegations have to be presented as allegations not as truth.

Media organizations shall not scandalise the court or the judiciary as a whole, or make personal allegations of lack of ability or integrity against a judge.

### **Reporting Sex Related Offences**

*“What we want is the recognition that any sort of forced sexual contact is unacceptable, plain and simple,” Mary Ellen Shone of the King’s County Sexual Assault Center.*

Victims of sexual abuse are physically injured as well carry forever the social stigma that is attached to it. Therefore, victims prefer to hide the offences.

Studies found that 84 per cent of rape victims in America do not report the crime to police. Reports on the events further traumatize the victims. Some feel humiliated by the community knowing what has happened to them.

Rape is already the most underreported violent crime in any country. Because rape victims are treated with such insensitivity by society, they deserve a level of privacy not afforded other crime victims.

Therefore media reports should ensure that reporting on sex related offences educate the society against such acts, at the same time maintaining the reputation of the victims.

Therefore,

The name, address, photo of the victims shall not be published except when the victims wants it to be known by others to educate them.

Detailed narration of the event so as to sensationalise the event shall not be given.

Narrations by witnesses shall not be given especially when they are minors.

Reporters have to take great concern for the victims of sexual abuse.

### ***Reporting Juvenile Crimes***

Juvenile crime is one of the puzzling issues of the world because of its psychological and contextual nature. Some studies say poverty, repeated exposure to violence, drugs, easy access to firearms, unstable family life and family violence, delinquent peer groups, and media violence lead to juvenile crimes. Studies taken up in western countries state that before the time a child has reached seventh grade, the average child has witnessed 8,000 murders and 100,000 acts of violence on the television.

Reporters should not report certain cases that are not necessary for the public but only amounts to sensationalism.

Identity of the accused should not be made public. Because children, even serious juvenile offenders who may have committed a murder, deserve a fresh start when they mature into adults and should not have their pasts haunt them as they struggle to get into college, land a job, find a spouse or obtain a mortgage.

Most of the Juvenile crimes are heard in camera, that reporters have to take care before publishing related stories.

### **Reporting on the Web**

As nothing prevents anyone from publishing anything in the net, question of ethics fall most often to deaf ears. But as the images and words are published for the public, the publishers definitely have certain ethical obligations to their readers, the people they write about, and society in general.

Integrity is the cornerstone of credibility. Being ethical in web publishing convey to the readers that they can be trusted.

Honesty Accuracy should guide the publishers in gathering, interpreting and publishing the material.

They shall not plagiarize materials. Possible links shall be given to sources wherever possible. Visuals should not be manipulated except for technical clarity and focus.

Factual information and commentary should be differentiated.

Respect the individuals privacy and dignity. Act diligently and with human concern and care in publishing photos of victims of sex crimes.

Deny favored treatment to advertisers and special interests and resist their pressure to influence content.

Publicly correct any misinformation.

## Lesson 43

## Accurate and Fair Reporting

*Dear Student,*

These lesson talks about various rights and duties of media professionals. It also emphasizes on the restrictions.

*At the end of this lesson;*

You should be able to remember them  
You should follow them

**Accuracy** is the first and the foremost thing in journalism. Public will know your media only by the virtue of accuracy news report exhibits. Accurate reports in media is the vital element for the development of society.

“Do not print one iota beyond what you know ” Gregory Fauve, the longtime editor in Sacramento and Chicago, says his rule is simple.

Proper care should be taken by newspapers in maintaining accuracy in respect of quotations, and all matters that are published. He has the right to eschew publication of inaccurate, baseless, graceless, misleading or distorted material. Verification of news is necessary before publication, especially when the report has slanderous or libellous overtones or could lead to communal tension; nor can the publication of rumours as views of a cross-section of people be justified under any circumstances. The editor shall make necessary amends when any false or distorted publication is brought to his notice.

News, current affairs and other factual programmes must be truthful and accurate on points of fact, and be impartial and objective at all times.

### **Guidelines**

- Ø Significant errors of fact should be corrected at the earliest opportunity.
- Ø Broadcasters should refrain from broadcasting material which is misleading or unnecessarily alarms viewers.
- Ø Broadcasters must ensure that the editorial independence and integrity of news and current affairs is maintained.
- Ø Factual reports on the one hand, and opinion, analysis and comment on the other, should be clearly distinguishable.
- Ø Broadcasters must take all reasonable steps to ensure at all times that the information sources for news, current affairs and documentaries are reliable.
- Ø Contributors and participants in any programme should be dealt with fairly and should, except as required in the public interest, be informed of the reason for their proposed contribution and participation and the role that is expected of them.
- Ø Programme makers should not obtain information or gather pictures through misrepresentation or deception, except as required in the public interest when the material cannot be obtained by other means.
- Ø Never add anything that was not there.
- Ø Never deceive the audience. Give the complete story.
- Ø Names, places etc. without mistakes
- Ø Accurate vocabulary
- Ø Sources are traceable, identification sometimes know to you.

### **Being Fair, Balanced and Impartial**

Reporters have to maintain fairness in reporting by being balanced and impartial. Media people are responsible for maintaining standards consistent with the principle that when controversial issues of public importance are discussed, reasonable efforts are made, or reasonable opportunities are given, to present significant points of view either in the same programme or in other programmes within the period of current interest. When a controversial question arises, conflicting parties should be given equal space and time.

Impartiality means not taking sides. Selecting portions and communicating them either from a video coverage, or a report, tend to give a partial view of events as the selection is done based on the value system of one who selects them.

### ***Maintaining Good Taste and Decency***

Media professionals are responsible for maintaining standards which are consistent with the observance of good taste and decency. They must take into consideration current norms of decency and taste in language and behaviour bearing in mind the context in which any language or behaviour occurs.

When these are unavoidable, visual and verbal warnings must be given before communicating them. When programmes that contain violent material, material of a sexual nature, coarse language or other content likely to disturb children or offend a significant number of adult viewers, warnings should be given, but avoiding detail, which may itself distress or offend viewers.

### **Protecting Confidential Sources of Information**

Any matter discussed or disclosed in confidence ought not to be published without obtaining the consent of the source. If the editor finds that the publication is in the public interest, he should

clarify it in an appropriate footnote that the statement or discussion in question was being published although it had been made “off the record”.

In Contempt of Court proceedings the press usually makes the plea that it should not be forced to disclose Confidential source. “Such a plea for justification has been permitted on a limited basis. The Press’s right to hold on to its sources of information has been balanced against other aspects of public interest. Some times press demands the right to break confidence more than they plead the right to hold on to their own confidential sources. It is only fair that each claim should be balanced against other claims without conceding total primacy to the press in respect of its investigative and truth verification functions”.

In 1983, the Law Commission of India sent a questionnaire soliciting the views of the Press Council, regarding disclosure of source of information by a journalist acquired by him in confidence for the purpose of his profession. In response to the Law Commission’s question on the subject, the Press Council expressed as follows:

“In the opinion of the Council, the provision contained in Section 15 (2) of the Press Council Act, 1978 incorporates the latest trend and principles on the subject. Although under the above Act it is confined only to the proceedings under the Act it is strongly recommended that it should be made a part of the general law of the land.”

“It is equally strongly felt that if any exception is to be made, it should be done in cases of extreme nature where disclosure is altogether unavoidable in the interest of the administration of justice. But the powers to order disclosure should be conferred only on competent court and that also in confidence to the presiding officer in the first instance, who may then, if satisfied that it is germane to the decision of the case, take such steps as may be necessary to make it a part of the evidence on record”.

The Law Commission of India submitted its 93rd Report to the Government of India on 10th August, 1983 recommending for insertion of Section 132A in the Indian Evidence Act, 1872, as under:

“No court shall require a person to disclose the source of information contained in a publication for which he is responsible, where such information has been obtained by him on the express agreement or implied understanding that the source will be kept confidential”.

It seems that the Government of India has not taken any step to get this recommendation of the Law Commission, implemented. The same can be said about the relatively moderate recommendations of the Press Commission/or of the Press Council of India, on this subject.

The editor of a newspaper cannot be asked to divulge the source of information of a letter published in his paper. Asking a journalist to divulge his personal and confidential source of information amounts to violation of his obligation to report on events of public interest and constitutes a threat to Press freedom.

If information is received from a confidential source, the confidence should be respected. The journalist cannot be compelled by the Press Council to disclose such source. But it shall not be regarded as a breach of journalistic ethics if the source is voluntarily disclosed in proceedings before the Council by the journalist who considers it necessary to repel effectively a charge against him/her.

### **Keeping away from Receiving Favours**

The public outcry over the reported attempts to win over the media through gifts and favors had prompted the Press Council of India to undertake a comprehensive study of the issue with regard to all kinds of favours/benefits, either in cash or in kind in the form of concessions, gifts, lands, house facilities etc., extended to journalists news agencies, newspaper establishments and owners by various authorities. The press council in 1998 published a detailed report on the subject and advised the journalists to keep away from such unethical practices.

The Press Council of India has held that government accommodation, concessional land, free air tickets and company shares being given to journalists, news agencies and newspaper establishments and owners will amount to 'undue favours.'

The council, which undertook a comprehensive study on the subject between 1985 and 1995, held that free and concessional bus, rail and other transport facilities given to journalists also fell in the category of favours.

The council noted that proprietors of newspapers, instead of journalists and editors, were accompanying the president, vice-president, prime minister and external affairs ministry officials on their foreign trips. It recommended that the newspapers should take care to nominate eligible persons for the purpose.

The commission also observed that indiscriminate disbursement of money from the discretionary funds of chief ministers encouraged unfaithfulness to the mission of journalism and promoted corrupt practices.

The committee (of the council on undue favours to journalists) came to the conclusion that the following facilities, so far being extended by the government and the authorities, companies and corporations, will amount to favours subject to the observations made hereunder:

**Accommodation:** Government housing, flats, land: The committee is of the view that it is the responsibility of the newspaper establishments to provide accommodation to its employees.

The committee also noted that central and state governments were giving prime land to newspaper owners at a nominal price.

In some cases, it was found that the newspapers, with a view to get another allotment at some other place after renting out the entire building, were not even reporting on attacks on their own scribes for the simple reason that they wanted to remain in the good books of the government. Such newspapers were compromising with the fascist forces and the freedom of the press.

**Allotment of shares in companies:** The committee is of the opinion that if shares are allotted at special prices or are given under any quota, this will amount to favour. The council has already issued guidelines for financial journalists.

**Bus, rail travel and transport:** The committee is of the opinion that this was favour so far as big and medium newspapers are concerned. The journalists attached to newspapers that are in profit have no justification for availing free or concessional bus, rail or air transport facility. However, in case of small newspapers this constituted a facility, as the committee felt that there is justification for extending such facility.

**Foreign travel:** The companies, corporations and airlines extend the facility of air travel to journalists not only within the country but also abroad. The journalists avail of this happily. This is an inducement to write favourably about their products or airlines. Propaganda is undertaken through such devices to commercially promote the products or airlines. This certainly interferes with independent reporting.

**Cash disbursement from CM's discretionary fund:** The committee noted that there are guidelines as to how the discretionary fund at the disposal of the chief minister or any other functionary has to be spent. The guidelines should be followed strictly.

**Financial assistance:** The committee is of the opinion that if financial assistance is given for medical treatment purposes, it still constitutes a favour, unless medical aid is being given under the clear-cut policy, uniformly applicable to all those destitute or sick persons who cannot afford medical treatment. And in case the journalist happens to be one of those persons there is nothing wrong in it.

**Funds for media centre and grants to journalists associations:** The committee is of the opinion that this is a favour, unless it is given for promoting journalistic skills.

**Gift cheque:** by advertising agencies for publication of press note of their clients. The committee thinks this is a favour and it deserves outright condemnation.

**Other gifts:** The committee is of the opinion that gifts in any form, irrespective of their value, are to be condemned.

**Free parking:** The committee is of the opinion that this is a favour if a journalist uses this facility for purposes other than his professional work.

**Guest hospitality:** The committee is of the opinion that working journalists, as a rule, should not be treated as state guests. In case an individual is treated as a state guest he, ipso facto, becomes entitled to many facilities without any payment thereof. However, when press teams are invited in discharge of their professional duties, making due arrangements for them should be an exception. The committee further noted that the stay in government guesthouses by accredited journalists is permissible if it is for discharging professional duties.

**Import of duty-free cameras and computers:** The committee is of the opinion it is the duty of the newspaper establishment to provide cameras or computers to its personnel. An individual employee journalist is not required to buy a camera or a computer for his work. In the recent past, the central government had allowed import of duty-free cameras and computers to the journalists. The committee is of the opinion that this facility should, however, be permissible for accredited freelance journalists, provided it is not misused.

**Insurance premium:** The committee is of the opinion that it is not for the government to pay for the premium towards the insurance of journalists. It is the duty of the newspaper establishments or the individual concerned to make such payment towards annual dues once the scheme has been introduced.

**Jobs to relatives:** Giving jobs to journalists' relatives are not a merit, is an outright attempt at inducement.

**Loans:** The committee is of the opinion that the grant of loans within the ambit of policy already laid down for all citizens is permissible. But when the loan is give only to the journalists or at

a reduced rate of interest or when the interest due or the principal amount is waived, written off or condoned, such a practice will amount to undue favour.

**Nomination on committees:** The committee is of the opinion that in some states, journalists are nominated on some organisations and institutions like the Public Service Commission and are also given the status of state or cabinet ministers. This is a wrong practice. Except for the nomination by professional organisations on committees that have a quota to represent various professionals, this practice constitutes favour.

**PCO, fax, phone booth or centre:** The committee is of the opinion that this is obviously a favour, if gifted. The fax and the phone facility given to all journalists should, however, be distinguished from the allotment of such booths.

**Pension benefits:** The committee is of the opinion that since the Fourth Estate is not a part of the government, this benefit constitutes a favour if the government extends the pension benefits. The authorities' role should be limited to ensuring that newspaper establishments implement the awards of the wage boards.

**Press clubs - donation of funds:** The committee noted that this practice is prevalent all over the country and funds are lavishly donated by chief ministers, ministers and leaders not only to genuine press clubs but also to the press clubs of dubious nature. It, therefore, constitutes an attempt to induce journalists to give favourable reports about the donors.

**Prizes:** The committee feels the practice of giving spurious awards has to be curbed. There are instances, not worth mentioning, of the sale of awards and prizes by racketeers, who make money out of it. Not just racketeers, but awardees also often contribute towards the value of the prizes.

**Shops:** Allotment of shops in their capacity as journalists is a clear-cut favour.

**The committee is of the opinion that the following constitute facilities, subject to the remarks given:**

**Accreditation:** The pattern of the formation of the Central Press Accreditation Committee should be followed in all states and union territories. CPAC at present has a good composition of representatives of journalists, owners, editors and non-editors' organisations, headed by a principal information officer of the Press Information Bureau. Another officer, the director of external publicity, is also called to attend the meeting whenever the issue of foreign accreditation is considered.

But it should be made mandatory that the accreditation committee should be constituted within a month of the expiry of the term of the earlier committee, and the committee should hold its meetings quarterly. A provisional accreditation, if given, must come up before the accreditation committee in its first meeting thereafter.

**Government and public authority advertisements:** It is a mutually beneficial transaction when conducted in keeping with the parameters defined in an already laid-down policy. But when given to individual newspapers on an ad hoc basis or for extraneous considerations or when they are not routed through centralised agency they constitute favour.

In addition, governments and public authorities, including the railways, must publish in their annual reports, the information regarding advertisements and facilities given by them to journalists and their organisations. This will ensure greater transparency in their working.

**Election facilities:** The committee is of the opinion that this was a must, so that journalists are able to cover the events relating to the most important electoral process. Access to all the places of information must be given to them, subject to reasonable restrictions imposed by the election commission of India.

**Meeting expenses for journalistic conventions, seminars:** The committee is of the opinion that this was permissible as long as under its garb cash grants are not given by central and state governments, public authorities and others.

**Press rooms:** They are a facility required to be provided for due discharge of the professional duties by journalists.

**Inviting press parties:** The committee is of the opinion that, as stated earlier, this is a facility extended by the authorities to provide necessary information on matters of public interest to the public.

**Publication material during press conference:** The committee is of the opinion that this is a facility.

**Training:** The committee is of the opinion that this is a facility and should be encouraged as this will improve the knowledge and efficiency of all those engaged in the profession of journalism.

### **Other Duties and Restraints**

#### **Duties**

**Reply:** The newspapers have the moral responsibility to reply the readers, and cannot deny the right of people for reply when they are referred to in the reports.

**Advertisement:** An advertisement containing anything unlawful or illegal, or the one which is contrary to good taste or journalistic ethics or propriety should not be published.

**Balanced View:** While reporting he should make sure that all sides of the core issue or subject is reported.

**Guard the Society:** It not only the right but also the duty of a journalist, discretion and right to serve the public interest by drawing reader's attention to citizens of doubtful antecedents and of questionable character. But as responsible journalists they should observe due restraint and caution in hazarding their own opinion or conclusion in branding these persons as 'cheats' or 'killers' etc. The cardinal principle being that the guilt of a person should be established by proof of facts alleged and not by proof of the bad character of the accused.

## **Restrictions**

French philosopher Claude Adrien has stated that, “To limit the press is to insult a nation; to prohibit reading of certain books is to declare the inhabitants to be either fools or slaves.”

**Judicial Proceedings:** Where a newspaper is charged with violation of journalistic ethics, a plea that it has ceased publication will afford the editor no defence, since it is his conduct which is subject of the complaint.

**Defamatory Statements:** A journalist should not write anything, which may amount to be libel. Reports that may bring down the reputation of anyone should be written carefully and diligently.

**Restricted Freedom of Expression:** The Official Secrets Act, 1923 prohibits gathering, storing, or publication of any material that are important to the national security, integrity of the nation. The constitution forbids publication of any materials that will adversely affect the friendly relationship with other countries.

**Cartoons and Entertainment Columns:** Cartoons and caricatures in depicting good humour are to be placed in a special category of news that enjoy more liberal attitude, in a way that it is received by the general public as cartoon only.

**Intruding privacy:** Things concerning a person’s home, family, religion, health, sexuality, personal life and private affairs are covered by the concept of privacy. Unless there is a genuine reason, and public’s need to know it, or it is of prime importance to society, media professionals shall not intrude other’s privacy. Unauthorized personnel shall not tap any communication between two parties. Intrusion through photography into moments of personal grief shall be avoided. However, photography of victims of accidents or natural calamity may be in larger public interest.

**Hidden Identity:** While reporting crime involving rape, abduction and kidnapping of women, sexual abuse of children, character, virginity of women etc, the identity of the people suffered have to be kept hidden. The ethical principle is that they shall not be subjected to further humiliation or

harassment. Their photos shall not be published. Minor children and infants who are the offspring of sexual abuse or 'forcible marriage' or illicit sexual union shall not be identified or photographed.

**Recording interviews:** The Press shall not tape-record anyone's conversation without that person's knowledge or consent, except where the recording is necessary to protect the journalist in a legal action, or for other compelling good reason.

**Avoid Obscenity:** Newspapers/journalists shall not publish anything, which is obscene, vulgar or offensive to public good taste.

**Violence not to be glorified:** Newspapers/journalists shall avoid presenting acts of violence, armed robberies and terrorist activities in a manner that glorifies the perpetrators acts, declarations or death in the eyes of the public.

**Social Evils not to be glorified:** Journalist shall not allow their columns to be misused for writings which have a tendency to encourage or glorify social evils like Sati Pratha or ostentatious celebrations.

**Paramount national interest:** Newspapers/journalist shall, as a matter of self-regulation, exercise due restraint and caution in presenting any news, comment or information which is likely to jeopardise, endanger or harm the paramount interests of the State and society, the rights of individuals with respect to which reasonable restrictions may be imposed by law on the right to freedom of speech and expression under clause (2) of Article 19 of the Constitution of India.

## Appendices

# Glossary of Legal Terms

**A-B trust:** see bypass trust.

**Abatement:** a diminishment, a reduction

**Abrogate:** to cancel, destroy, revoke or void

**Abscond:** to vanish, to travel covertly out of the court's jurisdiction

**Abstention:** a legal policy whereby one court declines to exercise its jurisdiction and defer to a different court

**Abuse of discretion:** a standard applied by appellate courts in reviewing the exercise of discretion by trial courts, administrative agencies and other entities

**Abuse of process:** the improper use of the legal process

**Acceleration:** to speed up, to hasten

**Accord:** agreement

**Accrue:** to accumulate, to collect, to come into existence, as to a right or cause of action, to come into existence as an enforceable legal claim

**Acquittal:** a final judgment by a judge or jury that the prosecution has not proven a criminal defendant's guilt beyond a reasonable doubt. This is not a guilty verdict.

**Act of god:** forces of nature which are impossible to predict

**Action (at law):** a legal right whereby one party prosecutes another for a wrong

**Actionable tort:** the failure to perform a legal duty created by statute or common law owed by one party to another which such failure results in injury

**Actionable:** giving rise to a cause of action

**Actual damages:** losses which are proven to have incurred as a result of the wrongful act of another

**Actual malice:** to win a defamation suit, public officials or prominent people, such as political candidates or movie stars, must prove that the offender made a false statement with actual malice. This means the statement was made with knowledge that it was false or with serious doubts about whether it was true.

**Ad Damnum:** (lat.) The amount of damages demanded normally in the context of a lawsuit

**Ad litem:** (lat.) For the lawsuit

**Additur:** an increase by the court in the amount of damages awarded by the jury

**Adjourn:** to suspend; to delay a court proceeding through recess

**Adjournment in contemplation of dismissal:** see pre-trial diversion.

**Adjudication:** a determination of the controversy and a pronouncement of a judgment based on evidence presented

**Adjudication:** the decision (decree or judgment) by the court concerning the defendant(s) involved in the case.

**Administrator:** person appointed to oversee the handling of an estate when there is no will.

**Admiralty and maritime jurisdiction:** jurisdiction over actions related to events occurring on navigable waters

**Admission:** voluntary acknowledgment that certain facts do exist or are true

**Advance directive:** see living will.

**Affidavit:** a written statement made under oath.

**Age of majority:** the age when a person acquires all the rights and responsibilities of being an adult. In most states, the age is 18.

**Alienation of affections:** a tort based upon willful, malicious or intentional interference of a marriage relation by a third party

**Alimony:** also called maintenance or spousal support. In a divorce or separation, the money paid by one spouse to the other in order to fulfill the financial obligation that comes with marriage.

**Allocution:** the right a victim has to make a statement (written or spoken) at felony sentencing hearings and parole hearings.

**Alter ego:** (lat.) The other self. Under this legal doctrine, the law will disregard the personal liability an individual has as a result of the existence a corporate entity and will regard an act as the act of the individual rather than solely the act of the corporation

**Alternative dispute resolution:** methods for resolving problems without going to court.

**American bar association (a.b.a.):** a national organization of lawyers and law students

**Amicus curiae:** latin for “friend of the court.” refers to a party that is allowed to provide information (usually in the form of a legal brief) to a court even though the party is not directly involved in the case at hand.

**Annotation:** citing a particular case of statute

**Annuity:** a contract that provides for the payment of a fixed sum usually over a period of time, and often utilized to fund a structured settlement

**Annul:** to make void, to do away with

**Annulment:** a legal decree that states that a marriage was never valid. Has the legal effect of wiping out a marriage as though it never existed.

**Answer:** in a civil case, the defendant's written response to the plaintiff's complaint. It must be filed within a specified period of time, and it either admits to or (more typically) denies the factual or legal basis for liability.

**Appeal:** a request to a supervisory court, usually composed of a panel of judges, to overturn the legal ruling of a lower court.

**Arbitration:** a method of alternative dispute resolution in which the disputing parties agree to abide by the decision of an arbitrator.

**Arraignment:** the initial appearance before a judge in a criminal case. At an arraignment, the charges against the defendant are read, a lawyer is appointed if the defendant cannot afford one, and the defendant's plea is entered. The defendant is advised of the allegations and his or her rights. A plea is then requested. If, at the conclusion of a preliminary hearing, a defendant is ordered to trial, he/she will be arraigned again in superior court.

**Articles of incorporation:** a document that must be filed with a state in order to incorporate. Among the things it typically must include are the name and address of the corporation, its general purpose and the number and type of shares of stock to be issued.

**Assignment:** the transfer of legal rights, such as the time left on a lease, from one person to another.

**Assumption of risk:** a defense raised in personal injury lawsuits. Asserts that the plaintiff knew that a particular activity was dangerous and thus bears all responsibility for any injury that resulted.

**Asylum seeker:** a foreigner, already in the u.s. Or at the border, who seeks refuge, claiming an inability or unwillingness to return to the home country because of a well-founded fear of persecution.

**At-will employment:** an employment relationship where the employer has the right to fire a worker for any cause at any time—usually without any notice.

**Bad faith:** dishonesty or fraud in a transaction, such as entering into an agreement with no intention of ever living up to its terms, or knowingly misrepresenting the quality of something that is being bought or sold.

**Bail schedule:** the list that sets the amount of bail a defendant is required to pay based on what the charge is. A judge may be able to reduce the amount.

**Bail:** the deposit - money, property, or bond - that is put up by, or on behalf of, an arrested person to secure his or her release from jail before or after court proceedings begin. For most serious crimes, a judge sets bail during the arraignment.

**Bailiff:** a court attendant

**Bailment:** a legal relationship created when a person gives property to someone else for safekeeping. To create a bailment the other party must knowingly have exclusive control over the property. The receiver must use reasonable care to protect the property.

**Bankruptcy:** insolvency; a process governed by federal law to help when people cannot or will not pay their debts.

**Barrister:** in England, one of two classes of legal practitioners; an English trial lawyer

**Battery:** an intentional or unlawful application of force to the person of another; an unlawful touching

**Bench trial:** also called court trial. A trial held before a judge and without a jury.

**Beneficiary:** person named in a will or insurance policy to receive money or property; person who receives benefits from a trust.

**Best evidence rule:** rule of the law of evidence requiring the original writing, recording, or photograph

**Beyond a reasonable doubt:** the highest level of proof required to win a case. Necessary to get a guilty verdict in criminal cases.

**Bifurcation:** splitting a trial into two parts: a liability phase and a penalty phase. In some cases, a new jury may be empaneled to deliberate for the penalty phase.

**Bill of rights:** the first ten amendments to the U.S. Constitution.

**Binder:** an outline of the basic terms of a proposed sales contract between a buyer and a seller.

**Board of directors:** the group of people elected by a corporation's shareholders to make major business decisions for the company.

**Bond:** a document with which one party promises to pay another within a specified amount of time. Bonds are used for many things, including borrowing money or guaranteeing payment of money.

**Booking:** part of the process of being arrested in which the details of who a person is and why he or she was arrested are recorded into the police records.

**Brief:** a written document that outlines a party's legal arguments in a case.

**Burden of proof:** the burden that rests with each party to the litigation to convince the jury in a jury trial or the judge in a bench trial of that party's case. It is the duty of a party in a lawsuit to persuade the judge or the jury that enough facts exist to prove the allegations of the case. Different levels of proof are required depending on the type of case.

**Buy-sell agreement:** an agreement among business partners that specifies how shares in the business are to be transferred in the case of a co-owner's death.

**By-laws:** a corporation's rules and regulations. They typically specify the number and respective duties of directors and officers and govern how the business is run.

**Capital gain:** the profit made from the sale of a capital asset, such as real estate, a house, jewelry or stocks and bonds.

**Capital loss:** the loss that results from the sale of a capital asset, such as real estate, a house, jewelry or stocks

and bonds. Also the loss that results from an unpaid, non-business (personal) loan.

**Case law:** also known as common law. The law created by judges when deciding individual disputes or cases.

**Case of first impression:** a novel legal question that comes before a court.

**Casualty loss:** a loss of property due to fire, storm, or other casualty

**Cause of action:** the existence of particular facts and law that create a right sufficient to merit judicial action

**Cautionary instruction:** judge's charge to a jury telling them not to allow any outside matter to influence their verdict

**Caveat emptor:** latin for "buyer beware." this rule generally applies to all sales between individuals. It gives the buyer full responsibility for determining the quality of the goods in question. The seller generally has no duty to offer warranties or to disclose defects in the goods.

**Caveat:** (lat.) Warning or caution

**Cease and desist order:** a court order prohibiting the person or entity to which it is directed from undertaking or continuing a particular activity or course of conduct

**Certiorari:** latin that means "to be informed of." refers to the order a court issues so that it can review the decision and proceedings in a lower court and determine whether there were any irregularities. When such an order is made, it is said that the court has granted certiorari.

**Challenge for cause:** ask that a potential juror be rejected if it is revealed that for some reason he or she is unable or unwilling to set aside preconceptions and pay attention only to the evidence.

**Change of venue:** a change in the location of a trial, usually granted to avoid prejudice against one of the parties.

**Charging lien:** entitles a lawyer who has sued someone on a client's behalf the right to be paid from the proceeds of the lawsuit, if there are any, before the client receives those proceeds.

**Child abuse:** defined by state statutes. Usually occurs when a parent purposefully harms a child.

**Child neglect:** defined by state statutes. Usually arises from a parent's passive indifference to a child's well-being, such as failing to feed a child or leaving a child alone for an extended time.

**Children's trust:** a trust set up as part of a will or outside of a will to provide funds for a child.

**Circuit court:** one of several courts in a given jurisdiction; a part of a system of courts

**Circumstantial evidence:** indirect evidence that implies something occurred but doesn't directly prove it. If a man accused of embezzling money from his company had made several big-ticket purchases in cash around the time of the alleged embezzlement, that would be circumstantial evidence that he had stolen the money.

**Citation:** a reference to a book or other source of legal authority

**Civil action:** a legal proceeding brought to protect a civil right created by common law or statute

**Civil law:** law concerned with non criminal matters

**Civil liability:** liability for actions seeking enforcement of personal rights

**Class action suit:** a lawsuit in which one or more parties file a complaint on behalf of themselves and all other people who are “similarly situated” (suffering from the same problem). Often used when a large number of people have comparable claims.

**Class action:** a lawsuit brought by a representative member on behalf of a large group of persons or members of the group

**Clayton act:** prohibits price fixing and other types of discrimination

**Clean hands:** the doctrine that requires that a person who seeks equitable relief must not himself have committed any impropriety with respect to the transaction

**Clear and convincing evidence:** the level of proof sometimes required in a civil case for the plaintiff to prevail. Is more than a preponderance of the evidence but less than beyond a reasonable doubt.

**Clear and convincing:** standard of proof; evidence greater than mere preponderance

**Closing:** in a real estate transaction, this is the final exchange in which the deed is delivered to the buyer, the title is transferred, and the agreed-on costs are paid.

**Codicil:** a supplement to a will.

**Cohabitation agreement:** also called a living-together contract. A document that spells out the terms of a relationship and often addresses financial issues and how property will be divided if the relationship ends.

**Collateral:** an asset that a borrower agrees to give up if he or she fails to repay a loan.

**Collective bargaining agreement:** the contract that spells out the terms of employment between a labor union and an employer.

**Comity:** a code of etiquette that governs the interactions of courts in different states, localities and foreign countries. Courts generally agree to defer scheduling a trial if the same issues are being tried in a court in another jurisdiction. In addition, courts in this country agree to recognize and enforce the valid legal contracts and court orders of other countries.

**Common law:** also known as case law. The law created by judges when deciding individual disputes or cases; the system of jurisprudence which is based on judicial precedent rather than statutory laws.

**Common-law marriage:** in some states, a couple is considered married if they meet certain requirements, such as living together as husband and wife for a specific length of time. Such a couple has all the rights and obligations of a traditionally married couple.

**Community property:** property acquired by a couple during their marriage. Refers to the system in some states for dividing the couple’s property in a divorce or upon the death of one spouse. In this system, everything

a husband and wife acquire once they are married is owned equally (fifty-fifty) by both of them, regardless of who provided the money to purchase the asset or whose name the asset is held in.

**Comparative negligence:** also called comparative fault. A system that allows a party to recover some portion of the damages caused by another party's negligence even if the original person was also partially negligent and responsible for causing the injury; the comparing of responsibility between the plaintiff and the defendant or defendants

**Compensatory damages:** money awarded to reimburse actual costs, such as medical bills and lost wages. Also awarded for things that are harder to measure, such as pain and suffering.

**Complaint:** a written accusation filed by a prosecutor in a justice or municipal court that accuses one or more persons of committing one or more crimes. In a civil action, the document that initiates a lawsuit. The complaint outlines the alleged facts of the case and the basis for which a legal remedy is sought. In a criminal action, a complaint is the preliminary charge filed by the complaining party, usually with the police or a court.

**Compos mentis:** (lat.) Mentally competent

**Conclusion of fact:** the conclusion reached through use of facts and reasoning, without resort to rules of law

**Conclusion of law:** conclusion reached through application of rules of law

**Conclusive evidence:** evidence which is irrefutable

**Concurrent sentences:** criminal sentences that can be served at the same time rather than one after the other.

**Conditional dismissal:** see adjournment in contemplation of dismissal.

**Conflict of interest:** a situation where the tending of one duty leads to disregard of another; refers to a situation when someone, such as a lawyer or public official, has competing professional or personal obligations or personal or financial interests that would make it difficult to fulfill his duties fairly.

**Conflict of laws:** applicable law of one state court which differs with the applicable law of another state jurisdiction which also has an interest in the outcome

**Consanguinity:** the familial relationship of persons united by one or more common ancestors

**Consecutive sentences:** criminal sentences that must be served one after the other rather than at the same time.

**Consent judgment:** an agreement of the parties which is placed on record with the court having jurisdiction

**Consent, informed:** see informed consent

**Conservator:** person appointed to manage the property and finances of another. Sometimes called a guardian.

**Consideration:** something of value that is given in exchange for getting something from another person.

**Consortium:** the loss of services and society of another

**Contempt of court:** a willful disobedience of a court order or a willful interference with the administration of justice; an action that interferes with a judge's ability to administer justice or that insults the dignity of the court. Disrespectful comments to the judge or a failure to heed a judge's orders could be considered contempt of court. A person found in contempt of court can face financial sanctions and, in some cases, jail time.

**Contingency fee:** also called a contingent fee. A fee arrangement in which the lawyer is paid out of any damages that are awarded; the amount is usually a percentage of the party's recovery

**Continuance:** a delay of court proceedings; a postponement

**Contract:** an agreement between two or more parties in which an offer is made and accepted, and each party benefits. The agreement can be formal, informal, written, oral or just plain understood. Some contracts are required to be in writing in order to be enforced.

**Contribution:** a legal right of a party who is responsible to the victim for reimbursement from another person

**Contributory negligence:** prevents a party from recovering for damages if he or she contributed in any way to the injury.

**Copyright:** a person's right to prevent others from copying works that he or she has written, authored or otherwise created.

**Corporation:** an independent entity created to conduct a business. It is owned by shareholders.

**Costs:** court-recognized expenses of the legal proceedings for which the successful party is entitled to reimbursement from the other party

**Creditor:** a person (or institution) to whom money is owed.

**Criminal negligence:** an act of negligence that is a violation of law and constitutes a crime

**Cross examination:** the questioning of an opposing party's witness about matters brought up during direct examination.

**Custodian:** under the uniform transfers to minors act, the person appointed to manage and dispense funds for a child without constricting court supervision and accounting requirements.

**Damages:** money compensation awarded to a person who has been injured by another; see actual damages, consequential damages, liquidated damages, nominal damages, punitive damages; the financial compensation awarded to someone who suffered an injury or was harmed by someone else's wrongful act.

**Damnum absque injuria:** (lat.) Harm without injury

**De jure:** (lat.) By right; lawful

**De novo:** (lat.) From the very beginning; anew

**Debtor:** person who owes money.

**Decision:** the judgment rendered by a court after a consideration of the facts and legal issues before it.

**Declaratory judgment:** a review and determination by the court, sometimes with the assistance of a jury, of a matter to determine the rights of the parties or express the opinion of the court on a question of law or interpretation

**Decree:** a decision or order of a court, usually in equity; a final decree disposes of all matters before the court; an interlocutory decree disposes of only part of the lawsuit and often may not be appealed until the conclusion of the entire case

**Deed:** a written legal document that describes a piece of property and outlines its boundaries. The seller of a property transfers ownership by delivering the deed to the buyer in exchange for an agreed upon sum of money.

**Defamation:** the publication of a statement that injures a person's reputation. Libel and slander are defamation.

**Default judgment:** a judgment entered against a party for that party's failure to answer or comply as required by procedure laws. Most often occurs when a defendant fails to answer the court papers filed by the plaintiff charging the defendant with wrongdoing; a ruling entered against a defendant who fails to answer a summons in a lawsuit.

**Default:** the failure to fulfill a legal obligation, such as neglecting to pay back a loan on schedule.

**Defendant:** in criminal cases, the person accused of the crime. In civil matters, the person or organization that is being sued.

**Defense:** the defendant's statement or reasons why he should not be liable to the plaintiff for the allegations made

**Defined benefit plan:** a type of retirement plan that specifies how much in benefits it will pay out to a retiree.

**Defined contribution plan:** also called an individual account plan. A type of retirement plan in which the employer pays a specified amount of money each year, which is then divided among the individual accounts of each participating employee. Profit-sharing, employee stock ownership and 401(k) plans are all defined contribution plans.

**Deliberation:** the jurors' process of pondering and weighing of facts, applying the law, and coming to a verdict

**Demand:** the amount of money requested by the plaintiff

**Demonstrative evidence:** evidence which aids by its ability to demonstrate; object or thing which can be viewed by the trier of fact

**Depose:** to give evidence or testimony under oath on the record

**Deposition:** part of the pre-trial discovery (fact-finding) process in which a witness testifies under oath. A deposition is held out of court with no judge present, but the answers often can be used as evidence in the trial; the taking of statements prior to trial where all parties' attorneys are asked to be present for the asking of questions of parties or witnesses while the proceedings are recorded by some approved method

**Derogation:** to repeal or abolish a law

**Direct evidence:** evidence that stands on its own to prove an alleged fact, such as testimony of a witness who says she saw a defendant pointing a gun at a victim during a robbery.

**Direct examination:** the initial questioning of a witness by the party that called the witness.

**Directed verdict:** a judge's order to a jury to return a specified verdict, usually because one of the parties failed to prove its case; a verdict entered in a jury trial by the judge before the jury is allowed to consider the merits of the case

**Disbursements:** legal expenses that a lawyer passes on to a client, such as for photocopying, overnight mail and messenger services.

**Discovery:** a pretrial procedure in which the prosecuting or defense attorney receives evidence in the possession of the other, including witness statements, police reports, scientific examinations, etc. Discovery permits the attorneys to prepare their cases and helps to ensure a fair trial; part of the pre-trial litigation process during which each party requests relevant information and documents from the other side in an attempt to "discover" pertinent facts.

**Discretion:** the exercise of an official prerogative to act in an official capacity

**Dismissal with prejudice:** when a case is dismissed for good reason and the plaintiff is barred from bringing an action on the same claim.

**Dismissal without prejudice:** when a case is dismissed but the plaintiff is allowed to bring a new suit on the same claim.

**Dismissal:** a decision by a judge to end the prosecution of a case without deciding whether the defendant is guilty or not guilty.

**Disposition:** a final disposition is a legal action which takes place following an adult or juvenile felony arrest. Examples are dismissal, acquittal, or conviction. Examples of intermediate dispositions are suspended proceedings or the placement of a defendant in one or more programs.

**District court:** court having jurisdiction over a territorial district

**Double jeopardy:** being tried twice for the same offense.

**Due care:** a theory of tort law to explain the standard of care or the legal duty one owes to others; what a reasonable person would do under like circumstances

**Due process:** the idea that laws and legal proceedings must be fair. The constitution guarantees that the government cannot take away a person's basic rights to "life, liberty or property, without due process of law." courts have issued numerous rulings about what this means in particular cases.

**Duty to warn:** the legal obligation to warn people of a danger. Typically, manufacturers of hazardous products have a duty to warn customers of a product's potential dangers and to advise users of any precautions they should take.

**Duty:** obligation owed by a person to another person

**Easement:** gives one party the right to go onto another party's property. Utilities often get easements that allow them to run pipes or phone lines beneath private property.

**Election of remedies:** a choice of possible remedies sanctioned by law for a particular injury or wrong

**Elective share:** refers to probate laws that allow a spouse to take a certain portion of an estate when the other spouse dies, regardless of what was written in the spouse's will.

**Emancipation:** when a minor has achieved independence from his or her parents, often by getting married before reaching age 18 or by becoming fully self-supporting.

**En banc:** (lat., fr.) By the full court

**En banc:** french for "by the full court." when all the members of an appellate court hear an argument, they are sitting en banc.

**En ventre sa mere:** (lat., fr.) In gestation; in the womb of ones mother

**Encumbrance:** any claim or restriction on a property's title.

**Enhancement:** additional confinement time added to the base prison term, based on specific circumstances such as use of a gun or knife when committing a crime.

**Enlargement:** the allowance of additional time to do a required act under the rules of civil procedure

**Equal access act:** a law passed by congress in 1984. It requires public schools to allow students who to meet before and after classes for religious purposes, including prayer, if they want to do so. If all extracurricular activities are prohibited by a school, it can also nix the prayer meetings. Otherwise, it has to allow them.

**Equal protection clause:** portion of the fourteenth amendment to the u.s. Constitution that prohibits discrimination by state government institutions. The clause grants all people "equal protection of the laws," which means that the states must apply the law equally and cannot give preference to one person or class of persons over another.

**Equitable distribution:** in a divorce, one of the ways in which property is divided. In states with equitable distribution systems, property acquired during a marriage is jointly owned by both spouses. Equitable distribution does not necessarily mean equal distribution, and ownership does not automatically split fifty-fifty. Rather, the distribution must be fair and just (equitable).

**Equitable:** due consideration for what is fair under particular circumstances

**Erroneous:** pertaining to a mistake

**Escrow account:** a special account in which a lawyer or escrow agent deposits money or documents that do not belong to him or his firm.

**Escrow agent:** in some states, this person conducts real estate closings and collects the money due the parties.

**Escrow:** money or documents, such as a deed or title, held by a third party until the conditions of an agreement

are met. For instance, pending the completion of a real estate transaction, the deed to the property will be held “in escrow.”

**Establishment clause:** portion of the first amendment to the u.s. Constituion that prohibits government from “establishing” a religion.

**Estate:** all the property a person owns.

**Estoppel:** precluding from asserting

**Evidence:** the various things presented in court to prove an alleged fact. Includes testimony, documents, photographs, maps and video tapes.

**Ex parte:** an application made by one party to the proceeding without the presence of the opposing party. Such meetings are often forbidden.

**Executor:** person named in a will to oversee and manage an estate.

**Exemplar:** a replica of the actual item which was involved

**Exempt employees:** workers not entitled to overtime, generally workers in executive, administrative or professional positions.

**Exempt property:** in a bankruptcy, the possessions that a person is allowed to keep.

**Exhaustion of remedies:** a judicial policy or statutory requirement that certain administrative steps be taken before the court will consider the controversy

**Exhibit:** an item of evidence which has been presented to the court for consideration

**Exigent circumstances:** emergency conditions.

**Expert witness:** a witness having particular knowledge of the subject about which he is called upon to testify; permitted to aid the jury in understanding information outside of their common knowledge. For example, an arson expert could testify about the probable cause of a suspicious fire.

**Express warranty:** an assertion or promise concerning goods or services. Statements such as “this air conditioner will cool a five-room house,” or “we will repair any problems in the first year” are express warranties.

**Fact-finder:** a person or persons that has the responsibility of determining the facts in question

**Failure to prosecute:** the failure to proceed in a matter in litigation as expected by the court; a failure to pursue

**Fair use:** the use of a portion of copyrighted material in a way that does not infringe the owner’s rights. The use of a portion of material for educational purposes, literary criticism or news reporting is often considered a fair use.

**Fault auto insurance system:** refers to a system in which the party that bears the blame (fault) for an accident is liable for any damages.

**Federal courts:** the courts of the united states

**Felony:** a crime which may be punishable by imprisonment in a state prison and/or a fine, or death. Probation, with or without county jail time, may also a possible disposition.

**Fiduciary duty:** an obligation to act in the best interest of another party. For instance, a corporation's board member has a fiduciary duty to the shareholders, a trustee has a fiduciary duty to the trust's beneficiaries, and an attorney has a fiduciary duty to a client.

**First impression:** first discussion or consideration of a particular matter

**Fixtures:** all things that are attached to property, such as ceiling lights, awnings, window shades and doorknobs. Fixtures are automatically included in a sale, unless specifically mentioned in the contract as going to the seller.

**Foreclosure:** when a borrower cannot repay a loan and the lender seeks to sell the property.

**Forensic:** the branch of science that employs scientific technology to assist in the determination of facts in the courts of law

**Foreperson of jury:** the jury selected

**Foreseeability:** a key issue in determining a person's liability. If a defendant could not reasonably have foreseen that someone might be hurt by his or her actions, then there may be no liability.

**Forum non conveniens:** (lat.) An inconvenient place to proceed

**Franchise:** a business relationship in which an owner (the franchisor) licenses others (the franchisees) to operate outlets using business concepts, property, trademarks and tradenames owned by the franchisor.

**Gag order:** an order by the court restricting comment on, or the release of information about the proceedings

**Garnishment:** a procedure to take control over a persons assets or income that have been judicially determined to be owed or to belong to another person; A court-ordered method of debt collection in which a portion of a person's salary is paid to a creditor. Often used to collect child support payments.

**General partner:** one of two kinds of partners in a limited partnership. A general partner has the right to participate in the management of the partnership and has unlimited personal liability for its debts.

**Good cause:** significant or legally adequate reason for the doing of some act

**Good faith:** a properly intentioned deed that is free from improper motive; honestly and without deception. An agreement might be declared invalid if one of the parties entered with the intention of defrauding the other.

**Governmental immunity:** a legal precept of sovereignty of the government rendering it exempt from liability for its acts or failures

**Grand jury:** a group of citizens convened in a criminal case to consider the prosecutor's evidence and determine whether probable cause exists to prosecute a suspect for a felony.

**Grantor:** the person who sets up a trust.

**Green card:** an immigrant visa. Allows an alien to become a lawful permanent resident of the u.s. And to work legally, travel abroad and return, bring in a spouse and children and become eligible for citizenship.

**Gross negligence:** conduct that is worse or more serious than a simple departure from reasonable care, but is less than a complete disregard of any care owed others; failure to use even the slightest amount of care in a way that shows recklessness or willful disregard for the safety of others.

**Grounds for divorce:** the legal reason (or reasons) a divorce is granted. There are two kinds of grounds: fault and no-fault.

**Guardian ad litem:** latin for “guardian at law.” the person appointed by the court to look out for the best interests of the child during the course of legal proceedings.

**Guardian:** person assigned by the court to take care of minor children or incompetent adults, sometimes called a conservator.

**Guilty:** the determination by a jury that the accused has committed a crime; term is not relevant to civil law matters

**Habeas corpus:** latin phrase meaning “you have the body.” prisoners often seek release by filing a petition for a writ of habeas corpus. A writ of habeas corpus is a judicial mandate to a prison official ordering that an inmate be brought to the court so it can be determined whether or not that person is imprisoned lawfully.

**Harmless error:** error which is not sufficiently prejudicial to require reversal of the previous finding or outcome

**Health care proxy:** someone designated to make a broad range of decisions for a person who is not able to give informed consent.

**Hearsay rule:** a rule of evidence that requires the declarant be subject to cross-examination at the hearing; many exceptions to the rule exist

**Hearsay:** secondhand information that a witness only heard about from someone else and did not see or hear himself. Hearsay is not admitted in court because it’s not trustworthy, though there are many exceptions.

**Heirs:** persons who are entitled by law to inherit the property of the deceased if there is no will specifying how it’s divided.

**Hidden defect:** a defect or condition which is not observable by a reasonable inspection; see latent defect

**Holding order:** a decision by a judge ordering one or more persons to stand trial after a preliminary hearing. A holding order is based on findings that one or more crimes have been committed and that there is sufficient cause to believe that one or more persons identified at the preliminary hearing committed the crime(s).

**Holographic will:** an unwitnessed handwritten will. A few states allow such documents to be admitted to probate, but most courts are very reluctant to accept them.

**Hostile environment sexual harassment:** where a person is subject to unwelcome sexual advances, requests

for sexual favors, or other verbal or physical conduct of a sexual nature to such an extent that it alters the conditions of the person's employment and creates an abusive working environment.

**Hung jury:** a jury whose members cannot agree in sufficient numbers to reach a verdict, unanimous in criminal cases, federal civil cases and three-quarters in some other states civil cases

**Immaterial:** a rule of evidence that requires that the evidence must have a sufficient relationship to the issue in question

**Immigrant visa:** see green card.

**Immunity:** a grant of freedom from responsibility; exemption from a legal duty, penalty or prosecution.

**Impact rule:** a requirement of some states tort law whereby a physical contact with the person must occur in order of damages for emotional distress to be recoverable

**Impairment:** when a person's faculties are diminished so that his or her ability to see, hear, walk, talk and judge distances is below the normal level as set by the state. Typically, impairment is caused by drug or alcohol use, but can also be caused by mental illness. Even if a person's alcohol level is lower than the legal intoxication level, he can still be convicted if the state can show his abilities were impaired.

**Impanel:** to bring together in the courtroom the people selected to serve as the jury

**Impleader:** a rule of procedure whereby a third party is brought into an existing lawsuit

**Implied consent laws:** (also called express consent) laws adopted by all states that apply to testing for alcohol in the blood, breath or urine (most states have such laws that apply to testing for the use of drugs). The principle underlying these laws is that any licensed driver who operates a vehicle has consented to submit to approved tests to show intoxication.

**Implied consent:** a consent that is drawn from the facts of the surrounding circumstances

**Implied contract:** a contract not expressly agreed upon in written terms but one created by the conduct of the parties

**Implied warranty of fitness for a particular purpose:** warranty that exists when a seller should know that a buyer is relying on the seller's expertise.

**Implied warranty of habitability:** law that exists in most states which governs residential rentals and asserts that regardless of what a lease says, the landlord must provide premises that are safe and liveable (habitable) at some basic level. Problems with essential building services and cleanliness are often breaches of the implied warranty and the landlord will be required to correct them.

**Implied warranty of merchantability:** warranty that guarantees that goods are reasonably fit for their ordinary purpose.

**Implied warranty:** a guarantee imposed by law in a sale. Even though the seller may not make any explicit promises, the buyer still gets some protection.

**Imputed liability:** liability for the acts of another person which arises out of the operation of law

**In absentia:** (lat.) In absence

**In camera:** latin for “in chambers.” refers to a hearing or inspection of documents that takes place in private, often in a judge’s chambers.

**In forma pauperis:** (lat.) As would a pauper. Normally refers to the right granted by the court to allow a party to proceed without the payment of costs due to financial inability

**In limine:** (lat.) At the beginning

**In loco parentis:** (lat.) In the place of the parent

**In personam:** (lat.) Against the person

**In re:** in the matters of

**In rem:** (lat.) An action against a thing, as opposed to an action against a person

**Indemnity:** to wholly or partially responsibility for the loss that has been sustained by another

**Indeterminate sentence:** sentences that are not fixed and may be imposed for severe felony crimes, such as murder. Examples of these sentences may be fifteen to life or twenty-five to life. Actual release dates are set by the board of prison terms after a parole hearing.

**Indictment:** a formal accusation of a felony, issued by a grand jury after considering evidence presented by a prosecutor; a written accusation returned by a grand jury and filed in superior court.

**Indigent:** lacking in funds; poor.

**Information:** a formal accusation of a crime, issued by a prosecutor. An alternative to an indictment.

**Informed consent:** a consent that is obtained after a full disclosure of the facts and risks involved; sometimes an allegation in medical negligence cases; except in the case of an emergency, a doctor must obtain a patient’s agreement (informed consent) to any course of treatment. Doctors are required to tell the patient anything that would substantially affect the patient’s decision. Such information typically includes the nature and purpose of the treatment, its risks and consequences and alternative courses of treatment.

**Infractions:** sometimes called violations. Minor offenses, often traffic tickets, which are punishable only by a fine.

**Infringement:** unauthorized use, typically of a patent or copyright.

**Inherent defect:** a defect that exists and is natural to the item

**Injunction:** an order of the court which requires a person or entity to refrain from pursuing a particular course of conduct or activity

**Injuria absque damno:** (lat.) Wrong or insult without damage; see damage absque injuria

**Injuria non excusat injuriam:** (lat.) One wrong does not justify another

**Injury** any damage or injury inflicted upon another

**Instruction:** the law as given by the court to the jury prior to their deliberations which states the applicable law to the issues in the case

**Inter alia:** (lat.) Among other things

**Inter vivos:** (lat.) Between the living

**Interim order:** a temporary order

**Interlocutory order:** temporary order issued during the course of litigation. Typically cannot be appealed because it is not final.

**Interpleader:** a rule of procedure that allows a person who has a thing or money not belonging to him, and who is not certain to whom among several claimants it rightfully belongs, may give the thing or money to the court to decide who gets the thing or money

**Interrogatories:** in civil actions, a pretrial discovery tool in which written questions are sent by one party and are to be answered under oath by the other party. The answers often can be used as evidence in the trial.

**Intervention:** a proceeding permitting a person to enter into a lawsuit already in progress

**Intestate:** to die without a will.

**Invasion of privacy:** the wrongful intrusion into a person's private life

**Invitee:** one who comes upon the land of another by invitation of the owner

**Ipsa dixit:** (lat.) He said it himself

**Irreparable injury:** a loss for which no remedy at law would be sufficient and therefore a court sitting in equity may order a special relief other than money damages

**Irrevocable living trust:** a trust created during the maker's lifetime that does not allow the maker to change it.

**Issue preclusion:** an issue that has been decided in a previous litigation that thereafter is precluded from being re-litigated

**Issue:** the item of fact or law in dispute

**J. D.:** juris doctor; the degree that is bestowed upon graduation from law school. The degree was formerly designated LL. B.

**Joinder:** uniting of parties to single case or litigation

**Joint and several:** sharing of right or liability between parties individually as well as jointly

**Joint and survivor annuity:** a form of pension fund payment in which the retired participant gets a check every month. If and when the participant dies, the spouse continues to get a monthly check equal to one-half of

the benefit for the rest of his or her life.

**Joint custody:** when both parents share custody of a child after a divorce. There are two kinds of custody: legal custody and physical custody. Either or both may be joint.

**Joint enterprise:** an agreement of two or more parties to take on a particular goal or project

**Joint liability:** a doctrine of liability making all parties who are responsible for a loss to each share full responsibility

**Joint property:** sometimes called joint tenancy. Property that names a co-owner on its deed or title. Co-owners retain ownership of the property upon the death of a co-owner. A co-owner in a joint property arrangement cannot give away his or her share of the property.

**Joint venture:** a business undertaking by two or more parties in which profits, losses and control are shared

**Jones act:** federal law that grants a seaman who suffers injury to his or her person during the course of employment a right to damages

**Judge-made law:** law that is decided by judicial interpretation as opposes to legislative enactment and is often termed common law

**Judgment non obstante veredicto:** known also as a judgment notwithstanding the verdict. A decision by a trial judge to rule in favor of a losing party even though the jury's verdict was in favor of the other side. Usually done when the facts or law do not support the jury's verdict.

**Judgment:** judicial determination of a matter

**Judicial notice:** a rule of judicial convenience that negates the need for proof of matter

**Jurisdiction:** a court's authority to rule on the questions of law at issue in a dispute, typically determined by geographic location and type of case.

**Jurisdictional amount:** an amount of money in controversy required for a court to have the authority to hear and determine a matter

**Jurisprudence:** the topical area of the science of law and societal order

**Jurist:** a legal scholar

**Juror:** an individual who has been impaneled as a member of a jury

**Jury charge:** the judge's instructions to the jurors on the law that applies in a case and definitions of the relevant legal concepts. These instructions may be complex and are often pivotal in a jury's discussions.

**Jury trial:** the determination of a case by a jury, the jury decides the facts and the court instructs the jury of the law to be applied to the facts

**Jury:** the group of individuals who are impaneled to decide on the facts involved in the trial

**Just cause:** a legitimate reason. Often used in the employment context to refer to the reasons why someone was fired.

**Justiciable:** a matter that is capable of being determined by a court of law or equity with or without the aid of a jury

**Laches:** neglecting to assert a right or claim which taken together with a lapse of time and other circumstances, causes prejudice to adverse party, thereby operating as a bar in a court of equity

**Latent defect:** a defect not discoverable by the exercise of an ordinary inspection, see hidden defect

**Law of the case:** a legal principle which states that a determination of law by a higher court is considered as correct during all subsequent hearings in the proceedings unless the question is being heard by a court higher than the court that made the ruling

**Lay witness:** a witness that is testifying as a witness to a fact or an opinion as opposed to an opinion given by an expert about a matter beyond the expected comprehension of the jury

**Leave of court:** a request to the court to obtain permission to do something that otherwise would not be permissible

**Legal custody:** in a divorce, one of two types of child custody. A parent who has legal custody has the right to be involved in all the decision making typically involved with being a parent, such as religious upbringing, education and medical decisions. Legal custody can be either sole or joint. Compare with physical custody.

**Legatee:** also known as a beneficiary. Person named in a will to receive property.

**Lemon laws:** laws that require manufacturers to repair defective cars. If the repairs are not made within a reasonable amount of time and number of attempts, the manufacturer is required to refund the purchase price, less a reasonable amount for the use of the car.

**Lesser included offenses:** charges that contain elements of the most serious charge against a defendant. For instance, a person charged with first-degree murder (which requires premeditation) could be convicted of second-degree murder (a killing done without premeditation) or manslaughter (a killing done in the heat of passion)

**Lex loci delicti:** (lat.) The place where the wrong took place

**Liability:** any legal responsibility, duty or obligation; responsibility or accountability for one's breach of duty owed to another

**Libel:** defamatory (false and injurious) written statements or materials, including movies or photographs.

**Licensee:** one of the classes of persons entering upon the lands of another whereby the individual has not been invited upon the land but is tolerated

**Lien:** a claim against someone's property. A lien is instituted in order to secure payment from the property owner in the event that the property is sold. A mortgage is a common lien.

**Limine:** see motion in limine

**Limited liability company:** a business structure that is a hybrid of a partnership and a corporation. Its owners are shielded from personal liability and all profits and losses pass directly to the owners without taxation of the entity itself.

**Limited partner:** one of two kinds of partners in a limited partnership. Is personally liable for the debts of the partnership only to the extent of his or her investment in it and has little to no voice in its management.

**Limited partnership:** a partnership with two kinds of partners: limited partners, who provide financial backing and have little role in management and no personal liability, and general partners, who are responsible for managing the entity and have unlimited personal liability for its debts.

**Liquidated damages:** a sum of money agreed upon by the parties to a contract that will be paid as damages if there is a breach of the contract

**Lis pendens:** (lat.) A pending suit

**Living trust:** a trust created during the maker's lifetime. Some living trusts are set up so that they can be changed during the maker's lifetime. These are called "revocable." others, known as "irrevocable," are set up so that they can't be touched.

**Living will:** also known as a medical directive or advance directive. A written document that states a person's wishes regarding life-support or other medical treatment in certain circumstances, usually when death is imminent.

**Living-together contract:** see cohabitation agreement.

**Long arm statutes:** statutory laws that empower a court to obtain jurisdiction over a nonresident defendant

**Lord campbell's act:** the English law that first recognized the right of the family of a decedent to bring an action for damages against the person who was responsible for the death of their family member

**Lump-sum payment:** an amount of money that is paid in one payment as opposed to a structured settlement which is paid out over a period of time in several payments

**Magistrate:** in the federal court system, this is a person who is appointed to serve as a representative of the court and is often given many responsibilities that would otherwise be performed by the federal judge

**Maintenance:** see alimony. In a divorce or separation, the money paid by one spouse to the other in order to fulfill the financial obligation that comes with marriage.

**Malfeasance:** the doing of an act in an improper, wrongful, or unlawful manner

**Malice:** a spiteful state of mind

**Malpractice:** a failure of a professional to act in accordance with the acceptable course of conduct, negligence of a member of a profession in a professional capacity

**Mandatory sentence:** a criminal sentence set by a legislature that establishes the minimum length of prison time

for specified crimes and thus limits the amount of discretion a judge has when sentencing a defendant.

**Mandamus:** Lat. “we command”. A writ traditionally used by the superior court to remove abuses of judicial power in a lower court. For example, used by a court of appeals to compel a district judge to perform an action he had refused to take or to rescind an action he was not legally allowed to make.

**Marital life estate:** see bypass trust.

**Maritime law:** the body of law that governs navigation and other activity in navigable waters

**Mediation:** a method of alternative dispute resolution in which a neutral third party helps resolve a dispute. The mediator does not have the power to impose a decision on the parties. If a satisfactory resolution cannot be reached, the parties can pursue a lawsuit.

**Medical directive:** see living will.

**Mens rea:** a guilty mind

**Minor:** a person who does not have the legal rights of an adult. A minor is usually defined as someone who has not yet reached the age of majority. In most states, a person reaches majority and acquires all of the rights and responsibilities of an adult when he or she turns 18.

**Miranda warning:** the statement recited to individuals taken into police custody. It warns of their right to remain silent and to have an attorney.

**Misdemeanor:** a crime punishable by imprisonment in the county jail for not more than one year, or by fine, or both.

**Misdemeanor:** crime that is punishable by less than one year in jail, such as minor theft and simple assault that does not result in substantial bodily injury.

**Misfeasance:** the improper performance of a required act

**Mistrial:** an action taken by a court which terminates a trial in progress

**Mitigating circumstances:** factors that a judge may consider in reducing the penalty for committing a crime.

**Mitigating factors:** information about a defendant or the circumstances of a crime that might tend to lessen the sentence or the crime with which the person is charged.

**Mitigation of damages:** a duty owed by the party who sustained injury to his person or property to minimize the loss by acting in a reasonably prudent manner

**Money judgment:** a judgment granting to one party the right to receive money from another party

**Moot case:** a case that is fictional as it is based upon a fact or right which is not recognizable or which has already been resolved

**Motion for a new trial:** request in which a losing party asserts that a trial was unfair due to legal errors that prejudiced its case.

**Motion for directed verdict:** a request made by the defendant in a civil case. Asserts that the plaintiff has raised no genuine issue to be tried and asks the judge to rule in favor of the defense. Typically made after the plaintiff is done presenting his or her case.

**Motion for summary judgment:** a request made by the defendant in a civil case. Asserts that the plaintiff has raised no genuine issue to be tried and asks the judge to rule in favor of the defense. Typically made before the trial.

**Motion in limine:** a request made by a party asking the court to prohibit the discussion or other presentation of a particular matter to the jury

**Motion to dismiss:** in a civil case, a request to a judge by the defendant, asserting that even if all the allegations are true, the plaintiff is not entitled to any legal relief and thus the case should be dismissed.

**Motion to suppress evidence:** a request to a judge to keep out evidence at a trial or hearing, often made when a party believes the evidence was unlawfully obtained.

**Motion:** a request asking a judge to issue a ruling or order on a legal matter.

**Municipal court:** a court that hears and determines matters concerning its own laws and other matters within its jurisdiction as provided by law

**Named plaintiffs:** the originators of a class action suit.

**Negligence per se:** an act or failure to act that is considered unreasonable conduct as a matter of law without the need to consider surrounding circumstances

**Negligence:** a failure to use the degree of care that a reasonable person would use under the same circumstances.

**Next friend:** a person who acts on behalf of a party who for some reason of incapacity is not able to proceed and has not had a court appointed guardian appointed to act in a representative capacity

**No fault insurance:** an insurance scheme wherein every person injured in an automobile accident is compensated irrespective of who was at fault

**No-fault auto insurance system:** under a no-fault system it doesn't matter which driver made the mistake that caused an accident. Each individual recovers from his or her own insurance carrier, regardless of who caused the accident.

**No-fault divorce:** a divorce in which it doesn't matter who did what to whom that caused the marriage to break down; all that matters is that there is no reasonable prospect of reconciliation.

**Nominal damages:** a minute sum awarded, often only a penny or a dollar

**Non-exempt employees:** workers who are entitled to overtime pay after working more than forty hours in a five day work week. Generally includes secretaries, factory workers, clerical workers and anyone paid by the hour.

**Non-exempt property:** in a bankruptcy, the possessions of a person that can be sold.

**Nonfeasance:** the failure to perform a duty owed to another

**Nonimmigrant visa:** visa granted to a foreigner who does not intend to stay in the u.s. Permanently.

**Nonsuit:** a judgment ordered by the court against a plaintiff who fails to proceed to trial

**Notary public:** a person authorized to witness the signing of documents.

**Notice of appeal:** the document a person must file with the trial court in order to pursue an appeal.

**Nuisance:** the hindrance or interference with the interests of others

**Obiter dicta:** ‘sayings by the way’. They can only ever be of persuasive value as they do not form part of the matters at issue.

**Officers of a corporation:** those people with day-to-day responsibility for running the corporation, such as the chief executive, chief financial officer and treasurer.

**On all fours:** an expression used to characterize a case where facts and law are similar to another’s

**On demand:** as soon as requested

**On the merits:** a decision or ruling that deals with the underlying basis of the case rather than a rule of procedure

**Open adoption:** an adoption in which the birth mother may retain some visitation privileges.

**Own recognizance:** sometimes called personal recognizance. A person who promises to appear in court to answer criminal charges can sometimes be released from jail without having to pay bail. This person is said to be released on his or her own recognizance. In certain cases, the judge has statutory discretion to release the defendant without posting bail. Failure by a defendant to later appear in such a case is a crime.

**Parens patriae:** latin for “parent of his country.” used when the government acts on behalf of a child or mentally ill person. Refers to the “state” as the guardian of minors and incompetent people.

**Parental liability:** a statutory law that obligates parents for certain wrongful acts committed by their children prior to achieving adulthood

**Parole:** a system for the supervised release of prisoners before their terms are over.

**Partition:** a court action to divide property. Typically taken when a property is jointly owned and a dispute arises about how to divide it.

**Partnership:** an association of two or more people who agree to share in the profits and losses of a business venture.

**Patent:** a document issued to an inventor by the united states patent and trademark office. Contains a detailed description of what the invention is and how to make or use it and provides rights against infringers.

**Pecuniary damage:** financial losses incurred

**Penalty phase:** the second part of a bifurcated trial, in which the jury hears evidence and then votes on what penalty or damages to impose.

**Pension plan:** an employer's program for providing retirement income to eligible employees.

**Per diem:** (lat.) Course of a day

**Peremptory challenges:** limited number of challenges each side in a trial can use to eliminate potential jurors without stating a reason. May not be used to keep members of a particular race or sex off the jury.

**Perjury:** a crime in which a person knowingly makes a false statement while under oath in court. In some jurisdictions, making a false statement in a legal document can also be considered perjury.

**Personal guardian:** person appointed to take custody of children and provide for their care and upbringing. Distinguished from property guardian.

**Personal recognizance:** sometimes called own recognizance. A person who promises to appear in court to answer criminal charges can sometimes be released from jail without having to pay bail. This person is said to be released on his or her personal recognizance.

**Personal representative:** a person who manages the legal affairs of another, such as a power of attorney or executor.

**Petit jury:** the jurors empaneled to hear a civil or criminal trial. Distinguished from a grand jury.

**Petition for probate:** the document that summarizes a will's provisions and names the heirs.

**Petition:** a written application to the court asking for specific action to be taken.

**Petty offenses:** minor crimes, such as traffic violations, which are generally punishable by a fine or short jail term.

**Physical custody:** in a divorce, one of two types of child custody. A parent who has physical custody lives most of the time with the child. Compare with legal custody.

**Piercing the corporate veil:** a legal doctrine that lifts a shareholder's shield of immunity for wrongful corporate activity under special circumstances

**Plaintiff:** the party who first initiates litigation. Petitioner, complainant.

**Plea bargain:** an negotiated agreement between the defense and the prosecution in a criminal case. Typically the defendant agrees to plead guilty to a specified charge in exchange for an oral promise of a lower sentence.

**Plea:** the response by a defendant to formal charge(s) in court. Such pleas include guilty, not guilty, nolo contendere (no contest) or not guilty by reason of insanity.

**Pleadings:** in a civil case, the allegations by each party of their claims and defenses. papers required to be filed

by each party with the court which allege the facts, claims, and defenses involved in the case

**Power of attorney:** the authority to act legally for another person.

**Prayer:** the relief sought by the plaintiff in the lawsuit as stated in his pleading to the court

**Precedent:** a deviation in a prior case which established a right or reasoning of law which must be followed in the present case

**Pre-emption:** a judicial principle which states that certain federal laws apply over certain state laws

**Preliminary hearing:** legal proceeding used in some states in which a prosecutor presents evidence to a judge in an attempt to show that there is probable cause that a person committed a crime. If the judge is convinced probable cause exists to charge the person, then the prosecution proceeds to the next phase. If not, the charges are dropped.

**Preponderance of the evidence:** the level of proof required to prevail in most civil cases. The judge or jury must be persuaded that the facts are more probably one way (the plaintiff's way) than another (the defendant's).

**Pre-sentencing report:** a report prepared by a probation department for a judge to assist in sentencing. Typically contains information about prior convictions and arrests, work history and family details.

**Presumption:** a rule of law which allows the finding of one fact from the presentation of another fact shown, an irrebuttable presumption requires a finding of the presumed fact

**Pre-trial diversion:** also known as adjournment in contemplation of dismissal or conditional dismissal. A program in which a defendant essentially is put on probation for a set period of time and his or her case does not go to trial during that time. If the defendant meets the conditions set by the court, then the charge will be dismissed.

**Prevailing party:** the winning party in the matter

**Prima facie case:** the existence of some evidence on each required point of a case

**Prima facie:** latin for "at first view." refers to the minimum amount of evidence a plaintiff must have to avoid having a case dismissed. It is said that the plaintiff must make a prima facie case.

**Privileged communication:** conversation that takes places within the context of a protected relationship, such as that between an attorney and client, a husband and wife, a priest and penitent, and a doctor and patient. The law often protects against forced disclosure of such conversations.

**Privity:** a sufficient relationship between parties to the same rights or property

**Pro hac vice:** (lat.) For this one particular occasion

**Pro se:** (lat.) For himself; in law, it refers to a person who represents himself without a lawyer

**Pro se:** (pronounced pro say) latin phrase that means "for himself." a person who represents himself in court alone without the help of a lawyer is said to appear pro se.

**Probable cause:** a reasonable belief that a person has committed a crime.

**Probate:** the legal process in which a court oversees the distribution of property left in a will.

**Probation:** the release into the community of a defendant who has been found guilty of a crime, typically under certain conditions, such as paying a fine, doing community service or attending a drug treatment program. Violation of the conditions can result in incarceration. In the employment context, probation refers to the trial period some new employees go through.

**Product liability:** principle of statutory and/or common law that holds a manufacturer responsible without regard for negligence if the product is defective

**Proffer (of evidence):** to present to the record in a trial what evidence a party has on a given point after the court has refused its admission into evidence in order that a reviewing court can know what was excluded at the original proceeding

**Promissory note:** a written document in which a borrower agrees (promises) to pay back money to a lender according to specified terms.

**Property guardian:** person appointed to oversee property left to a minor in a will. Distinguished from a personal guardian.

**Prosecutor:** the government lawyer who investigates and tries criminal cases. Typically known as a district attorney, state's attorney, or united states attorney.

**Protective order:** in litigation, an order that prevents the disclosure of sensitive information except to certain individuals under certain conditions. In a domestic dispute, an order that prevents one party from approaching another, often within a specified distance.

**Public defender:** a lawyer who works for a state or local agency representing clients accused of a crime who cannot afford to pay.

**Punitive damages:** an award of money to punish the wrongdoer and to stop the person or business from repeating the type of conduct that caused an injury. Also intended to deter others from similar conduct.

**Quantum meruit:** as much as it is worth

**Quash:** to annul or abandon by judicial decision; to nullify, void or declare invalid.

**Question of fact:** the existence of a controversy as to the actual facts of a case which must be determined by the trier of fact - a jury in a jury trial; the judge in a bench trial

**Quid pro quo:** latin phrase that means what for what or something for something. The concept of getting something of value in return for giving something of value. For a contract to be binding, it usually must involve the exchange of something of value. For example, **Quid pro quo sexual harassment** is where an employee is threatened with a demotion (or promised a promotion) in exchange for "sexual favors." it usually comes from a supervisor or other person in a position of authority.

**Quitclaim deed:** a deed that transfers the owner's interest to a buyer but does not guarantee that there are no other claims against the property.

**Ratio decidendi:** literally means ‘reason for deciding’ and is capable of creating binding precedent.

**Real property:** land and all the things that are attached to it. Anything that is not real property is personal property and personal property is anything that isn’t nailed down, dug into or built onto the land. A house is real property, but a dining room set is not.

**Reasonable care:** the amount of care expected of an ordinarily prudent person under the same or similar circumstances

**Reasonable doubt:** the level of certainty a juror must have to find a defendant guilty of a crime.

**Rebuttal:** evidence disproving other evidence previously given

**Reckless disregard:** behavior or demeanor which evidences a lack of concern for consequences

**Re-cross examination:** questioning a witness about matters brought up during re-direct examination.

**Re-direct examination:** questioning a witness about matters brought up during cross examination.

**Refugee:** a person who applies to enter the u.s. From outside the country, claiming an inability or unwillingness to return to (or remain in) the home country because of a well-founded fear of persecution.

**Remand:** when an appellate court sends a case back to a lower court for further proceedings; to send back

**Remittitur:** (lat.) To reduce, generally in law it describes a reduction of the jury’s verdict made by the judge

**Removal:** the right of a defendant in a civil lawsuit to have a case moved from state court to a federal court within 30 days of the service of the complaint if jurisdiction also exists in the federal court

**Replevin:** repossession. Action taken by a creditor to seize assets of a debtor.

**Res ipsa loquitur:** (lat.) The thing speaks for itself. In a negligence lawsuit, the plaintiff generally has the burden to prove that the defendant was negligent. The doctrine of *res ipsa loquitur* is a rule of evidence which has the effect of requiring the defendant to prove that he was not negligent in certain circumstances; refers to situations when it’s assumed that a person’s injury was caused by the negligent action of another party because the accident was the sort that wouldn’t occur unless someone was negligent.

**Res judicata:** (lat.) The thing has been decided

**Rescission:** the cancellation of a contract

**Residuary estate:** also known as residue of the estate. Portion of the estate left after bequests of specific items of property are made. Often the largest portion.

**Residuary legatee:** the person or persons named in a will to receive any residue left in an estate after the bequests of specific items are made.

**Respondeat superior:** (lat.) Let the superior reply. A legal principle whereby the master is responsible for the acts or omissions of his/her servant

**Restitution fine:** a fine that a convicted perpetrator must pay to the state as part of sentencing.

**Restitution order:** compensation to a crime victim by a criminal defendant for financial losses or personal injuries caused by the crime, sometimes called “victim’s restitution” or direct restitution. Every victim who suffers economic loss as a result of criminal activity is entitled to restitution upon sentencing of a defendant.

**Restitution:** to make good the loss for injury or damage

**Retainer:** refers to the up front payment a client gives a lawyer to accept a case. The client is paying to “retain” the lawyer’s services.

**Retaining lien:** gives a lawyer the right to hold on to your money or property (such as a deed) until you pay the bill.

**Reversible error:** error in a trial which is significantly sufficient to cause the entire trial to be reversed or a new trial to be granted by a reviewing appellate court

**Revocable living trust:** a trust created during the maker’s lifetime that can be changed. Allows the creator to pass assets on to chosen beneficiaries without going through probate.

**Right against self-incrimination:** granted by the fifth amendment. Allows a person to refuse to answer questions that would subject him or her to accusation of a criminal act.

**Right of eminent domain:** the government’s right to acquire private property for public use.

**Right of survivorship:** in a joint-tenancy, the property automatically goes to the co-owners if one of the co-owners dies. A co-owner in a joint tenancy cannot give away his or her share of the property.

**Risk of non-persuasion:** see burden of proof

**Routine vacatur:** a procedure where a defendant settles an unfavorable determination which occurred in the trial court while the case is on appeal and has the appellate court vacate the determination below

**Scienter:** (lat.) Knowledge, prior knowledge

**Scintilla:** a very minute amount of evidence

**Security agreement:** a contract between a lender and borrower that states that the lender can repossess the property a person has offered as collateral if the loan is not paid as agreed.

**Self-proving will:** a will accompanied by a sworn statement from witnesses and signed before a notary public. Many states accept such wills in order to avoid the cumbersome process of requiring an executor to track down the witnesses.

**Separation agreement:** in a marital breakup, a document that outlines the terms of the couple’s separation.

**Sequester:** to separate, in law, refers to the isolation of the jury from the world outside the courtroom in order that they will not be influenced from events and information not presented in the trial

**Service of process:** the act of notifying the other parties that an action has begun and informing them of the steps they should take in order to respond.

**Settlement agreement:** in a civil lawsuit, the document that spells out the terms of an out-of-court compromise.

**Settlement:** the resolution or compromise by the parties in a civil lawsuit.

**Shareholder:** an owner or investor in a corporation.

**Show cause order:** a command from the court to appear before it and explain why something should not be done

**Side-bar:** an area of the courtroom where the judge and attorneys can converse outside of the jury's hearing

**Single life annuity:** a form of pension plan payment in which the retired person receives a monthly check from the time of retirement until death.

**Slander:** defamatory (false and injurious) oral statements or gestures.

**Sole proprietorship:** a form of business organization in which an individual is fully and personally liable for all the obligations (including debts) of the business, is entitled to all of its profits and exercises complete managerial control.

**Sovereign immunity:** a doctrine granting immunity to the sovereign unless the sovereign consents to be sued; see governmental immunity

**Specific performance:** a remedy requiring a person who has breached a contract to perform specifically what was agreed upon and is available only when money damages would not suffice

**Spendthrift trust:** a trust designed to keep money out of the hands of creditors. Often established to protect someone who is incapable of managing his or her financial affairs.

**Spousal right:** the entitlement of one spouse to inherit property from the other spouse. The right varies from state to state.

**Spousal support:** see alimony.

**Standard of care:** the degree of care a reasonable person would take to prevent an injury to another.

**Standing:** the legal right to initiate a lawsuit. To do so, a person must be sufficiently affected by the matter at hand, and there must be a case or controversy that can be resolved by legal action.

**Stare decisis:** (lat.) To stand by that which was decided; the legal principle that a lower court will follow that which has already been decided by a previous case

**Stationhouse bail:** bail that some defendants accused of misdemeanors may be allowed to pay at the police station. This allows them to be released prior to appearing before a judge.

**Statute of limitations:** the statutory law which establishes the time within which a lawsuit must be brought or be forever barred

**Statutes of fraud:** laws in most states to protect against false claims for payment from contracts that were not agreed upon. The specific laws vary from state to state, but most require that certain contracts be in writing.

**Statutes of limitations:** laws setting deadlines for filing lawsuits within a certain time after events occur that are the source of a claim.

**Stipulation:** an agreement by the attorneys on both sides about some aspect of the case

**Strict liability:** liability even when there is no proof of negligence. Often applicable in product liability cases against manufacturers, who are legally responsible for injuries caused by defects in their products, even if they were not negligent.

**Sub judice:** (lat.) Before the court

**Sublet:** when a party agrees to rent a space from the main tenant for a portion of the time remaining on the lease.

**Subpoena:** an order compelling a person to appear to testify or produce documents.

**Subrogate parent:** one who is not a child's parent, but who stands in the place of the parent

**Subrogation:** a right of repayment to a payor in the event that another is found to be responsible for the payee's loss

**Summary judgment:** a finding and entry of judgment by the court after a hearing and review of the claims and the evidence of the parties prior to a trial wherein the court determines that there is no genuine issue or dispute as to any material fact available for presentation and that the evidence, as a matter of law, is insufficient to allow such claim to continue and renders judgment in favor of one party

**Summation:** the closing argument in a trial.

**Summons:** a legal document that notifies a party that a lawsuit has been initiated and states when and where the party must appear to answer the charges.

**Survival statute:** statutory law that creates a right on behalf of the estate of a deceased person to maintain a lawsuit for any cause of action that would have existed had the decedent not died

**Syllabus:** a summary paragraph usually prepared by the court preceding the body of a reported case which in some jurisdictions is the black-letter law of the jurisdiction

**Tangible personal property:** anything other than real estate or money, including furniture, cars, jewelry and china.

**Tenancy in common:** a type of joint ownership that allows a person to sell his share or leave it in a will without the consent of the other owners. If a person dies without a will, his share goes to his heirs, not to the other owners.

**Testamentary trust:** a trust created by the provisions in a will. Typically comes into existence after the writer of the will dies.

**Testator:** the person who makes a will.

**Title search:** a review of the land records to determine the ownership and description of the property.

**Title:** ownership of property.

**Tort claims act:** a statutory law enacted by the u.s. Congress and many state legislatures that waives all or some part of the government's immunity from tort liability

**Tort:** a civil wrong which causes injury as a result of a breach of a legal duty owed to another

**Totten trust:** a bank account in your name for which you name a beneficiary. Upon the death of the named holder of the account the money transfers automatically to the beneficiary.

**Trade name:** the name used to identify a business.

**Trademark:** a word, name or symbol used to identify products sold or services provided by a business. Distinguishes the products or services of one business from those of others in the same field. A business using a trademark has the right to prevent other businesses from using it and can get money to compensate for its infringement.

**Trial de novo:** a new trial

**Trial:** a proceeding or hearing of evidence in a court having jurisdiction over the persons, entities, and subject matter for a determination of all issues between the parties based upon the applicable substantive law

**Trust:** property given to a trustee to manage for the benefit of a third person. Generally the beneficiary gets interest and dividends on the trust assets for a set number of years.

**Trustee:** person or institution that oversees and manages a trust.

**Udsl:** the uniform determinate sentencing laws which established fixed terms for crimes and removed the element of judicial discretion from sentencing proceedings.

**Ultrahazard activity:** conduct or any activity that involves such a great potential for harm or injury that the person or entity performing such activity will be held strictly liable for the outcome

**Uniform reciprocal enforcement of support act:** law that allows an order of child support issued in one state to be enforced in another state.

**Unjust taking:** when the government acquires private property and fails to compensate an owner fairly. A taking can occur even without the actual physical seizure of property, such as when a government regulation has substantially devalued a property.

**Vacate:** to set aside or to render void

**Valid claim:** a grievance that can be resolved by legal action.

**Verdict:** the conclusion of the court or jury which becomes the basis for the judgment

**Vested right:** an absolute right. When a retirement plan is fully vested, the employee has an absolute right to the entire amount of money in the account.

**Vicarious liability:** when one person is liable for the negligent actions of another person, even though the first person was not directly responsible for the injury. For instance, a parent sometimes can be vicariously liable for the harmful acts of a child and an employer sometimes can be vicariously liable for the acts of a worker.

**Victim impact statement :** in felony cases, the probation department is required to compile a presentence report for the judge to use to impose sentence. This report usually includes a victim impact statement, which is prepared by the probation officer from conversation with the victim and includes the victim's view of the effects of the crime on the victim and the victim's family.

**Visitation right:** the right granted to a parent or other relative to visit a child on a specified basis. Usually occurs during a divorce proceeding.

**Void marriage:** one of two types of marriages that can be annulled. A void marriage is one that is void and invalid from its beginning. It is as though the marriage never existed and it requires no formality to terminate it. For instance, an incestuous marriage would likely be considered void.

**Voidable marriage:** a valid marriage that can be annulled if challenged, but that otherwise remains legitimate. For instance, if one of the parties was a minor at the time of marriage, the marriage could be annulled if challenged. If it's never challenged, the marriage is considered valid.

**Voir dire:** a french phrase that means "to speak the truth." the process of interviewing prospective jurors. Pronounced "vwa dear.". in law, it is that portion of the trial where the potential jurors are asked questions by the attorneys or the court to determine their qualifications and suitability to sit as jurors in the particular case

**Volenti non fit injuria:** (lat.) A volunteer suffers no wrong; a person who consents to legal wrong has no legal right

**Wage execution:** see [garnishment](#).

**Wanton:** a heedless disregard for the outcome of one's actions

**Warrant:** an official order authorizing a specific act, such as an arrest or the search of someone's home.

**Warranty:** a promise about a product made by either a manufacturer or a seller.

**Weight of the evidence:** an expression stating an evaluation of the balance of the evidence for each side of the controversy after the conclusion of the controversy

**Willful:** a knowing disregard for the consequences of one's actions

**Witness:** a person who is sworn at a trial to provide evidence in a case

**Witness:** person who comes to court and swears under oath to give truthful evidence.

**Work product:** the work done by an attorney in the process of representing a client which is ordinarily privileged

an not subject to discovery

**Worker's compensation:** a benefit paid to an employee who suffers a work-related injury or illness.

**Writ:** a judicial order.

**Wrongful death statutes:** statutory law that creates a right to bring an action by the personal representative of an estate of the deceased for the wrongful loss of the decedent's life, also see lord campbell's act

**Wrongful discharge:** when an employee is fired for reasons that are not legitimate, typically either because they are unlawful or because they violate the terms of an employment contract.

### **Other Sentence Terms**

**Overruled:** when an appellate court decides a similar matter, in a later case, on the basis of a different legal principle, the decision in the later court is now to be followed;

**Distinguished:** when a court finds some material difference between the facts of the two cases;

**Disapproved:** if the court cannot overrule an earlier case and considers the earlier case no longer to be good law;

**Reversed:** if it goes on appeal to an appellate court and the order of the lower court is changed.

# Case studies

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### Contempt of Court

#### Case Study: 1

**The Editor, Printer And Publisher Of “The Times Of India” And Aswini Kumar Ghose And Another V. Arabinda Bose And Another, 1953-(004)-SCR – 0215.**

Supreme Court of India charged Contempt of Court proceedings against the Editor, Printer and Publisher of the “Times of India” (daily), Bombay and Delhi, for publishing a leading article in their paper entitled “A Disturbing Decision” on October 30, 1952. The Court found them guilty and was charged under the act.

In this case the court observed that the article appeared in the daily, had exceeded the limits of legitimate criticism in the words or expressions which could be construed as casting reflection upon the court. The court made it clear in its judgement that no objection could have been taken to the article if it had merely preached to the courts of law, the sermon of divine detachment.

But when it proceeded to attribute improper motives to the judges, it not only transgressed the limits of fair and bona fide criticism but had a clear tendency to affect the dignity and prestige of this Court.

The article in question was thus a gross contempt of court. It is obvious that if an impression is created in the minds of the public that the judges in the highest court in the land act on extraneous considerations in deciding cases, the confidence of the whole community in the administration of justice is bound to be undermined and no greater mischief than that can possibly be imagined.

On the above grounds the court charged them for contempt of court.

**Result:**

In view of the unconditional apology tendered by the daily and the undertaking given by them to give wide publicity to their regret, the court decided to drop further proceedings.

## **Case study 2:**

**In P. N. Duda v. P. Shiv Shanker (1988) 3 SCC 167 : 1988 SCC (Cri) 589 : AIR 1988 SC 1208]**

The Court had held that the administration of justice and judges are open to public criticism and public scrutiny.

Judges have their accountability to the society and their accountability must be judged by the conscience and oath to their office, i.e., to defend and uphold the Constitution and the laws without fear and favour.

Thus the judges must do, in the light given to them to determine, what is right.

Any criticism about the judicial system or the judges which hampers the administration of justice or which erodes the faith in the objective approach of the judges and brings administration of justice to ridicule must be prevented.

The contempt of court proceedings arise out of that attempt. Judgments can be criticised. Motives to the judges need not be attributed. It brings the administration of justice into disrepute.

Faith in the administration of justice is one of the pillars on which democratic institution functions and sustains. In the free market-place of ideas criticism about the judicial system or judges should be welcome so long as such criticism does not impair or hamper the administration of justice.

## **Case Study:3**

**E. M. Sankaran Namboodripad v. T. Narayanan Nambiar (1970) 2 SCC 325 : 1970 SCC (Cri) 451 : (1971) 1 SCR 697**

In this case a bench of three Judges observed that the law of contempt stems from the right of a court to punish, by imprisonment or fine, persons guilty of words or acts which obstruct or tend to obstruct the administration of justice. This right is exercised in India by all courts when contempt is committed in facie curiae by the superior courts on their own behalf or on behalf of courts subordinate to them, even if committed outside the courts.

Scandalising the judges or courts tends to bring the authority and administration of law into disrespect and disregard and tantamounts to contempt. All acts which bring the court into disrepute or disrespect or which offend its dignity or its majesty or challenge its authority, constitute contempt committed in respect of single judge or single court or in certain circumstances committed in respect of the whole of the judiciary or judicial system.

## **Case study: 4**

**Ambard v. Attorney General for Trinidad and Tobago [1936 AC 322 : (1936) 1 All ER 704] (AC at p. 335)**

In this case, Lord Atkin in his oft-quoted judgment held that “justice is not a cloistered virtue : she must be allowed to suffer the scrutiny and respectful, even though outspoken comments of ordinary men”.

But in the same judgment it was further pointed out that provided that members of the public should abstain

from imputing improper motives to those taking part in the administration of justice and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice.

## Case Study 5

### **In Charan Lal Sahu v. Union of India [(1988) 3 SCC 255 : 1988 SCC (Cri) 662]**

In a petition under Article 32 of the Constitution the advocate indulged in mud-slinging against advocates and the Court.

It was held that those allegations were likely to lower the prestige of the Court. The Court accordingly held that he committed contempt in drawing up the petition and directed to initiate proceedings against him for overstepping the limits in particular of self-restraint.

#### **Media report**

**Headline: Sunday Mirror fined £75,000 for contempt**

**Date: Friday, April 19, 2002**

**Media: Media Guardian**

#### **Sunday Mirror fined £75,000 for contempt**

The Sunday Mirror has been ordered to pay one of the biggest contempt of court fines in newspaper history after publishing an article that led to the collapse of last year's trial of Leeds United footballers Lee Bowyer and Jonathan Woodgate.

The paper has been instructed to pay £75,000 for contempt of court by Lord Justice Kennedy and Mrs Justice Rafferty and will pay £54,000 in costs

The Sunday Mirror's decision to publish an interview with the family of the Asian victim of the attack while the first jury was still considering its verdicts resulted in the collapse of the trial.

Mirror Group Newspapers, which publishes the newspaper, accepted yesterday it was guilty of contempt and "unreservedly apologised" for the distress and inconvenience that followed the collapse of the trial.

It accepted "corporate responsibility" for publishing an interview with the father of the Asian student, Sarfraz Najeib, days after the jury retired to consider its verdict.

#### **Copyright**

#### **Case study: 1**

### **G. Anand V. M/s. Delux Films And Others 1978 AIR (SC) 1613**

The court dismissed the plaintiff's suit for damages against the defendants on the ground that they had violated the copyrighted work of the plaintiff which was a drama called 'Hum Hindustani'.

#### **Case in a nutshell**

*The plaintiff is an architect by profession and is also a playwright, dramatist and producer of stage plays. A suit was filed the plaintiff against Delux films for their adaptation of his play "Hum Hindustani" into a motion picture called 'New Delhi', with out his knowledge.*

*The court dismissed the suit on the grounds that plaintiff's doubts were without any foundation and the story treatment, dramatic construction, characters etc were quite different and bore not the remotest connection or resemblance with the play written by the plaintiff.*

## **Case study 2:**

### **Donoghue v. Allied Newspapers Ltd. ((1937) 3 All ER 503 : 157 LT 186)**

It was pointed out that there was no copyright in an idea and in this connection the court observed as follows :

This, at any rate, is clear, and one can start with this beyond all question that there is no copyright in an idea, or in ideas..... If the idea, however brilliant and however clever it may be, is nothing more than an idea, and is not put into any form of words, or any form of expression such as a picture or a play, then there is no such thing as copyright at all. It is not until it is (if I may put it in that way) reduced into writing, or into some tangible form, that you get any right to copyright at all, and the copyright exists in the particular form of language in which, or, in the case of a picture, in the particular form of the picture by which, the information or the idea is conveyed to those who are intended to read it or look at it.

## **Media report**

### **Headline: One arrested, 2 booked under Copyright Act**

**Date: September 21, 2003**

**Media: Tribune News Service**

Ludhiana, September 20

The police has booked two persons on the charge of manufacturing soap cakes and detergent powder and marketing these with names similar to a well-known brand, after packing these in similar wrappers, with the intention of cheating consumers. They have been booked under the Copyright Act.

Manjit Singh of Bindra Trading Company, Guru Amardass Nagar, and manufacturer of soaps under G-Series brand, was arrested by the police today. His partner was, however, absconding. Raids were on to nab him.

The action followed a complaint by Mr Bharat Bhushan Sharma, proprietor of the Bhiwani Detergent Khadi Gramudyog, Kurali, Ropar district.

According to the complainant, his company is the holder of T-series franchise for manufacturing washing powder and detergent cakes. He alleged that it had come to his notice that M/s Bindra Trading Company was manufacturing products similar to the products manufactured by his company under the brand G-Series which had a similar pronunciation.

He had further alleged that the products were packed in wrappers having similar look and colour scheme. After coming to know about this, he came to Ludhiana and met some buyers. They told him that they had demanded T-series products, but were given G-series products.

He also alleged that the buyers could only distinguish between the two products after washing clothes. The G-series products were deliberately given a look similar to T-series products in order to cheat consumers.

He said he had received several complaints stating that his company's products had spoiled their clothes and had affected their hands. On enquiring, he came to know that the products were not manufactured by his company.

He said the products manufactured by his company were registered under the Copyright Act. The owners of M/s Bindra Trading Company were committing an offence by marketing their products after giving these an appearance like that of the products of his company, he said. Even a registered notice was sent to the company through an advocate, but the party, instead of responding properly, threatened him on the phone and warned him of dire consequences, he alleged.

The police had registered a case under Section 420 of the IPC, Section 63 of the Copyright Act and Sections 78 and 79 of the Trade and Merchandise Act against M/s Bindra Trading Company and one arrest was made in that connection today. Sacks containing soaps and detergents of G-series were also seized from the premises of the company.

### **Defamation**

#### **Case study: 1**

**Source: Dailymirror**

**Date: April 2, 2003**

Minister vs Newspapers

The defamation action filed by Minister G. L. Peiris claiming Rs. 4,000 million from Lake House (ANCL), was settled before Colombo Additional District Judge, S. Sumanasekara yesterday.

In this case Prof. Peiris had filed two cases in respect of two separate articles published in the “Daily News” and “Dinamina” claiming Rs. 2000 million from each, jointly and severally, from Lake House.

The editors of the two respective newspapers were cited as the second defendants in each case, and the former chairman of Lake House, Lucien Rajakarunanayake was cited as third defendant.

Mr. Peiris had claimed the news item published in the “Daily News” of October 22, 2001 related to an alleged corruption in the issue of quotas to garment manufacturers, when Mr. Peiris was the Minister in charge of the subject under the PA government and the other in the “Silumina” of October 21, 2001 related to certain land transactions by Mr. Peiris under the previous PA Government. Those articles were defamatory of him.

During the trial of these cases, The Associated Newspapers of Ceylon Limited (ANCL) in its response to the two cases of defamation stated in both instances the news items referred were based on facts and were published in good faith and in the public interest, and denied any charges of defamation.

However when this case came before the Court yesterday, the ANCL admitted the news items were not fair and accurate and tendered an apology to Mr. Peiris.

Prof. Peiris thereupon withdrew the cases and Court proforma dismissed the actions.

#### **Case study: 2**

**Source: Hindustantimes.com**

**Date: December 8, 2003**

## Actress vs Film magazines

The Madras High Court on Monday awarded a compensation of Rs.11 lakh to the famous actress Mumtaz and restrained some Tamil film magazines from writing about her.

Disposing of a defamation case filed by the actress, Justice A R Ramalingam said the compensation should be paid by four film magazines - Roja, New Cine Times, Cine Thirai and Cine Love.

The actress, in her defamation suit against the magazines had contended that they wrote ill of her and she was mentally affected by the writings. The Editors of these magazines also demanded money from her, she stated in her suit.

### Privacy

**Gordon Kaye case,**

**Kaye v Robertson [1991] F.S.R. 62**

#### **Case study: 1**

Gordon Kaye, a well known actor, had been hospitalized following a car accident. A journalist and photographer employed by the Sunday Sport newspaper secured through trickery access to the hospital room, where was recovering from brain surgery. Photographs were taken of the plaintiff which it was planned to publish in the Sunday Sport accompanying what purported to be an exclusive interview with him.

A case was filed on the plaintiff's behalf seeking to injunct publication of the story, stating it was a trespass into the private life.

Although the action ultimately met with partial success on other grounds, Bingham LJ expressed concern at the absence of any remedy based on infringement of privacy . "If ever a person has a right to be let alone by strangers with no public interest to pursue, it must surely be when he lies in hospital recovering from brain surgery, and in no more than partial command of his faculties. Yet it alone, however gross, does not entitle him to relief in English law"

Source: goodmanderrick.co.uk

## Case study 2

### The Tragedy

**On August 31, 1997, at approximately 12:25 A.M. local time, an automobile carrying Diana Francis Spencer, Princess of Wales, and Dodi Al Fayed crashed into the thirteenth pillar in the tunnel under the Place d'Alma in Paris, France. Princess Diana and Dodi Al Fayed were killed along with the automobile's driver, Henri Paul, a French security officer at the Ritz Hotel. Bodyguard Trevor Rees-Jones was the sole survivor.**

#### Press intrusion and Princess Diana

Before her death in September 1997, Lady Diana, Princess of Wales, following continuous media intrusion into her private life, confronted the British press in a vain plea for privacy for herself and her sons. Following the revelation of her friendship with Dodi Fayed, the son of the wealthy and controversial owner of Harrods, Mohammed Fayed, the press and photographers were anxious to photograph her on holiday in France with Dodi.

Exasperated at the attention bestowed on her family by journalists, she hopped from his yacht into a launch and made her way to a boat carrying reporters and photographers. Wearing a leopard-print swimsuit, she remonstrated for five minutes with representatives from the Daily Mail, the Mirror and the Sun, who had been training

binoculars and camera lenses on her throughout her private holiday.'

Earlier, in April 1997, Lady Diana described an incident in which a passer-by forced a freelance cameraman into an armlock so that she could confiscate his film as a 'distressing intrusion' into her private life. The incident was captured by another photographer, and displayed over three pages of the Sun newspaper. In response, the Princess issued a statement condemning the action of the photographer.

Following her divorce from the Prince of Wales, the Princess appealed to the media several times to leave both them and their children alone so that they might get on with their lives. In July 1996, Princess Diana complained to the Press Complaints Commission about 'intrusive' pictures of her on holiday in France which were published in the *Daily Mirror*. Princess Diana also obtained an injunction against a press photographer, who has allegedly been 'harassing' her for a long time in August 1996. The injunction prevented him from coming within 300 metres of her. The man, named in the writ as Martin Stenning, was the photographer involved in an incident earlier in 1996 in which the Princess jumped out of her car and took his motor cycle ignition key to prevent him from following her.

The writ appeared to treat the freelance press photographer like a stalker. He was prevented from communicating or attempting to communicate, molesting, assaulting and harassing her 'or otherwise interfering with her safety.'

Anthony Julius, the Princess's lawyer, stated that:

'My client has been compelled as a last resort to take legal action. She hopes that, as well as alleviating her own distress, this will highlight the destructive effect of persistent harassment on women's lives.'

Yet the death of the Princess Diana was the subject of more newspaper coverage than the most dramatic events of the Second World War and set a media record, according to Durrants Press Cuttings agency which monitors nearly 200,000 newspapers and magazines a year. No other subject in the agency's archives, which go back to 1880, compared with the coverage devoted to Diana's death, funeral and subsequent stories. In death, there was even more press interest than during her life.

Princess Diana's tragic death in a car crash in Paris (Dodi was also killed, as was the driver, an employee of Mr Fayed) and the presence of paparazzis at the crash scene raised concerns about privacy laws and press freedom in Britain. During her funeral service in Westminster Abbey, Earl Spencer, her brother stated that Princess Diana talked to him endlessly of getting away from England, mainly because of the treatment that she received at the hands of the newspapers.

### **Photographers acquitted of charges in Diana's death**

**PARIS - Three photographers who clicked photos of Princess Diana and her companion Dodi Fayed on the night they died in a car crash were acquitted of invading the couple's privacy.**

Mohammed Fayed, Dodi's father, filed a criminal complaint against the photographers for invasion of privacy, but a Paris court decided Friday that a crashed vehicle on a public highway is not a private area.

The three men admitted to taking photos of the couple while they left the Paris Ritz Hotel, and of them inside the demolished car.

Diana and Fayed died on Aug. 31, 1997, when the car being driven by their inebriated chauffeur, Henri Paul, smashed into a concrete pillar in a traffic tunnel, then spun around and hit the tunnel wall.

The photos taken by the three photographers were confiscated and never published.

In 2002, manslaughter charges against nine photographers were dropped by France's highest court.

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*by Julie Kredens, staff writer*

"At some point we have to balance the child's right to privacy against the freedom of the press," says Charles Pederson. Pederson represents the child's parents who sued KFMB-TV in San Diego for invasion of privacy.

His clients, Steven and Robin Schwartz, were outraged when the station interviewed their then 8-year-old daughter Alison the day after she, her sister and two friends escaped from a knife-wielding man who threatened them on their way to school.

The lawsuit, which was settled out of court in March, contends that KFMB -TV put the child at risk by using her picture and first name on the air.

"(KFMB) didn't give any consideration to the potential impact of identifying her and broadcasting video of her picture for this fellow to see," said Pederson. The man molested an 11-year-old girl the morning that Alison escaped him on the same wooded trail.

KFMB reporter John Culea interviewed Alison the next day on her school playground. The plaintiffs contend Culea didn't have the principal's or any adult's permission to interview the child; the defense claims that consent was implied because school officials were on the grounds and no one objected.

Station attorneys argue that Alison had already appeared on television in connection with the story. Steven Schwartz was interviewed by another station the night of the incident and was seen holding Alison's hand, although the child was not identified as his daughter, nor was her name given.

The station said Schwartz entered the "limelight" by appearing in the interview, making his family "involuntary public figures." The defense also argues it was a newsworthy story of public interest.

Pederson said putting the father on TV and putting an unauthorized interview of an 8-year-old on TV are two different things. "We're not talking about an interview for a science fair project," says Pederson.

“An 8-year-old does not have the capacity to understand the ramifications of an interview (of this kind).”

Pederson said he hoped the case would remind journalists to give serious consideration to whom they are interviewing and what the impact might be. The family lived in fear that the molester, who was not caught until a month later, would be able to find Alison as a result of the story and come after her, he said.

“I’ve got a problem when we’re dealing with minors, and in a situation where there very possibly could be some impact on them,” said Pederson, “There was some impact (here) — there could have been a lot more, let’s put it that way.”

### **Privacy case settled against TV station**

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Source: FineLine: *The Newsletter On Journalism Ethics*.

**Media ethics**

**Case study: 1**

**When a story source threatens suicide**

**“I’m going to kill myself!”**

**by Mike Jacobs**

One story, two ethical decisions and a threat of suicide: a combination that would create a lively discussion in any newsroom.

It started as an intriguing tip: Two years ago, a suburban cop was fired because he was stopping teenage boys, threatening to give them speeding tickets, and then letting them go in exchange for sex. But the police chief did not refer the case to the district attorney for possible charges, avoiding embarrassing publicity for the department. Now, two years later, and in the wake of other allegations about a troubled police department, our sources wanted us to know about this episode.

We located two of the victims, and they confirmed what had happened. One victim, now 24 years old, even agreed to talk about it on camera, without having his identity concealed. He described, in detail, the sexual contact in the officer’s apartment when he was 19 years old.

But a few days later, the young man called us back. He’d changed his mind. He did not want to be on TV.

**Ethical decision #1:** Should we air the interview? He did the interview voluntarily. We had it “in the can.”

He was not retracting his statement, simply asking that we not use his name or picture. We decided to use the interview, masking the man’s identity electronically. We did so because he was, essentially, a sexual assault victim, and we routinely withhold the names of such victims. Furthermore, it was his information that was important, not his identity.

**Ethical decision #2** proved to be a lot more difficult. A week later, we tracked down the former officer, living in a small town 150 miles away. We surreptitiously took pictures of him working in his yard and then approached him for an interview.

When we told him why we were there, he immediately broke down. He asked to speak to me alone. He tearfully confessed to what he’d done, told me he’d tried to put that ugly period in his life behind him, and assured me he’d had no contact with teenagers since then. He said he’d been receiving counseling from a minister. And then he asked if we were going to put his story on TV.

When I told him why we were there, he said, and I’ll never forget his words: “Well, you’ve just made up my mind. I’m going to get my shotgun and go out into a farm field and kill myself. I hate myself for what I’ve done. My parents don’t know why I left town. And I can’t stand the thought of them finding out.”

I spent the next hour trying to talk the man out of committing suicide. I told him he shouldn’t do anything foolish since there was a chance the story might not air, that nothing he’d done was worth dying for. I coaxed. I cajoled. I pleaded. It was, perhaps the most difficult hour of my life.

He finally assured me he wouldn’t do anything until he’d heard from me. We left and went straight to his church. We told his minister about the suicide threat. The minister agreed to visit the man immediately.

We drove back to the newsroom for discussions with news management and the station attorney. Legally, the

story was clean. We had all the facts nailed down, including a confession.

Journalistically, we had a good story. But ethically, we had a problem. Could we tell this story, knowing it might cause a man to take his life?

We wrestled with other questions as well: Was it still a story, since the incidents had happened a few years ago? If so, what was the most important part of the story? And was this man still using his authority to take advantage of teenagers?

We came up with these answers:

Because the officer had resigned, he was no longer in a position to use his badge to take advantage of teenagers. He had assured me he was not involved in activities that put him in contact with young people. And we knew, if we did a story, the D.A. would investigate to find out if he was telling the truth and letting him know he was being watched.

We decided it was still a story. But we believed an equally important part of the story was the fact that the police chief had allowed the officer to resign, without referring the case to the D.A.

Yet, we did not want to do a story, that might result in a man's suicide. We decided to air the story, withholding the former officer's identity. We electronically altered our videotape of the man working in his yard so he could not be recognized. We notified him in advance, through his minister.

In our story, we told the viewers about the sexual incidents. And we explained how the police chief had handled the case.

The D.A. immediately launched an investigation. Months later, after interviewing everyone involved, the D.A. decided he was not going to prosecute the former officer, so long as he had no further contact with teenagers. The D.A. criticized the police chief for the way he had handled the case. But the D.A. ruled the chief had not acted criminally.

The police chief, declaring himself cleared of criminal wrongdoing and citing his age, 55, immediately resigned. The former officer did not kill himself. We believe we handled this case responsibly. But there is a larger issue: Can the threat of suicide be enough to kill a story? If so, some important stories probably would go unreported. Each case, we decided, must be based on its own set of facts.

**Source:** FineLine: The Newsletter On Journalism Ethics

Mike Jacobs anchors the 10p.m. news and heads the investigative unit at WTMJ-TV in Milwaukee, US.

### **Case study :2**

#### **Are we our brother's keeper?**

#### **You bet we are!**

#### **by Deni Elliott**

*Wow! I can't believe he's really telling me this!*

All reporters have had sources say surprising things. But what happens when the source doesn't understand that he's putting himself at risk? What do journalists owe vulnerable sources?

Children, persons charged with crimes, some psychiatric patients, and unsophisticated individuals who simply

don't understand the consequences of being on the record are vulnerable sources. Self-damaging information provided by them should not be published without compelling justification.

Not many people would disagree with this as a general rule, but it's sometimes difficult to decide just who is a vulnerable source and what constitutes "compelling justification" for publication.

Robert Hitt argued [in his article "Vulnerable sources and journalistic responsibility"] that the source, James Wilson, was competent to consent to an interview because he was "lucid." That's not sufficient reason: Lucidity doesn't necessarily change a source's vulnerability.

A 7-year-old girl, for example, could be a "lucid" source for a custody or child abuse story. But she is still vulnerable because she does not understand the implications of being quoted in a news story.

Hitt uses Wilson's release from psychiatric programs as an indication of his competency. Wilson's psychiatric history should raise questions for lay persons, not allay fears, about his current mental health. No psychiatrist would attempt to judge competency based on a telephone call, nor should a lay person.

Journalists can identify the vulnerable source by asking themselves if it is rational for the person to accept the risk that will come through publication. The combined criteria of risk and rationality give a reason for including as vulnerable sources persons charged with crimes and people who just don't understand journalistic process.

A person charged with a crime may think that talking to a reporter gives him a chance to explain that he has been wronged. But he does not understand that the published story may interfere with his ability to defend himself. Other people are vulnerable simply because they don't understand the interview process. They feel befriended and think that the reporter will decide what to write based on "friendship."

An example would be an impoverished mother who shows the reporter how she continues to get electricity into her home despite the utility's turn-off order. She doesn't know that she is informing the electric company through her conversation with the reporter.

Should reporters avoid interviews with vulnerable sources? No. The reporter's duty is to develop every story angle.

Decisions about what to publish come later. Editors need to justify publishing information that is likely to harm the unwitting vulnerable source. A look at other professions gives the key to when it's okay to publish such information.

Society allows doctors or researchers to put vulnerable individuals at risk if the possible benefit to the individual outweighs the risk.

The story of the impoverished mother who outwitted the system could actually protect her from further harm by exposing her dire need. A whistle-blowing prisoner or institutionalized individual is more likely to be helped when reporters are willing to tell their stories.

But, if a news organization publishes information that is damaging to a vulnerable source without regard to the individual, it's difficult to justify the harm. Would we be willing to allow medical experimentation on incompetent individuals because the experimentation might be good for society? Not likely.

Some journalists argue, as does Hitt, that it is justifiable to use potentially harmful information from a vulnerable source because some agency other than the newsroom is responsible for the individual's protection.

Would we accept the same argument from a judicial system that knowingly sent an innocent person to jail because his lawyer failed to prepare a minimally adequate defense? A double failure of those in power doesn't justify hurting someone.

The onus is on journalists to explain why they should be allowed to act toward individuals in a way that they would condemn in other professions. The First Amendment is not a shield for abuse of power.

Source: FineLine: *The Newsletter On Journalism Ethics*.

**Elliott is a monthly column written by consulting editor Deni Elliott. Elliott is executive director of the Ethics Institute, Dartmouth College.**

### **Indecent Representation of Women (Prohibition) Act, 1986 Case study ( A media report)**

#### [Complaint lodged against Tehelka staff](#)

A retired Army officer and a programme officer of Shakti Vahini, a non-governmental organisation, have lodged a complaint with the Delhi police against Mr. Tarun Tejpal, Mr. Samuel Mathew, Mr. Aniruddha Bahal and other persons employed with tehelka.com for procuring women for the "purpose of prostitution".

Seeking action against the named persons under the Indian Penal Code, the Immoral Traffic (Prevention) Act 1956 and the Indecent Representation of Women (Prohibition) Act, 1986, the complaint by Col. (retd.) K.S. Bhimwal of Qutab Institutional Area and Nishi Shrivastava, programme officer of Shakti Vahini, states that various articles in the media had made a mention of the use of sex workers in the Tehelka expose.

The complaint - copies of which have been submitted by the complainants to the Commissioner of Delhi police, the Deputy Commissioner of Police (New Delhi district) and the Station House Officer of Connaught Place police station - says that "while purportedly investigating corruption in the Ministry of Defence, Government of India and the Indian Army, the persons in-charge and associated with the affairs of M/s tehelka.com procured women for the purposes of prostitution and provided them to certain officials of the Indian Army."

Stating that "not only did the said persons procure women for the purposes of prostitution, but also filmed the said officers committing sexual acts with these women", the complainants claim that in the course of various interviews, press conference and debate shows, Mr. Tarun Tejpal had admitted to having procured sex workers and making them available to the Army officials.

Of the view that in the course of the Tehelka expose, some persons involved with the company indulged in various acts of criminal conspiracy, cheating, impersonation and sedition vis-a- vis the Government, the complainants sought action against the named persons.

As for the use of women in the operations, the complainants say, that by using sex workers and filming them, the named persons have committed acts which not only denigrated women but were also grave offences under the Indian Penal Code and the Immoral Traffic (Prevention) Act, 1956.

The complainants have also stated that as per newspaper reports, the wife of Col. Anil Sehgal had com-

plained to the President, Prime Minister and Defence Minister alleging that her husband who had been filmed by the tehelka was being blackmailed. The complaint also alleges production, distribution and circulation of writings and films which represent women in an indecent fashion and calls for action under the Indecent Representation of Women (Prohibition Act), 1986.

[Juvenile crime](#)

Case study

Past but not over

When history collides with the Present

*By Cheryl Appel*

When I encountered Albert Thompson, it was 18 years after he had stabbed a playmate to death.

The Wayland Town Crier published an interview with Thompson, who had just accepted the highly-politicized job of executive director of the Wayland Housing Authority, on June 13, 1985. The next morning, Editor Andrea Haynes received the first of what would be many anonymous phone tips.

That call started Haynes and her staff on a summer of investigating and writing, and agonizing over whether to reveal Thompson's past.

Information from newspaper accounts and off-the-record sources helped piece together the story:

When Thompson was a 12-year-old living in Wayland, Boston suburb, he killed 6-year-old Mark Dupuis by stabbing him in the head and face 23 times. Dupuis had been hit in the shoulder by Thompson during a jackknife-flipping game and began to cry. Thompson, fearing the boy would tell his mother, panicked.

Thompson was arrested that night, and, found guilty, sent through the state's juvenile system. He had been a troubled child, physically and sexually abused by his stepfather.

The staff of the Town Crier, three full-time reporters and two editors, assembled facts for a story it might never publish.

We talked to everyone we could find, including the reporter who had covered the 1967 killing and the murdered boy's mother. No one would go on record.

The staff also discovered fraudulent entries on his resume. The paper printed stories about those and other discrepancies in his professional record while deciding what to do about the childhood crime in Thompson's past.

As information accumulated, staff meetings became more frequent. Many were held in the publisher's office on a speaker phone to the paper's attorney. He assured us that legally we could publish the story about the playmate's killing, despite the sealed juvenile records, since so many years had passed and this man was now in a public position.

The ethics involved the juvenile records, the private lives of public officials, the extent of knowledge in the community and the public's right - or need - to know.

As a reporter, I was often torn between protecting Thompson and the public's right to know.

At every staff meeting, no matter how many new facts had surfaced, the ethical arguments remained, and the staff's decision was always split.

We asked ourselves if Thompson was entitled to privacy: Hadn't he paid his penalty? Should he be judged only on his actions as an adult?

Did the public need to know about his past?

The staff was not in a position to judge his motives or whether he was an unbalanced threat to the public, or to the tenants.

Housing Authority members knew about his past when they hired him. But they learned about some falsifications on his resume from our stories.

We could discern no general feeling in the town that he shouldn't have the job. Tenants had expressed support, not fear.

Was he newsworthy because he was a public official, or because he had returned to his hometown?

The staff decided that summer not to publish what it knew, but kept the subject open. We just couldn't decide that he was enough of a threat to risk harming him.

But then-publisher James Hopson, who had just joined the paper and chose not to override Haynes' decision, later said the story should have been printed. "Al Thompson forfeited any claims to privacy when he sought a public position," he reasoned. "... It's a hell of a news story."

Boston magazine, a 124,000-circulation monthly, agreed. In November 1985, writer John Strahinich broke the playmate stabbing death story, calling it "The Bogeyman Comes Home."

Strahinich said he had told Thompson he'd write a story - whether or not he cooperated. Thompson talked - about childhood beatings, suicide attempts, reform school and two marriages. And the killing. It sent waves through Wayland.

Haynes wrote a column explaining why the Crier hadn't broken the story, and the paper also ran news and reaction pieces.

In April 1986, the Housing Authority voted 4-1 not to renew Thompson's contract, citing poor job performance and deteriorating relationship with the board. He resigned in May.

Six months later, Thompson hanged himself.

The news was a shock but I felt relieved that we hadn't revealed his story a year earlier. Still, I wondered whether a small-town weekly breaking the story could have helped Thompson.

**If we had printed a balanced treatment that allowed him to get everything off his chest, he may have been able to deal with his past and his problems more rationally. I now think we should have printed**

**what we knew.**

Hopson agreed. Being sensitive and restrained, he said, “didn’t do much for the journalistic credibility of the Town Crier. All of the explanations and clarifications in the world don’t change that fundamental fact that we got our pants pulled down on a big story.”

*The writer Cheryl Appel, who now works for the Gannett Westchester Newspapers, was a reporter/copy editor for Town Crier Publications, Sudbury, MA, at the time of the incident.*

*Source: FineLine: The Newsletter On Journalism Ethics*

## **Race realtions**

### **Case study**

#### **Frontline Volume 18 - Issue 19, Sep. 15 - 28, 2001**

**HAD Keshappa and Meramma, a young couple from Vannenur village in Bellary district who fell in love across an inflexible caste divide, been caught together, they would in all likelihood have been lynched by the residents of this caste-cleaved village in northern Karnataka.**

Yerramma, with her husband Yennappa. The Dalit agricultural worker has been singled out for punishment by the members of the Valmiki community for her alleged role in encouraging the relationship between Keshappa and Meramma.

Keshappa is a Dalit and Meramma is from the upper Valmiki caste. It was to escape harm that they fled their village. Their act of daring destabilised the rigid network of caste-based social conventions in the village, but not for long.

On hearing that Meramma was in a nearby village, her enraged relatives forcibly brought her back. She was abused and beaten and later sent away to relatives in another village. Keshappa dared not return to his village and has so far not been traced.

There was further upper caste reprisal that was swift and savage. Yerramma, a poor Dalit agricultural labourer in her mid-30s, was singled out for punishment, for her alleged role in encouraging the clandestine affair.

The village had been in a ferment ever since Meramma was found in mid-August. There were rumours of revenge, and the Dalits feared that their homes would be set on fire by the Valmikis - a mode of upper caste attack that is not uncommon.

On the evening of Sunday, August 26, a large gang of upper caste men, drunk and armed with knives, went to Yerramma’s house, dragged her out and into the nearby field and stripped her, while abusing and beating her. They were accompanied by several women as well.

The gang tied her arms behind her head, and then dragged her from her house down the main road for a distance of about 700 metres to the village panchayat office, where they tied her to a post. The entire village was witness to this spectacle, but none dared intervene.

Yerramma’s husband Yennappa, and daughter Honamma, tried stopping the men, but were themselves beaten. It was only when the men left Yerramma that her husband and daughter could approach her. Yennappa covered her with the piece of the cloth he was wearing and brought her home.

“They beat and kicked my mother, shouting at her to accept her mistake,” Honamma said. “Mother said, ‘Even if you kill me I will not accept that I did any wrong. I too have a daughter.’ I tore a piece out of my sari to cover her, they threw it away. The whole village was watching, including panchayat members, but the men said they would kill anyone who tried to stop them,” Honamma recalled.

The unwritten rules of caste govern life in most villages of Karnataka, especially in the northern districts. The brazenness, however, of this well-planned act of upper caste vendetta suggests the depth of upper caste domination in this area and the contempt that the upper castes have for the law.

Valmikis are a Scheduled Tribe, but they are superior to Dalits in the caste hierarchy. Of the 543 households in the village, 320 belong to Valmikis and 90 to Dalits. The Valmikis are a land-holding caste, and several amongst them are wealthy owners of agricultural land irrigated by the Tungabhadra canal.

SOON after Yerramma was brought back to her house, the police were informed of what happened. A police party arrived at 6-30 p.m. Yerramma and her husband were taken to the police station, where they filed a First Information Report (FIR). Thereafter Yerramma, who was bruised and in a state of emotional trauma, was taken to the Vijayanagar Institute of Medical Science in Bellary town. The FIR named eight persons - five men and three women (including the parents of Meramma).

Cases were booked under Sections 143, 147, 342, 323, 354, 504, 506 and 114 read with 149 of the Indian Penal Code. These sections deal with wrongful confinement, assault, molestation, threat of death, abetment to violence, punishment for rioting, and so on. As the crime was committed by members of a Scheduled Tribe, cases could not be booked under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, a law that has more teeth and makes any atrocity motivated by caste a non-bailable offence. Instead, the eight accused were charged under Section 7, Clauses B, C and D of the Protection of Civil Rights Act, 1955, in addition to other provisions. All the offences for which the accused were booked were bailable.

The next morning, the eight accused were arrested and produced before the court of the Judicial First Class Magistrate, Bellary. Despite the exceptional nature of the crime, they were released on bail. Immediately the five men who were accused absconded. In a second round of preventive arrests the three women were re-arrested, and another 17 persons from the village were also taken into custody. By this time the news had been picked up by the media, and the event attracted national attention.

However, the publicity and the visits by a number of senior politicians and government officials to the village have not assuaged the fears of the Dalits. Nor have assurances by the police that they have created a special squad to find the five accused who jumped bail. Despite a 24-hour police picket in the village, an atmosphere of tension and uncertainty pervades.

The fact that the culprits were let out on bail despite the enormity of the crime, and are now at large, only reinforces the Dalits' convictions of upper caste invincibility. "You have let them out on bail. Give me poison, there is now no point in living," Yerramma is reported to have told Allam Veerabhadrappe, the Karnataka Pradesh Congress Committee president.

In the homes of the upper caste people, the men have either been arrested or have fled the village. Sullen-faced women from Valmiki homes refused to be drawn into conversation. Only Dalits were willing to give eyewitness accounts of what happened to Yerramma.

Because of the sweep of arrests of persons belonging to the Valmiki caste, participants and onlookers alike, non-Dalits now feel safer denying their presence in the village on the day the incident took place. Hanumakka, Keshappa's mother, is burdened with her own fears for her son's safety, and her family's future in the village. Although her son has not returned, the family has not filed a complaint with the police. "I knew nothing of his affair, and I have not seen my son from the day he left the house," Hanumakka said.

The apprehensions of the Dalits and their lack of confidence in the law have some justification given the abysmal track record of the courts in handing out punishment for caste crimes. Karnataka has a very low conviction rate in the matter of cases booked under the Prevention of Atrocities Act.

According to S.N. Borkar, Additional Director-General of Police, Civil Rights Enforcement Cell, there are several reasons for this. Borkar said: "Although special courts for trying caste crimes have been established under the Act, they do not confine themselves exclusively to such crimes, and they are heavily burdened with other cases. Also, there is a lapse of over a year before a charge-sheet is drawn up and the case committed to

such courts.

The cases are frequently adjourned, and the parties are so unequal in economic and social standing that with the delays, witnesses turn hostile, and the case finally becomes too weak for a conviction.”

At present, half the compensation due to a victim of a caste atrocity (the compensation rates for different types of caste crimes are listed in the Rules framed in 1995 to the Prevention of Atrocities Act, 1989) is to be paid at the time of the filing of the FIR. The remaining half is to be paid after the conviction. Since conviction has become such an unlikely occurrence, the Karnataka police have recommended to the government that the Act be amended to ensure that the remaining 50 per cent of compensation be paid after the charge-sheet is filed. In Yerramma’s case, several days after the crime neither had a charge-sheet been filed nor had the main perpetrators of the crime been arrested. While in hospital at Bellary, Yerramma’s physical condition took a turn for the worse and she was shifted to the Jayadeva Institute of Cardiology, Bangalore.

### Sexual offences

#### Case study

In the summer of 2002, the daughter of Mike Kelly, a columnist for the *Omaha World-Herald*, was attacked at her home in Texas.

The newspaper published several news stories about the attack, and Kelly twice wrote about it. But he eliminated a detail before writing an elegant contemplation on naming names in the newspaper.

Kelly wrote:

**“Now you don’t have to read between the lines and wonder: My daughter was raped.**

Since she was attacked June 21 by a stranger who kicked in her locked apartment door, World-Herald news stories and two of my columns have said that she was abducted, robbed, shot and left for dead.

My daughter’s attack in Texas made news in Omaha because of its horrible nature - she was shot in the back with 9 mm bullets - and because she grew up in Omaha.

Editors say an additional factor, and one causing Bridget’s name to be published initially, was that she is the daughter of a long time columnist.

A grand jury in Texas, indicted a man Wednesday on five counts, including attempted murder and aggravated sexual assault. Because Bridget’s name had already been reported in connection with the shooting, the sexual-assault charge created a policy dilemma for editors, who decided - with the concurrence of my daughter, my wife and me - to make a rare exception and report it.

In the hospital more than a month ago at Fort Hood, Texas, unable to speak at first, Bridget wrote that in news coverage of her case, “It’s OK if they say rape.”

She says she wasn’t speaking for others or suggesting how they should feel. But she adds: “Why is it more shameful to be a rape victim than a gunshot victim?”

Surely, it is not. But there is shame in rape, and it rests squarely with the attacker, not the victim.

### **Wireless and Technology Act - 2000**

#### **Case study (Media report)**

## **Not an unfettered right**

### **By K. Subramanian**

While the laudable object of telling the truth to the public by writing a book by a retired government servant is a welcome measure, such an exercise has certain legal barriers and limitations. A person's right to write a book and publish it is covered under Article 19 (1) (a) of the Constitution as part of the freedom of speech and expression. The said right is, however, not an unfettered right but is controlled by Sub-Articles (2) to (6) of Article 19 of the Constitution.

C. Dinakar, former Director-General of Police, Karnataka, in his recent book 'Veerappan's prize catch: Rajkumar' has made startling revelations even to the extent that the Chief Minister, S.M. Krishna's mobile phones were tapped. In Chapter 40, page 296 of the book, under the caption 'Rajkumar's release', he has mentioned the following: "S.M. Krishna probably thinks that I am not aware of all the developments. He has obviously taken the Home Secretary, M.B. Prakash, into confidence, as he is found in 'Anugraha' at odd hours. Doesn't S.M. Krishna know that even mobile phones can be tapped?"

Moreover, in various chapters of the book, he has referred to Mr. Krishna's telephone talk with other persons over the mobile phone. In Chapter 39, page 290 of the book, the following information is revealed: "Mr. Krishna again talks to P. Nedumaran over mobile phone and pleads with him to go to the forest early and rescue Rajkumar. 'Everything will be met', is his assurance to Nedumaran".

In Chapter 38, page 287, under the caption 'Reviewed facts' the following passage is found: "Rajkumar dials Mr. Krishna on the mobile phone and Veerappan talks to him. Veerappan gets the assurance about the Special Court from S.M. Krishna." In page 288, the following passage is found: "Late in the night Mr. Krishna rings up Mr. Nedumaran and requests him to go to the forest".

The above writings of Mr. Dinakar go to show that he was constantly and continuously engaged in tapping Mr. Krishna's telephone even while he (Mr. Dinakar) was the DGP. This raises an important question, a larger question: Whether it is legally permissible for a DGP, by virtue of the office he holds, to intercept the conversation and engage in tapping of the telephone of a Chief Minister and whether such interception would not attract the offence under Section 25 of (The Indian) Telegraph Act, 1885.

Section 25 of the Act reads as hereunder: "Intentionally damaging or tampering with telegraphs — If any person, intending (a) to prevent or obstruct the transmission or delivery of any message, (b) to intercept or to acquaint himself with the contents of any message, or (c) to commit mischief, damages, removes, tampers with or touches any battery, machinery, telegraph line, post or other thing whatever, being part of or used in or about any telegraph or in the working thereof, he shall be punished with imprisonment for a term which may extend to three years or with fine or with both".

In yet another case reported in AIR 1997 SC 568 People's Union for Civil Liberties Vs Union of India and another, the Supreme Court had an occasion to interpret section 5(2) of the Telegraphic Act, 1885. Sec 5(2) reads as hereunder:

"On the occurrence of any public emergency, or in the interest of public safety, the Central Government or a State Government or any officer specially authorised on this behalf by the Central Government or a State Government may, if satisfied that it is necessary or expedient to do so in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of an offence, for reasons to be recorded in writing, by order, direct that any

message or class of messages to or from any person or class of persons, or relating to any particular subject, brought for transmission by or transmitted or received by any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government making the order or an officer thereof mentioned in the order.

Provided that press messages intended to be published in India of correspondents accredited to the Central Government or a State Government shall not be intercepted or detained, unless their transmission has been prohibited under this sub-section”.

Under the above provision, the Director, Intelligence Bureau, the Director- General of the Narcotics Control Bureau, the Revenue Intelligence and Central Economic Intelligence Bureau and the Director, Enforcement Directorate, have been authorised by the Central Government to do the interception. The State Governments generally give authorisation to the police/intelligence agencies to exercise the power. The said power can be exercised only in the interest of :

(i) sovereignty and integrity of India; (ii) the security of the State; (iii) friendly relations with foreign states; (iv) public order; (v) for preventing incitement to the commission of an offence.

In the above case, the Supreme Court also issued the following procedural safeguards for observance in the absence of any provision in the Statute:

An order for telephone-tapping in terms of Section 5(2) shall not be issued except by the Home Secretary, Government of India (Central Government) and Home Secretaries of the State Governments. In an urgent case, the power may be delegated to an officer of the Home Department of the Government of India and the State Government not below the rank of the Joint Secretary. Copy of the order shall be sent to the Review Committee concerned within one week of the passing of the order.

It also added: There shall be a Review Committee consisting of the Cabinet Secretary, the Law Secretary and the Secretary, Telecommunication, at the level of the Central Government, Secretary, Law Secretary and another member, other than the Home Secretary, appointed by the State Government.

**(a) The Committee shall on its own, within two months of the passing of the order by the authority concerned, investigate whether there is or has been a relevant order under Section 5(2). Where there is or has been an order whether there has been any contravention of the provisions of Section 5(2).**

(b) If on an investigation the Committee concludes that there has been a contravention of the provisions of Section 5(2), it shall set aside the order under scrutiny of the Committee. It shall further direct the destruction of the copies of the intercepted material.

(c) If on investigation, the Committee comes to the conclusion that there has been no contravention of the provisions of Section 5(2) it shall record the finding to that effect.

It is a million dollar question as to whether Mr. Dinakar was authorised to tap the telephone conversation of Mr. Krishna and, if so, who gave such authorisation and whether such authorisation was within the parameters laid down by the Supreme Court. It is highly improbable that the State Home Secretary, the competent authority under Section 5(2) of the Act, would have given such permission to tap the Chief Minister's telephone. Since this is an important matter concerning the conduct of a member of the Indian Police Service and also

interference with the confidential communication of the Chief Minister of a State by his own Head of the Department of Police, there is an urgent need for updating the provisions of the Official Secrets Act, 1923, which is an ancient piece of legislation. Section 5 of the Act provides that wilful communication, use, retention or failure to take reasonable care of an information which has been entrusted in confidence to any government servant or citizen by any person holding office or which he has obtained or which he has had access to owing to his position will be an offence.

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