
UNIT 3 PRESS LEGISLATION IN INDIA

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3.0 OBJECTIVES

After going through this unit, you will be able to :

- describe the laws relating to the Press in India;
- explain the importance and scope of legislation in order to steer clear of its traps and avoid legal pitfalls;
- suggest the best way of using the beneficial provisions for healthy and effective journalism;
- enumerate the constitutional and legal rights, limitations and obligations of the Press, and the guidance to defend the rights and carry out the obligations; and
- describe the substantive provisions of various laws relating to the Press and also the legal procedures involved in them.

3.1 INTRODUCTION

In the previous unit, we discussed the salient features of the Indian Constitution. The Constitution is the supreme law of the land and all other forms of legislation must conform to it.

In this unit we shall discuss the press laws of India. We shall in addition, discuss briefly the origin and development of Press Legislation in our country. We will also discuss salient features of important press laws of the country.

In the next unit we shall deal only with the law relating to defamation.

Activity 1

We sometimes say that nothing is permanent in human society. Laws that we enact today may become obsolete some years later or may need amendments to suit the needs of the

society. Therefore, before you proceed further with this unit, it may be appropriate for you to pause a little and engage in an activity which will give you a feel as to how things, specially laws, change in our society.

For this purpose, go to a library and get hold of books/documents on laws. Identify a law and find out how many times it has been amended in the past to arrive at its present shape. For your convenience take the help of the proforma provided below.

Law	Major Points	Enacted	Amended
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3.2 BRIEF HISTORY OF PRESS LEGISLATION IN INDIA

The foundation of the Press law in India had been laid even before the first newspaper began publication in the country. William Bolts, a former employee of the East India Company was ordered to leave Calcutta, proceed to Madras and from there take his passage to Europe when in 1776, he had simply expressed his intention to start a newspaper. All he did was to paste a notice on the gates of the Council Hall telling people that he had in his possession “in manuscript” many things to communicate which were of intimate concern to every individual.

Similarly, intolerance was shown to later publishers and editors although they all happened to be British or other Europeans. James Augustus Hicky who started the first newspaper, the ‘Bengal Gazette or the Calcutta General Advertiser,’ in 1780, was so harassed that he had to finally close down his paper.

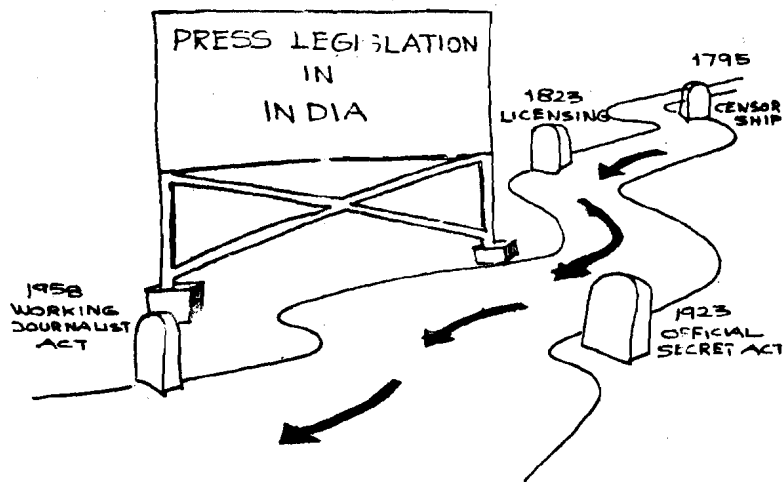
In 1795, censorship was introduced for the first time. The ‘Madras Gazette’ was asked to submit to the Military Secretary all the general orders of the government for censorship before publication. Pre-censorship was one of the three methods resorted to in order to deal with non-conforming editors. The other two being the denial of postal privileges and deportation.

This continued until 1799, when the first Press regulations were promulgated by Marquess of Wellesley. The Wellesley regulations required the newspapers to print the names of printers, publishers and editors. They were also required to submit all the material for pre-censorship by the Secretary to the Government of India. Warren Hastings abolished these regulations.

But, in 1823, Governor General John Adams introduced licensing of the Press. His Ordinance required a previous license for printing of all matters, except commercial matter. Similar regulations were introduced in Bombay in 1825 and 1827.

Licensing was abolished in 1835 and replaced by Metcalf’s Act which only required a newspaper to declare the address of the printer and of the publication .

In the wake of the first war of Independence of 1857, licensing was reintroduced by Lord Canning. The Act of 1857 applied even to books and all other kinds of publications.



In 1860 a comprehensive law, the Indian Penal Code (IPC) was enacted. It contained offences like defamation and obscenity which writers, editors, publishers and printers must avoid. Sedition (S.124A) was added to it in 1870, promoting enmity between classes (S. 153A) in 1898, outraging religious feelings (S. 295A) in 1927 and assertions against national integration (S.153B) in 1927.

The oldest surviving Press Regulation, “Press and Registration of Books Act”, was passed in 1867. It regulates printing presses and newspapers throughout India.

The Act, specifically meant to curb the Indian language newspapers, called the Vernacular Press Act, was passed in 1878. This evoked widespread opposition in India and to some extent in England too. It was, therefore, repealed in 1881. This Act empowered the Government for the first time to issue search warrants and enter newspaper premises even without court orders.

The present Criminal Procedure Code (Cr P.C.) was first enacted in 1882 and then consolidated in 1898. The 1898 Code conferred on the Government certain procedural powers against the Press like search and forfeiture of publications which offended against sections 124A, 153A or 295A of the IPC.

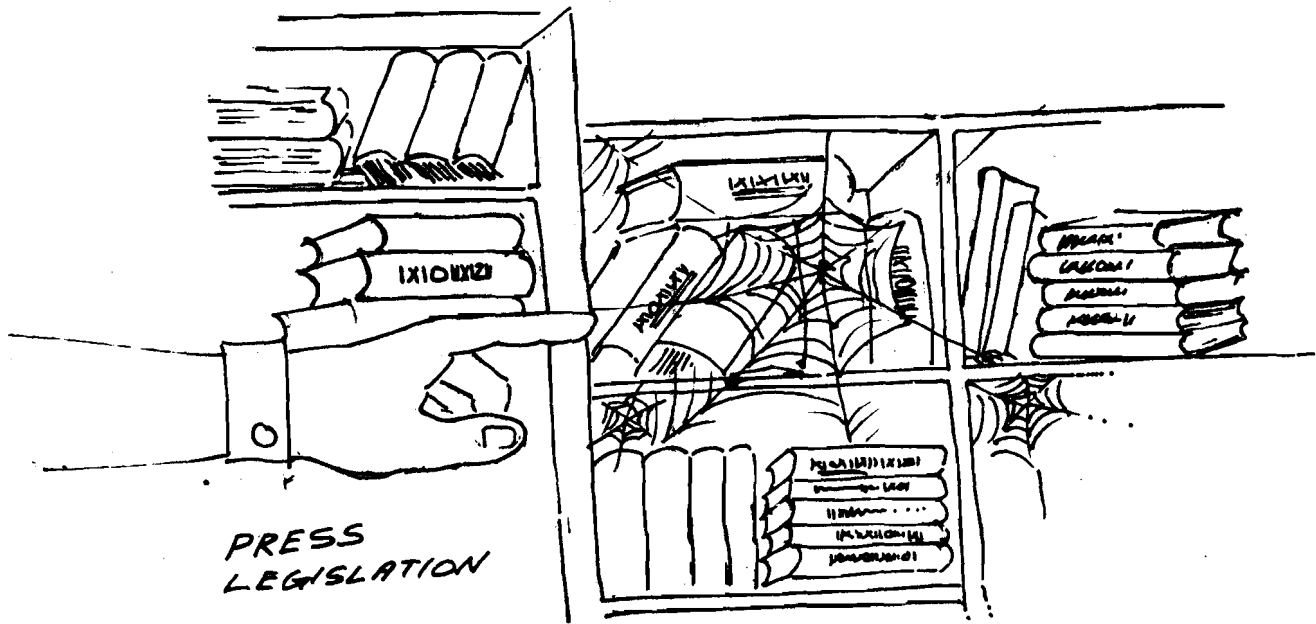
The beginning of the twentieth century saw the enactment of more stringent anti-Press laws to curb the activities of the revolutionaries and the British put various restrictions on newspapers preventing the reporting of and comments upon their activities. In pursuance of this, the Newspapers (Incitement to Offences) Act was passed in 1908, empowering magistrates to seize a press where a newspaper containing matter which incited murder or any other act of violence or an offence under the Explosive Substances Act was printed. In 1910, the Indian Press Act was passed. This was a more comprehensive law and was directed against both offences of violence and sedition. It empowered the Government to ask for a deposit of security from the press and where it deemed fit to forfeit it. The Act was made more rigorous in 1913 and 1914. But, following the report of a committee the Acts of 1908 and 1910 were repealed after incorporating some of their provisions in other laws.

In 1923, the Official Secrets Act was prohibiting the publication of any classified official information.

After Independence, the Press (Objectionable Matter) Act, 1951 was to be a temporary law for two years but was extended upto February, 1956. This Act provided for a judicial inquiry before demanding security from a printing press or forfeiting it.

Following the recommendations of the First Press Commission, a law was passed in 1955 seeking to ameliorate the conditions of working journalists and other newspaper employees. This was the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act. It regulates the conditions of service of working journalists, provides a machinery for the fixation of rates of wages of working journalists and other newspaper employees. Similarly, the Working Journalists (Fixation of Rates of Wages) Act, 1958 was passed to overcome certain difficulties in respect of fixation of the rate of wages.

An Act seeking to link the number of pages in a newspaper to its cover price was passed in 1956. This Act, called the Newspaper (Price and Page) Act, 1956 was struck down by the Supreme Court in the case of *Sakal Papers vs. Union of India* in 1962 as unconstitutional.



D.D. Basu in his book *Law of the Press in India* has said the Newspaper (Price and Page) Act, 1956 illustrates how the freedom of the Press may be interfered with by the Government indirectly by enacting some law which does not profess to impose any restriction of that freedom on the ground of security of State or the like.

In 1956, Parliamentary Proceedings (Protection of Publication) Act was also enacted. The Act, popularly known as Firoze Gandhi Act, protected a newspaper from legal action for the publication of substantially true reports of the proceedings of Parliament. The Act was later repealed in 1976 during the period of internal Emergency.

In 1961, the Criminal Law Amendment Act was passed imposing certain restrictions on the freedom of the Press on grounds of the security of the State and public order. Defence of India Acts were promulgated in the wake of the external aggression in 1962 and 1971. These placed sweeping restrictions on the Press.

An Act to establish the Press Council was passed in 1965 with the dual objective of protecting the freedom of the Press and raising standards of journalism including self-monitoring. This Act was repealed in 1976 during the internal emergency clamped on the country by Mrs Indira Gandhi's government, but was re-enacted with some changes by the Janata Party government in 1978.

In 1969, Criminal and Election Laws Amendment Act was passed to amend certain sections of the IPC and the Cr P.C. as also to introduce certain new provisions. All these affected the Press.

The Press was brought under strict censorship on the promulgation of internal Emergency in 1975. This was done by issuing the Central Censorship Order on June 26, 1975, under the Defence of India Act. The Order was revoked on March 22, 1977.

Like the Press Council of India Act of 1965, the Indira Gandhi government also repealed the Parliamentary Proceedings (Protection of Publication) Act, 1956. Simultaneously, a very stringent Act titled the Prevention of Publication of Objectionable Matter Act was introduced. This Act was substantially the same as the Press (Objectionable Matter) Act, 1951. It was repealed on April 9, 1977.

During the last decade, attempts were made to enact some new laws affecting the Press like the Bihar Press Bill, the Defamation Bill and the Press and Registration of Books (Amendment) Bill. But, they were all abandoned in the face of strong opposition from the Press and the people.

Check Your Progress 1

- Note :** i) Give your answers in the space provided below.
 ii) Wherever required, tick [✓] the correct answer.
 iii) Compare your answers with those given at the end of this unit.

1) Who brought out the first newspaper in India?

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2) Name the oldest surviving legislation.

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3) On the left hand column the important dates in the history of the Press Legislation are given. On the right hand column the facts or reasons of their importance are provided. But, they are not arranged. You may arrange **them** or match them. There is no need to rewrite the phrases or dates. Take a pencil and with the help of arrows match them.

Dates	Reasons/Facts
1776	Parliamentary Proceedings Act.
1780	Censorship was first Introduced in India.
1795	Central Censorship Order.
1975	Criminal and Election Laws Amendment Act was passed.
1956	Indian Penal Code (IPC).
1958	William Bolts wanted to start a newspaper.
1969	Bengal Gazettee was first published.
1860	Working Journalists Act.

3.3 CONSTITUTIONAL LAW OF PRESS FREEDOM

India is one of those countries which guarantee their citizens the right to freely express themselves. The Indian Constitution guarantees six fundamental freedoms, and the 'freedom of speech and expression' is the first among them.

Article 19(1) of the Constitution reads : All citizens shall have the right to :

- a) freedom of speech and expression;
- b) assemble peacefully and without arms;
- c) form associations and unions;
- d) move freely throughout the territory of India;
- e) reside and settle in any part of the territory of India;
- f) practice any profession, or to carry on any occupation, trade or business.

Thus all Indian citizens enjoy a constitutional right to give free expression to their views, opinions and convictions. They have, for this purpose, the right to seek,

receive and impart information and ideas. As the exercise of freedom of expression requires a medium through which information and ideas may be communicated, it naturally follows that the medium shall also be free. Our Constitution does not specifically mention the freedom of the Press as in the U.S. Constitution. However, the Supreme Court has, following the above logic, very explicitly ruled that freedom of the Press is included in the guarantee of the freedom of expression, which also includes the liberty to publish and circulate. The apex court has held that there was, therefore, no need to make a separate provision for the freedom of the Press.

But, as this right has been guaranteed to all Indian citizens, the right of the Press is no more than that of a citizen. Therefore, the Press cannot claim any special privilege. Likewise, it cannot be subjected to any special restrictions which are not applicable to the citizens.

No right is absolute. In an orderly society, liberty cannot mean a license. Like other freedoms, the freedom of the Press is also not absolute. It is circumscribed by restrictions specified by the Constitution itself.

Clause (2) of Article 19 of the Constitution empowers the State to enact laws imposing reasonable restrictions on the exercise of this freedom. "In the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency and morality, or in relation to contempt of court, defamation or incitement to an offence". Thus, the Constitution permits certain restrictions to be placed on the Press to protect the greater interests of (a) the State, like the need to maintain its very existence, (b) the society, in the form of public safety and tranquility, decency and morality, public confidence in the administration of justice, and (c) the individual, in enjoying his reputation and fair name.

However, the various court verdicts have made it clear that :

- i) The restrictions must not be approximately connected with any of the grounds enumerated in Article 19 (2) and 19 (6).
- ii) They must be reasonable. What is reasonable is a question of fact, which will be decided by the court. Reasonableness must stand to test both substantively and procedurally.
- iii) They cannot totally extinguish the right. That is, the restrictions cannot be excessive. They must relate and be commensurate to the gravity of the problem meant to be tackled by the intended restriction.
- iv) They should not be deliberately imposed or enforced with a view to controlling the Press.

Article 361A provides protection from any proceedings in any court in respect of the publication in any newspaper and by any news agency of a substantially true report of the proceedings of either House of Parliament or a State Legislature unless the publication is proved to have been made with malice.

However, this protection is not available in relation to reports of a secret sitting of any House.

Check Your Progress 2

- Note :
- i) Give your answers in the space provided below.
 - ii) Wherever required, tick [✓] the correct answer.

1) The Indian Constitution does not have a separate provision for the 'freedom of the press'. However, it is said that for a democratic society it is not only required but also essential. Do you agree with this statement? Give reasons for your answers.

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2) There are certain restrictions on the freedom of the press. Give two reasons as to why such restrictions are essential.

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3.4 PRESS AND REGISTRATION OF BOOKS

Having noted the constitutional position, let us now look at the various Acts affecting the Press. The oldest surviving Act in this regard is the Press and Registration of Books Act, 1867. It also remained the fundamental law governing the rules for the regulation of the publication of newspapers and of having printing presses.

Though no licence or permission is required for starting and running a newspaper, no paper can be published without complying with the provisions of this Act. A declaration made in the prescribed manner before the District, Presidency or Sub-divisional Magistrate and authenticated by him is necessary before the newspaper is published. Similarly, no printing press can be set up without making a relevant declaration.

The Act requires that the name of the printer, the place of printing and the name of the publisher and place of publication must be legibly printed on every book or newspaper printed/published within India (Sec.3).

For having a press to print books or newspapers, a declaration must be made before the District Presidency or Sub-divisional Magistrate giving description of its location.

Every time a press is shifted to a new place a fresh declaration is necessary. But, if the change of the place is for a period less than 60 days, the new location also falls within the jurisdiction of the same Magistrate, and the keeper of the Press continues to be the same, no fresh declaration need be made. In that case, and intimation regarding the change of place sent within 24 hours will suffice.

Two conditions are necessary to be fulfilled for publishing a newspaper. One, the name of the editor must be clearly printed on every copy of the newspaper. Two, a declaration must be made before the District, Presidency or Sub-divisional Magistrate within whose jurisdiction the newspaper is to be published, stating the following facts : (a) name of the printer and publisher (b) premises where printing and publishing is conducted, (c) the title, language and periodicity of the newspaper. The declaration should be made by the printer and publisher either in person or through an authorized agent. If the printer or publisher is not the owner of the paper, the declaration should specify the name of the owner. But, making a declaration does not automatically pave the way for publishing a newspaper. Publication can be started only after the said Magistrate authenticates the declaration.

Every time the title, language or periodicity is changed, the declaration ceases to exist, and a fresh declaration must be made. Similarly, a new declaration is necessary as often as the ownership or the place of printing or publication of the newspaper is changed. However, only a statement furnished to the Magistrate will suffice if the change of place is for a period not exceeding 30 days. If the printer or publisher leaves India for a period exceeding 90 days or if he is by infirmity or otherwise incapable of carrying out his duties for more than 90 days, then a fresh declaration will have to be made.

No person who does not ordinarily reside in India or a minor can file a declaration or edit a newspaper. If the declaration is made in accordance with the provisions of the law and if no other paper bearing the same or similar title is already in existence in the same language or the same State, then the Magistrate cannot refuse to

authenticate the declaration. However, before authentication he must make an inquiry from the Registrar of Newspapers for India (RNI) about the existence of such other paper.

The authentication is an administrative and not a judicial function, and the Magistrate must perform it without exercising his personal discretion.

After authentication the paper must be started within a specific period. The declaration in respect of a newspaper to be published once a week or more shall be void if it is not commenced within six weeks of the authentication. In case of all other newspapers the time limit for commencing publication is three months. This means that a daily, a weekly or a bi-weekly newspaper must commence publication within six weeks and a fortnightly, a monthly or a quarterly can start publishing within three months after authentication.

The Magistrate can cancel the declaration and order closure of a newspaper for irregular publication. If in any period of three months, a daily, a triweekly, a bi-weekly or a fortnightly newspaper publishes less than half the number of issues which it should have published in accordance with the declaration, the newspaper shall cease to publish. A fresh declaration must be filed before it can be started again. In case of any other newspaper the maximum period of non-publication must not exceed 12 months in order to keep the declaration alive.

Two copies of each issue of a newspaper and upto three copies of each book must be delivered, in a prescribed manner to the Government free of expense.

The declaration can be cancelled by the Magistrate after giving opportunity to show cause to the person concerned, if the Magistrate is satisfied on the following counts :

- a) the newspaper is being published in contravention of the provisions of this Act or rules made under it, or
- b) the newspaper bears a title which is the same as, or similar to that of any other newspaper published either in the same language or in the same State, or
- c) the printer or publisher has ceased to be so, or
- d) the declaration was made on false representation or concealment of any material fact.

The Magistrate's decision can be challenged in an appeal before the Press and Registration Appellate Board. The Board comprises a Chairman and another member nominated by the Press Council of India.

Penalties : If a newspaper (or a book) is printed or published without legibly printing the name of the printer and publisher as also the name of the place of printing/publishing, the printer or publisher can be fined upto two thousand rupees or imprisoned upto six months or punished by both. The same punishment can be awarded for keeping a press without making declaration or for making false statement or for editing, printing or publishing a newspaper without conforming to the rules. In the last case the Magistrate, may in addition to this punishment also cancel the declaration in respect of the newspaper.

Non-compliance with the requirement regarding the delivery of copies of newspaper will invite a penalty of upto Rs. 30 for each default. In case of publication of a book, the value of the copies of the book may be charged.

Registrar of Newspapers : There is a provision for appointment of a Press Registrar by the Government of India for the whole of the country. The Press Registrar maintains a register containing the following particulars of each newspaper : Title, language, periodicity, name of the editor, printer and publisher; place of printing and publication; average number of pages per week, number of days of publication in the year, average number of copies printed, sold and distributed free; retail selling price per copy, and names and addresses of owners.

The Press Registrar also issues a certificate of registration to the publisher of the newspaper. He does this on receipt of a copy of the declaration from the Magistrate who has authenticated it.

It is the duty of the publisher to furnish to the Press Registrar an annual statement of the above particulars about his newspaper. It is also his duty to publish such of the particulars in the newspaper as may be specified by the Press Registrar. The Rules require the publication in the first issue after the last day of February each year, the name, address, nationality of the editor and publisher, and the name of all those holding one per cent or more shares in the newspaper.

The newspaper is also obliged to furnish returns, statistics and other information as the Press Registrar may from time to time require. Noncompliance attracts a fine of five hundred rupees. The Press Registrar has a right of access to records and documents of the newspaper for the purpose of collection of any information about it.

Check Your Progress 3

- Note :** i) Give your answers in the space provided below.
ii) Wherever required, tick [✓] the correct answers.
iii) Check your answers with the ones given at the end of this unit.

- 1) The following are some statements. You are required to tick each of them indicating whether or not they are false.
- a) The newspaper owners need to acquire licences to run a newspaper.
 True False
 - b) Press and Registration of Books Act, 1867 says that printing the name of the publisher with proper address once a week is necessary.
 True False
 - c) A declaration by the Publisher before the District Presidency or Sub-divisional Magistrate regarding the exact location of printing and publishing is necessary by the law.
 True False
 - d) Any Indian, whether residing in India or abroad, of any age can start running a newspaper after proper declaration by the District Court.
 True False
 - e) Every issue of a registered newspaper has to be sent to the Office of the Registrar of Newspapers for India.
 True False

2) What are the two legal conditions one must fulfil in case one plans to publish a newspaper?
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3) What punishment can be given if in case the two legal conditions are violated?
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- 4) Tick [✓] the correct answer.
- a) Under the provisions of Press and Registration of Books Act, 1867 do we have state level Registrars of Newspapers?

[] True [] False

b) Who authenticates a declaration filed by a publisher?

Magistrate []

Press Registrar []

3.5 OFFICIAL SECRETS ACT, 1923

The Official Secrets Act, 1923 is a comprehensive document relating to official secrets and defines a number of offences. The Act is aimed at maintaining the security of the State against leakage of secret information, sabotage and the like. However, many of the acts prohibited by this law may be committed by newspapers and journalists, as private individuals, while performing their duties.

The Official Secrets Act, 1923 broadly has two parts—one relating to spying for the enemy (Secs. 3 & 4). The punishment for spying in relation to the country's defence is upto fourteen years. The other relates to unauthorized communication of any other secret official code or pass words, or any sketch, plan, model, article, note, document or information (Sec.5).

The provisions of Sec. 5 are more important from the stand-point of the freedom of the Press. The Government whose administrative culture is secrecy, has an internal system of dividing its documents into 'classified' and 'non-classified' categories. The classified documents are considered secret under various statutes, such as "Top Secret", "Secret", "Confidential" and "Restricted personal-note for publication". Laws against printing of classified documents are understandable in relation to certain areas like defence and security of the country. But, the Official Secrets Act also prohibits publication or communication of any information, which may be directly or indirectly useful to the enemy.

Regarding official secrecy and freedom of information, it is interesting to know about an American case. In the case of *New York Times vs. U.S.A.* in 1971, the U.S. Supreme Court refused injunction for restraining publication of the Pentagon papers relating the US foreign policy on the Vietnam war. By majority, the court decided that no injunction could be imposed upon press freedom on the basis of surmises and conjectures that untoward consequences might result. The court can issue an injunction only when the publication of a matter will inevitably, directly and immediately imperil the safety of the nation.

In India, it has been widely demanded that section 5 of the Official Secrets Act which inhibits free reporting should be done away with. It prescribes a punishment with imprisonment upto five years or fine or with both for a person who voluntarily receives or communicates any official secret. The Act does so without defining an official secret. This means that any official information which has been deemed by the authorities as secret can be published only on the pain of punishment.

The law does not recognize the fact that it may be in the public interest to publish certain information which, in the opinion of the authorities, should not be revealed. Thus, there is a clash of public interest. The question involved here is between the public's right to open government and government's need for secrecy. The Second Press Commission and the Press Council of India have recommended that Sec. 5 be scrapped. The Commission has suggested its replacement by provisions modelled on those of the British Freedom of Information Bill, 1978. The Council has asked for the repeal of the Official Secrets Act, 1923 *in toto* and to enact a new legislation which may be called Freedom of Information Act. Exceptions or permissible restrictions to this freedom may be specified in the proposed Act.

There are two opinions on the Official Secrets Act, 1923. One opinion is that it is the most deadly of all laws affecting the Press in this country and its existence in the statute book has a chilling effect on investigative reporting. However, under this Act not many prosecutions have been launched against newsmen and newspapers. According to Arun Shourie, who is widely known for his investigative reporting,

newsmen are often not very active and they use the official secrets Act to shield their inactivity. These laws are in fact help to the Press. In his article in *India Today* of 30 September, 1983, Shourie has said that the Official Secrets Act is aimed against a person passing Official Secrets surreptitiously to enemies of the State. Barring some hyper-patriotic umpiring by the judges it would be well nigh impossible for a government to use the Act to prosecute a pressman for disclosing secrets openly to the people, secrets which it is manifestly in their own interest to know.

After the internal emergency period, during the Janata Party regime, the government set up a working group to examine the question of official secrecy. The group reported that in view of the present situation the provision of the Official Secrets Act should be made more stringent and rigorous.

3.6 CONTEMPT OF COURTS

Judiciary is the most important of the three arms of the government. It interprets laws. The judiciary settles disputes between individuals, between the individual and the State, and among the various constituents of the State. In order that it is effective all must have faith and confidence in its impartiality, fairness and concern for the rights of the individual, interest of the State and the good of the society. For this its independence must be ensured. There must be no interference in its functioning and no attempt to intimidate or influence it. Any such thing, shall be done on the pain of punishment.

This is, broadly, the objective of providing for a law of contempt of courts. As we have seen in section 3.4, reasonable restrictions can be placed on the freedom of expression in respect of the contempt of courts.

According to Sec. 2 of the Contempt of Courts Act, 1971, contempt is of two kinds, Civil Contempt and Criminal Contempt (C1.2 (2)).

Civil contempt means wilful disobedience to any judgement, decree, direction, order, writ or other process of a court, or wilful breach of an undertaking given to a court (C1.2(b)).

Criminal contempt means publication of any matter or doing of any other act whatsoever (C1.2(c)), which (i) scandalises or tends to scandalise or lowers or tends to lower the authority of any court or (ii) prejudices or interferes or tends to interfere with the due course of any judicial proceeding; or (iii) interferes or tends to interfere or obstructs or tends to obstruct the administration of justice in any other manner.

Scandalisation here means scurrilous attack on the administration of justice or vilification of the entire judiciary, a particular judge or a particular court.

Publication of any thing which tends to create in the minds of the people an apprehension about the integrity, ability or fairness of a judge or which tends to deter litigants from complete reliance upon the court's administration of justice, amounts to contempt. Similarly, a publication which is likely to cause embarrassment in the judge's mind to the discharge of his official duty is a contempt of court. But, if it is proved that the concerned writing would undermine the prestige or authority of the court or public confidence in the administration of justice by it, then it is contempt even if the vilificatory criticism relates to the judge's non judicial functions like the functions of an administrative judge. Imputation of improper motives in deciding a case is obviously a contempt of court.

However, the power to punish for scandalising the court, is to be used sparingly and in reference to the administration of justice only. It cannot be used for vindicating personal insult to the judge. Bonafide criticism that is fair and reasonable criticism of a judicial act in the interest of the public good does not amount to contempt. But, if improper motives are attributed to the judges then it ceases to be bonafide. A judgement can be criticised as erroneous, but dishonesty on the part of the judge in delivering the judgement cannot be alleged. If a statement is likely to prejudice or

interfere with the due course of justice, then the truthfulness of the facts on which it is based, is no defence. 'Trial by newspapers' has been considered by courts as interference with the proper administration of justice in pending cases. These are but a few examples of what amounts to the contempt of court.

However, punishment can be awarded for interference with the due course of justice only if the interference is substantial. Similarly, a person will not be guilty of contempt of court for innocent publication of distribution, during the pendency of civil or criminal proceedings, of a matter which would otherwise deem to constitute contempt.

A fair and accurate report of judicial proceedings, a fair criticism of a judicial act, and a bonafide complaint concerning the presiding officer of a subordinate court do not constitute contempt of court.

Supreme Court and High Courts being the courts of record can punish any body for their contempt. Every High Court has also the power to punish contempt of subordinate courts like their own contempt.

Punishments : A contemtor can be punished with simple imprisonment only for a term extending up to six months or with a fine up to two thousand rupees or with both. If he makes a satisfactory apology, the accused may be discharged or the punishment awarded may be remitted.

In case of civil contempt, the contemtor cannot be sentenced even to simple imprisonment. He can be detained in a civil prison for not more than six months; normally, a fine would be considered sufficient to meet the ends of justice.

The time limit for action for contempt of court is one year from the date on which the contempt is alleged to have been committed.

Check Your Progress 4

- Note :** i) Give your answers in the space proved below.
 ii) Wherever required, tick the correct answer.
 iii) Compare your answers with the ones given at the end of this unit.

- 1) a) The purpose of the Official Secrets Act, 1923 is to
 [] help Journalists to keep secrets
 [] help journalists to unearth secrets
 [] maintain the security of the state against leakage of secret documents.
- b) Spying on Indian defence-related matter is punishable by
 [] death sentence
 [] life imprisonment
 [] jailing upto 14 years
- c) The Second Press Commission has suggested that Sec. 5 of the Official Secret Act be
 [] eliminated
 [] strengthened
 [] modified
- d) A Civil Contemtor
 [] cannot be sentenced only can be detained for six months.
 [] can be imprisoned for atleast 10 years.
 [] can be sentenced for 1 year and fined 50 thousand rupees.

2) How does the government categorise its documents?

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3) What is the argument for scrapping section 5 of the Official Secrets Act?

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4) Why is publication of anything which creates doubts in the minds of the public about the integrity of the judge termed contempt of court?

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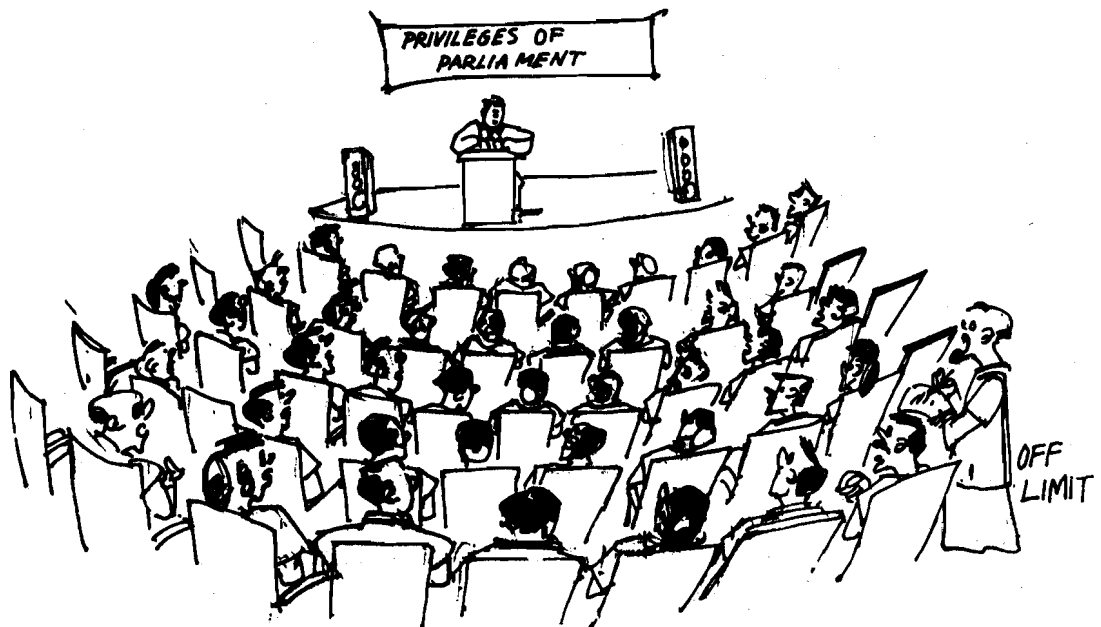
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3.7 PRIVILEGES OF PARLIAMENT

The concept of privileges of Parliament rests on the principle that a sovereign legislature should be able to perform its legislative and deliberative functions independently and effectively. For this it should possess certain inherent or conferred powers to punish for breach of such privileges.

Articles 105 (3) and 194 (3) of the Constitution empower Parliament and State Legislatures respectively to enact laws codifying their privileges. However, neither Parliament nor any of the legislatures of the States has so far done so. Therefore, according to the Constitution itself, the privileges enjoyed by them are the same as, and not more than, those of the British House of Commons. One has to wade through the rulings, customs and practices of the House of Commons and to seek guidance for the Rules of Business and Conduct of Proceedings of the House. Breach of privilege of either House of central or state legislature is usually known as 'contempt of Parliament' like the contempt of courts.



A journalist or editor can be punished with imprisonment or administered a warning, admonition or reprimand for the breach of privilege of the House. His privileges like facilities to enter the precincts of the House and cover its proceedings can be withdrawn. He can be asked to publish an apology. However, no fines are imposed.

There are a number of cases on privileges of the Houses. They include Karanjia Case (1961), Keshav Singh Case (1965), and Eenadu Case (1988).

In the Keshav Singh Case, the Speaker of Uttar Pradesh Vidhan Sabha, committed Keshav Singh to prison for contempt of the House for writing a disrespectful letter to him. On this an Advocate filed a petition in the High Court for his release. The Lucknow Bench of the Allahabad High Court released him on bail. Appraised of this order, the UP Assembly passed a resolution that not only Keshav Singh and his advocate had committed contempt of the House by moving the petition before the High Court, but the two judges were also guilty of contempt. The resolution directed that all these persons should be brought into custody before the House. Then the Full Bench of the High Court issued an interim order, restraining the Speaker and the Marshal of the Assembly from implementing the resolution of the House. After the interim order, the Assembly passed another resolution which made the previous resolution milder. At this stage the President of India made a reference to the Supreme Court for its opinion on the case.

In its opinion the Supreme Court said that neither the two judges nor the Advocate had committed contempt of the House by moving or dealing with the petition.

Contempt has a wider sweep than breach of privilege. Contempt can be committed by an act or utterance which undermines the dignity of the House even without violating any particular privilege of the legislature.

But, it is not a breach of privilege to publish without malice a substantially true report of the proceedings of the House even if it is defamatory, seditious or obscene in nature. No civil or criminal proceedings can be launched in a court of law for publication of such a report even if it offends the laws relating to official secrets, defamation, sedition, obscenity or other offences under the IPC.

The legislature in India has not enacted any law codifying its privileges, mainly because any such law will be subject to a judicial review in respect of the citizens, fundamental rights. The Press has been rightly demanding that the privileges of Parliament should be codified so that it knows the scope and limits of its freedom vis-a-vis the legislature.

Check Your Progress 5

- Note :** i) Give your answers in the space provided below.
 ii) Compare your answers with those given at the end of this unit.

1) What is meant by privileges of the Parliament?

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2) If a journalist publishes a true report on an indecent argument between two MPs in the house can the Parliament bring a Contempt Case against the said journalist? Give reasons.

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3.8 PRESS COUNCIL OF INDIA

We have dealt at length with the growth and evolution of the Press Council in Unit I of this Block. We were also made aware of the working of the Press Council in India. Here we will examine the guiding principles, the structure and function of the Press Council.

The guiding principle of the Press Council is that if any section of the Press violates the tenets of journalistic ethics, whether written or unwritten, the Press itself should take appropriate action against it rather than the authorities punishing newspapers.

The Press Council of India, which was first set up in 1966, under the Act of 1965, was abolished after the proclamation of emergency in 1975. However, the government enacted a new Press Council Act in 1978. Thus, the Council came into being again in 1979.

Under this Act, the Council comprises a Chairman and 28 other members. Until now, only former Supreme Court judges have been selected for the Chairmanship of the council. The Chairman is selected by a committee consisting of the Chairman of the Rajya Sabha, the Speaker of the Lok Sabha and a person chosen by the members of the Council from among themselves.

Twenty members of the Council are nominated through an elaborate procedure from the panels of names submitted by representative bodies of working journalists, working editors, proprietors/managers of newspapers, and managers of news agencies. Of these, thirteen are nominated from among working journalists including six editors and seven other working journalists. Not less than three editors and four other working journalists should be from newspapers in Indian languages. Out of the six owners or managers of newspapers, two each should be from small, medium and big categories of newspapers. One person is nominated from among the managers of news agencies.

The term of the Chairman and of the Council is three years. While the members retire on the expiry of the term of the Council, the Chairman may continue in office until a new incumbent is nominated, but not for more than six months beyond the three-year term. A retiring member can be re-nominated for not more than one term. That is, a person can be a member of the Press Council for maximum period of six years.

Three persons having special knowledge or practical experience in respect of education and science, law and literature and culture are nominated, one each by the University Grants Commission, the Bar Council of India and the Sahitya Academy.

The Press Council of India has a two-fold objective; one, to preserve the freedom of the Press and two to maintain and improve standards of newspapers and news agencies in India.

The Press Council has very wide functions in furtherance of its dual objectives of preserving Press freedom and maintaining and improving standards of print journals. However, the Council does not deal with the electronic media. The Council has quasi-judicial functions and has, therefore, been vested with powers of a civil court. It can summon and examine witnesses, require the discovery and inspect documents, receive evidence on affidavits, issue commissions for examining witnesses or documents, or any other matter which may be prescribed.

The Council holds open inquiries on complaints received both against newspapers and news agencies, and journalists as well as those made against the authorities, individuals, associations or groups of people. On the basis of its inquiries the Council declares its adjudications. The Council has issued important guidelines to deal with situations like communal riots, and has rendered opinions on the law affecting the Press.

Check Your Progress 6

Note : i) Give your answers in the space provided below.
 ii) Compare your answers with those given at the end of this unit.

- i) Please tick [✓] the appropriate answer.
 - a) The guiding principle of the Press Council of India is to
 - [] safeguard the journalists from the government's arbitrary and irrational acts.
 - [] bargain better salary deal for journalists.
 - [] take appropriate action against any journalist who violates the journalistic ethics.
 - b) The First Press Council was set up in
 - [] 1946
 - [] 1956
 - [] 1966
 - c) The term of the Press Council is
 - [] 3 years
 - [] 4 years
 - [] 5 years
 - d) A relieving member of the Press Council
 - [] cannot be renominated three times
 - [] can be renominated for a second and final term
 - [] can be renominated as many times as the Chairman desires
 - e) The Press Council of India consists of
 - [] a Chairman and 28 members
 - [] a President, a Convenor and 28 members
 - [] a Secretary General and 30 members
- 2) Who is appointed as the Chairman of the Press Council under the Act of 1978? How is he appointed? How long can he remain as Chairman?

3.9 WORKING JOURNALISTS ACT

The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 is a welfare measure meant to regulate conditions of service of the people employed in the newspaper industry.

Its provisions relate mainly to (a) special provisions in respect of certain cases of retrenchment, (b) payment of gratuity, (c) hours of work, (d) leave, (e) fixation of revision of rates of wages, (f) enforcement of the recommendations of the wage fixation machinery, i.e., wage boards and wage tribunals, (g) Employees' Provident fund, and (h) recovery of money due from the employer.

In order to fix or revise rates of wages, separate Wage Boards for working journalists and other newspaper employees can be set up under the Act. The Wage

Board for journalists shall consist of a chairman, two representing working journalists and two independent persons. In the Wage Board for non-journalist newspaper employees, two persons representing them shall be included. The Chairman of both the Boards is to be an independent person who is or has been a Judge of the High Court or the Supreme Court.

The Central Government may fix interim rates of wages (popularly called 'interim relief') in consultation with the Boards.

Money due to an employee under this Act can be recovered from the employer by the Collector in the same manner as an arrear of land revenue, and have it paid to the employee.

3.10 COPYRIGHT ACT, 1957

A work of literature, drama, music or art is an intellectual property. It must be protected from illegal copying or reproducing it. The Copyright Act, 1957 accords this protection.

This law is based on two competing considerations. One, the creator's property, that is, the original works need to be protected. Two, for advancement of knowledge in the interest of the society, there should be some amount of freedom to produce parts of other people's copyrighted works. Copyright has been held to be a right which a person acquires in a work which is the result of his intellectual labour. The primary function of the copyright law is to protect from annexation by other people the fruits of a man's work, labour or skill.

In respect of the Press, copyright means, under Section 14 of the Copyright Act, 1957, the exclusive right in the case of a literary, dramatic or musical work, to do and authorize the doing in substantive form of any of the following acts, namely :

- i) to reproduce the work in any material form;
- ii) to publish the work;
- iii) to make any adoption of a work; and
- iv) to reproduce or publish translation of the work.

Punishment for knowingly infringing or abetting the infringement of a copy right is imprisonment which may exceed upto one year or fine or both.

Check Your Progress 7

- Note :** i) Give your answers in the space provided below.
ii) Compare your answers with those given at the end of this unit.

1) What are the provisions of the Working Journalists and Other Newspaper Employees Act, 1955?

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2) The following are some statements. You are required to indicate whether they are 'true' or 'false'.

- a) The Wages of the journalists and non-journalists working in a newspaper are fixed by the same board.

True False

b) The Chairman of the Wage Board is always the Labour Minister.

True False

c) A novel is an item of intellectual property.

True False

d) Punishment for violating the Copy Right Act may be imprisonment upto one year, or fine, or both.

True False

3.11 LET US SUM UP

In this unit, you have seen how important it is to know which laws affect the functioning of the Press. You now know the manner and the extent to which they affect the press. This equips you with the knowledge necessary to avoid legal pitfalls as also to make use of the helpful provisions of certain laws to perform the functions of reporting and commenting, with confidence.

In the next unit, i.e. Unit 4 we shall be dealing with law of defamation.

We may say that the freedom of expression has been given the pride of place among the six fundamental freedoms guaranteed by our Constitution. You have also been told that the freedom of the Press has a constitutional right to function freely and without fetters. But, at the same time, it must exercise this right within the framework of certain reasonable restrictions laid down in various laws. Most of these are general laws which are also applicable to the Press; only a few relate exclusively to it. Thus, there is partly a constitutional law, partly a special law and mostly the ordinary law which together constitute the press law. It is worthwhile for all constituents of the press, the authorities and the public to know about this law.

3.12 GLOSSARY

Pentagon : US Defence Department

3.13 FURTHER READING

Ahuja, B.N. (1988) : *History of Press, Press Laws and Communications*, Delhi: Surjeet Publications.

Basu, Durga Das (1986) : *Law of the Press*, New Delhi : Prentice-Hall of India.

3.14 CHECK YOUR PROGRESS : MODEL ANSWERS

Check Your Progress 1

- 1) James Augustus Hicky, in 1780.
- 2) Press and Registration of Books Act, 1867.
- 3)

Dates	Reasons/Facts
1776	William Bolts wanted to start a newspaper.
1780	Bengal Gazette was first Published.

1795	Censorship was first introduced in India.
1975	Central Censorship Order.
1956	Parliamentary Proceedings Act.
1955	Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act.
1969	Criminal and Election Laws Amendment Act was passed.
1860	Indian Penal Code (IPC).

Check Your Progress 2

- 1) Yes, I do agree with the Constitutional Provision.
 - The Constitution of India does guarantee the freedom of speech and expression to each of its citizen. The freedom of press is a part of the guarantee.
 - The Supreme Court of India has explicitly said that freedom of speech and expression includes the media through which the citizen can express their views.
- 2) The restrictions are essential for the following reasons.
 - the existence and sovereignty of the state is to be safeguarded.
 - the individuals and their reputation should be protected.

Check Your Progress 3

- 1) a) False
b) False
c) True
d) False
e) True
- 2) ● The name of the editor of the newspaper must be printed clearly in each copy.
 - A declaration must be made by each newspaper stating the names of the publisher and printer, the address of the printing press and publishing house and the title, language and periodicity.
- 3) The penalties are
 - a) Rupees two thousand.
 - b) imprisonment upto six months
 - c) both a) and b)
 - If the declaration is violated then the magistrate can cancel the declaration in addition to a, b, and c.
 - If the copies of the newspaper, books, magazines are not delivered to the registrar office regularly then Rs. 50 penalty is charged for each violation.
- 4) a) No
b) Magistrate

Check Your Progress 4

- 1) a) maintain the security of the state against leakage of secret documents.
b) jailing upto 14 years.
c) eliminated
d) cannot be sentenced, only can be detained upto six months.
- 2) The government categorises its documents into two broad categories—
 - 1) Classified and 2) Non-classified. The classified documents are considered as

secrets. These secret documents are further divided under various headings depending on the degree of importance of secrecy. They may be 'Top Secret', 'Secret', 'Confidential', and 'Restricted'—'Personal', 'not for communication'.

- 3) The section 5 can be misused by the authorities to curb press freedom. People may not have information necessary for them in a democratic country.
- 4) Such writing, which creates doubts in the minds of the general public regarding the integrity of the judge, is considered a contempt as the whole process of dispensing with justice will be doubted. Thus, the credibility of the Courts will be eroded.

Check Your Progress 5

- 1) The Parliament is a constitutional and sovereign body. Therefore, it should be free from all kinds of interferences. This is a very privileged status. If any one violates this, then the Parliament can punish him.
- 2) No case can be brought against the journalist as the news report correctly states what had happened. A factual report may not be a strong piece to bring contempt against.

Check Your Progress 6

- 1) a) (i) and (iii)
b) (iii)
c) (i)
d) (ii)
e) (i)
- 2) Until now, under the Act of 1978, only a former judge of the Supreme Court of India has been appointed as the Chairman of the Press Council. He is appointed by a Committee consisting of the Chairman of Rajya Sabha, the Lok Sabha Speaker and a representative member of the Council. He is appointed for a period of 3 years. His term can be extended for another six months if the new Chairman is not selected in due time.

Check Your Progress 7

- 1) The Working Journalists Act, was enacted
 - to protect journalists from arbitrary retrenchment
 - to ensure a fair salary scale
 - to fix the hours of work
 - to provide paid leave
 - to recover due money accrued to the journalists from the employer.
- 2) a) False
b) False
c) True
d) True