

Media Law and Ethics (106)

Unit 1

A comparative introduction to media laws and ethics — where media laws and the issues of ethics are derived in constitutional societies The relevance of laws and ethics to modern journalism The difference/distinction between objective journalism and the so-called Yellow journalism

Unit 2

The roots of constitutions—a comparative perspective of India and the United States; the broad outline of the Indian constitution including an analysis of the constitutes the Basic Structure of the Indian constitution.

Unit 3

Media Laws and Privileges within the Constitution of India and other derived sources. Why there are restrictions even to begin with in India and elsewhere. A look at what media laws mean in the United States. Does the media system police itself even on issues of national security?

Unit 4

Trial by The Media and the Issue of Ethics—the codified rules of conduct including the right to privacy and the perennial conflict between authorities and media houses on the right to hold on to sources. Case studies of national security issues and the media. The fine line between holding on to sources and contempt of court and breach of privileges What is Right to Information and how to use this RTI including the issue of framing questions?

Unit 5

Media and National Security Laws including the undefined and yet to be fully regulated cyber space. Cyber space, terrorism, national security and the media

MEDIA LAWS - AN INTRODUCTION

There are many laws that regulate the performance of media in India. Laws related to the mass media have been there since the very beginning. In the time of the British Raj, many laws related to the Press were enacted. In the post-Independence time, the various Governments have enacted many more media related laws. Some of these media related laws are:

First Press Regulations, Gagging Act,
Indian Press Act,
Vernacular Press Act,
Constitutional Provisions regarding Press Freedom,
Official Secrets Act,
Press and Registration of Books Act,
Sea Customs Act Contempt of Court,
Young Persons (Harmful Publications) Act,
Parliamentary Proceedings Act,
Delivery of Books and Newspapers Act Copyright Act,
Defense of India Act,
Press Council of India Act
Police Act,
Drugs and Magic Remedies Act,
Cable Television Regulation Act, Right to Information.

Some of these laws are directly related to mass media. Some of these are only indirectly related to the mass media. Most of these laws are still prevalent. But a few of these laws have been abolished. Some laws have been changed to suit the changing times. We shall discuss about most of these laws in this lesson.

PRESENTATION OF CONTENT:

Media of mass communication are very important part of the modern society. They are also very powerful systems that influence the society. At a certain level media influences the present and can also influence the future of the society. Mass media have the power to make or unmake governments. So it is clear that mass media are quite powerful. But the exercise of power by the media gets regulated and controlled by the various laws and rules enacted from time to time. In a democratic society media enjoy more powers and face less restrictions and regulations. In an authoritarian form of governance, the working of the media is restricted and controlled to a great extent. Sometimes media in autocracies or under military rule are not all free. In India, the situation is a mixed one. The mass media enjoy certain freedom. But the Constitution imposes certain reasonable restrictions. Then there are laws that regulate the functioning of mass media in India. Media laws in India have a long history right from the British rule. The Government enacted several rules and regulations in India to perpetuate in rule. After independence, more laws have been enacted and the old ones amended for the benefit of the society. Some of the laws that regulate the performance of media in India are mentioned below. A few of the laws will be discussed in detail in other lessons. The content of this lesson is presented as under:

Constitutional Provisions for Freedom of Media in India
Reasonable Restrictions as Imposed by the Constitution
Major Laws related to Media in India

CONSTITUTIONAL PROVISIONS FOR FREEDOM OF MEDIA:

The Indian Constitution does not provide freedom for media separately. But there is an indirect provision for media freedom. It gets derived from Article 19(1) (a). This Article guarantees freedom of speech and expression. The freedom of mass media is derived indirectly from this Article. Our Constitution also lays down some restrictions in the form of Article 19(2). Regarding the issue of freedom of speech,

Dr. B. R. Ambedkar explained the position as follows: "The press (or the mass media) has no special right which are not to be given to or which are not to be exercised by the citizen in his individual capacity. The editor of a Press or the manager are all citizens and, therefore, when they choose to represent any newspapers, they are merely exercising their right of expression and in my judgement no special mention is necessary of the freedom of Press at all."

On the matter of the freedom of speech and expression, the first Press Commission in its report said, "This freedom is stated in wide terms and includes not only freedom of speech which manifests itself by oral utterances, but freedom of expression, whether such expression is communicated by written word or printed matter. Thus, freedom of the press particularly of newspapers and periodicals is a species of which the freedom of expression is a genus. There can, therefore, be no doubt that freedom of the press is included in the fundamental right of the freedom of expression guaranteed to the citizens under Article 19(1) (a) of the Indian Constitution."

Justice Mudholkar, a Supreme Court Judge said during Emergency (1975-77), "Pre-censorship, prohibition on import of printed and published material, placing a ban on printing and publishing material of a specified nature, demanding security from the press or placing any restriction which would amount to an indirect curb on free circulation of a newspaper or class of newspaper should confine itself have all been held to be bad in law."

Article 19 of the Indian constitution lays down, "All citizens shall have the right to freedom of speech and expression, to assemble peaceably, and without arms, to form associations or unions, to move freely throughout the territory of India, to reside in any part of the territory of India, to acquire hold and dispose of property and to practice any profession or to carry on any occupation, trade or business. However the right to freedom of speech and expression shall not affect the operation of any existing law or prevent the state from making any law insofar as such law imposes reasonable restrictions on the exercise of that right in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public decency or morality or In relation to contempt of court, defamation or incitement to offence". Thus the type of freedom of expression guaranteed to the American Citizen does not exist in India but that he is liable to "reasonable restrictions."

REASONABLE RESTRICTIONS ON MEDIA:

It is strange, unique and paradoxical that what is provided as a right by our Constitution on the one hand is taken away by some sub-clause in the same situation. Mr. M. C. Chagla has given a general reply to this paradox, which may be put in the following ways: It has been said that our Constitution gives fundamental rights with one hand, and with other hand takes them away. It is also said that, our Constitution circumscribes the given rights by numerable exceptions and provisions. This is a very wrong criticism. Article 19 of our Constitution deals with the right to freedom and it enumerates certain rights regarding individual freedom of speech and expression etc.

These provisions are important and vital, which lie at the very root of liberty. It is true that in the sub-clauses that follow, certain limitations are placed upon these freedoms with regard to freedom of speech and expression. In addition, there are many laws that relate to libel, slander, defamation, contempt of court, or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow the State. It can be seen that these limitations are related to the objective standards laid down by the Constitution. Similarly, the legislature is given the right to impose reasonable restrictions in the interest of public order on the right to assemble peaceably and without

arms. Whether a restriction is reasonable or not is not left to the determination of the legislature, and of the executive. But it is again an objective consideration, which has got to be determined by the Court of law. Only such a restriction would be reasonable as the Court thinks as reasonable. It is clear therefore that the Constitution has not left the laws to the mercy of the party in power or to the whims of the executive. No one is allowed to limit, control or impair our fundamental rights by changing, amending, or introducing new laws that easily. Any limitation of a fundamental right has to be before a Court of law. Legislatures, indeed, have been empowered to impose reasonable restrictions on freedom of speech and expressions on the following grounds:

Integrity of India, or Security of the State,
Friendly Relations with neighboring Countries,
Public order,
Decency or morality,
Contempt of Court and Contempt of Legislature,
Defamation, and
Incitement to an offence.

By and large the necessity for imposing "reasonable restrictions" by the legislature has not been seriously challenged by the newspaper world (and media world) where matters of state security or the integrity of India are concerned. And where the superior judiciary is concerned, Justice Mudholkar has remarked, there has been a long tradition of non-interference with the freedom of the press (and other mass media) except where newspaper was found guilty of contempt of court. Thus, it is evident that the freedom conferred by Article 19 (1) (a) in fairly general terms. It does not for example, even refer specifically to the freedom of the Press (or mass media) as is envisaged in the corresponding provision in the American Constitution. Judicial decisions have, however, affirmed that Article 19 (1) is sufficiently wide to include the freedom of the Press and implicitly, the freedom of other mass media. In addition to the provisions mentioned above, there are several important laws, which a media person must know. We shall discuss some of these now.

MAJOR MEDIA LAWS IN INDIA:

Some of the major laws related to mass media in India include the following:

First Press Regulations,
Gagging Act,
Indian Press Act,
Vernacular Press Act,
Constitutional Provisions regarding Press Freedom,
Official Secrets Act,
Press and Registration of Books Act,
Sea Customs Act,
Contempt of Court Act,
Young Persons (Harmful Publications) Act,
Parliamentary Proceedings Act,
Delivery of Books and Newspapers Act,
Copyright Act,
Defense of India Act,
Press Council of India Act,
Police Act,
Drugs and Magic Remedies Act,
Cable Television Regulation Act,
Right to Information Act.

FIRST PRESS REGULATIONS, 1799:

On 13th May 1799, Lord Wellesley promulgated the First Press Regulations. According to these regulations it was mandatory for the newspapers to print the names and addresses of printers, editors and publishers. However, these regulations were abolished during the administration of Warren Hastings in 1813.

GAGGING ACT, 1857:

In 1857, a law was enacted known as the "Gagging Act". This Act introduced mandatory licensing for running or owning a printing press. It empowered the Government to prohibit the publication or circulation of any newspaper, book or any printed matter. It allowed the Government to ban the publications or dissemination of statements or news stories, which had a tendency to cause hatred or contempt for the Government, incite disaffection or unlawful resistance to its orders or weaken its lawful authority. The Act was, however, abolished in June 1858.

VERNACULAR PRESS ACT, 1878:

This Act was enacted on March 1, 1878. This Act empowered the then British Government to exercise more stringent control over publications in the Indian languages. Under this Act, any District Magistrate or Police Commissioner could demand security from the printer and publisher of a newspaper, forfeit such security or confiscate any printed matter considered objectionable in the interest of the British Government.

INDIAN PRESS ACT, 1910:

Under this Act, owners of presses were required to tender security deposits. These securities were to be forfeited if they printed any objectionable matter. In addition, the police was given extensive powers of search and seizure. The harshness of the legislation was matched by vigorous enforcement of its provisions. The British Government, between 1910 and 1914, initiated no fewer than 355 cases.

OFFICIAL SECRETS ACT, 1923:

This is an act, which consolidates the law relating to official secrets, and deals with offences like spying and wrongful communication of secret information. Section 3 of the Act makes it an offence if any person for any purpose prejudicial to the public safety and the interests of the state:

Approaches, inspects, passes over or is in the vicinity of or enters any prohibited place,

Makes any sketch, plan, model or note which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy, or

Obtains, collects, records or publishes or communicates to any person such sketch, etc.

In a prosecution for an offence punishable under Section 3(1) of the Act, with imprisonment for a term which may extend to 14 years.

THE PRESS AND REGISTRATION OF BOOKS ACT, 1867

: This Act was enacted with a view to evaluating the present position of books, newspapers, and magazines in the country at any given time. The most important aspect of this Act is that every copy of a newspaper shall contain the names of the owner, publisher, and editor printed clearly on all the copies. The printer of every newspaper is required to deliver to the State Government free of expense two copies of each issue of the newspaper as soon as it is published. Failure to do so is treated as an offence.

SEA CUSTOMS ACT, 1878:

Section 8 (c) of the Act prohibits the bringing into India whether by land, or by sea "any obscene book, pamphlet, paper, drawing, painting, representation, figure or article." These items can be confiscated.

CONTEMPT OF COURT ACT:

Contempt of Court is one of the reasonable restrictions under Article 19(2) of the Indian Constitution. This Act was enacted for the first time in the year 1952. Later on this was again enacted in 1971, which was further amended in 1976.

YOUNG PERSON'S (HARMFUL PUBLICATIONS) ACT, 1956:

This Act seeks to prohibit the publication in India of such literature as glorifies crime, violence or vice.

PARLIAMENTARY PROCEEDINGS (PROTECTION OF PUBLICATION) ACT, 1956:

This Act was enacted with a view to protecting the publications of reports of proceedings of Parliament except in newspapers. Section 3 of the Act states that no person shall be liable to any proceedings, civil or criminal in any court, in respect of the publication in a newspaper of substantially true report of any proceedings of either House of Parliament, unless the publication is proved to have made with malice.

DELIVERY OF BOOKS AND NEWSPAPERS (PUBLIC LIBRARIES) ACT, 1954:

This Act enjoins upon the publisher of every newspaper to deliver at his own expense one copy of each issue of such newspaper as soon as it is published to each public library as may be notified by the Central Government. Contravention of any provision of this Act becomes punishable.

COPYRIGHT ACT, 1957:

Section 52 of this Act lays down that certain acts shall not constitute an infringement of Copyright, such as fair use, fair quotation, bonafide abridgements and the like.

DEFENSE OF INDIA ACT, 1962:

According to Justice Mudholkar, "upon the declaration of emergency, the Parliament will be empowered to make laws affecting the freedom of the Press. It is as if the freedom of media disappears in a situation of emergency. Any law made by the Parliament, under a situation of emergency, cannot be challenged on the ground of legislative incompetence for as long as emergency lasts. Citizens cannot claim any protection under Article 19. Further, clause 7 of section 3 of the Defense of India Act deals with the entire gamut of printing and publishing of any newspaper or book and the imposition of Censorship.

PRESS COUNCIL OF INDIA ACT, 1965:

The Press Council of India, according to the preamble to the Press Council of India Act, is established: "For protecting the freedom of the press and maintaining and improving the standards of both newspapers and news agencies" M.V. Kamath once pointed out that it is important to remember that the Press Council of India is not a Court of Law. It is a Court of Honour. Its verdicts are not judicial pronouncements. Therefore, there is no question of punishment imposed on an offending journalist or newspaper. By that same token the Council cannot award damages to the aggrieved party. As justice Mudholkar put it, "The only weapon in the armory of the Press Council of India is moral authority". The sole strength of the Council lies in its appeal to conscience. The power conferred by section 13 (1 A) requiring a newspaper to publish therein any particulars relating to any enquiry under section 13 does not mean that it has any power to punish a defaulting paper. The experience of the British Press Council has shown that this power, if properly used and constantly exercised, can become extremely effective. The public rebuke that the Council administers and the moral obligation of the offending newspaper to publish its decisions operates both as a penalty and a deterrent. The Press Council of India Act, 1965 was later amended on 31st March 1970. The Council's term which expired in December, 1975 was not extended during the Emergency again the Press Council's Act was revised in 1978 which was more or less on the same lines as the Press Council Act, 1965.

POLICE (INCITEMENT TO DISAFFECTION) ACT, 1972:

This Act penalizes any act, which causes or is likely to cause disaffection toward the Government among the member of the police force or which induces or attempts to induce any member of the police force to withhold his services or to commit a breach of discipline.

DRUGS AND MAGIC REMEDIES (OBJECTIONABLE ADVERTISEMENT) ACT, 1954:

The Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954 was enacted to control wrong practices in the advertisement of drugs. In certain cases, this Act is meant to prohibit the advertisement for certain drugs for matters connected therewith. Any person who contravenes any of the provisions of the Drugs and Magic Remedies Act is punishable by the Act. It takes two forms such as: o In the case of a first conviction, with imprisonment may extend up to six months or with fine or with both. o In the case of a subsequent conviction, with imprisonment may extend to one year or with fine or with both (Section 7 of the Act).

CABLE TELEVISION REGULATION ACT, 1995:

This is one of the most recent Acts. According to this Act: o No person shall operate a cable television network unless he is registered as a cable operator under this Act. o No person shall transmit or re-transmit through a cable service any programme unless such programme is in conformity with the prescribed programme code. o Every cable operator using a dish antenna or "Television Receiver only" shall, from the commencement of this Act, re-transmit at least two Doordarshan Channels of his choice through the cable service. Moreover, the Doordarshan Channels referred to in sub section (1) shall be retransmitted without any deletion or alteration of any programme transmitted on such channels. Whoever contravenes any of the provisions of this Act shall be punishable as under: o For the first offence, with imprisonment for a term, which may extend to two years or with fine, which may extend to one thousand rupees or with both. o For every subsequent offence, with imprisonment for a term, which may extend to five years and with fine, which may extend to five thousand rupees.

RIGHT TO INFORMATION ACT:

Noted political analyst James Michael has pointed out in his pioneering book *The Politics of Secrecy* that, "freedom of information" and "right to information" are two different concepts. "Freedom" implies the absence of restraint, particularly of legal penalties. Thus, "freedom of information" means a citizen is free to receive and impart information without fear of punishment. However, there is no obligation on the State to provide any information to the citizen. The right to information is indispensable for free flow of information. But there was a massive wall in the shape of the Official Secrets Act in India. The official Secrets Act was a hindrance to the flow of information. Hence, there was an urgent need to thoroughly examine the Official Secrets Act.

Through out the last two decades, the demand for the enactment of a Right to Information Act gained momentum. It was felt that right to information, as a fundamental legal right, is necessary to bring about the much-needed transparency in the system. This sort of right was also viewed as a necessary measure to remove corruption from public and administrative life. Barrier to information is known to be the single largest factor behind corruption as it facilitates arbitrary decisions, clandestine deals, embezzlements and manipulation of all kinds. If information is made a right, people will be able to ask inconvenient questions from those whose conduct is either suspicions or not above board. As we are ushering into the 21st century, our life styles and values are changing. Therefore, we should continue changing our approach and attitudes and shake off the old mentalities that has impediments in our evolution as a modern and democratic society.

One school of thought in the media' world strongly felt that the crusade for right to information will be the best contribution to the evolution of such a modern democratic and forward-looking society. But there was another school of thought still feels that Official Secrets Act has its own importance from the point of view of maintaining efficiency in the Government. The Press Commission opined that secrecy in bureaucracy, which arose out of functional necessity, as a means to achieving organizational efficiency- has become an end in itself from effective outside control. The Commission's attempt to establish a balance between an open Government and the need of keeping secret certain affairs of State was laudable. But it had a negative attitude of showing a slavish weakness for the British model.

The Commission had noted that the question of amending Section 5 of the Official Secrets Act has been considered by various committees and commissions and the general opinion has been that, since the Act has been administered in a sensible manner, there being few prosecutions under the law, no modifications in the Act are warranted. Section 5 of the Official Secrets Act lays down:

If any person having in his possession or control any secret official code or pass word or any sketch, plan, model, article, note, document or information which relates to anything in such a place or which is likely to assist, directly or indirectly, an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States or which has been made or obtained in contravention of this Act, or which has been entrusted in confidence to him by any person holding office under Government or which he has obtained or to which he has had access owing to his position as a person who holds or has held office under Government, or as a person who holds or has held a contract made on behalf of Government, or as a person who is or has been employed under a person who holds or has held such an office or contract.

Willfully communicates the code or pass word, sketch, plan, model, article, note, document or information to any person other than a person to whom he is authorized to communicate it, or a Court of Justice of a person to whom it is in the interests of the State, his duty to communicate it; or o Uses the information in his possession for the benefit of any foreign power or any other manner prejudicial to the safety of the State; or o Retains the sketch, plan, model, article, note or document in his possession or control when he has no right to retain it, or when it is contrary to his duty to retain it or willfully fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof; or o Fails to take reasonable care of or so conducts himself as to endanger the safety of the sketch, plan, model, article, note document, secret official code or pass word or information, he shall be guilty of an offence under this section. The Commission recommends that more liberal Act must replace this section.

Where the commission goes wrong is in suggesting that the provisions of the British Information Bill should serve as a model for India. As regards access to information, the Commission has mentioned in a paragraph that Sweden was the first to legislate on the subject open Government being part of the Constitution. Denmark, Finland, The USA, Austria and France have laws on the subject. Austria has formed a Bill and so has Canada. Mr. Justice P. N. Bhagwati has further held that the concept of an open Government is the emanation from the right to know which seems to be implicit in the right of free speech and expression. Thus many a legal battles were fought before the right to information became a reality in this country. Finally the Right to Information Act was enacted in October 2005. The Indian Right to Information Act was introduced to the Indian Parliament in July 2000. It came into effect on 12 Oct 2005. Under this law the information has become a fundamental right of the citizen. Under this law all Government Bodies or Government funded agencies have to designate a Public Information officer (PIO). The PIO's responsibility is to ensure that information requested is disclosed to the petitioner within 30 days or within 48 hours in case of information concerning the life and liberty of a person. The law was inspired by previous legislations from select states (among them Maharastra, Goa, Karnataka, Delhi etc) that allowed the right to information (to different degrees) to citizens about activities of any State Government body.

A number of high profile disclosures revealed corruption in various government schemes such as scams in Public Distribution Systems (ration stores), disaster relief, construction of highways etc. The law itself has been hailed as a landmark in India's drive towards more openness and accountability. However the RTI India has certain weaknesses that hamper implementation. There have been questions on the lack of speedy appeal to non-compliance to requests. The lack of a central PIO makes it difficult to pin-point the correct PIO to approach for requests. The PIO being an officer of the Govt. institution may have a vested interest in disclosing damaging information on activities of his/her Institution, This therefore creates a conflict of interest. In the state of Maharashtra it was estimated that only 30% of the requests are actually realized under the Maharashtra Right to Information act. The law also bars disclosure of information that affects national security, defence, and other matters that are deemed of national interest.

Media Laws and Privileges within the Constitution of India and other derived sources

With the view and thought to enable parliament to work effectively and efficiently and to discharge its functions without any kind of obstruction or interference the privileges are provided to both the houses of parliament. The privileges are provided to each house collectively and to its members independently. An important as also a complicated question is : What do we understand by 'parliamentary privileges'? "Nothing", said Dicey, "is harder to define than the extent of the indefinite powers or rights possessed by either House of Parliament under the head of privilege or law and custom of Parliament".

As per Oxford dictionary the term privilege refers to the "special right, advantage or a immunity to the particular person. It is special benefit or honour". Hence it can be inferred that the term privileges referred to the special rights and advantages that are enjoyed by the members of parliament over the citizen of India. Various authors throughout the world has interpreted the word privileges according to the norms and scenario exists in their respective country.

India in the case of Raja Ram Pal v Hon'ble speaker defined the term privilege as " A special right, advantage or benefit conferred on a particular person. It is a peculiar advantage or favour granted to one person as against another to do certain acts". Inherent in the term is the idea of something, apart and distinct from a common right which is enjoyed by all persons and connotes some sort of special grant by the sovereign. The word grant by sovereign refers to the privilege is conferred to them by the higher authority and the privilege an immunity is derived from them only to such members. As inspired by the privileges of house of the commons.

The privileges of house of commons has been defined as "the sum of the fundamental rights of the house and of its individual members as against the prerogative of the crown, the authority of the ordinary court of law and the special rights of the house of lord.

Sir Erskin May states "Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by Members of

each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the general law. Certain rights and immunities such as freedom from arrest or freedom of speech belong primarily to individual Members of each House and exist because the House cannot perform its functions without unimpeded use of the services of its Members. Other such rights and immunities such as the power to punish for contempt and the power to regulate its own constitution belong primarily to each House as a collective body, for the protection of its Members and the vindication of its own authority and dignity. Fundamentally, however, it is only as a means to the effective discharge of the collective functions of the House that the individual privileges are enjoyed by Members".

Sir Erskin, widening beautifully the scope of Privileges with inducing the concept of Power and Immunities of the members of parliament that exists in India too describes them as the necessity for parliament to perform its function with impeded use of services of its members. He consider it as the tool for collective discharge of its collective and important function. Sankar J. In a particular case stated that the right of the House to have absolute control of its internal proceedings may be considered as its privilege.

Sighted very rightly in the case of raja Ram Pal that "privilege depends on the known laws and customs of Parliament".

Thus, the term privilege is the special rights that are available in the different extent and in various forms to the members of parliament throughout the world. This privileges are important in order to enable the house to perform its functions authorized to them by constitution and for proper conduct of business.

RELEVANT PROVISION IN CONCERN WITH PRIVILEGES IN INDIAN CONSTITUTION

Article 105 and 194 of the constitution of India deals with the power privileges and immunities of parliament and its members and of their state legislature and there members respectively. This constitution of India does not exhaustively enumerate the privileges of Indian parliamentarian. As section 3 of both these articles refers directly to the privilege of the house of commons at the commencement of the constitution. Hence it basically deals with all those privileges that exists in the house of commons as on 26. Jan. 1950.

Summarizing Article 105 and 194 of constitution of India it states-

105- Power, privileges, etc. of the house of parliament and of members and of committee thereof – (1) Freedom of Speech.

(2) No member shall be liable for any proceeding in respect to anything said or any vote given by him and no one shall be liable for any publication.

(3) In other respects, the powers, privileges and immunities of each house of parliament and of the members and the committee of each house, shall be as may from time to time defined by parliament and until so defined shall be those of house and of its members and committee immediately before coming into force of section 15 of constitution act 1978.

(4) The above provision shall apply to all those person who have right to speak in and otherwise to take part in proceeding of house of parliament.

194- Power , privileges, etc., of the house of legislature and of the members and committees thereof- (1) Freedom of speech.

(2) No member shall be liable for any proceeding in respect to anything said or any vote given by him and no one shall be liable for any publication.

(3) In other respects, the powers, privileges and immunities of each house of parliament and of the members and the committee of each house, shall be as may from time to time defined by legislature and until so defined shall be those of house and of its members and committee immediately before coming into force of section 26 of constitution act 1978.

(4) The above provision shall apply to all those person who have right to speak in and otherwise to take part in proceeding of that legislature.

Hence from the above 2 different Article of Indian constitution it can be inferred that the position of state legislature is same as those of house of parliament. Therefore Article 105 applies Mutatis Mutandis to the state legislature as well.

PRIVILEGES EXPRESSLY MENTIONED IN THE CONSTITUTION

A.) FREEDOM OF SPEECH – The essence of the parliamentary democracy is a free, frank and fearless discussion in the parliament. For the body like parliament freedom of speech play very important role that enables the members to express their feelings without any kind of fear of penalising for the offences such as defamation, innuendo. The rule of freedom of speech in parliament became established in 17th century in case of Sir John Eliot.

The Rajya Sabha held in its XII report that a parliament member cannot be questioned in any court or any place outside the parliament for any disclosure he made since it will amount to interference with the freedom of speech. Subsequently Lok Sabha has also held that it will amount to contempt of court or breach of privilege if any suit is filed in court for what is said on the floor of the house.

The Supreme court in the case of Tej Kiran held that “once it is proved that parliament was sitting and its business was being transacted, anything said during the course of that business was immune from proceeding in any court”.

B.) PUBLICATION UNDER PARLIAMENTARY AUTHORITY-All person connected with the publication of proceeding of a House are protected in the same is made under the authority of the house itself. The

immunity of publication does not apply to publishing of secret meeting of the house of parliament or legislature. It should also be kept in mind that the immunity extends only to a "report" of the proceedings of the house and not to any "article" or "comment" on the proceedings.

C.) RULE MAKING POWER – The constitution of India has given power to parliament to make its own rule but that should be subject to provision of the constitution. Therefore parliament is not authorised to enact any laws for its own proceedings within the house, the law should not infringe any provision of the constitution otherwise it will be held as void as per Art. 118(1) of constitution.

D.) INTERNAL AUTONOMY - The internal autonomy is required for both the houses in order to work effectively without any outside interference. The houses have right to maintain their own internal issues to deal among themselves without any interference from any statutory or private authority. The internal autonomy in terms denotes the immunity to the houses of parliament and to its members as well. Hence in support of Art.122(2) no officer of parliament is empowered by constitution, subject to jurisdiction of any court of law in India in two cases-

1. to regulate the procedure or conduct of business
2. to maintain order in parliament.

Thus it can be inferred that the houses of parliament had freedom from the judicial control of the nation.

Held in the case of Surendra that the court does not interfere with the functioning of the speaker inside the house in the matter of regulating of conduct of business therein by virtue of his power vested on him. But it is also pronounced by Indian judiciary in number of cases from various decades that the court can scrutinise the proceeding of the house on the grounds of illegality and unconstitutionality. Since it is the duty of the Judiciary of our nation to keep legislature and Executive in their control.

This all are the explicit provision which are mentioned in our constitution of India. But despite this privileges there are various implied provision in order to safe guard the functioned of parliament. In Constitution Assembly Debate it is held that the constitution makers wanted to adopt all the privileges which was mentioned by the Dicey (a renounced British Jurist) but it was held that it will take another 2- 3 days to cover all of this and in order to decrease its length this all were not inserted.

PRIVILEGES AND BRITISH CONSTITUTION IN CONCERN

Whenever it comes to privileges the biggest question which arises in front of us is why every time when privileges are discussed, the Privileges of Britain is taken into consideration. The answer to my question is that because it is realised that the Britain enjoys the largest and the widest privileges as compared to whole world and hence it the British houses which are taken care of.

The Art. 105 need to be taken into consideration at this point of time. When it comes to power and privileges of the house of parliament its sub clause 3 reads as:-

In article 105 of the Constitution , in clause (3), for the words "shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution ", the words, figures and brackets "shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978" shall be substituted.

The constitution makers themselves wanted that the privileges of United Kingdom should be taken into consideration.

But every now and then the approach is largely criticized. It is said that there is one major difference that exist within India and United Kingdom and that need to be taken consideration.

Unlike British Parliament, Indian Parliament is not sovereign. It is the Constitution which is supreme and sovereign and Parliament will have to act within the limitations imposed by the Constitution. This is a mark of distinction between British Parliament and the Indian Parliament. British Parliament is sovereign. "One of the hallmarks of such sovereignty is the right to make or unmake any law which no court or body or any person can set aside or override." On the other hand, the Indian Parliament is a creature of the Constitution and its powers, privileges and obligations are specified and limited by the Constitution. A legislature created by a written Constitution must act within the ambit of its power as defined by the Constitution and subject to the limitations prescribed by the Constitution. Any act or action of the Parliament contrary to the constitutional limits will be void.

A.7 In Special Reference No. 1, a bench of seven judges observed : "In England, Parliament is sovereign; and in the words of Dicey, the three distinguishing features of the principle of Parliamentary Sovereignty are that Parliament has the right to make or unmake any law whatever; that no person or body is recognized by the law of England is having a right to override or set aside the legislation of Parliament; and that the right or power of Parliament extends to every part of the Queen's dominion. On the other hand, the essential characteristic of federalism is "the distribution of limited executive, legislative and judicial authority among bodies which are co-ordinate with and independent of each other's". The supremacy of the constitution is fundamental to the existence of a federal State in order to prevent either the legislature of the federal unit or those of the member States from destroying or impairing that delicate balance of power which satisfies the particular requirements of States which are desirous of union, but not prepared to merge their individuality in a unity. This supremacy of the constitution is protected by the authority of an independent judicial body to act as the interpreter of a scheme of distribution of powers."

RELATION BETWEEN PRIVILEGES AND THE COURT

There exist the balance between the two institution established on the following lines :-

- 1.The court recognize the common law privileges.
- 2.A new privilege can be created for the house only by the law passed by the parliament and not merely by resolution of one house.
- 3.Whether the particular privilege claimed by the house exists or not is the question for the court to decide. The court has a right to determine the nature and limits of parliamentary privilege.
4. The question whether the particular privilege is infringes or not in a particular case is for the house to decide.

When we look at the present position with an overview it appears to us that when the

particular house holds and individual guilty by making him imprisonment by a speaking warrant mentioning the specific grounds then the court can scrutinize whether the particular act constitute contempt or breach of privilege or not. But when the house does not mentions the ground of breach of privilege then the court fails to help in any manner and can neither ask the house for same.

In India the house of parliament may claim privilege if :-
1. If constitution grants it specifically
2. It has been created by law of parliament
3. It was enjoyed by the house under Art.105(3)

CONCLUSION

The court in order to solve the undefined power of privilege has once introduced the amendment in the constitution in Art. 105(3) which helps to channelize the privileges claim by parliament and helps the court to determine whether the particular privilege exist or not, and to prevent the house from making various wage privileges.

The court has evolved the proper doctrine to determine the privileges of the parliament that the Indian parliament can adopt. The Doctrine of Pen, Ink and Indian rubber theory. In *Hardwari Lal v. The Election Commission of India* court explained this Doctrine. Justice Sabharwal made the following observation:-

"I am of the view that it is essentially tautologies to first read something into the Constitution suggested on behalf of the respondents, one is to first read the King, the Queen, the House of Lords or the Acts of Attainder into the Constitution and thereafter to proceed to nullify them on the plain ground that by the very nature of things they cannot form part of a Republican Constitution. The pen and ink theory, therefore, in effect becomes indeed a pen, ink and India Rubber theory whereby one first writes something entirely alien to the Constitution within it and the next moment proceeds to rub it off. It is well-settled that when a statute includes something in it by a reference to another provision then only that can be deemed to be included which is compatible with the parent provision. To my mind, therefore, the plain method of construing Article 194(3) is the usual and the settled one of not reading something into it which is glaringly anomalous, unworkable and irrational."

As to borrowing examples and cases of privileges from the Constitution of other countries, the Supreme Court in *M.P.V. Sundaramier & Co. v. State of Andhra Pradesh* , cautioned:

"The threads of our Constitution were no doubt taken from other Federal Constitutions but when they were woven into the fabric of our Constitution their reach and their complexion underwent changes. Therefore, valuable as the American decisions are as showing how the question is dealt with in sister Federal Constitution great care should be taken in applying them in the interpretation of our Constitution."

Thus it can be successfully conclude that in order to determine the privileges the house cannot

blindly adopt the same that exist In Britain but has to decide and scrutinize weather it suits the Indian Democracy and does not offend the Republic characteristic of the nation.

Contempt of Court and breach of privileges

Introduction:

The term parliamentary privileges is used in Constitutional writings to denote both these types of rights and immunities. Sir Thomas Erskine May has defined the expression 'Parliamentary privileges' as follows: The sum of the peculiar rights enjoyed by each house collectively is a constituent part of the High Court of Parliament, and by members of each house of parliament individually, without which they cannot discharge their functions, and which exceed those possessed by other bodies or individuals.

Parliamentary

Privileges

A.105.Powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof

1. Subject to the provisions of this Constitution and the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

2. No member of Parliament shall be liable to any proceeding in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

3. In other respects, the powers, privileges and immunities of each House of Parliament, and the members and the committee of each House, shall be such as may from time to time be defined by Parliament by law, and until so defined, [shall be those of that House and of its members and committees immediately before the coming into force of Section 15 of the Constitution (44th Amendment) Act, 1978].

4. The provision of clauses (1), (2), and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to the members of Parliament.

Parliamentary privileges-this article defines parliamentary privileges of both Houses of Parliament and of their members and committees. Article 194, which is an exact reproduction of Article 105, deals with the State Legislatures and their members and committees. To enable Parliament to discharge functions properly the Constitution confers on each member of the Houses certain rights and immunities and also certain rights and immunities and powers on each house collectively. Parliamentary privilege is an essential incident to the high and multifarious functions which the legislature is called upon to perform. According to May, the distinctive mark of a privilege is its ancillary character a necessary means to fulfillment of functions. Individual members enjoy privileges because the House cannot perform its function without unimpeded use of the services of its members and by each House for the protection of its members and the vindication of its own authority and dignity.

In defining parliamentary privilege this article adopts certain method. Two privileges, namely, freedom of speech and freedom of publication of proceedings, are specifically mentioned in

clauses (1) and (2). With respect to other privileges of each House, clause (3) before its amendment in 1978 laid down that the powers, privileges and immunities shall be those of the House of Commons of the United Kingdom at the commencement of the Constitution until they are defined by an Act of Parliament. Though since 1978 position has changed in so far as the privileges of parliament, its members and committees have to be determined on the basis of what they were immediately before the commencement of 1978 amendment i.e., before 20th June 1979.

Freedom of speech

Article 105, clause (1), expressly safeguards freedom of speech in parliament. It says: there shall be freedom of speech in parliament. Clause (2) further provides that no member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in parliament or any committee thereof. No action, civil or criminal, will therefore lie against a member for defamation or the like in respect of things said in parliament or its committees. The immunity is not limited to mere spoken words; it extends to votes, as clause (2) specifically declares, viz. any vote given by him in parliament or any committee thereof. Though not expressly stated, the freedom of speech would extend to other acts also done in connection with the proceedings of each House, such as, for notices of motions, questions, reports of the committee, or the resolutions.

It may be noted that clause (1) of Article 105 is made Subject to the provisions of this constitution and to the rules and standing orders regulating the procedures of Parliament. The words regulating the procedures of Parliament occurring in clause (1) should be read as covering both the provisions of the Constitution and the rules and standing orders. So read, freedom of speech in Parliament becomes subject to the provisions of Constitution relating to the procedures of Parliament, i.e., subject to the articles relating to procedures in Part V including Articles 107 and 121. Thus for example, freedom of speech in Parliament would not permit a member to discuss the conduct of any judge of the Supreme Court or of a High Court. Likewise, the freedom of speech is subject to the rules of procedures of a House, such as use of unparliamentary language or unparliamentary conduct.

The freedom of speech guaranteed under clause (1) is different from that which a citizen enjoys as a fundamental right under Article 19 (1) (a). the freedom of speech as a fundamental right does not protect an individual absolutely for what he says. The right is subject to reasonable restrictions under clause (2) of Article 19. The term 'freedom of speech' as used in this article means that no member of Parliament shall be liable to any proceedings, civil and criminal, in any court for the statements made in debates in the Parliament or any committee thereof. The freedom of speech conferred under this article cannot therefore be restricted under Article 19 (2) . Clauses (1) and (2) of Article 105 protect what is said within the house and not what a member of Parliament may say outside. Accordingly, if a member publishes his speech outside Parliament, he will be held liable if the speech is defamatory . Besides, the freedom of speech. To which Article 105 (1) and (2) refer, would be available to a member of Parliament when he attends the session of Parliament, no occasion arises for the exercise of the right of freedom of speech, and no complaint can be made that the said right has been invalidly invaded.

Article 105 (2) confers immunity, inter alia, in respect of anything said in Parliament the word anything is of the widest import and is equivalent to everything.

The only limitation arises from the words in Parliament, which means during the sitting of Parliament and in the course of business of Parliament. Once it was proved that Parliament was sitting and its business was transacted, anything said during the course of that business was immune from proceedings in any court. This immunity is not only complete but it is as it should be. It is one of the essence of parliamentary system of government that people's representative should be free to express themselves without fear of legal expenses. What they say is only subject to the discipline of the rules of Parliament, the good sense of the members and the control of proceedings by the speaker. The courts have no say in the matter and should really have none.

In a much publicized matter involving former Prime Minister, several ministers, Members of Parliament and others a divided Court, in *P.V.Narsimha Rao v. State* has held that the privilege of immunity from courts proceedings in Article 105 (2) extends even to bribes taken by the Members of Parliament for the purpose of voting in a particular manner in Parliament. The majority (3 judges) did not agree with the minority (2 judges) that the words in respect of in Article 105 (2) mean, arising out of and therefore would not cover conduct antecedent to speech or voting in Parliament. The court was however unanimous that the members of Parliament who gave bribes, or who took bribes but did not participate in the voting could not claim immunity from court proceeding's under Article 105 (2). The decision has invoked so much controversy and dissatisfaction that a review petition is pending in the court.

Right of Publication of proceedings

Clause (2) of Article 105 expressly declares that no person shall be liable in respect of the publication by order under the authority of a house of Parliament, of any report, paper, votes or proceedings. Common law accords the defence of qualified privilege to fair and accurate unofficial reports of parliamentary proceedings, published in a newspaper or elsewhere. In *Wason v. Walter*, Cockburn, C.J. observed that it was of paramount public and national importance that parliamentary proceedings should be communicated to public, which has the deepest interest in knowing what passes in Parliament. But a partial report or a report of detached part of proceedings published with intent to injure individuals will be disentitled to protection. The same is the law in India. The Parliamentary Proceedings (Protection of Publication) Act, 1956 enacts that no person shall be liable to any proceedings, civil or criminal, in a court in respect of the publication of a substantially true report of the proceedings in either House of the Parliament, unless it is proved that the publication is made with malice.

Other

privileges

Clause (3) of Article 105, as amended declares that the privileges of each House of Parliament, its members and committees shall be such as determined by Parliament from time to time and until Parliament does so, which it has not yet done, shall be such as on 20th June 1979 i.e., on the date of commencement of Section 15 of the 44th Amendment. Before the amendment this clause has provided that until Parliament legislates the privileges of each House and its members shall be such as those of the House of Commons in England at the time of commencement of the Constitution. As the position till 20th June 1979 was determined on the

basis of original provision, it is still relevant to refer to the law as it has been in the context of English law. In that perspective it may be emphasized that there are certain privileges that cannot be claimed by Parliament in India. For example, the privileges of access to the sovereign, which is exercised by the House of Commons through its Speaker to have at all times the right of access to the sovereign through their chosen representative can have no application in India. Similarly, a general warrant of arrest issued by Parliament in India cannot claim to be regarded as a court of record in any sense. Also the privilege of the two Houses of Parliament, unlike the privileges of the House of Commons and House of Lords in England are identical. To each House of Parliament, accordingly, belong the privileges, which are possessed by the House of Commons in the United Kingdom.

In India freedom from arrest has been limited to civil causes and has not been applied to arrest on criminal charges or to detention under the Preventive Detention Act. Also there is no privilege if arrest is made under s.151 Criminal Procedure Code. It has been held in *K. Anandan Kumar v. Chief Secretary, Government of Madras*, that matters of Parliament do not enjoy any special status as compared to an ordinary citizen in respect of valid orders of detention.

In India, the rules of procedure in the House of People give the chair the power, whenever it thinks fit, of ordering the withdrawal of strangers from any part of the House and when the House sits in a secret session no stranger is permitted to be present in the chamber, lobby or galleries. The only exceptions are the members of the Council of States and the persons authorized by the Speaker.

In *Pandit M.S.M Sharma v. Shri Krishna Sinha*, proceedings for the breach of privilege had been started against an editor of a newspaper for publishing those parts of the speech of a member delivered in Bihar legislative assembly which the speaker had ordered to be expunged from the proceedings of the Assembly. The editor in a writ petition under A. 32 contended that the House of Commons had no privilege to prohibit either the publication of the publicly seen and heard proceedings that took place in the House or of that part of the proceedings which had been directed to be expunged. The Supreme Court by a majority of four to one rejected the contention of the petitioner. Das C.J., who delivered the majority judgment, observed that the House of Commons had at the commencement of our Constitution the power or privilege of prohibiting the publication of even a true and faithful report of the debates or proceedings that took place within the House. A fortiori the House had at the relevant time the power or privilege of prohibiting the publication of an inaccurate version of such debates or proceedings. Now Article 361-A inserted by the 44th Amendment with effect from June 20, 1979 provides that no person shall be liable to any proceedings civil or criminal for reporting the proceedings of either House of Parliament or a State Legislature unless the reporting is proved to have been made with malice. This provision does not apply to the reporting of proceedings of secret sittings of the Houses.

In India there also vest a right of the House to regulate its own constitution. When a seat of a member elected to the house becomes vacant, the Election Commission, by a notification in the Gazette of India calls upon the Parliamentary constituency concerned to elect a person for the purpose of filling the vacancy. In India, Article 103 expressly provides that if any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications, the question shall be referred to the President whose decision shall be final.

The President is however required to act in this behalf according to the opinion of Election Commission.

As far as right to regulate internal proceedings are concerned Article 122 expressly provides that the validity of any proceedings shall not be called in question on the ground of any alleged irregularity of procedure, and no officer or member of Parliament in whom powers are vested by or under the Constitution for regulating the procedure or the conduct of business or for maintaining order in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

Law Courts and Privileges

Article 105, so also Article 194 subjects the powers, privileges and immunities of each House as well as all its members and all its committees not only to the laws made by the appropriate legislature but also to all other provisions of the Constitution. Both these articles far from dealing with the legislative powers of the Houses of Parliament or of State Legislature respectively are confined in scope to such powers of each House as it may exercise separately functioning as a House .

A House of Parliament or Legislature cannot try anyone or any case directly as a court of justice can, but it can proceed quasi judicially in cases of contempt of its authority or take up motions concerning its privileges and immunities in order to seek removal of obstructions to the due performance of its legislative functions. If any question of jurisdiction arises as to a certain matter, it has to be decided by a court of law in appropriate proceedings. For example, the jurisdiction to try a criminal offence such as murder, committed even within a House vests in ordinary courts and not in a of Parliament or in a State Legislature. Also, a House of Parliament or State Legislature cannot in exercise of any supposed powers under Articles 105 and 194 decide election disputes for which special authorities have been constituted under the Representation of People Act, 1951 enacted in compliance with Article 329.

Parliamentary Privileges and Fundamental Rights

In Pandit M.S.M. Sharma's case it was also contended by the petitioner that the privileges of the House under A.194 (3) are subject to the provision of Part III of the Constitution. In support of his contention the petitioner relied n the Supreme Court's decision inGunupati Keshavram Reddi v. Nafisul Hasan. In this latter case Homi Mistry was arrested at his B'bay residence under a warrant issued by the Speaker of U.P. Assembly for contempt of the House and was flown to Lucknow & kept in a hotel in Speaker's custody. On his applying for a writ of habeas corpus, the Supreme Court directed his release as he had not been produced before a magistrate within 24 hours of his arrest as provided in Article 22 (2). This decision therefore indicated that Article 194 (or Article 105) was subject to the Articles of Part III of the Constitution.

In Sharma's case the Court held that in case of conflict between fundamental right under Article 19 (1) (a) and a privilege under Article 194 (3) the latter would prevail. As regards Article 21, on facts the Court did not find any violation of it. In Powers, Privileges and Immunities of the State Legislature, Re , the proposition laid down in Sharma's case was explained not to mean that in all cases the privileges shall override the fundamental rights.

The rules of each House provide for a committee of privileges. The matter of breach of privilege or contempt is referred to the committee of privileges. The committee has power to summon

members or strangers before it. Refusal to appear or to answer or to knowingly to give false answer is itself a contempt. The committee's recommendations are reported to the House which discusses them and gives its own decision.

Article 194

Powers, privileges, etc., of the Houses of Legislature and of the members and committees thereof.

1. Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.

2. No member of the Legislature of a State shall be liable to any proceeding in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.

3. In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may be defined from time to time be defined by the Legislature by law, and until so defined, shall be those of that House and of its members and committees immediately before the coming into force of Section 26 of the Constitution (Forty Fourth Amendment) Act, 1978.

4. The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature.

This article that applies to the State Legislatures and members and committees thereof is an exact reproduction of Article 105, which applies to both Houses of Parliament and committees thereof.

Clause (1)- of this article declares that there shall be freedom of speech in the legislature of every State. This freedom is subject to the provisions of Articles 208 and 211 . A member cannot accordingly raise discussions as to the conduct of a Supreme Court or High Court judge as A. 211 prohibits it. The provisions of the Constitution subject to which freedom of speech has been conferred on the legislators are not the general provisions of the Constitution but only such of them as relate

to the regulation of the procedure of the Legislature. The freedom of speech guaranteed to citizens under A. 19 (1) (a) is therefore separate and independent of Article 194 (1) and does not control the first part of clause 1 of A.194.

Clause (2)- emphasizes the fact that the freedom of speech conferred on the Legislatures under clause (1) is intended to be absolute and unfettered. Similar freedom is guaranteed to the legislators in respect of the votes they may give in the Legislature or committees thereof. Thus, if a legislator exercises a right of freedom of speech in violation of A. 211 he would not be liable for any action in any court. Likewise, if the legislator by his speech or vote is alleged to have violated any of the fundamental rights guaranteed by Part III of the Constitution in the Legislative Assembly, he would not be answerable for the said contravention in any court. If the speech amounts to libel or becomes actionable or indictable under any other provision of the law immunity has been conferred on him from any action in any court by clause (2). He may be answerable to the House for such a speech and the Supreme Court may take appropriate action

against him in respect of it. Thus clause (1) confers freedom of speech to the legislators within the legislative chambers and clause (2) makes it plain that the freedom is literally absolute. Clause (3)- the first part of this clause empowers the State Legislature to make laws Prescribing its powers, privileges and immunities. If the Legislature of a State under the first part of clause (3) makes a law which prescribes its powers, privileges and immunities, such law would be subject to Article 13 and clause (2) of that article would render it void if it contravenes or abridges any of the fundamental rights guaranteed by Part III.

The right of State Legislatures to punish for contempt can be discussed with the case law of Powers, Privileges and Immunities of State Legislature, Re. The reference was a sequel to the passing of an order by an unprecedented Full Bench of 28 judges staying, under Article 226, the implementation of the U.P. Assembly resolution ordering two judges of Allahabad High Court to be brought in custody before the Bar of the House to explain why they should not be punished for the contempt of the House. The two judges had admitted the habeas corpus petition of and granted bail to one Keshav Singh who was undergoing imprisonment in pursuance of the Assembly Resolution declaring him guilty of the breach of privilege. The resolution of the Assembly and the stay order issued by the Full Bench resulted in a constitutional stalemate.

Consequently,

the president referred the matter under Article 143 to the Supreme Court for its opinion. The Supreme Court by a majority of 6:1, through an elaborate and learned opinion delivered by Gajendragadkar, C.J., held that in India notwithstanding a general warrant issued by the Assembly, the Courts could examine the legality of the committal in proper proceedings. Other propositions were also laid down in the majority judgment. It said that Article 194 (3) cannot be read in isolation. The impact of Articles 226, 32 and 211 had to be ascertained in order to determine the scope of Article 194. Article 226 empowers the High Court to issue a writ of habeas corpus against any authority. This would include the legislature since no exception is made in favour of a detention order by the House for the breach of its privileges. Article 211 on the other hand unambiguously indicates that the conduct of a judge in the discharge of his duties can never become the subject matter of any action taken by the House in exercise of its powers or privileges conferred by the latter part of Article 194 (3). The fact that the first part of Article 194 (3) refers to future laws defining the privileges as being subject to fundamental rights is a significant factor in construing the latter part of Article 194. Such a state legislation would be law within the meaning of article 13 and the courts will be competent to examine its validity vis-à-vis the fundamental right. Although no opinion was tendered as regards fundamental rights in general, it was made clear that so far as Articles 21 and 22 are concerned, any privileges etc., which are claimed, must be consistent with these articles in the context of Article 208.

Conclusion

There is a clear demarcation as to what all rights and privileges are absolute and what are not. For example, in India Legislative Assemblies and Parliament never discharge any judicial function and their historical and constitutional background does not support their claim to be regarded as courts of record in any sense. No immunity from scrutiny by courts of general warrants issued by House in India can therefore be claimed.

Both the Parliament and State Legislatures have a duty to look carefully before making any law, so that it doesn't harm other rights. It is also a duty of the members to properly use these privileges and not misuse them for alternate purposes that is not in the favour of general interest of nation and public at large. Thus what we must keep in mind is the fact that power corrupts and absolute power corrupts absolutely. For this not to happen under the privileges granted, the public and the other governing body should always be on vigil.

Unit 5

Media and National Security Laws

National Security and the Indian Media:

National Security, as a concept in the contemporary structure of a Nation State, is highly entwined with the facilitation of governance, which is the effective management of national affairs of a country at all levels of its functioning and execution, aimed at maintaining the integrity of the nation and the security of its people. To achieve good governance, it becomes essential for the authorities to exercise political, economic and judicial procedures in a manner, which ensures that the people are given their freedom to fulfil their duties, and resolve their disputes as is allowed in the written constitution. Similarly for India, the preamble to the Indian Constitution provides the key to its national security policy, where it enshrines the sovereignty of the people in a socialist, secular, democratic republic based on the pillars of Justice, Liberty, Equality and Fraternity. The safeguarding of national security, thus, encompasses dedication and timely awareness to counter any threat or external force that hampers the well being of the Indian State in a successful manner as is advised by the Rule of Law.

For a country like India, the backbone of its democracy and the propagator of its national interests remains the access to information and expression, which helps its citizens to make responsible and objective choices, to promote accountability by its officials, to provide solutions to conflict resolution, and also to encourage diverse views of its diverse people. This access of information has, in turn, allowed the Indian media to play the role of the fourth estate and watchdog that holds the Government accountable in all its activities, and also functions as the | media and national security only mode of expression for its people. Our Constitution emphasises an active and independent media which is highly maintained on the ideals of freedom of speech and expression as contained in Article 19 of the Indian framework, and which allows the Indian journalists to be spontaneous activists in the overall governance of the country. Abiding by the fundamentals enshrined by the architects of sovereign India through the years, the Indian media has been allowed to grow and transcend from an active disseminator of information to an omnipresent unit of the society. It has not only helped in building, shaping or transforming an individual's perceptions, but has also been given the

power to challenge the Government, the Judiciary, and other institutions of the country that form part of the larger policymaking system. The increasing reach of regional and global communication systems and sophisticated technology has made media in India, an autonomous tool of statecraft.⁶ The Indian media also continues to provide channels of communication, helping to educate, inform and exchange information between the public and its Government. Thus, the ability to influence the attitudes and behaviour of countries and their policies has helped the Government to initiate its national strategic goals through an integrated, coordinated and combined media that acts as a tool and channel for information dissemination and enlightenment.

However, to the extent that the Indian media continues to play the role of an information activist for an informed public and responsible Government, it deserves much deeper and sustained study by promoters, actors and facilitators of democracy and good governance. In consonance with this requirement, the subsequent chapters of the occasional paper aim to highlight the expansion of the new generation media as an entity into the security domain of every country. The first chapter introduces a contextual framework to help understand the complexity of the relationship between the media and the realm of national security. The study consequently tries to analyse the importance of the understanding of India's national security needs by its media, and the role it can play in maintaining a steady and efficient Government. Focusing on the functioning of the Indian print and broadcast media only, the paper tries to dissect media behaviour with case studies that help to put forward need for an effective cooperation between the State and the media in India to counter national security threats in a phased manner. While dealing with national security, it has become inevitable to dismiss the relationship that any media has with the facilitation of terrorism. Thus, the paper also broadly underlines the tryst of Indian media with its contemporary security challenge and the role it plays in counter-terrorism strategies, making the task of incorporating media | in the national security strategy even more unavoidable. The study not only aims to theoretically analyse the role of the Indian media in conflict resolution through the theoretical basis of journalism but proposes to lay a practical and implementable outline for the State and policy guides to actively involve the media in maintaining security, peace and stability in the region.

National Security in India India's National Security Threats India remains the world's largest democracy and one of the fastest growing economies in the 21st century. The country is being recognised for its middleclass educated professionals, its cultural influence, Diaspora, economic growth and global expertise. A 2010 joint study by the US National Intelligence Council and the EU declared India to be the world's third most powerful nation in terms of influence and growth. India also represents cultural and geographical diversity, socio-religious traditions (dating back to more than 4,000 years), and multiracial, multi-religious and multi-lingual societies. Every major religion in the world is practiced in India, and the roots of its secular and cultural traditions are embedded deep in India's glorified past. India's national security problems thus emerge through the influence of a number of existing factors such as its history, geography, colonial legacy, socio-cultural and ethno-religious traditions, population, and social and economic disparities.

India's growth is expanding with her economic, technological and political developments, and advancements in Asia and the rest of the world. With the emergence of China in the East and the slow declining mode of the US, the country is facing challenges from the consequences of a possible strategic change in the international security order. Developments that are continuously shaping India's national security environment are happening globally, regionally and domestically. In regard to this, India's national security policy objectives that were framed to meet the emerging challenges were summarised by the Indian Prime Minister in 1995, highlighting a broad concept which enshrined the defence of national territory over land, sea, and air, and included the inviolability of land borders, land territories, offshore assets, and maritime trade routes; internal security against threats to unity or progress from religious, language, ethnic, or socio-economic conflict; the ability to influence other regional countries to promote harmonious relationships that support Indian national interests; and the ability to execute out-of-area operations to contribute to international stability. India's security requirements and challenges have been traditionally thought about in terms of domestic, regional, continental and systemic security.

Domestically, India's security is threatened primarily by insurgencies, naxal movements, terrorism, separatist tendencies by States and corruption among its bureaucrats. At the regional level, the greatest threat to India is from terrorism. Where its neighbours China and Pakistan are concerned, due to continuing political instability and regional changes, possession of nuclear weapons by both these countries and the prevalent border disputes, have significantly affected India's relations with these countries. Continentally, the rise of China is a concern for India and also for other States of the Southern Asian subcontinent as it may hamper the involvement of India in the region.

The Indian Media in National Security Strategy

Apart from the relevance and acceptance of the Indian media as an entity into the maintenance of governance in the country in the current security environment, India's media continues to remain unique because of the culturally diverse nature of the country. On the one hand, India is politically and technologically advanced, upholding its strength in economy, democracy, and culture, and on the other hand, the majority of India remains a developing country with strong religious and conservative patriarchal systems isolated from the ideologies and advancements of modern and technological life. The mainstream Indian media reflects the distinct differences of its people and thoughts by supporting and catering to two types of media outlets and audience: the English language media and the non-English language media, including various newspapers, magazines and television channels, thereby upholding the difference in expression and perspectives of its multi-cultural population, and showcasing the true essence of India.

Therefore, media remains an important component of statecraft, not only for India but even for the rest of the world, as it helps the States attain their goals and objectives, mainly due to the effect that media has on opinion-building of the public. However, in terms of matters of national security, media of any country including that of India follows a nationalistic approach, even though the dynamics of media are different and diverse in different countries.

Sometimes, the States use media to create fear or hatred among countries, and sometimes prolong diplomatic ties. In the contemporary strategic environment, media and the Government have a very strong and symbiotic relationship, which is believed to be evolving as even political actors have started working in the environment set or prescribed by the media for undertaking their duties. Thus, not only are the perceptions of the public set by the media in this modern world, but also that of the authorities and leaders, which in turn help them to set up policies in tune with the demands of the people.

Role of the Indian Media in Security Issues

To further elaborate on the relation between media and its role in safeguarding national security there are a number of examples where Indian media has portrayed an effective role in providing information to the public, and confirming the actions of the government on the issues of national security. In August 1999, Pakistan Navy's Naval Air Arm Breguet Atlantique patrol plane was shot down by the Indian Air force for violating Indian air space as it was flying close to the Indian border off the Rann of Kutch in Gujarat.

The issue flared tensions between the two countries as the Kargil War had just ended, and there was a destabilisation of ongoing peace negotiations between India and Pakistan. Though claims were rebuked by the Pakistani authorities as the part of a training mission, questions were raised as to why the plane was flying so close to the international border between the two nations. Pakistan even took the issue to the International Court of Justice (ICJ) for resolution, as it condemned the shooting down of its plane by the Indian Air force.

However, the Indian media's support for its country and the timely information that it provided to the domestic and international audience, helped not only the Indian public but also the foreign media grasp the ground situation, which in turn, influenced the judgment of the ICJ. The verdict thus given helped question Pakistan's credibility on the issue, and also urged both the countries to resolve their disputes bilaterally. Similarly, but in different circumstances, the Indian media was also used by the Government as a tool to rightly inform and replace misinformation that could have hampered India's relations with its neighbouring countries mainly Pakistan. On January 24, 2010, a signal of a 'flying object' was picked up by the radar of the Indian Air force at Nalia base in the Rann of Kutch. Claimed to be an intrusion at first, the Government identified it to be one of the planes of the Indian Air force and confirmed a 'no threat' situation. In this matter, the Indian media was used by the government to clarify the event not only to its people but also to the international audience.

The editors and journalists of media organisations in India were called upon by military and Government officials where they were shown the details of the plane, and were requested to convince the national audience that the radar picked up signal of an Indian plane, and that they help diminish any claims of outside intervention. The role played by the media during this time helped decrease the tension that existed between India and Pakistan, as there were reports earlier of a possible terrorist threat and disruption during India's Republic Day celebration, which was to be held two days later. Examples of the tremendous and radical change in technology of the Indian media and their repercussions thus continue to be numerous and in terms of national security, the impact of the media evidently has clear strategic implications.

