

Course Title –
MEDIA LAW AND CENSORSHIP

Faculty Instructor -
NIDHI SHARMA, ASSOCIATE PROFESSOR, JGLS

No. of Credits - 4 credits

Cross-registration: Not allowed

Level - 5yr LLB, 3yr LLB, LLM (Constitutional and Administrative Laws)

Pre-requisites - Constitutional Law – I, Constitutional Law – II for 5yr B.A. LLB, BB.A. LLB, B.COM LLB and 3yr LLB students

Course Description:

The Constitution of India guarantees every person the right to freedom of speech and expression. Unlike the First Amendment to the Constitution of the United States of America, the Constitution of India does not make a categorical declaration of the right to free speech for the media. This right has been read into the chapter of fundamental rights by the Supreme Court of India. From the time of the commencement of the Constitution, the right to freedom of speech and expression for the media was under contestation. For instance, after a fierce opposition from the then incumbent government against a few publications that were critical of certain government endeavors, the Supreme Court in the cases of *Brij Bhushan v. the State of Delhi*, AIR 1950 SC 129 and *Romesh Thappar v. State of Madras*, AIR 1950 SC 124, emphasized the centrality of a free media for a healthy democracy.

As India developed into a vibrant democracy, its legal system grappled with the issue of censorship. Often, censorship of media has followed charges of sedition or hate speech that have led to laws and regulations restricting the freedom of expression and, in some instances, stifling dissent. To address the issues of freedom of expression and censorship, the discourse in this course would start with the assessment of the censorship of media before independence and before the commencement of the Constitution. The course would further address the development of the right as fundamental under the Constitution of India. Commencing from print media, the students will be acquainted with the development of mass media as an indispensable tool for dispersing information through digital media (including social media platforms) and the challenges it brings forth in an era dominated by round-the-clock access to the internet.

The discourse in the core courses of Constitutional Law, particularly Constitutional Law I, introduces the students to the chapter on fundamental rights and the corresponding state duties. Due to the limitation of the foundational course to go into the deeper nuances of the right to freedom of speech and expression, this course would allow the students to understand the legislative framework regulating media, censorship and hate speech, the intersection of media ethics and responsible journalism with the development of democracy, and the volatile nature of social media. The pedagogy for this course will focus on the constitutional foundations of the right to freedom of speech and expression of both traditional and digital media, the regulation of media outlets and the importance of integrity as the fourth pillar of democracy. To that end, the course will focus on the constitutional courts' judgments, case studies, the regulatory framework for media outlets, and social

media's positive and negative potential.

Module 1: Introduction to Mass Media (Print and Digital) and Media Laws (Week 1)

Module 2: Constitution and Media (Weeks 2, 3, 4 and 5)

- Right to freedom of speech and expression *vis-à-vis* media
- Right to access to information
- Censorship and free speech
- National emergency and press censorship
- Commercial Speech

Module 3: Legislative and Regulatory framework for media outlets (Weeks 6, 7, and 8)

- Privacy and Media
- Libel/slander and Media
- Hate speech and Media
- Medial Trial

Module 4: Media Ethics and Responsibility (Weeks 9 and 10)

- Prior restraints on publication
- Non-partisan and independent media

Module 5: Censorship and Creative Freedom (Weeks 11, 12, and 13)

- Freedoms and restrictions *vis-à-vis* literary work
- Freedoms and restrictions *vis-à-vis* cinematic work
- Freedoms and restrictions *vis-à-vis* social media and content creation

Reading List:

1. Singh, Tripurdaman. Sixteen Stormy Days: The Story of the First Amendment of the Constitution of India. Vintage, an imprint of Penguin Random House India, 2020 (*selected chapters*)
2. Basu, Durga Das. Introduction to the Constitution of India. 19th ed., Wadhwa & Co., 2006 (*selected chapters*)
3. S P Sathe, Accountability of the Supreme Court - Arundhati Roy Case, Vol. 37, Issue No. 15, EPW, 13 Apr, 2002
4. For a credible model, Interview with Rajdeep Sardesai, Editor-in-chief, IBN 18 Network, Sagnik Dutta, FRONTLINE, Volume 29, Issue 10, 01 June 2012
5. Banerjee, Arpan, Judicial Safeguards Against 'Trial by Media': Should Blasi's 'Checking Value' Theory Apply in India? (January 9, 2011). Journal of Media Law & Ethics, Vol. 2, p. 28, 2010
6. Soli J. Sorabjee, "Freedom of Expression and Censorship: Some Aspects of the Indian Experience," Northern Ireland Legal Quarterly 45, no. 4 (Winter 1994): 327-342
7. Bhatia, Gautam. Offend, Shock, or Disturb: Free Speech under the Indian Constitution. Oxford University Press, 2016. (*selected chapters*)
8. Subradipta Sarkar, "Right to Free Speech in a Censored Democracy," University of Denver Sports and Entertainment Law Journal 7 (2009): 62-90

9. Segal, Alan. "Censorship, Social Control and Socialization." *The British Journal of Sociology* 21, no. 1 (1970): 63–74.
10. Tambini, D. (2021). A theory of media freedom. *Journal of Media Law*, 13(2), 135–152.

Selected Case Law:

1. Brij Bhushan v. the State of Delhi, AIR 1950 SC 129
2. Romesh Thappar v. State of Madras, AIR 1950 SC 124
3. Bobby Art International v. Om Pal Singh Hoon, AIR 1996 SC 1846
4. K.A. Abbas v. Union of India, AIR 1971 SC 481
5. Indibily Creative Pvt. Ltd. V. Govt. Of West Bengal, AIR 2019 SC 1918
6. Maqbool Fida Husain v. Raj Kumar Pandey, Crl. Revision Petition Nos. 282/07
7. Dejo Kappan v. Deccan Herald, Writ Petition (Civil).No. 21108 of 2014
8. Software Freedom Law Center, India (SFLC.in) v. State of Jharkhand, W.P.(PIL) No. 3947 of 2022
9. Campaign against Hate Speech v. State of Karnataka, Writ Petition No. 6749 of 2020
10. Hamdard Dawakhana v. Union of India, AIR 1960 SC 554