

1988

I 15

## Scrap Defamation Bill!



R. K. Laxman in The Times Of India (6/9)

### Bombay Union Of Journalists

23/25 Prospect Chambers (annexe)  
317, D. N. Road  
Bombay-400 001

# **Black Bill Must Go**

**T**he Defamation Bill, is nothing short of an attempt by the Central government to threaten, browbeat and blackmail the press so as to deter it from carrying out its function of subjecting the acts of commission and omission of those in power to critical public scrutiny. The Bill constitutes a fatal attack on the citizen's Fundamental Right of freedom of speech and on the democratic political process as well.

The government has tried to give the impression that the Bill has been brought forward in pursuance of the recommendations of the 42nd Report of the Law Commission and the Report of the Second Press Commission. This is altogether false. Neither the Law Commission nor the Second Press Commission had found the existing law relating to defamation, set out in Sections 499 to 502 of Chapter XXI of the Indian Penal Code, to be seriously lacking in the protection afforded to the individual against defamation. Neither Commission, therefore, saw any need for total overhaul of the law on defamation. Both Commissions suggested only some relatively minor amendments to the law. The suggestion put forward in the statement of Objects and Reasons attached to the Defamation Bill, 1988, that the existing law does not provide enough protection to the citizen is thus a figment of the government's imagination, advanced to provide a fraudulent justification for the Defamation Bill.

While a few of the suggestions made by the two Commissions have been incorporated in the Defamation Bill, some important ones have been ignored. For instance, the Press Commission had taken the view that the truth of a statement should be sufficient defence against a charge of defamation and had rejected the suggestion that it should in addition be shown that the publication of the statement was in the public interest. Ignoring this important recommendation, the Defamation Bill requires that, in order to escape the charge of being defamatory, a statement must be both true and its publication must be shown to have been for the public good.

More important, however, is the fact *not a single one* of the innumerable obnoxious provisions of the Defamation Bill can be traced to the reports of either the Law Commission or the Press Commission. The disgrace for these provisions belongs solely to the government. It is obvious that they have been incorporated in the Bill with the deliberate purpose of intimidating the press and deterring it from discharging its vital function of bringing to light the wrongdoings of those in positions of power and authority.

Chapter II of the Bill which deals with 'defamation' enlarges the definition of 'defamation' to now also include any imputation that exposes the affected person, directly or indirectly, "to hatred, contempt or ridicule or disparages or causes injury to such person in his trade, business, profession, calling or office". More importantly, Section 8 of this chapter introduces "the printing, etc. of

grossly indecent or scurrilous matter or matter intended for blackmail" as a new category of offence. What exactly would constitute "scurrilous" matter has been left vague, no doubt so that the provision can serve as a catch-all.

When the Press Bill framed by the Bihar government had sought to introduce a similar provision in the state, it had been forced by public pressure to withdraw the Bill. Now the Central government is trying to impose that obnoxious provision on the press all over the country. Finally, contrary to the views expressed by the Law Commission, the punishment for a second offence for both defamation and for printing scurrilous matter, etc. is sought to be enhanced to imprisonment for a term upto five years or fine upto five thousand rupees or both.

It is, however, Chapter III of the Defamation Bill which is designed specifically to meet the present government's requirements. Its provisions are tailor-made to prevent exposures in the press of the type which have caused the government so much discomfiture in, for instance, the Bofors, the West German submarine and the ONGC-Sumitomo deals or in the allegations of breach of tax and foreign exchange laws against individuals known to be close to the Prime Minister. The provisions of this chapter no doubt also explain the government's anxiety to rush the Bill through Parliament and to enact it into law as early as possible.

In Chapter III another new category of offences is invented, comprising "any imputation falsely alleging that any person has committed an offence or has done or omitted to do any act which amounts to an offence, under any law for the time being in force". None of the ten exceptions, save one, specified in regard to defamation will be available to anyone charged with the offence of criminal imputation. The only circumstance in which such a person can escape conviction is if she or he can establish that the imputation is true and further that it is for the public good that the imputation is made.

With regard to defamation it is explicitly provided that the expression in good faith of any opinion on the conduct of a public servant in the discharge of his public functions or on the conduct of any person touching any public question would not be held to be defamatory. No such protection would be available to those charged with criminal imputation. In other words, it will be a punishable offence to make a charge of corruption or of dereliction of duty involving the breach of any law against a public servant unless the journalist or newspaper making the charge is in possession of sufficient evidence to prove the charge in a court of law.

It is obvious how the introduction of criminal imputation as an offence will deter much of everyday reporting and editorial comment in newspapers and journals. Not to put too fine a point on it, the extent of criticism of persons in public life, both politicians and administrators, that our British rulers were prepared to permit the press and the citizens of a subject India, the country's present rulers are not willing to tolerate from the press and citizens of free India.

Chapter III of the Defamation Bill also has the effect of nullifying the exceptions provided in regard to defamation proper since even if an allegedly defamatory statement is covered by one or more of these exceptions, but contains an

imputation of offence under any law, it would become actionable under the "criminal imputation" provisions of the Defamation Bill. In other words, these provisions not only introduce a new category of offences but in effect enormously tighten the law with regard to defamation as a whole.

The vicious intent of the framers of the Defamation Bill is evident from some of the specific provisions of the chapter on criminal imputation. Unlike for defamation or publication of grossly indecent or scurrilous matter, where the court has been given the discretion to award a punishment of imprisonment or fine or both, for criminal imputation a sentence of imprisonment has been made mandatory - the term of imprisonment ranging from one month to one year for a first offence and from three months to two years for subsequent offences, together with a fine in both cases. Further, the sessions court, which is to try alleged offences of criminal imputation, has also been empowered to decide, at its discretion, to try a case in a summary manner or even in camera. And where a trial is conducted in camera it has been made a punishable offence to "print or publish any matter in relation to such trial." The ordinary protection that is afforded to the accused by trial in open court and by normal judicial procedures is sought to be denied to those charged with the so-called offence of criminal imputation.

The Defamation Bill also makes history because it reverses one of the cardinal principles of criminal jurisprudence that an accused person is presumed to be innocent unless her or his guilt is proved beyond reasonable doubt. In respect of all the offences covered under the Bill - defamation, publication of grossly indecent and scurrilous matter and criminal imputation - the onus of proving her or his innocence is shifted to the accused and the prosecution has been given the right to produce evidence in rebuttal. In cases of criminal imputation, for instance, the accused is required to "establish" that the imputation made is true and further that it is for the public good.

It is next to impossible for journalists to gather all the proof required to establish in a court of law the truth of reports of wrongdoing by people in positions of power. And that is precisely what the government wants to exploit. It is the government's calculation that the virtual impossibility of proving their innocence will be a powerful deterrent to newspapers and newspaper persons.

The framers of the Defamation Bill have taken care to ensure that the harassment of the press and newpersons begins long before the point of conviction and punishment. The Bill lays down that editors, publishers and printers who are charged with any of the offences covered by the Bill will have to be personally present in court on every single day of the trial. The court's power under the Indian Penal Code to dispense with the accused's personal attendance in court has been withdrawn under Section 18 (1) of the Bill. The only way the editor, publisher and printer can escape being subjected to this ordeal is by publishing "any reply" sent by the person against whom a defamatory imputation is alleged to have been made.

No doubt the government's calculation, once again, is that faced with the choice between being forced to print so-called "replies", however objectionable



and offensive, sent by persons accused of wrongdoing and being subjected to the harassment of spending day after day in courts for protracted periods, editors and publishers will be deterred from exposing the crimes of the country's rulers and their associates.

For the Prime Minister to seriously expect that the press and the people of the country can be persuaded to agree to petition the Committee of Ministers he has been pleased to set up for minor changes here and there in the Bill is to add insult to injury. The Defamation Bill, 1988, has to go — lock, stock and barrel.



# **What The Bill Says**

*Here we reproduce the text of the Defamation Bill, 1988 for you to judge for yourself.*

## **Defamation Bill, 1988**

**Bill No. 103 of 1988**

### **A BILL**

*to consolidate and amend the law relating to defamation and for matters connected therewith or incidental thereto.*

Be it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows —

### **CHAPTER I PRELIMINARY**

#### **Short title, extent and commencement**

1. (1) This Act may be called the Defamation Act, 1988.
- (2) It extends to the whole of India, except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

#### **Definition**

2. (1) In this Act, unless the context otherwise requires—
  - (a) 'Code' means the Code of Criminal Procedure, 1973;
  - (b) words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in the Code.
- (2) Any reference in this Act to the Code or any provision thereof shall, in relation to an area in which the Code or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

### **CHAPTER II DEFAMATION**

#### **Defamation**

3. Whoever by words, either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

*Explanation I.*— It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person, if living, and is intended to be hurtful to the feelings of his family or other near relatives.

*Explanation II.*— It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

*Explanation III.*— An imputation in the form of an alternative or expressed ironically, may amount to defamation.

*Explanation IV.*— No imputation is said to harm a person's reputation unless,—

(a) that imputation directly or indirectly in the estimation of others, lowers the moral or intellectual character of the person in respect of his caste or his calling or lowers the credit of that person, causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful; or

(b) that imputation exposes, directly or indirectly, such person to hatred, contempt or ridicule or disparages or causes injury to such person in his trade, business, profession, calling or office.

#### **Exemptions**

##### **4. Nothing in section 3 shall apply to—**

(i) the imputation of anything which is true concerning any person, if it be for the public good that the imputation should be made or published and it is a question of fact as to whether it is for the public good;

(ii) the expression in good faith of any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further;

(iii) the expression in good faith of any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further;

(iv) the publication of a substantially true report of the proceedings of a court or Tribunal or of the result of any such proceedings;

(v) the expression in good faith of any opinion whatever respecting the merit of any case, civil or criminal, which has been decided by a Court or respecting the conduct of any person as a party, witness or agent in any such case, or respecting the character of such person, so far as his character appears in that conduct, and no further;

(vi) the expression in good faith of any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author; so far as his character appears in such performance, and no further;

(vii) the passing in good faith any censure on the conduct of a person by a person having authority over that other person either conferred

by law or arising out of a lawful conduct made with that other person in matters to which such lawful authority relates;

(viii) the preferring in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of the accusation;

(ix) the imputation on the character of another provided that the imputation is made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good;

(x) the conveying of a caution, in good faith, to one person against another, provided that such caution is intended for the good of the person to whom it is conveyed; or of some person in whom that person is interested, or for the public good.

#### **Punishment for defamation**

5. (1) Whoever defames another, shall, in the case of the first offence, be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both, and, in the case of a second or subsequent offence, with imprisonment which may extend to five years, or with fine which may extend to five thousand rupees, or with both.

(2) Where the offence has been committed by publishing an imputation in a newspaper, the court convicting the offender may further order that its judgment shall be published, in whole or in part, in such newspaper and in such manner as it may specify.

(3) The cost of such publication shall be recoverable from the convicted person as if it were a fine.

*Explanation.*— The court may, before passing a sentence under this section, take into consideration the question whether the guilt of the accused is aggravated by the plea and the nature of the evidence adduced to prove or disprove it.

#### **Printing or engraving matter known to be defamatory**

6. Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall, in the case of the first offence, be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both, and, in the case of a second or subsequent offence, with imprisonment which may extend to five years, or with fine which may extend to five thousand rupees, or with both.

#### **Sale of printed or engraved substance containing defamatory matter.**

7. Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.



**Printing, etc., of grossly indecent or scurrilous matter or matter intended for blackmail**

8. Where any matter which is grossly indecent or scurrilous or is intended for blackmail is published in any newspaper, periodical or circular, the author of such matter and the printer, publisher and editor of such newspaper, periodical or circular shall, in the case of first offence, be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both, and in the case of a second or subsequent offence, with imprisonment for a term which may extend to five years or with fine which may extend to five thousand rupees, or with both.

*Explanation I* — It shall not be scurrilous,—

- (a) to make any imputation concerning any person which is true, if it is for the public good that such imputation should be made or published and it is a question of fact as to whether it is for public good: and
- (b) to express in good faith any opinion respecting the conduct of —
  - (i) a public servant in the discharge of his public functions or respecting his character so far as his character appears in that conduct and no further, or
  - (ii) any person touching any public question, and respecting his character, so far as his character appears in that conduct and no further.

*Explanation II* — In deciding whether any person has committed an offence under this section, the Court shall have regard, *inter alia*, to the following considerations, namely:—

- (a) the general character of the person charged, and where relevant, the nature of his business;
- (b) the general character and dominant effect of the matter alleged to be grossly indecent or scurrilous or intended for blackmail;
- (c) any evidence offered or called by or on behalf of the accused person as to his intention in writing, printing or publishing such matter.

**Unintentional defamation**

9. (1) A person who has published any matter alleged to be defamatory of another person may, if he claims that the matter was published by him innocently in relation to that other person, make an offer of amends under this section.
- (2) An offer of amends shall —
- (a) be in writing,
  - (b) be expressed to be made for the purposes of this section;
  - (c) affirm that the person who has published the matter in question (hereafter in this section referred to as "the publisher") published the matter innocently in relation to the party aggrieved;

- (d) include an offer to publish, or join in the publication of, a suitable correction of the matter complained of and a sufficient apology.

**Explanation.**— Where the matter alleged to be defamatory is published in a newspaper, periodical or circular, the correction and apology made in pursuance of the offer of amends shall be published in the same manner and with the same prominence as the matter alleged to be defamatory was published.

- (3) If an offer of amends is accepted by the party aggrieved and is duly performed, no proceedings for defamation shall be taken or continued by that party against the publisher in respect of the publication in question, but without prejudice to any proceedings against any other person jointly responsible for that publication.
- (4) If an offer of amends is not accepted by the party aggrieved, it shall be a defence, for the publisher, in any proceedings for defamation against him in respect of the publication in question to allege and prove—
- (a) the facts and circumstances which establish that the matter was published innocently in relation to the party aggrieved;
  - (b) that the offer made fulfilled the requirements of clauses (a), (b) and (d) of sub-section (2) of this section; and
  - (c) that the offer has not been withdrawn.
- (5) For the purposes of this section, any matter shall be treated as published by the publisher innocently in relation to the party aggrieved if, and only if, the following conditions are satisfied, that is to say—
- (a) that the publisher did not intend to publish it concerning that party and did not know of the circumstances by virtue of which it might be understood to refer to him; or
  - (b) that the matter was not defamatory on the face of it, and the publisher did not know of the circumstances by the virtue of which it might be understood to be defamatory of that party aggrieved, and in either case that the publisher exercised all reasonable care in relation to the publication

#### **Fair comment**

10. In an action for defamation in respect of any matter consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if, having regard to such of the facts alleged or referred to in the matter complained of as are proved, the expression of opinion is fair comment.

#### **Certain statements not to constitute defamation**

11. Notwithstanding anything contained in this Act, the publication of

any of the following statements shall not constitute defamation namely;—

(a) a fair and accurate report of any proceeding in public of—

(i) a legislature of any foreign country;

(ii) an international organisation of which India is a member, or of organisations recognised by the United Nations, or of any international conference to which the Government of India sends a representative;

(iii) an international court;

(iv) a court of any foreign country;

(v) a fair and accurate report of or extract from any registry kept in pursuance of any Central, Provincial or State Act, which is open to inspection by the public, or of any other document which is required by law for the time being in force in any part of India to be open to inspection by the public; or

(b) a notice or advertisement published by or under the authority of any court, tribunal or commission of inquiry or a committee of investigation constituted by any lawful authority in India;

(c) a fair and accurate report of the findings or decisions of any of the following associations or of any committee or governing body thereof in relation to a person who is a member of or is subject by virtue of any contract to, the control of, any such association or, of any committee or governing body thereof, that is to say—

(i) an association formed in India for the purpose of promoting or encouraging the exercise of or interest in any art, science, religion or learning, and empowered by its constitution to exercise control over or adjudicate upon, matters of interest or concern to the association, or the actions or conduct of any person subject to such control or adjudication;

(ii) an association formed in India for the purpose of promoting or safeguarding the interests of any game, sport or pastime to the playing or exercise of which members of the public are invited or admitted, and empowered by its constitution to exercise control over or taking part in the game, sport or pastime.

(d) a fair and accurate report of the proceedings of any meeting or sitting of—

(i) any local authority or committee of a local authority;

(ii) any commission, tribunal, committee or person appointed for the purposes of any inquiry under a Central, Provincial or State Act by the appropriate government;

(iii) any person appointed by a local authority to hold a local inquiry in pursuance of any Central, Provincial or State Act;

(iv) any other tribunal, board, committee or body constituted by or under and exercising functions under a Central, Provincial or State Act,

not being a meeting or sitting admission to which is denied to representatives of newspapers and other members of the public;

(e) a fair and accurate record of the proceedings at a general meeting of any company or association constituted, registered or certified by or under a Central, Provincial or State Act not being a private company within the meaning of the Companies Act, 1956;

(f) any notice or other matter issued for the information of the public by or on behalf of Government or a local authority.

#### **Burden of proof**

12. For the removal of doubts, it is hereby declared that where a person accused of any offence under this chapter claims that the imputation made or published by him or that the statement published by him is excepted under section 4, or, as the case may be, under section 11, the onus of proving such claim shall be on him and the prosecution shall have the right to lead evidence in rebuttal.

### **CHAPTER III CRIMINAL IMPUTATION**

#### **Offence of criminal imputation**

13. (1) Notwithstanding anything contained in Chapter II of this Act, whoever, by words, either spoken or intended to be read or by sign or by visible representations, makes or publishes any imputation falsely alleging that any person has committed an offence, or has done or omitted to do any act which amounts to an offence, under any law, for the time being in force, shall, in the case of the first offence be punishable with imprisonment for a term which shall not be less than one month, but which may extend to one year and with fine which may extend to two thousand rupees, and, in the case of a second or subsequent offence, with imprisonment for a term which shall not be less than three months, but which may extend to two years and with fine which may extend to five thousand rupees:

(2) Notwithstanding anything contained in the Code, where any offence under sub-section (1) is alleged to have been committed against any person, a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by such person.

(3) Every complaint referred to in sub-section (2) shall be supported by an affidavit which shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(4) Where a Court of Session takes cognizance of an offence under this section, it shall cause a notice to be sent to the accused alongwith a copy of the affidavit referred to in sub-section (3), calling upon him to appear before it on a date and time to be specified in the notice (not being a date later



than four weeks from the date of said notice) along with the necessary documents, materials or other evidence on which he relies for his defence.

#### **Trial of offence under this Chapter**

14. (1) Notwithstanding anything contained in the Code, an offence under section 13 shall be triable only by a Sessions Court.

(2) A Court of Session taking cognizance of an offence under section 13, shall try the case in accordance with the procedure for the trial of a summons case specified in the Code and, if the Court thinks fit, the case may be tried in a summary way and the provisions of sections 262 to 264 (both inclusive) of the Code shall apply to such trial:

Provided that in the case of any conviction in a summary way, it shall be lawful for the Court to pass the sentence of imprisonment for a term up to the maximum provided in section 13.

(3) Every trial under this Chapter shall, as far as possible, be on a day to day basis and concluded within a period of three months from the date specified in the notice calling upon the accused to appear before the court under sub-section (4) of section 13.

#### **Exceptions and burden of proof**

15. (1) Notwithstanding anything contained in this Act, a person accused of any offence under this Chapter shall not be guilty of the offence if, and only if, it is established that the imputation made or published by him is true and if it be for the public good that the imputation should be made or published and it is a question of fact as to whether it is for the public good.

(2) The onus of establishing that the imputation is true and it is for the public good under sub-section (1) shall be on the accused and the prosecution shall have the right to lead evidence in rebuttal.

#### **Appeal**

16. (1) Notwithstanding anything contained in the Code, an appeal shall lie as a matter of right from any judgment of the Court of Session to the High Court, both on facts and on law.

(2) Every appeal to the High Court under sub-section (1) shall be preferred within a period of thirty days from the date of the judgment appealed from;

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

#### **Power of High Court to make rules**

17. The High Court may, by notification in the Official Gazette, make such rules, if any as it may deem necessary for the purpose of filing an appeal to it under this Chapter.

## CHAPTER IV MISCELLANEOUS

### **Application of the Code to offences under this Act subject to certain modifications**

18. (1) Section 205 of the Code shall, in its application to any proceedings in relation to an offence under this Act, have effect subject to the modification that in sub-section (1) of that section, the following proviso shall be inserted namely :—

“Provided that where the accused, being the editor, publisher or printer of a newspaper or periodical is prosecuted for an offence under the Defamation Act, 1988, the Court shall not dispense with his personal attendance if it is proved that he has refused within a reasonable time, to publish any reply of the person against whom any imputation relating to such offence was made, in the same manner and with the same prominence as the imputation was published in the newspaper or periodical.”

(2) Notwithstanding anything contained in the Code, every offence under this Act shall be non-cognizable, and bailable.

(3) Where the trial of any offence under this Act is conducted *in camera*, it shall not be lawful for any person to print or publish any matter in relation to any such trial except with the previous permission of the Court, and whoever prints or publishes such matter without such permission shall be punishable with imprisonment for a term which may extend to two years or with fine or both.

### **Sentence of imprisonment for non-payment of fine**

19. In every case of an offence under this Act punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, and in the case of every such offence punishable with imprisonment or fine, in which the offender is sentenced to a fine; the provisions of sections 64 to 70 (both inclusive) of the Indian Penal Code, shall, as far as may be, apply.

### **Act to have overriding effect**

20. The provisions of this Act or any order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other enactment or in any instrument having effect by virtue of any other enactment

### **Repeal and saving**

21. (1) Chapter XXI of Indian Penal Code shall be omitted.

(2) The provisions of section 6 of the General Clauses Act 1897 shall apply to the omission of Chapter XXI of Indian Penal Code under sub-section (1) as if the said Chapter had been repealed by a Central Act.

### **Amendment of the Code**

22. In the Code,—

(a) in section 199,—

(i) in sub-sections (1) and (2), for the words and figures “Chapter XXI of the Indian Penal Code”, the words and figures “the Defamation Act, 1988” shall be substituted;

(ii) in sub-section (6), for the word “Magistrate”, at both the places where it occurs, the words “Magistrate, or, as the case may be, the Court of Session” shall be substituted;

(b) in the First Schedule, under heading “I.—OFFENCES UNDER THE INDIAN PENAL CODE”, the sub-heading “CHAPTER XXI.—DEFAMATION” and the entries thereunder shall be omitted.

#### STATEMENT OF OBJECTS AND REASONS

Sections 499 to 502 of Chapter XXI of the Indian Penal Code deal with the offence of defamation and the punishment therefor. In its 42nd Report, the Law Commission had suggested certain amendments to these provisions. Accordingly, amendments to these sections had been included in the Indian Penal Code (Amendment) Bill, 1978, which, after having been passed by the Rajya Sabha, lapsed on the dissolution of the Lok Sabha in 1979. The Second Press Commission also had, in its report submitted in 1984, recommended amendments to the law of defamation in certain respects like protecting unintentional defamation, fair comment and certain types of privileged statements. These recommendations relate to procedural matters. Further, it is proposed to make publication of imputations falsely alleging commission of offences by any person as an offence. Those who make such imputations often have no intention of pursuing the matter any further with the appropriate authorities. Their only intention appears to be to bring a person's reputation into question. It is considered necessary to check this tendency so that freedom of speech, which is the very essence of democracy, does not degenerate into mere licence. In view of the above, it is considered advisable to have a self-contained law on defamation covering both substantive and procedural aspects.

2. The Bill accordingly seeks to achieve the above objects and makes *inter alia* the following provisions to deal with offences of defamation more effectively, namely:—

(a) incorporation of the existing provisions of Chapter XXI of the Indian Penal Code with certain amendments thereto recommended by the Law Commission of India;

(b) punishment for publication in any newspaper or periodical of grossly indecent or scurrilous matter or matter intended for blackmail, on the lines of the proposed section 292A in the lapsed Indian Penal Code (Amendment) Bill, 1978;

(c) provisions to give effect to certain recommendations of the Second Press Commission for protecting unintentional defamation, fair comment, and certain types of privileged statements;

(d) provision to punish imputations falsely alleging commission

by any person of an offence under any law for the time being in force, and to provide for the trial of such offence by a Court of Session.

NEW DELHI;

P. CHIDAMBARAM

The 22nd August, 1988



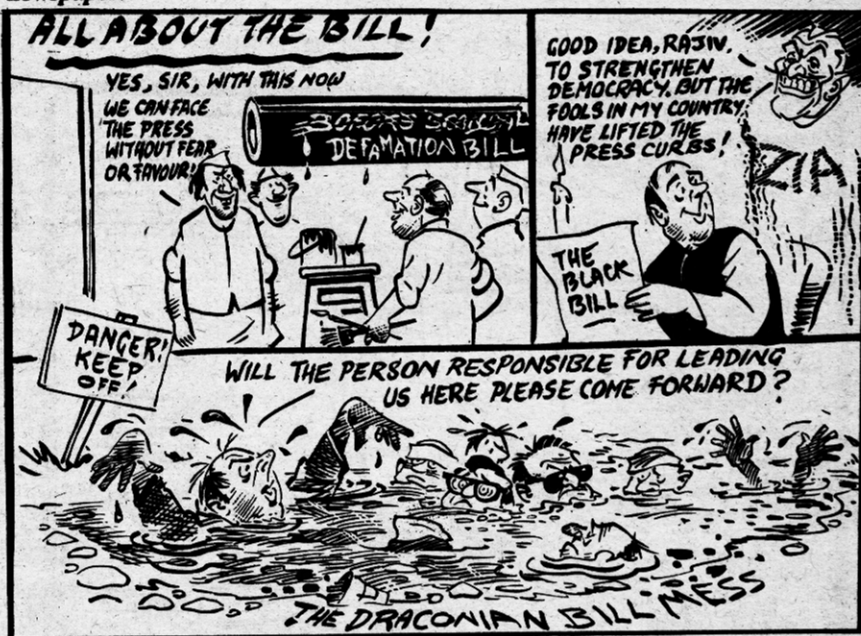
R. K. Laxman in 'The Times Of India' (89)

I just read the Bill, I introduced. It is harsh and goes against democratic norms. But I can't drop it. People will think I yielded to their demand.



# What We Say

Comments by legal experts and mediapersons excerpted from articles in several newspapers.



In today's free world freedom of the press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible on a large scale particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgements. Newspapers being purveyors of news and views, having a bearing on public administration, very often carry material which would not be palatable to governments and other authorities. The authors of the articles which are published in newspapers have to be critical of the actions of the Government in order to expose its weakness.

H.R. Khanna, *Hindustan Times* (3/9)

Without being cynical, midgets in office with oblique records may seek protection for their vulnerable faculties and frailties through

bulletproof legislation. But such special immunisation by dilution of the definition, confined to the news media, picks and chooses prejudicially within the common class of defamers and therefore spells grave inequality before the law

**V.R. Krishna Iyer** *The Hindu* (3/9)

Criminalisation of free speech and press will not buttress tottering reputations; and robust reputations are not likely to be affected even by the excesses of free speech and press. Indeed, if we recall the leaders who shook the foundations of the British empire in India there will be no names which would not be disgraced by the very idea that they need provisions of the Defamation Bill to protect their reputations. In providing the crutches of law to lame reputations, the bill defers the prospect of development of a resurgent political culture in India. In seeking to criminalise free speech and free press, India risks her outstanding record of constitutionalism, which has assisted many a progressive movement in the decolonised nations. Minor irritants of small political egos should not be allowed to squander the proud democratic legacy of India for the developing world.

**Upendra Baxi**, *Times of India*, (3/9)

If my understanding of the background leading to the Defamation Bill is broadly correct, the conclusion should be obvious. The press essentially reflects changes in the political order (or disorder). It does not initiate them. The process of correction, if it is feasible, has to begin in the political sphere.

**Girilal Jain**, *Times of India*, (6/9)

**W**hen the Constitution of India was being drafted, Mr. Jaya Prakash Narayan, though not a member of the Constituent Assembly, pleaded for having an express provision for the freedom of the Press. To that, the answer of Mr. B. N. Rau was that the freedom of the Press was part of the freedom of speech and expression which was guaranteed to all citizens under Article 19 of the Constitution. Lest, however, the freedom of speech and expression should degenerate into licence it was also provided in that article that freedom was subject to certain reasonable restrictions including that imposed by the law of defamation.

**H. R. Khanna**, *Hindustan Times* (3/9)

There is an attempt in the statement of objects and reasons to whittle down the guilt of the government in bringing the Bill by attributing its paternity partly to an old report of an early Law Commission, a report of the Press Commission and an abortive attempt by the Janata Government to experiment with a somewhat similar legislative incarnation. Why now an ancient report of the Law Commission is dug up or a Janata exercise repeated after a decade or a portion of the Press Commission recommendation borrowed is an occult pursuit.

**V. R. Krishna Iyer**, *The Hindu* (3/9)

The whole truth is both embarrassing and frightening. Embarrassing, because the bill is a hotch-potch of civil and criminal defamation, containing clumsy and absurd mistakes which cast doubt on the professional competence of its draughtsmen. Frightening, because it can be traced to an awesome clause first proposed in July 1975 i.e. soon after the emergency was declared. Drawing inspiration from the Bihar Bill (which was withdrawn after a national campaign exposed it as a device to defend corruption in government and victimise those who sought to expose it), it goes further to interfere in precisely those civil liberties upon which Indian democracy rests.

**Rajeev Dhawan, *Times of India* (5/9)**

...the Law Commission considered the right of free expression so valuable as to contemplate scrapping the penal provisions relating to defamation altogether. In its report too, it described the law of defamation as "a restriction on the freedom of speech and expression."

**L. K. Advani, *Indian Express* (31/8)**

There has been a criminal law of defamation in the Penal Code more than a hundred years old which has served British and Indian rulers alike. Similarly the vintage Procedure Code to try such cases has worked well. Then why this enigma of a new law of defamation which is defamatory of law in India? This Bill if scanned closely is a jurisprudential shock and shame and raises constitutional consternation in sensitive souls.

**V. R. Krishna Iyer, *The Hindu* (3/9)**

The concept of defamation is part of the Penal Code which the British introduced in India over 125 years ago. A whole chapter of the - Code-XXI - is devoted to this subject. First, the expression defamation is described thus: "Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person." Then follow ten exceptions. The punishment is imprisonment of upto two years, simple imprisonment or fine or both. The new Bill seeks to replace the present provisions of the Indian Penal Code. Section 21 (1) of the new Bill provides for repeal of Chapter XXI.

**Madhu Limaye, *Times of India* (5/9)**

**R**unning right through the bill is a go at the printer, publisher and editor. Although the words used seem to be general. Clauses 6, 7 and 8 are targetted at the press, to terrorise them into silence or submission.

**V. R. Krishna Iyer, *The Hindu* (3/9)**

Section 8 has little to do with the law of defamation and it is less than honest surreptitiously to smuggle it in under the pretext of codifying the

defamation law. The expression 'grossly indecent' has overtones of obscenity and such other acts as tend to arouse feelings of lust or otherwise depress the morals of those exposed to them. It is already dealt with by the existing penal code.

**Ram Jethmalani, *Indian Express* (5/9)**

There are 511 sections in the Indian Penal Code and criminal offences in hundreds of other special and local statutes. Nowhere is the general character of the accused or the business he carries on admissible evidence. The Evidence Act expressly prohibits the use of character evidence to prejudice the accused on trial. Give the dog a bad name and hang him is the new jurisprudence which the Government wishes to usher in to the eternal disgrace of our legal system and court procedures.

**Ram Jethmalani, *Indian Express* (5/9)**

There are small mercies, though. If R.K. Laxman, for example, is able to read the fine print of Section 8, and decide that the imputation in a cartoon is for public good and touches a public question while not going beyond the public conduct of the subject of the cartoon, all would be well for us. But if he makes an error of judgement he runs the risk of being hauled up for "scurrilous" publication! In policing humour thus, the Bill smacks of the worst possible form of political tyranny.

**Upendra Baxi, *Times of India* (3/9)**

Clause 13 is the illegitimate offspring of the Bofors and HDW scandals. To comment on them is to point a finger at the wielders of power for shielding the wrongdoers. That is tantamount to saying that the wielder of power "has committed an offence." Clause 13 is patently unconstitutional. A person who accuses a legislator of taking a bribe to defect, which is not an offence in law, enjoys greater protection under Clause 4 of the Bill than one who accuses another of having "committed an offence" such as say "public nuisance" under S. 268 of the Penal Code. There is a flagrant violation of the right to equality in that equals are treated unequally. The right to free speech is also violated for restriction is patently unreasonable.

**A. G. Noorani, *Indian Express* (4/9)**

Presumably, any republication of Rajiv Gandhi's stinging and stirring speech at the Congress centenary celebrations in 1985 decrying corruption and power-brokers in the party may now invite a prosecution under Section 13 (since the general definition of a person includes an association)! and, dissidents and incumbents in Congress-ruled states (though not only there) may now hold Section 13 sword against each other. All that one has to do to invoke it is to file a complaint before a sessions court, supported with an affidavit. The defendant would then have to bear the burden of proof that the imputation is true and it is for the public good. Should a conviction result, disqualification for contesting elections under the electoral law will automatically follow!

**Upendra Baxi, *Times of India* (3/9)**



The heavy deterrents, in terms of the punishment and the suggestions for speedy trial, incorporated in the Bill, smack of criminal law in what is actually a civil proceeding. It is perplexing why the offence of defamation should be given precedence over all other offences in the Indian Penal Code. For example, it is laid down that the trial should be, if possible, on a day-to-day basis and concluded within a period of three months. What is more, the offence can be put on trial only in the sessions court and not the lower court. All of which suggests that defamation gets priority even over crimes such as murder, rape and treason which drag on for years.

**Coomi Kapoor, *Indian Post* (4/9)**

Summary trials are ordinarily for simple cases where the sentence is light. It is arbitrary, unreasonable and unjust to try a case against the press for a grave offence of defamation which now, on account of the Amendment, is liable to attract punitive imprisonment in a summary manner. For then, depositions of witnesses need not be recorded, reasoned judgements need not be delivered and convictions and sentences may issue from the inscrutable face of the sphinx.

**V. R. Krishna Iyer, *The Hindu* (3/9)**

Art. 14 of the Constitution read with Art. 19 and 21 are inviolable and invaluable Human Rights. A series of rulings of the Supreme Court have interpreted these provisions. The procedure for trial must be fair not fanciful, just not arbitrary, reasonable not obscure. In the light of Maneka Gandhi's case [AIR 1978 SC 597] and the subsequent case law on the subject establishing Indian procedural due process, where personal liberty may be a casualty, the invidious provision for summary trial and privatisation of hearing are clear violations of fundamental rights.

**V. R. Krishna Iyer, *The Hindu* (3/9)**

One of the well-established principles of criminal law is that a person accused of an offence is presumed to be innocent until he is found guilty. In the rarest of rare cases, some exceptions have been made in very special situations where it is impossible to establish all the affirmative facts and the state does prove some basic facts, and so the initial onus is laid on the accused. In the Indian law, presumption of innocence of the accused and proof beyond reasonable doubt by the prosecution have always been the rule. A deviance from this fundamental right must be justified substantially, especially if the punishment is made severe and personal liberty is in peril. Unfortunately, the present legislation casts the onus of the proof of innocence on the accused, an outrage on criminal jurisprudence. That is the impact of 15 (2).

**V. R. Krishna Iyer, *The Hindu* (3/9)**

Putting the onus of proof on the accused (Section 15-2) : The provision is a total denial of the principle on which our judicial system has rested these last 130 years. This provision of putting the onus on the accused is being

increasingly inserted in the laws of the country.

**Madhu Limaye, *Times of India* (6/9)**

This onerous requirement mandating the publication of even a false or frivolous reply on the pain of having to attend the day-to-day proceedings in remote corners is clearly an unreasonable imposition on the freedom of newspapers. It would amount to prejudging the issue of whether the original imputation was an offence meriting the publication of a correction or a reply. In any case, the court convicting a person for any publication in a newspaper could under Clause 5 of the Bill order the publication of its judgement in the newspaper at his cost and that would be suitable amends to the injured party.

**N. Ravi, *Hindustan Times* (4/9)**

Article 145 (4) of the Constitution requires that no judgment shall be delivered by the Supreme Court except in open court. The open court is the security that errors contained in the judgment can be promptly corrected. To give a district judge a discretion to hold a sitting in camera and to proceed in a summary way is a travesty of justice and such a provision would be unconstitutional and void.

In the leading case *Scott vs Scott* v(1913) appeal cases 417; (H.L.), Lord Shaw used words which aptly describe the evils of a trial in camera. Lord Shaw quoted the following passages from Bentham with approval: "In the darkness of secrecy, sinister interest and evil in every shape have full swing. Where there is no publicity there is no justice. Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself, while trying under trial. The security of securities is publicity."

**H. M. Seervai, *Indian Express* (4/9)**

**W**hen an editor, writer or reporter begins investigating a murky affair, he starts with a terrible disadvantage. He cannot get all the facts at once. One clue leads to another. Publication of partial information brings fuller information. The public interest demands that investigative writing of journalism be protected.

**Madhu Limaye, *Times of India*, (5/8)**

No doubt, civil defamation is a rich man's sport, often played - as we have seen recently—to cripple the press financially and harass impecunious journalists. But just because our civil law of defamation needs looking at is no reason for expanding the criminal law so that every little whisper amongst friends, serious investigative journalism and practically any and every kind of conversation could become potentially criminal in nature.

**Rajeev Dhawan, *Times of India*, (5/8)**

Under the existing law, the Supreme Court has taken the truth so far to mean not necessarily "beyond reasonable doubt" but sufficient for a "pre-ponderance of possibilities." Now with the onus changed, a court could interpret truth to mean nothing short of clear-cut documentary evidence.

**Coomi Kapoor *Indian Post* (4/9)**

The cumulative effect of the clauses of the new Bill is to make journalists genuflect before ministers and mafia rather than run the risk of easy prosecutions launched by an authoritarian regime, even though ultimately the journalists may win. The price is too high when the legislative dice is loaded.

V.R. Krishna Iyer, *The Hindu* (3/8)

The Government routinely bulldozes Parliament as it did in ramming this Bill through. It has paralysed the courts. It has reduced commissions of inquiry to a farce. It has had trouble from just one quarter; that is, the press—and it is this that it is now determined to silence. But precisely because the press is the only instrument left in the hands of citizens by which they can at least attempt to ensure some accountability, precisely for that reason the Government must not be allowed to succeed.

Arun Shourie, *Indian Express* (4/9)

As Mr. Justice E.S. Venkataramaiah said in the case concerning duties on import of newsprint, "the authors of the articles which are published in newspapers have to be critical of the actions of Government in order to expose its weaknesses. Such articles tend to become an irritant or even a threat to power. Governments naturally take recourse to suppress newspapers publishing such articles, in different ways."

After listing those ways he emphasised "the primary duty of all the national courts to uphold the said freedom (of speech and expression) and invalidate all laws or administrative actions which interfere with it, contrary to the Constitutional mandate"

If there is any law which demands judicial censure, it is this disgraceful Bill.

A.G. Noorani, *Indian Express* (4/9)

1200

(I 15)

# Scrap Defamation Bill!



R. K. Laxman in The Times Of India (6/9)

## Bombay Union Of Journalists

23/25 Prospect Chambers (annexe)  
317, D. N. Road  
Bombay-400 001



**September, 1988**

**Rs. 2**