**Shades of Big Brother**

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The Prevention of Electronic Crimes Act (PECA) was enacted in 2016 – amidst much outrage and uproar by a multitude of civil society bodies – to govern the realm of cyber crimes. A recent ordinance passed to amend PECA 2016 gives new life to the provision.

The amendment has quite a few salient features and, considering how little space it takes up on a few pages, it has wrought quite the mayhem and generated a lot of talk – and not for the right reasons. Chiefly, the amendment tinkers with the offence (read: criminal) of online defamation under Section 20 of the Act.

The amendment must be seen in juxtaposition with the fact that many countries have decriminalised defamation, seeing it as an anachronism that disproportionately stifles freedom of expression. Resolution 1577 of the Parliamentary Assembly of the Council of Europe, adopted in 2007, was indicative of this general trend in its urging of member states to abolish prison sentences when it came to defamation. Many listened. Some are in the process. A select few, however, think that it is perfectly fine to swim against the crashing tides in the pursuit of increased criminalisation – and, as a corollary, perfect obedience. Murky waters, however, aren’t as homely as they may seem to some.

The amendment gets about enforcing its business by making the offence of online defamation non-bailable, cognisable, and worthy of an increase in the maximum prison sentence to five years. Essentially, what this means is that if you decide to harm someone’s dignity (or are alleged to have done so) through any electronic device and are proceeded against, you can bid adieu to any aspirations you might have had in wanting to articulate theatrical lines that demand an arrest warrant be shown, or that bail be granted as a right. Truth be told, you now have neither – and unless five years behind bars sounds like a relishing prospect, you’d be well-advised to shut up shop. Defamation laws generally try to find a tidy compromise between the right of freedom to expression and the right to reputation. When you tip the scales in the latter’s favour, however, people find that remaining silent is usually the sensible choice. Legal commentators call this the ‘chilling effect’.

But bear with me: it gets chillier from here on. Prior to the amendment, the offence of online defamation under Section 20 could only apply when the dignity of a natural person was falsely implicated. The original 2016 Act didn’t quite tell us who a ‘person’, for the purposes of the Act, was. The amendment divines inspiration, by holding that a ‘person’ most definitely includes an “institution, organisation, authority or any other body, established by the government under any other law or otherwise.” It does one more thing; it omits the requirement that a charge for online defamation can only be brought against natural persons. Read in conjunction, we arrive at quite the conclusion. Briefly, any authority established by the government can now complain to have reparations made to its dignity in the capacity of an “aggrieved person”.

Now, there’s nothing inherently wrong with a sentient entity sticking up for itself; alas, public policy must precede the wounded self. The government and its public authorities, by virtue of their very existence, put themselves up for close scrutiny by the public and thereby need to exhibit a higher degree of tolerance to criticism. Any fetter on this right to expression sees you mount a slippery slide into the abyss of censorship. It is for this very reason that jurisdictions such as the UK and the US do not allow public authorities to proceed against claims or charges for defamation. Thus, the House of Lords, in Derbyshire County Council v Times Newspapers stated that: “it is of the highest public importance that a democratically elected governmental body, or indeed any governmental body, should be open to uninhibited public criticism. The threat of a civil action for defamation must inevitably have an inhibiting effect on freedom of speech.”

Across our eastern border, as far back as 1994, it was stated in the Indian Supreme Court’s hearing of R Rajagopal v the State of Tamil Nadu, that whilst nothing could conclusively be said about the right (if any) of a public authority to claim or bring about a charge for defamation, a system that remained vigilant over the exercise of governmental power through the press and media did need to be evolved with Derbyshire in mind.

There is more to unravel, for the presidential gift’s ribbon is yet to be undone. Any member of the public can now choose to file a complaint when it feels that a public officeholder or official has been defamed. This strikes at the very core of any concept that might once have been defamation. Practically all legal jurisdictions (to the best of my knowledge) hold that the cause of action for defamation accrues only to the person allegedly defamed. Opening this right so charitably to the general public and, by extension, their subjective permutations is to play with fire – lots of it. Already an overburdened system, one can only imagine the workload a veritable complaint hotline would assert.

That the amendment may now undergo reconsideration is completely irrelevant. The very fact that such a piece of legislation, of paramount public importance, could be passed without consultation, and include such ambitious provisions, speaks for itself. A number of petitions have been filed throughout the high courts of Pakistan, impugning the ordinance. One can only pray that the gavel lets out an unamused thud in dealing a swift demise. Personally, I’d rather not have to slip notes of confession or meticulously scout remote locations for a Julia; that didn’t quite end well for Orwell’s Winston.

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