

**T**he Federal government has recently proposed a few amendments in the penal law of defamation. These amendments if approved and enacted would change the entire nature of the present law of defamation especially relating to the journalists and the very concept of the freedom of Press would be undermined. In addition, the proposed 'Publication of Reply to Defamatory Material Bill, 1994' has given rise to a burning debate that if the proposed acts of the government are democratic one?

According to the Federal Law Ministry, following changes have been proposed in the law of defamation:

(a) The person making defamatory statement, i.e., the politician, the journalist, printer or publisher, would be required to prove the truth of imputation. In other words, the burden of proof will shift upon the shoulders of the journalist.

(b) The punishment will be imprisonment of either description (simple or rigorous) up to two years rather than simple imprisonment.

(c) The amount of fine will be up to one million rupees.

(d) The offender shall pay compensation to the person defamed.

In addition to the above changes, a bill namely Publication of Reply to Defamatory Material Bill, 1994 has been proposed which if enacted, will give the person defamed the right to get his explanation or counter-statement published in a newspaper or journal publishing defamatory material against him at the same place in such newspaper or journal where the defamatory material was published.

Moreover, the establishment of an Ethics Committee has been proposed which will ensure the publication of the explanation or counter statement of the aggrieved person and will also be entitled to impose a fine of fifty thousand rupees upon editor, printer, publisher, etc. The said committee shall also be responsible to frame the code of conduct for the journalists and for its implementation.

The *raison d'être* of the said changes and proposals has been told by the Federal Law Secretary that the defamatory statements are published in the Press without verification and in fact, a person is tried through media without giving him a chance to explain his point of view. Recently certain Opposition leaders and newspapers have made it a daily routine to raise imputations against persons holding high public offices and public institutions...where false allegations are raised to defame a person or an

institution, matter can be resolved if the view point of such person or organisation are duly published in the newspaper or journal raising such allegations.

A bird's eye view of these proposals justifies the government's plea but when analysed in the pretext of freedom of Press then it becomes necessary to consider these proposals in some depth. But before that, let us review the concept and law relating to defamation.

Reviewing concept of defamation

Good name in man and woman, dear my Lord, Is the immediate jewel of their souls;

Who steals my purse, steals trash; 't is something, nothing;

'T was mine, 'tis his, and has been slave to thousands

But he that filches from me my good name, Riles me of that which not enriches him, And makes me poor indeed."

This importance of good name or reputation felt by Shakespeare in Othello (Act III Scene 3, 167) is not a personal one but has universal recognition. The right of each man during his life time to the unimpaired possession of his reputation and good name is recognised by law. Reputation depends upon opinions and opinion in the main on the communication of thought and information from individual to another. A person's own opinion about himself is not his reputation. It means rather the opinion of others about him. The good name one bears or the esteem in which one is held in society is one's reputation.

The Law of Defamation is based upon the fundamental principle that the reputation of a member of society, the esteem in which he is held by it, the credit and trust it reposes in his intelligence, honour and integrity, is his valuable asset and that the love of reputation being a great moving principle of human action, must be encouraged and protected, for the protection of the society.

The most comprehensive definition of defamation has been given by Winfield, "Defamation is the publication of statement which tends to lower a person in the estima-

tion of right thinking members of society generally or which tends to make them shun or avoid that person. It is libel if the statement be in permanent form and slander if it consists in significant words or gestures." Defamation is both a civil and criminal wrong. Mischief to the private individual is the basis of law of civil defamation while mischief to the society is the basis of criminal defamation.

In Pakistan the offence of defamation is embodied in the Section 499 of Pakistan Penal Code which says that to constitute an offence of defamation, there must be making or publication of any imputation concerning any person by words either spoken or intended to be read, or by sign or by visible representations, intending to harm, or knowing or having reason to believe that such imputation will harm the reputation of such person. Unless there is publication there can be no offence of defamation committed. Exceptions have also been provided in the law that make certain imputations not defamatory. These exceptions are enumerated as:

1. Imputation of truth which public good requires to be made or published.
2. Expression in good faith respecting public conduct of public servants.
3. Expression in good faith respecting conduct of any person touching any public question.
4. Publication of reports of proceedings of courts.
5. Opinion expressed in good faith regarding merits of cases decided in court or conduct of witnesses and others concerned.
6. Opinions expressed in good faith regarding merits of public performances.
7. Censure passed in good faith by person having lawful authority over the other.
8. Accusation preferred in good faith to authorised person.
9. Imputation made in good faith by person for protection of his or other's interests.
10. Caution intended for good of person to whom conveyed or for public good.

It is obvious from the above exceptions that the defences to an action of defamation

can be (a) truth, (b) privilege, (c) or fair comment.

At present, the burden of proof to plead protection under these exceptions is on the accused. Where he is called upon to prove that his case falls under an exception, law treats the onus as discharged if he succeeds in proving a preponderance of probability. As soon as the preponderance of probability is established the burden of proof shifts to the prosecution which still has to discharge its original onus to prove the guilt of the accused beyond a reasonable doubt. A newspaper is in exactly the same position as an individual for defamation.

By virtue of the proposed amendment in the Section 499 of PPC, the burden of proof will shift on the journalist or newspaper making the purported accusation. The cardinal principle of burden of proof in criminal cases is that generally it lies on the prosecution, i.e., the state whereas the accused is presumed as innocent unless proven otherwise. Exceptions are always there, e.g. the burden of proof in case of plea of alibi is on the accused. Once the party pleads justification the burden would shift to him to prove that what was reported in the newspaper was true or was published with good motives and for justifiable ends.

As stated above, there is no special privilege attached to the Press which is not enjoyed by the members of the Press. Then why this discrimination to the Press? The freedom of Press rests on the presumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public. The proposed law if enacted would make it impossible for the Press to perform its primary task of reporting the truth at all. If any one thinks that he has been defamed, he should be able to establish this in a court of law. If he does, the newspaper concerned should be punished in accordance with law.

The proposed "Publication of Reply to Defamatory Material Bill 1994" is much interesting being a unique one. According to this bill the person defamed shall have the right to get his counter-statement or expla-

# Defamation law

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The freedom of Press rests on the presumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public, writes IRFAN JAVED

nation published in the same newspaper, journal publishing defamatory material against him at the same place in such newspaper. This means that the culprit would be able to compound his original wrongdoing by subsequently being able to intimidate the same newspaper. This proposed bill will also enable the politicians to humiliate each other by making defamatory statements or counter-statements free of cost and thus threatening the sanctity of the newspapers. Now criteria has been provided in the proposed bill for the authenticity of the counter-statement or explanation of the person supposed to be defamed. Now if a report is published in a newspaper about a public official who is caught red-handed while taking bribe, the next day he would get published his explanation in the same newspaper saying that he was actually receiving back his own money and would take action against the newspaper. Then what will be the status of that newspaper in the eyes of the general public?

The proposed ethics committee is also something which is difficult to be endured in a democratic system. The ends of justice cannot be met if the government will be the sole authority to nominate members to such committee. Moreover, when the system of remedy is already available in the form of the criminal as well as civil courts at different levels, the proposal of an ethics committee is unjustified.

The journalist is entitled to equal protection with others, but ordinarily cannot claim to belong to a privileged class entitled to some special treatment. The journalist has a two-fold responsibility: the first is to inform the people as to what the government and their officials are doing; the second is an ethical responsibility to deal fairly with all including ministers and officials, in reporting the new truthfully, accurately and sincerely. If any code of ethics is required for this purpose, that should be evolved by the journalists themselves and not by the government or any so-called ethics committee.

In a democratic set-up Press is known as the fourth limb of the state in addition to the executive, legislature and the judiciary. Press also plays an important role in highlighting the grievances of the public and no democracy can succeed and function well if there is no freedom of Press and also if the Press does not report the facts impartially. Freedom of Press is the corner-stone of the liberty of the people and any attempt to circumscribe it would be bad and repugnant.