

# Defamation law

The Federal Government proposes to enforce new Press laws which would enable it to set up special courts to try journalists and enhance punishments for publishing defamatory material etc. The proposed laws have triggered strong reaction from the national Press. Following are the editorials published by various national dailies:

## Placing Press in the dock

5-9-94. *The Nation*

PRIME Minister Benazir Bhutto's meeting with a delegation of the Newspaper Editors Council of Pakistan (NECP), has been a productive one in the sense that the promulgation of the Press laws that had already been drafted or were in the process of drafting, has been held back pending further consultations with the representatives of the Press. The Press has been concerned about the retrogressive nature of the legislation that was on the anvil. Some of the proposals were far worse than even the notorious Press and Publication Ordinance, commonly known as the 'black law', for the abrogation of which the Press had waged a long struggle. Forcing the newspapers to publish material, howsoever, libelous and incorrect it may be under the misconstrued notion of 'right of reply', setting up of special courts to try journalists, enhancing punishments on the publication of some so-called defamatory material, etc., were among the provisions which were far in excess of restrictions that the PPO had imposed on the Press. The ironic part of the move being that while the PPO was imposed by a dictator, who had little inclination to uphold Press freedom, the present legislation was being contemplated by a government committed to Press freedom and especially one which acknowledges the role the Press played in the restoration of democracy in the country. When the present government was in the Opposition, it is this very Press that carried its voice to the people. Had the Press been placed in the type of chains now being contemplated, it does not require much imagination to visualise the predicament the present leadership would have been in. Being in the government and hogging the limelight of the media, has its own hazards. It does invite some negative reactions and these reactions, regardless of their validity, cannot be eliminated. But to cope with that, inducting laws to muzzle the entire Press is not the answer. The answer lies in encouraging the Press to have a self-regulatory machinery which could be given some teeth by the government.

What needs to be understood and appreciated is that the Press in a democracy has a watch-dog role to play and that tends to generate an adversarial relationship between the government and its fourth estate. To keep that relationship in its proper perspective, minor irritants have often to be ignored. It also needs to be understood that in the making of a newspaper scores of journalists take a hand and the final product cannot always be error-free. Publication of a wrong story is not necessarily reflective of a paper's policy. The sad part, however, is that the present government basing its assessment on such errors, which are common all over the world, puts the Press in the same slot as the parliamentary Opposition in the country and starts giving a tit for tat. The more recent example of that is the smear campaign against eminent journalists, casting doubts on their personal integrity. If the government feels that it has hard evidence of wrong-doing against anyone, it should not hesitate to have that judicially examined. By relying on muck-raking just to settle scores is definitely a conduct unbecoming of the government.

- The Nation, August 30, 1994

## A law or a nutcracker?

EVERY government is unhappy with the way it is covered by the Press. At best, governments, all governments, want the Press to be adulatory about their activities, sometimes even about their non-activities; at worst, they want it to be uncritical. Even a faintly objective Press most governments consider a thorn in their side. Thus it is not surprising when government set out to educate the Press.

Sometimes the attempt is subtle; often it is thick-fisted. The amendments the government is thinking of bringing about in the anti-defamation law fall into the second category. What else is there to say about changes in the penal code which if enacted will turn the mildest reproof directed at a public official or a government institution into an enterprise fraught with danger? According to the changes being proposed by the Law Ministry, the burden of proof in a defamation case will lie on the shoulders of the journalist or newspaper making the purported accusation? What happens in the case of a report based on classified information or a report based upon sources which a journalist, given the ethics of his profession, is not free to divulge?

licence, a real enough problem, it should improve the procedure in defamation cases. But if there is something more to it than that it should really question its own motives.

-Dawn, August 5, 1994

## Defamation laws and the

THE proposed defamation laws have as yet not been considered by the Press nor have representatives of the Press and journalists expressed their opinions on it. The government promises to discuss the law with journalists and says it will take into consideration their views. The chief objection is that there are at present enough laws on the book to curb slander and defamation, and there does not seem to be enough reason for passing stricter defamation laws. Before passing existing defamation laws the government would be well advised to look up seriously the question of granting newsmen greater freedom of information, and drastic change the Official Secrets Act. The right to know and freedom to know must be related to the Press.

At present there are very strict laws that prohibit journalists from disclosing information about matters of great public importance and which are communicated to the public by the Press.

It has been possible for governments and individual officials of government to loot public funds, mismanage the affairs of the country, waste money on useless projects simply because all officials are well protected by laws which firmly maintain a thick veil of secrecy on all the government functionaries. Laws have been used mostly to cover up the misdeeds of officials and ministers, rather than safeguard national interests. Bureaucratic habits and traditions will take a long time to change. It is feared that any law about defamation will similarly be used to protect the honour or reputation of a good officer, but to protect the doings of men who are not accountable to anybody.

The demands made by the representative organisations of journalists must be given serious consideration by the government before it proceeds further with the defamation laws. The nation has been denied any freedom to know all that governments have done in the past. Many of the most important enquiry reports of momentous events that shook the country have been shelved and journalists have been denied access to them. The Hamood-ur-Rehman report on the loss of the eastern wing of the country remains a secret, like hundreds of other similar reports. In all countries state documents are opened up for scholars and the public after a lapse of thirty years or so, but in Pakistan these documents are buried forever and remain secrets so that even academic historians cannot look into them. Not only are existing rulers and men in responsible positions protected against public scrutiny, but past rulers and governments are also protected. The Official Secrets Act prevents a journalist examining any state document and even if he gets a glimpse of it he is prevented from publishing it even if it is in the public interest to do so. Great harm has been done to this nation and its simple people by the operation of this Official Secrets Act. Many criminals, traitors, bunglers and disastrous blunders have been covered up and history falsified just to save the reputation of some ruler and his advisers.

If the government were to amend the defamation laws and make it possible for journalists to obtain authentic information from genuine sources, they are less likely to invent, guess and speculate about what is going on in the country. Denied first hand information journalists are compelled to pick gossip, slanders, cafeteria back biting, and bits and pieces of conversations picked up at receptions and social gatherings. These odds and ends pieced together by an imaginative reporter form the news columns for readers. Of course the resultant story is coloured by his prejudice and convictions. A most unsatisfactory state of affairs. For this the blame rests fairly and squarely on the shoulders of the tight-lipped government functionaries who just will not communicate with the Press, nor will they truthfully answer journalists questions.

If today the government complains of a hostile and critical Press they should remember that they, too, have resorted to media trials and have used the more potent TV to launch smear campaigns against their opponents. Character assassination is a game that all sides have played with gusto and with abandon and yet they start complaining when it starts to hurt the leaders of the government. Fairness and justice demand that what is needed now is not new laws, but a new attitude towards political opponents. All political leaders must agree to keep the political debate free from personalities and smear campaigns should be voluntarily given up by all. Every issue should be debated on merit and only incidentally should persons be mentioned. If, however, some leaders or newspapers exceed the limits they should be prosecuted under the existing laws and

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Clearly, there is much that is wrong with the anti-defamation law as it now stands. But between tightening it – a process which we would welcome – and making an ass of it there is a world of difference. Increasing the fine in defamation cases to a million rupees and even making the jail term more stringent is perfectly all right. In fact, that is hardly the issue. Journalists or newspapers making libelous or slanderous accusations should be made to pay for them. But this should not mean that the Press should be put into such a strait-jacket that it is not able to perform its primary task of reporting the truth at all. If anyone thinks he has been defamed, he should be able to establish this in a court of law. If he does, the newspaper concerned should get it in its neck. But a culprit rightly accused of graft or influence-peddling should not be able to compound his original wrongdoing by subsequently being able to browbeat a newspaper into silence. That would amount to making a travesty of our still far-from-perfect democracy.

What the government should really be looking into is how to improve the efficiency of civil courts which hear defamation cases. Most people are deterred from going to them because their work is so slow that it takes a lifetime to get a decision. What the government could do is to designate a particular court in a district as an anti-defamation court, much in the way that we already have guardian courts before whom guardianship cases are heard, and then make it obligatory for libel cases to be decided within a given period of time, say three or six months. That will serve the ends of justice and go a long way to address public concerns that the Press, or a section of it, is able to publish what it pleases without too great a regard for the truth or even balanced reporting. But making it difficult for an honest reporter to perform his basic function is an altogether different matter.

The proposed ethics committee is also something which is difficult to swallow. How would the ends of justice be served if the government was the sole-authority empowered to nominate members to such a committee? To a totally independent ethics or whatever committee the Press should have no objection. But any committee with an official colouring will only be another instrument to terrify the Press. If the government is concerned about the bad Press it thinks it is getting it should improve its performance. If it is genuinely concerned about journalistic

compelled to pick gossip, slanders, cafeteria back biting, and bits and pieces of conversations picked up at receptions and social gatherings. These odds and ends pieced together by an imaginative reporter form the news columns for readers. Of course the resultant story is coloured by his prejudice and convictions. A most unsatisfactory state of affairs. For this the blame rests fairly and squarely on the shoulders of the tight-lipped government functionaries who just will not communicate with the Press, nor will they truthfully answer journalists questions.

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Affairs of the government are the concern of all citizens and each person has a right to know what is going on so that he can express his opinion on matters that concern him.

Before proceeding with the bill and amending the defamation laws the government should allay the fears of newsmen and publish the text of the proposed legislation and convene a meeting with the representatives of the Press to discuss the legislation and if necessary modify the proposed amendment in the light of the objections of journalists. If at the same time it could offer a proposal for the amendment of the Official Secrets Act and also decided to open all government archives after documents are thirty years old and also make public all enquiry reports that have not yet seen the light of day we might be able to establish more cordial relations between the Press and the government. Furthermore, if the government were to promise that it would instruct all its officers to make available to journalists all information that does not compromise our national security, and ensure the freedom of information to all journalists perhaps the government would not need to make any amendment in the defamation laws.

A well informed Press means a well informed nation and that can never be a danger to any honest government.

—The Muslim, September 3, 1994

## A code of conduct for the Press

In a happy development over the issue of formulation of special Press laws, which had created a justifiable furore among the community, the Prime Minister has deferred the matter prefatory to a dialogue with the representative bodies of the Press for a mutually agreed code of conduct, following a meeting August 28 with a delegation of NECP (Newspaper Editors Council of Pakistan). This implies that at least for the time being Ms Benazir Bhutto has put her media managers on the leash. This is