

# Press Contests Defamation By Government

## The New Defamation Bill

THE Defamation Bill, sprung without warning on the Lok Sabha in the last week of the monsoon session, and pushed through in two days with the ruling party's brute majority, in the face of an opposition walk out, is the latest in a series of laws designed to curtail the citizens' fundamental rights without formally declaring an Emergency. Among the more recent of these are the laws to keep reports of commissions of enquiry secret even from parliament and the very recent law giving commissions the right to prosecute the press for critically commenting on their functioning, the 59th amendment to the Constitution which provides for the declaration of Emergency and the consequent abrogation of the right to life and liberty, the Postal Bill to censor private mail, and the Hospitals And Other Institutions Bill framed in 1982, dropped after widespread protests and revived in 1988, which proposes to do away with the right of large sections of working people to collective bargaining.

The Defamation Bill incorporates the existing sections against defamation from the Penal Code, and adds many new provisions, amongst which the most dangerous are those which :

1. provide for the punishment with imprisonment up to two years or fine or both, of the author, printer, publisher and editor of "any matter which is grossly indecent or scurrilous or is intended for black-mail" (section 8)

2. create the new offence of "criminal imputation" under which whoever makes an "imputation falsely alleging that any person has committed an offence or has done or omitted to do any act which amounts to an offence" is punishable with imprisonment up to a year and with a fine up to Rs 2,000 (section 13 (1)). This provision does away with the time honoured journalistic practice of using

phrases such as "It is alleged—", "It is reported..." "A reliable source—". A case can only be reported if fool proof evidence is available. A reporter is expected to function like a lawyer collecting evidence;

3. declare that truth alone is no defence : "a person, shall not be guilty if, and only if, it is established that the imputation—is true and if it be for the public good that the imputation should be made—" (section 15 (1));

4. shift the burden of proof on to the accused, that is, in contradiction to legal procedure in criminal cases where, even in a murder case, the accused is assumed innocent until proved guilty, here, the accused is assumed guilty until proved innocent (section 12 and 15 (2));

5. allow any sessions court to take cognizance of an offence if any one person submits to it a complaint in writing (section 13 (2-4));

6. allow a "summary" and "in camera" trial, that is, one kept secret from the public and the press (sections 14 and 18 (3));

7. provide for the trial to be on a day to day basis and to be concluded within three months (section 14 (3)); and for the accused to be personally present throughout;

8. protect government from prosecution for defamation (section 11).

These provisions are designed not just to impede press functioning but to make it impossible. Let alone such investigative reporting as on the Bofors case, even if a newspaper alleged (as almost all papers have alleged at different times) criminal governmental negligence during an epidemic or drought or flood, and if any government official complained to a court anywhere in the country, the editor, publisher, and printer would have to appear at that court every day for three months, and

establish "beyond reasonable doubt"

that their allegation was not only true but "for the public good"—a vague term open to varied interpretation.

It could well be argued, for instance, that an allegation that drinking water supplied by government is contaminated—whether true or not—frightens the public and hence is not for the public good. In any case, the issue of what is for the public good is not relevant to defamation. The truth of an allegation is the primary issue, and whether it injures the individual's reputation the secondary issue. The public right to know the truth is assumed to be for the public good, in any democracy.

The purpose of the Bill was not so much to logically implement its provisions, which would be impossible, but to frighten the press into self censorship. But, as when the Bihar Press Bill was introduced in 1982, all sections of the press, countrywide, have protested in a remarkably determined and united way. On September 3, 1982, there was an all India press strike, which forced government to drop the Bihar Press Bill. On September 7, 1988, the action had to be repeated to counter that Bill's more dangerous offspring, and the government has once again responded with the tactics of delay—set up a committee of seven ministers to engage in dialogue with concerned individuals and organisations. The press has rightly refused to engage in dialogue or to accept anything less than withdrawal of the Bill. At the September 6 rally in Delhi, attended by editors and journalists from all over the country, a pledge was taken to ensure withdrawal, and many papers announced in print their intention to defy the Bill if it became law.

While the Bihar Press Bill, which also proposed to prevent the publication of "grossly indecent or (Contd. on page 30) scurrilous matter intended for

black-mail" and shifted the burden of proof to the accused (see *Manushi* No. 13, 1982) has been identified as an ancestor of the Defamation Bill, another line of descent has gone largely unnoticed—that from the various laws ostensibly intended to protect women. Laws like the one that established family courts in 1984 providing for *in camera* trials and for the shortcircuiting of legal process in the name of speeding up justice (see *Manushi* No. 25, 1984), and the very recent Indecent Representation of Women (Prohibition) Act, under which government assumed sweeping powers of censorship, search and confiscation (see *Manushi* No. 47, 1988) were the laboratories wherein government tried out its ability to get away with subverting due process of law.

While the main thrust of the present Bill is against the press, it also has other dangerous implications for human rights activists, especially those working for

women's rights. In cases of violence against women, particularly domestic violence, most evidence initially available is circumstantial in nature and not enough to fully establish guilt. To report a case on the basis of such evidence would amount to criminal imputation. Activists trying to build social pressure against the family, would fit perfectly the definition of wrongdoers in the Bill's Statement of Objects, where it is said: "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."

Apart from the demand for withdrawal of the Bill, the press, civil liberties groups and concerned citizens should seize the opportunity to build a campaign for the right to know to be made a statutory right. Our government maintains a cult of

secrecy at all levels which is directly related to the unaccountability of government functionaries and the consequent harassment of the public. As the editor of *Navbharat Times* said at a public meeting, the Indian press is forced to operate in the "black market of information" and to constantly violate the Official Secrets Act. It is vital to the health of a democracy that people know how they are governed, how decisions are taken, who are responsible and accountable for decisions and their implementation. If government is really concerned that unsubstantiated imputations not be made, it should proceed to lift the veil of unnecessary secrecy that covers even its routine functioning. Only if information is freely made available to citizens and to the press, will it be possible for investigative reporting to be more fully documented and substantiated.

—**Manushi**

*As we go to Press, Government has dropped the Bill in response to public pressure.*