Right To Reply Bill, 1994: A Critique

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Introduction

A free and independent press is the cornerstone of any democracy. Democracy can survive and be effective only if there is enlightened public opinion, as awareness is a prerequisite for exercising responsible franchise. The freedom of the press has been recognised as a fundamental freedom under Art.19(1)(a), by the Supreme Court.[1] In matters of dissemination of news and publication of opinions and views, the press is totally independent and any bar on this freedom must be a reasonable restriction, only on the grounds provided in Art.19(2).

The Right to Reply in the Press Bill, 1994[2] introduced in the Rajya Sabha, is in the form of a bar on the freedom of the Press. It recognises the right of citizens to demand publication of their replies to allegations made against them, in the same newspaper as the allegation, at the cost of the newspaper. The newspaper has no choice in such publication. Even if the editor prefers to refuse publication of the reply, the matter can be referred to a panel of the Press Council, constituted for the purpose, and once (and if) the panel decides the refusal is not an valid grounds, the editor is penalised.

Right to Reply and Freedom of the Press

In the United States, in *Miami Herald Publishing Co. v. Tornillo*[3] the Florida Right to Reply Statute was struck down by the Supreme Court as being violative of the First Amendment, which recognises expressly, the freedom of the press. In the Indian constitution, neither the freedom of press nor right to reply are declared expressly as fundamental rights. The Supreme Court in *Life Insurance Corporation v. Manubhai Shah*[4] held that the right to reply is a part of the freedom of speech and expression under Art. 19(1)(a) in the light of the citizen's right to get full and complete information. Therefore, in the Indian context, the right to reply and the freedom of press are not so much contradictory rights as being constitutional limits on each other. They are part and parcel of the same right, since the citizen's right to reply is as vital in a democracy as the freedom of press, and is embraced by the larger and more fundamental freedom of speech and expression.

The need for a Right to Reply Statute

An individual's reputation is his asset. The importance of reputation in society is reflected in the definition of 'injury' in the Indian Penal Code, 1860. The word 'injury' denotes "any

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1 *Sakal Papers (P) Ltd. v. Union of India*, AIR 1962 SC 305.

2 Bill No. XXII of 1994 - Hereinafter Right to Reply Bill, 1994

3 418 US 241 (1974).

4 (1992) 3 SCC 637.

harm whatever illegally caused, to any person in body, mind, reputation and property."[5] If a person is defamed by the media, he must have an opportunity to redeem his image. The right to reply as it has been recognised by the Supreme Court, attains significance only in the light of the citizen's right to get access to a wider spectrum of information. "The citizen's fundamental right of speech and expression clearly entitles him to insist that his views should reach these who read the magazine so that they have a full and complete picture."[6] Also, the issue in this case was whether divergent views of individuals should be published and not so much whether an individual has a right to reply to personal allegations. So this case fell short of recognising a *prima facie* right to reply.

The Right to Reply Bill seeks to give members of the public the right to reply to allegations made against them. The object of the Bill is to provide a speedier remedy for defamation; "since taking legal action against persons responsible for false newspaper reports is an expensive and time consuming process, it is necessary to give a statutory right to reply to ensure that individuals can set the record straight".[7]

Right to reply statutes exist in the books of many nations. The first law of this kind was introduced in France in 1822. The French law and German law regarding right to reply present opposing stands with respect to the nature, scope and methods a right to reply statute can assume and prescribe.

Analysis of the Bill

The Indian Right to Reply Bill makes the right statutory and therefore available to any person and against any person. It is limited to the print media. The Bill defines 'newspaper' as any periodical whether published daily, weekly or monthly. It does not include quarterly, half-yearly and yearly or other periodicals, though there is no apparent reason why it should not.

S.3. of the Bill states : "Every persons shall have the right to require the editor of a newspaper to print a reply to a factually inaccurate or distorted report..."French law permits the reply to factually incorrect reports as well as expressions of opinion whereas German law restricts it to correction of factually incorrect statements.[9] The Right to Reply Bill, in the Preamble, states that the object is to give the right to reply to 'allegations'. It can therefore be construed as following the French law in this respect.

The question of who can reply has not been specifically dealt with in the Bill S.3. state "Every person including an organisation of persons or a company, firm and partnership shall have the right to require the editor of a newspaper to publish a reply to a factually inaccurate or distorted report involving that person..." Both French and German law allow anyone who has been named in a defamatory statement, the right of reply. But the purpose of the Right to Reply Bill would be defeated, if everyone connected with the statement, not

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5 S. 44 of the Indian Penal Code, 1860.

6 *Supra* n. 4 at 655.

7 Statement of Object and Reasons, Right to Reply Bill, 1994.

8 S.2. (b).

9 Donelly Richard "The right of reply: An alternative to an action for libel" Virginia Law Review Vol. 34, 1948; p 886.

necessarily those defamed by it, demand publication of a reply. Therefore "involving that person" in s.3 has to be construed to mean "affecting that person". Whether it really does affect the person would be decided by the Press Council Panel.

S.4 of the Bill states that the reply shall be published within 3 days of receipt in case of a daily newspaper and in the next issue in case of any other newspaper. But the Bill does not prescribe a time limit for the exercise of the right to reply. In French Law the limit is 1 week in case of a daily newspaper and 1 month in case of any other newspaper. This limit is reasonable because beyond this period the original statement replied to will diminish in the memory of the public and the reply would serve no purpose. This can be incorporated into the Indian system.

S.5 requires the reply to be printed free of cost and to be of equal length as the report replied to. The reply is required to be printed on the same page, at the same position and in the same type as the report replied to. If the reply is longer than the original report it would be reasonable, to print the excess length at the cost replier, at normal rates. The Bill does not incorporate this contingency. Also, the Bill must give instructions to editors, in order to prevent any addition or distortion of the reply- a reply would serve its purpose only if published in its original from, without any corrections or face-saving commentaries.

In case the editor of the concerned newspaper refuses to publish the reply, the matter can be referred to a panel appointed by the Press Council of India. The Panel would decide, within 10 days of the reference, whether or not sufficient grounds exist for meeting the demand. If the Panel decides that there is not ground for refusal to publish, the editor would be liable under s.7 of the Bill. If there are sufficient grounds, the matter ends there.[10] Under s.7, the editor shall be guilty of an offence punishable on conviction, with fine of the amount in the case of a small newspaper of Rs.25,000, a medium newspaper of Rs.50,000 and other newspaper of Rs. 1,00,000. So, even after the Press Council Panel decides, a criminal trial has to be initiated for conviction. This system is neither in the form of an appeal hierarchy nor does it make the decisions of the panel final. In fact, the panel's decision is totally worthless if a trial is not provided for. The remedy then becomes useless to the defamed, as even the fine payable, being in the nature of a fine for a criminal offence goes to the state.

An alternative system of remedy would be an appeal hierarchy. If the panel's decision is disputed by the editor, he can take the case to the High Court on appeal. The jurisdiction of the panel would then be limited to demanding publication of the reply. Before the High Court's decisions is given, the reply can be published on the basis of the panel's decision, and in case the High Court reverses the decision, the cost of publication can be borne by the panel. The High Court would, in this system, have the power to impose fine, as under s.7 of the Bill.

Alternatively, the panel can be given the power to impose a disciplinary fine, not in the nature of a criminal fine, apart from the power to order publication of the reply. Appeal in such a system will not lie, as per the Press Council Act, 1973, but a remedy under Art. 226 (writ jurisdiction) will always be available. Also the Supreme Court can assume jurisdiction under Art. 136 to hear the case on special leave, by considering the Press Council as a tribunal.

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10. S. 6 (3)

The Bill seeks to criminalise the act of refusal to publish the reply, if found to be on insufficient grounds. The panel's decision that there is sufficient ground to refuse a complete defence in the criminal trial is of paramount importance. Also, there is a contradiction in s. 6(3) and s. 7 of the Bill because in the criminal court, in the latter, the criminal court does not have to give weightage to the panel's decision in the process of trial. The above issues are fundamental questions regarding powers and jurisdiction of courts in the redressal system envisaged in the Bill.

Conclusion

The right to reply is not a bar to a defamation suit. The damage caused by the original statement cannot be totally redeemed by a reply and therefore a defamation suit still lies. The proceedings under this Bill, whatever decision they produce, will not be of any relevance in a defamation suit.

If an editor, subsequent to the report, apologises or retracts the statement on his own accord, it will not extinguish the right to reply but might be a relevant factor in reducing damages in a defamation suit. Even in common law, a full fair and unequivocal retraction of a defamatory statement usually precludes the recovery of punitive damages and could be shown in mitigation of general damages.[11] The Right to Reply Bill contains no provision to this effect.

Regarding the efficacy of the very right to reply as a remedy, the reply never completely wipes out the doubts created in people's mind. The same thing of course, can be said about the verdict in a defamation suit, which is the alternative. A reply from an individual may not have much credibility as it is an expression springing from self interest. A court verdict might be more credible but it is a long drawn remedy. Against the criticism that a right to reply will prevent media from publishing personal charges which the public ought to hear, if defamation suits have not achieved that end, why would a statutory right to reply do so.

Right to reply statutes not only provide a speedier remedy but also enable dissemination of news which is a basic to democracy. The Right to Reply in the Press Bill, 1994 is an apology for a right to reply statute. In its present form, it serves no purpose. Drastic changes are called for, if any result is to be achieved by it.

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11. *Meyerle. v. Pioneer Pub Co.*, 178 N.W. 792 (1920).