Using Women as a Pretext for Repression

The Indecent Representation of Women (Prohibition) Bill

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THE Indecent Representation of Women (Prohibition) Bill, 1986, just passed by the Rajya Sabha and introduced into the Lok Sabha, is so absurd a piece of legislation that it would not be worth wasting time over, were it not that it confers a number of arbitrary powers on government officials, which will lend themselves to abuse. The ridiculously vague and all encompassing definition of what is indecent and derogatory to women clearly shows that government has not the slightest intention of taking this law seriously.

Considering how much debate and research have been conducted in different parts of the world around the issue of obscenity, even a consultation of elementary textbooks would have enabled them to draw up a less amateurish and shabby document.

But, clearly, government's purpose is not to devise an implement able law. Rather, as with much recent legislation, government's main purpose is to pretend that it is deeply concerned about an issue that is of high priority to articulate sections of public opinion. More and more poorly drafted, repressive and ineffectual laws come on to the statute book and stay there while the problems they are meant to resolve go from bad to worse. The government claims to be solving all of our problems by passing law after law that have no chance of accomplishing their purposes. The Anti Dowry Act of 1961 with its ridiculous distinction between "dowry" which is prohibited and "gifts" which are permissible, and the recent amendments made in the Act, are examples of laws that are designed to be ineffective.

However, apart from being ineffective, the present law is also pernicious, and, in this, is comparable to the recent Prevention of Terrorism and Disruptive Activities Act and the Anti Defection Act.

Each is ostensibly designed for people's protection and to tackle some problem such as terrorism, corruption, income tax evasion or obscenity. But the law really has nothing to do with the problem and has no impact on it. Instead, the law ends up being used to nullify the fundamental rights guaranteed to citizens by the Constitution. These laws give government officials new powers to subvert due process of law.

For example, the Prevention of Terrorism and Disruptive Activities Act has had little or no effect on terrorism. But it gives government arbitrary powers to arrest and detain anyone they choose to suspect of terrorist activity. It has been used to harass a number of innocent people, the latest victim being Shahid Siddiqui, editor of the progressive paper, Nai Duniya, well known for his antiterrorist views. He was arrested and imprisoned for 15 days for having published an interview with J.S. Chauhan.

None of these laws are really needed to tackle the supposed problem. Existing obscenity laws such as section 292 of the Indian Penal Code confer enormous powers of interference on the government. The new laws reiterate these powers. And expand on them to the detriment of the citizens' rights and liberties.

An accumulation of such laws results in an amassing of arbitrary powers in the hands of state functionaries these powers can used to harass those who criticize or expose government misdoings

In India, since TV and radio are already completely under government control, the press is one the few important channels for dissent and free flow of information Of late, we have seen a series attacks by government on the press blatantly misusing existing laws For example, a recent issue of The Illustrated Weekly carried a tasteless photo feature of seminude women. Such features have frequently been carried by this magazine over the years and no action has been taken against it. But this particular issue happened to carry a follow up report on the misdeeds of J.B. Patnaik, chief minister of Orissa. It was to stop that report from reaching people in Orissa that the Orissa police seized all copies of the issue. But the pretext used was the alleged obscenityof the feature.

The new Act lends itself admirably to such persecution of the press because it defines indecency as "anything that is likely to injure the morals of any person..." All that is required to send an editor to prison for two years is for any one person in the country to prove that his "morals were injured" by reading a certain report or seeing a picture in a paper. The decision as to whether this is sufficiently proved or not and as to whether the report or picture is indecent or not is left entirely to the discretion of the individual judge before whom the case happens to come up. The process is basically arbitrary, as individual judges are bound to have conflicting opinions on what constitutes indecency and what can be spared as literary or artistic.

The Act gives wide-ranging powers to "any gazette officer" to harass citizens. He can, with a warrant, enter and search anyone's residence and seize anything he thinks is indecent, including personal letters ("writing...sent by post"). It is left to him to decide what can be exempted on grounds of being literary, artistic, scientific or religious. Even if the court later decides that he was wrong, section 9 protects him from any legal action. Thus, a government officer is empowered to harass any citizen, and the citizen has no way to seek redress.

A government officer, by virtue of being a government officer, becomes above the law, unaccountable to anyone for his actions. Even if the victim is ultimately acquitted by the court, he or she would have - been sufficiently harassed in the duration of the case, and the confiscated articles are likely to be damaged or destroyed in police custody. The law provides admirably effective ways for government officials to settle private and governmental scores.

Apart from settling scores, the law can be routinely used to extract bribes. As soon as a law is passed, declaring a certain activity "criminal", people engaged in it are forced to

operate in an underground fashion. Those at the lowest level, in this case petty vendors of magazines, become more vulnerable to harassment by police. The trade can only continue with the active collusion of the police. The main effect the law has is to increase bribery and corruption.

The functioning of the Suppression of Immoral Traffic in Girls and Women Act (SITA) is a good example of this process. SITA is used to harass the prostitute, not to reduce prostitution, and thus creates a situation wherein police can function as pimps. Police periodically raid brothels, and arrest prostitutes, to make a show of implementing the law. On an everyday basis, police use the threat of arrest under SITA to extract bribes, sexual and economic, from the mostly underprivileged women who work as prostitutes. By declaring these women criminals, SITA makes it difficult for them to claim the rights available to other citizens such as schooling for children and medical care, thus worsening their already miserable lives.

Ladies' Compartment Approach

Some women's groups in a few metropolitan cities demanded this law and lobbied for it. This shows up the difficulties inherent in the ladies' compartment approach to women's issues

1. The campaign raised only the issue of the derogatory portrayal of women without sufficient emphasis on the overall context. Thus, the most important issue for radio and TV in India today that of government monopoly over them, obstructing the free flow of information and opinion, was completely ignored by the campaigners. By restricting lobbying merely to the demand for more women's programmes and more women producers, together with a no derogatory portrayal of women, the campaigners created the impression that all would be well if some negative stereotypes of women were eliminated and women were given more time and attention on radio and TV.

2. So far, all the films and hoardings against which women's groups have agitated by picketing or painting them out have been those which showed women nude or in sexually suggestive poses. This reinforces the notion that anything sexual is obscene and that respect for women is equivalent to treating them as sexless. It also leads to ignoring other derogatory stereotypes of women as marginal dependent beings who exist only to serve men. It disregards various cynical ways used by advertisers to manipulate people's desire for a better life.

For instance, the Regent cigarette advertisement which showed a seminude woman in proximity to a male hand holding a cigarette Under the slogan "An Exclusive Affair" was widely attacked but the cigarette advertisement showing two fashionably dressed young people under the slogan "Made For Each Other" or the Charminar ad showing birds flying in the sky with the caption "Taste the spirit of freedom" came in for no comparable criticism. Is it not indecent and dishonest to equate freedom and happiness with a product that is proven to be severely damaging to health?

Similarly face cream advertisements which show no woman but only a pink rose, and promise "rosy cheeks this winter" have not come in for any criticism although they mislead women into believing that a cream by itself, regardless of a woman's general state of health and nutrition, is sufficient for an attractive complexion. The campaign has not emphasized the need for advertisers to provide essential information on the contents of a product and evidence of a scientific nature, demonstrating how this product can achieve what its makers claim.

3. The equation of indecency with nudity and sex allows all other portrayals of women to pass off as 'decent'. If a woman is clad in a sari but shown as a servile housewife, finding her life's fulfillment in using a particular detergent on the family wash, or a particular cooking oil to feed her husband, no one attacks this as indecent. Overmuch emphasis on the portrayal of women as sex objects and not on them as service objects has been picked up from women's groups in the West. Who have usually targeted only the former kind of portrayal for public action.

Women's demonstrations against sexually explicit or suggestive films and hoardings have always been joined by conservatives whose version of respect for women is covering up, seclusion and segregation for 'good women' but punishment and humiliation for 'bad women' defined as any woman who defies social and sexual convention. We have seen the effects of such ideology in countries like Iran where a bareheaded woman or one caught having an extramarital relationship can be more violently attacked than a purveyor of porn. A milder version is visible in our country, too, when a woman in a sleeveless or low necked blouse, if molested in a public place, is likely to be told she deserved it.

In the West, too, it is significant that the section of feminist opinion which has agitated for government controls on porn has been joined by right wing forces and Church conservatives. In different times and places, reactionary hysteria, whether reflected in public demonstrations or in the opinions of administrators and judges, has been notorious for censoring and banning various works that have later been accepted as works of literary and artistic merit.

Bills like the present one could adversely affect many parts of the work that is vitally necessary to help women, for example, sex education programmes, so direly needed in educational institutions, particularly by girls, who are kept in great ignorance of how their bodies function. Overall, the bill is likely to work against the interests of women. It could well be used, for example, to censor the dissemination of information vital to improving women's health, merely because this may sometimes have to be in a form that the censor construes as sexually explicit.

Although much of the public debate around the portrayal of women has revolved around the commercial exploitation of women's bodies in films and advertisements, the new law is far wider in scope. It covers all kinds of writings intended for circulation, not necessarily only those that are commercial. Significantly, most commercial films seem to be excluded from its purview under the exception 4 (c) even though the film industry is the worst culprit in this regard.

The new law thus constitutes a serious infringement of the fundamental right to freedom of speech and expression. If rigorously applied, it could conceivably be used to ban almost any communication that refers to women in any way because all that is required to make such a reference indecent is for any one person to allege that he or she has been morally injured by it. There are manifold ways, for example, that classics like Kalidasa's "Shakuntalam", Vidyapati's poems or Tagore's novels could be construed as indecent under the absurdly wide definition provided by this Bill. More modern works, particularly in regional languages and by relatively unknown authors, will be in even greater danger.

It would also, for example, be easy for anyone to allege reports of atrocities against women during the massacre in Ahmedabad in 1985, or in Delhi in November 1984, aroused their prurient interest and corrupted their morals. Such an allegation by one person would be sufficient for prosecution, seizure and confiscation of the publication to take place.

The only way to avoid the possibility of being prosecuted under this law would be never to mention women at all. Women could thus become the unmentionables of Indian society, and a new obstacle be placed in the way of normal discourse as well as of attempts at alleviating women's oppression.

Who Wants This Law?

Three kinds of forces have come together to back this Bill. The first consists of certain urban women's groups. They have taken their cue from similar campaigns in the West. Giving so much priority to the image of women in the absence of greater effort to change the reality of their lives is particularly misplaced in India, where millions of women continue to die prematurely from actual violence, as well as the unseen violence of malnutrition, disease, overwork, deprivation and family tyranny.

The second force is the conservative lobby which wants to impose a repressive culture on people in the name of Indian tradition. In fact, their notions have little to do with any Indian tradition, but are directly descended from the nineteenth century British rulers' perverse Puritanical Christian morality. According to this morality, sex is a product of original sin and is inherently dirty, the genitals being referred to as "shameful parts." The only kind of permissible, yet unmentionable, sex is that within marriage, its primary justification being procreation.

The Indian Penal Code was framed in 1860, the heyday of this version of morality imposed on Indians by the British through various agencies such as educational institutions, missions and laws. Section 292 of the Indian Penal Code defines "obscenity" as that which is "lascivious or appeals to the prurient interest or tends to deprave or corrupt persons" The dictionary meaning of "lascivious" is that which excites sexual desire, and of "prurient interest" and interest in sexual matters.

The Penal Code thus identifies immorality with sexual desire and morality with its repression. It is sad that instead of questioning such outdated and rigorous provisions, we should, over a century later, and 40 years after independence, be attempting to build a more repressive set of restrictions.

In the course of the twentieth century, legal concepts of privacy and of the individual's liberty have greatly advanced. Many countries have introduced legal safeguards to attempt to reduce governmental violations of the privacy and integrity of the individual. No causal connection between literature and depravity has been established in any country which has liberalised its laws nor have crime rates risen concurrently with more liberal laws.

The third force behind the Bill is, of course, the government which welcomes any opportunity to acquire more control over people and would like to control not only their actions, but even their words thoughts and desires. It is typical of our government's hypocritical style of functioning that it has responded to the issue with this law which tries to rearrange the clothing on pictorial representations of women while so many women an without adequate clothing or shelter.

Asking For More Repression

Some women's groups have drawn up a list of recommendations for amendments to the Bill, and presented them in the Rajya Sabha. These include

1. Giving police officers the same powers of search and seizure that the Bill gives to gazetted officers.

So much for all the experience of women's and other vulnerable groups in this country of the glorious record of the police in protecting their rights.

2. Adding "exhibitions, photos, plays, films, video films, slide shows. TV programmes and other shows" to the list of media covered by the Bill. This involves indirectly bringing more and more media under governmental control instead of challenging the monopoly government already has over radio and TV.

3. Amending the definition of "indecent representation of women to include any depiction or description of a woman which has the effect of being violent or "derogatory to her dignity as a human being or to her status as an equal to man."

The definition could easily be used to censor reports on injustice and atrocities on women. Anyone could allege that the depiction is "violent in character" or derogatory to the status of a woman as equal to a man." Any description of the actual unequal status of women would be volatile of this definition. Women's organizations who have made this recommendation may believe that they would ensure that reports of this kind are not affected. But, in thus assuming that women's groups will be able to control and monitor the implementation of law by government machinery, they are forgetting that once a

repressive law comes into existence, no one section of society can control its use by other sections, far less ensure that government does not misuse it.

Significantly, no amendment has been suggested to lessen the arbitrary powers of government officers, for example, no change is suggested in section 9 which protects the officer from being sued

Questions of Strategy

While there can be no doubt of the need to struggle against the portrayal of women as sex objects in the media, we disagree with a strategy that prescribes punishment as the way of changing societal perceptions of women. It is not the absence of stringent laws that allows the denigration of women to continue and accelerate. Rather it is the basically contemptuous and degrading vision of what a woman's life should be that the rulers and manipulators of our society hold, which allows violence against women to flourish both in everyday life and in the media.

In this situation, the best we all could have done was continue our struggle to make the denigration of women in the commercial media as uncomfortable and unprofitable as possible for its purveyors. It is best to leave a bad enough law, the Penal Code, alone for the present, until such time as we have a clearer strategy and women have more say in delineating the ways we are treated and the ways we are portrayed.

Stop Harassing the Independent Press

In the last few months, we have witnessed a series of attacks by government on small, independent, noncommercial newspapers.

The reputed journal, "Economic And Political Weekly" has been charged with sedition under the Indian Penal Code. Sedition is a serious charge, for which the minimum punishment is three years' imprisonment and the maximum life imprison imprisonment.

The impugned article, published a year ago, is a report on police prosecution of innocent persons in Punjab in I 984, during and after Operation Bluestar. Written by well known journalist Harji Malik. In this article, she brought to light the fact that many innocent children were rotting in jails in Punjab. The Supreme Court ordered their release after ex freedom fighter Kamladevi Chattopadhyaya filed a petition on their behalf.

In November 1986, Shahid Siddiqui, lecturer at Delhi University, civil liberties activist and editor of popular Urdu newspaper "Nai Duniya", was arrested and detained for 15 days under the Terrorist and Disruptive Activities (Prevention) Act. A year ago, he had published in "Nai Duniya", an interview with J. S. Chauhan, proponent of Khalistan. The interview in no way supported Chauhan's views. Similar interviews had been published in many other magazines including "Illustrated Weekly" and "Probe."

Clearly, therefore, this was merely a pretext to harass Siddiqui, and an attempt to twist the arm of the small independent press.

While government is not able to prevent violence and killings in various parts of the country, it seeks to distract public attention by using repressive and arbitrary powers to pounce on innocent citizens. This persecution is doubly alarming when it assumes the form of an attack on small journals which play an important role in providing vital information that is sometimes censored out of the major newspapers and often out of the government controlled media including radio and TV.

We request readers to build public pressure by organising collective protest through their groups, organisations. Communities through such means as writing letters to editors of local papers holding meetings and publicising protest. We demand immediate and unconditional withdrawal of the cases filed by government against "Economic And Political Weekly" and "Nai Duniya."

Salient Clauses of The Bill

"... In this Act, unless the context otherwise requires:

(a) "advertisement" includes any notice, circular, label, wrapper or other document and also includes any visible representation by means of any light, sound, smoke or gas;

(b)"distribution" includes distribution by way of samples whether free or otherwise;

(c)"indecent representation of women" means the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent or of being derogatory or denigrating women or is likely to deprave, corrupt or injure the public morality or morals of any persons of any class or age group notwithstanding that persons in any other class or age group may not be similarly affected ;...

No person shall publish or cause to be published, or arrange or take part in the publication or exhibition of, any advertisement which contains indecent representation of women in any form.

No person shall produce or cause to be produced, sell, let to hire, distribute, circulate or send by post any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation, or figure which contains indecent representation of women in any form.

Provided that nothing in this section shall apply to

(A) Any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure—

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure is in the interest of science, literature, art or learning or other objects of general concern; or (ii)which is kept or used bonafide for religious purposes.

(b) Any representation, sculpture, engraved, painted or otherwise represented on or in—

(i) Any ancient monument within the meaning of the Ancient Monument and Archaeological Sites and Remains Act, 1958; or

(ii) Any temple, or any car used for the conveyance of idols, or kept or used for any religious purpose;

(c) Any film in respect of which the provisions of Part II of the Cinematograph Act, 1952 will be applicable. Subject to such rules as may be prescribed, any Gazetted Officer authorised by tbe State Government may, within the local limits of the area for which he is so authorised,

(a)enter and search at all reasonable times, with such assistance, if any, as he considers necessary, any place in which he has reason to believe that an offence under this Act has been or is being committed;

(b) Seize any advertisement or any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph. Representation or figure which he has reason to believe contravenes any of the provisions of this Act

(c) Examine any record, register, document or any other material object found in any place mentioned in clause (a) and seize the same if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act.

Any person who contravenes the provisions of section 3 or section 4 shall be punishable on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and in the event of a second or subsequent conviction with imprisonment for a term of not less than six months but which may extend to five years and also with a fine not less than ten thousand rupees but which may extend to one lakh rupees.

" ..('1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under this Act shall be bailable. 1

(2) An offence punishable under this Act shall be cognizable. No suit, prosecution or other legal proceeding shall lie against the Central Government or any officer of the Central Government or any State Government for anything which is in good faith done or intended to be done under this Act...."

Provisions against ObscenityIn Indian Penal Code, 1860

Section 292. (1) For the purposes of subsection (2) a book, pamphlet, paper, writing, drawing, painting, Presentation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect... is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely .to read, see or bear the matter contained or embodied in it.