

## Defending freedom of speech

### What is the issue?

\n\n

70 years after Independence, the freedom of speech still occupies a fragile and weak place especially when it is used against the authority of the State.

\n\n

### What are the legal provisions in this regard?

\n\n

\n

- The legal authority of the government to ban books flows from **Section 95** of the Code of Criminal Procedure (CrPC) which is largely based upon colonial provisions.

\n

- It authorises State governments to forfeit copies of any newspaper, book, or document that “**appears**” to violate certain provisions of the Indian Penal Code.

\n

- These include sedition, communal or class disharmony, obscenity, insulting religious beliefs, etc.

\n

- Under **Section 96 of the CrPC**, any person aggrieved by the government’s order has the right to challenge it before the high court of that State.

\n

\n\n

### What are the drawbacks?

\n\n

\n

- In the Indian legal system, achieving censorship through law is almost costless for anyone inclined to try.

\n

- The only thing that could effectively counteract this is a strong, **judicial commitment to free speech** which often fails to manifest.

\n

- Evidently, Section 95 allows governments to ban publications without having to prove, before a court of law, that any law has been broken.  
\n
- Also the term “appear” gives a wider scope for government's arbitrary decision given all possibilities of political influences. Effectively, a book is banned without a hearing.  
\n
- This functions detrimental to the interests of free speech as the onus falls on the writer or publisher to approach the court and try and get the ban lifted.  
\n
- While the court deliberates and decides the matter, the default position remains that of the ban.  
\n
- Also the litigation process is both expensive and time-consuming which is a blow to the creativity of writers and publishers.  
\n

\n\n

## **What is the way forward?**

\n\n

- Section 95 and 96 should either be banned or amended.  
\n
- This is to ensure that governments approach the court and demonstrate with clear evidence the violation of law if it wants to ban publications.  
\n
- In line with basic principle of our Constitution, presumption always ought to be in favour of the freedom of speech and expression.  
\n
- Restriction or ban by courts should balance between freedom of speech and a person's/community's right to reputation.  
\n
- Judges tasked with implementing the law should internalise the importance of free speech in a democracy.  
\n

\n\n

\n\n

**Source: The Hindu**

\n



**SHANKAR**  
**IAS PARLIAMENT**  
*Information is Empowering*