

Bill No. XXXV of 2018

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL, 2018

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further to amend the Code of Criminal Procedure, 1973.

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

2 of 1974.

1. (1) This Act may be called the code of Criminal Procedure (Amendment) Act, 2018.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

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2. For sub-section (1) of section 95 of the code of Criminal Procedure, 1973 the following shall be substituted, namely:—

Amendment of Section 95 of Act 2 of 1974.

"(1) Where—

(a) any newspaper, or book, or

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(b) any document, wherever printed, appears to the State Government to contain any matter the publication of which is punishable under section 124A or section 153A

or section 153B or section 292 or section 293 or section 295A of the Indian Penal Code 45 of 1860.
the State Government may, after obtaining an order from the High Court, by notification,
declare every copy of the issue of the newspaper containing such matter, and every
copy of such book or other document to be forfeited to Government, and thereupon
any police officer may seize the same wherever found in India and any Magistrate may 5
by warrant authorise and police officer not below the rank of sub-inspector to enter
upon and search for the same in any premises where any copy of such issue or any
such book or other document may be or may be reasonably suspected to be.".

STATEMENT OF OBJECTS AND REASONS

1. It is necessary in a democratic society to have the freedom of speech and expression safeguarded from arbitrary actions of the State. Censorship laws cannot be given such wide powers without checks as the abuse of it can prevent the dissemination of not only bona fide artistic expressions but also of legitimate criticism and dissent towards the Government or other groups.

2. Section 95 of the Code of Criminal Procedure allows for the State to forfeit any material if it merely "appears" to the State that the publication has violated any of the given provisions of the Indian Penal Code. The same can be done through a simple notification being issued by the State giving its "opinion". This provides for the State to censor almost any publication on the basis of an 'opinion' that it is in violation of certain provisions of the penal code.

3. In such a situation, the role of the judiciary appears only when the author of the publication approaches the court for the restoration of the publication. The burden is then upon the interested applicant to show the court that the grounds relied by the State for forfeiture of the material was wrong. This imposes an unnecessary burden not only upon the author of the publication but also upon the court itself.

4. It is also seen through the decision of the Supreme Court in the case of *Shreya Singhal vs. Union of India* (2015), the importance of having adequate safeguards to the freedom of speech and expression and the requirement of having a prior court order before the executive can restrict the particular freedom of the citizen.

5. It is necessary for the court to decide upon the validity of the opinions of the State first before allowing for the forfeiture of material. This safeguard will ensure that the provision is not abused and is not detrimental to the freedom of free speech and expression.

6. Hence, the present Bill.

V. VIJAYASAI REDDY

ANNEXURE

EXTRACTS FROM THE CODE OF CRIMINAL PROCEDURE 1973
(2 OF 1974)

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95. Power to declare certain publications forfeited and to issue search-warrants for the same.

(1) Where—(a) any newspaper, or book, or (b) any document, wherever printed, appears to the State Government to contain any matter the publication of which is punishable under section 124A or section 153A or section 153B or section 292 or section 293 or section 295A of the Indian Penal Code, the State Government may, by notification, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to Government, and thereupon any police officer may seize the same wherever found in India and any Magistrate may by warrant authorise any police officer not below the rank of sub-inspector to enter upon and search for the same in any premises where any copy of such issue, or any such book or other document may be or may be reasonably suspected to be. 45 of 1860.

(2) In this section and in section 96,—

(a) —newspaper and —book have the same meaning as in the Press and Registration of Books Act, 1867; 25 of 1867.

(b) —document includes any painting, drawing or photograph, or other visible representation.

(3) No order passed or action taken under this section shall be called in question in any Court otherwise than in accordance with the provisions of section 96.

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further to amend the Code of Criminal Procedure, 1973.

(Shri V. Vijayasai Reddy, M.P.)