



A CRITICAL ANALYSIS ON BOOK CENSORSHIP IN INDIA

By *Krishna Goyal & Garvita Agrawal*
From *University of Petroleum and Energy Studies (UPES)*

Abstract

This article focuses on a specific type of censorship that is imposed on publishers, authors, writer, poet, philosophers, lyricist or any person whose work is associated with writing termed as “Book Censorship”. Book Censorship is the way by which government or people duly authorized under it have the power to ban or limit the contents of books, articles or any document in order to stop that piece of written material spread across the country. There can be many reasons to ban such content which include religious hurt to community, sedition, against Hinduism or political leader or any political reason etc. The role of government, political parties and religious groups in book censorship and the impact they have brought to the persons who are censoring the books. The author also checked whether such censoring is encroaching the rights of the citizens of India. The Impact of the censoring on the students through the censoring of the material form their academic books is seen..Many cases have been analyzed to see the effect in the light of the judicial provisions and the facts of the case. Reasonableness and justness of the censoring of the material is checked. This Article deals with the deep analysis of several cases, decisions, judgments, appeals, case laws, judicial provisions, sections which will answer several questions which

includes, Is there a need to ban books as people these days access such content online very easily using technology and that content becomes viral, Whether our laws and judicial system are structured properly to deal with such disputes, What are the impact of such ban on publishers and people. This article will put light on such questions and will cover each and every aspect related to Book Censorship which will be very beneficial in order to get a horizontal and vertical analysis of the topic. Also there are several argumentative questions that have appeared during the course of this research which points out several top holes in existing system.

Keywords: Censorship, Book Censorship, government, books, authors

1. Introduction

Books are considered to be man’s best friend. From the very beginning when a child starts his school journey, he is introduced with this new friend, to know a whole new world. Books play a very significant role in overall development of person’s personality. Books are packed with knowledge, values and morals which can enhance the imagination, cognitive thinking and vocabulary building. Book is a platform where different authors present their views, thoughts, ideas and beliefs by using their fundamental right of freedom of speech and expression¹. Books are the most trusted source of knowledge by parents for their children so, the content of book should be properly perpetuated by also giving author his space of creativity.

India is the country of several religions, traditions, customs, cultures and practices



where people are divided into different groups on the basis of their culture and tradition. This is the main reason why Indian government make laws in order to prevent the conflicts and arguments between different religious communities and to achieve unity in diversity. Indian constitution was made after the independence to lay down fundamental rights and duties of citizens of India and powers, duties and structure of Government. One of the most precious right given to the citizens of India is “right to freedom of speech and expression”. People started misusing this right for defaming political leaders, breach terms of national security, do religious hurt, hate speech, child pornography and spread other obscene material across the nation. Here comes the role of Censorship to control and limit such content which is objectionable and harmful for the society.

This paper strictly focuses towards censoring of the literary work, which is known as books censorship. In India, the concept of the books censorship was taken from the Britishers which shows till that time there is no restriction on literary work in India. The idea of books censorship limits the freedom of the authors and put them inside the umbrella of Indian laws if their thoughts and views move out of the umbrella their book will be censored to maintain public order and morality.

2. Judicial provisions related to censorship

Government get its power to censor the content of any book from section 95 of Code of Criminal Procedure, 1973 by which Government can forfeit the copies of any

newspaper, magazine, book or any document which appears to violate the sections of Indian Penal Code, 1860 which includes section 124A (Sedition), section 153A or 153B (Communal or Class Disharmony), section 295A (Insulting Religious Beliefs). The remedy of the section 95 is given under section 96 by which they can approach to High Court to set aside declaration of forfeiture which is very time consuming and expensive. Also, books cannot enter in the market until the High Court removes the ban, which results in huge loss during the proceedings. Section 20 of the Indian Post Office Act, 1898 prohibits the transmission of anything indecent through book. Section 4 of the Indecent Representation of Women (Prohibition) Act, 1986 which prohibits publication or sending by post of books containing indecent representation of women. Section 292 of the Indian Penal Code, 1860 deals with the obscenity stating that selling, lets to hire, publicly circulate or distribute any book which contains any obscene material is prohibited unless it is justified under section 262 of the Indian Penal Code, 1860.

3. Impacts of Book Censorship

3.1 How Book Censorship affects Publishing Houses and Authors:

Publishers and Authors often becomes prey to government authorities which impose ban on the content and become predators. After censoring content of the book, without giving a reasonable reason to do so, it cannot be introduced in market this results in huge loss to publishers and hurt the feelings of author that his piece of art is getting defamed instead of getting appreciated.



For removing such ban or forfeiture, authors have to approach in High Court and the proceedings are costly and time consuming.

Very unfortunate thing happened with Priyanka Pathak Narain's new book on Baba Ramdev, titled "Godman to Tycoon" in which Karkardooma's civil judge granted injunction to ban this book without hearing the writer or publisher¹. Judge presume the ground of defamation of Baba Ramdev without even hearing the other party and banned the book using section 95 of Code of Criminal Procedure, 1973. Later High Court of Delhi Considered the Civil Judge's decision to be unfortunate and wrong as the provision of freedom of speech and expression have to be presumed and taken into account under article 19(1)(a) of the constitution.

Jharkhand's government imposed ban on the Sahitya Akademi awardee Hansda Sowvendra Shekhar's 2015 book, "The Adivasi Will Not Dance", for portraying the Santhal community¹ in bad light. The people who protested against the book said the book had insulted Santhal woman. Book censorship in India is very easy as Indian legal structure is in such a way that achieving censorship through law is an almost costless enterprise for anyone inclined to try and also there is no such strong remedy for the counteract available in the interest of publishers.

3.2 Banning of books directly affects the knowledge of the person who is unable to read it

If we talk of new budding minds which are students, banning the books or

protecting them from reading certain kind of the material in a way restricts their knowledge and push them to take this information from Internet. Internet that can be said as one of the most informed source but it is the most misleading source of information as well. Searching such topics on the internet might infect their innocent minds. On the other hand if such subjects are taught in the classroom they could have a better understanding of such topic. By censoring the books, we are stopping the students to learn about the sensitive and controversial topics in the safe environment like classroom.

3.3 Other Negative Impacts

- Asking right questions on wrong things is often taken as obscene content which is subjected to ban, for example Nirbhaya¹'s rapist on 16th December gave a statement "death of rape victim could be avoided if she would have cooperated, hence she is also responsible for her own death". Such pungent comment shows the mindset of rapists, it needs to be presented in front of society. It will make judicial system to understand mindset while framing antirape laws, criminal psychologists to determine the behavior of rape criminals.
- The content which shows the bad face of the society is necessary, to show a mirror to the society and continuously cleanses it from deformities. If such content is banned then it will lead to underdevelopment and unawareness of the society.
- By banning the books, documentaries and articles which talks about conflicting statements given by famous gurus, politicians such as suggesting women to



wear full clothes or living in four walls clearly shows patriarchal mindset of our society. So by banning such kind of presentation we can't change the ideology of these people but instead by showing this they can be made to realize that their thinking is in same tune of rapists and other criminals.

- After getting a notice of ban by the state government under section 95 of Code of Criminal Procedure, 1973, the aggrieved publication seeks remedy from High Court under section 96 of Code of Criminal Procedure, 1973 and remove such ban. But this whole process consumes the time of Courts as well as of writing houses'

4. Some famous cases which deals with the irrelevant ban on contents of books, essays, papers and articles:

In the famous case of "Dwikhandita" written by a Bangladesh writer, Taslima Nasreen in which the book was banned by using the power of section 95¹ of Code of Criminal Procedure, 1973 as it has two paragraphs that "promote, or attempt to promote, enmity between different groups on grounds of religion, or disharmony, or feeling of enmity, hatred or illwill between different religious groups which is prohibited under section 153A of Indian Penal Code¹. But later it was observed that the writer herself is Muslim so the writer cannot be held guilty of promoting hatred or enmity between different groups on grounds of religion. Also court did not gave the opportunity to be heard to the author and injunction made was partial in the context of law. Our law is taken from Common law¹ from British law where they give opportunity to both the parties to be heard then give the orders to

ban but in India authors and publishers are not given opportunity to be heard.¹

In 2008, A K Ramanujan's Collected Essays was attacked by the Hindu Right because of a particular chapter in it, Delhi University just gave in. Against the will of professors, the book was scratched off from the curriculum by considering it as obsolete. Bombay University also made a shameful move when it reneged on its duty and pulled a Rohinton Mistry book out of its reading list. It was an act of betrayal by administrative authority. Later Ramanujan won the legal battle but his book was unavailable for a long time which result in great loss and he have to tackle the time consuming proceedings, which is very frustrating for authors. There was a time when the first four volumes of the Harry Potter series were banned in several American states for they purportedly supported witchcraft. In India, we are still marching to an ancient drum. While other democracies are stepping out to protect their authors, we are going in the opposite direction and promoting the protesters. .

5. Some books that are banned in India or once faced such ban:

The most famous movie "The Da Vinci Code" was released across the world and becomes the global hit. Strange thing is that this movie was based on a novel "The Da Vinci Code" by Dan Brown which was banned by the government of Nagaland for allegedly containing blasphemous remarks about Jesus¹. The book "Mysterious India" by Moki Singh cannot be imported into India¹. The book purportedly contained stereotypes. Also the most controversial book "Who killed Gandhi" by Lourenço de



Salvador is also banned and cannot be imported to India on the ground that this book is inflammatory and ill researched¹. There were several books which were banned due to factual errors in it which includes “Early Islam”, “Nehru: A Political Biography” and many more. There are several books which are specially prohibited to be imported in India such as “CeaseFire” by Agha Babar, “Khak or Khoon” by Nusseim Hajazi, “Chandramohini”, “Nepal” by Toni Hagen, “Ayesha” by Kurt Frishler and many more which are originally in Urdu are specially restricted to be in India¹. Most famous author’s content were also banned at some point like Subramania Bharati’s short story “Aaril Oru Pangu” was banned¹ and at that time it was selfpublished in three languages and this was the first short story in Tamil Language. Arundhati Roy’s book “The God of Small Things” was also challenged by a lawyer named Sabu Thomas from Kerala claiming that chapter 21 of this book contains obscene material¹. The never ending list of such banned or challenged books goes on.

6. Things you can do with the banned book

- Reading of the books

The Indian laws are silent upon whether a banned book can be read so we can read the banned books. But still in there are several books that the Indians are not allowed to read.

- Possession of the books

Again there is no where written that a banned book cannot be possessed by any person which makes the possession totally legal.

- Printing or publishing of banned books

The publication of the books containing 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 as given under the section 95 of the Cr.P.C. is prohibited.

- Downloading the banned books

Downloading any book from the internet cause the interference of Information technology act which overrides all the acts when talking about the work done over the internet and in this act it is nowhere written that the person cannot download a banned book.

- Export or import of Banned books

The export of banned books is not restricted by any law. According to section 11 of the customs act, 1962 which prohibits the export of certain things, there is nowhere written in it about the prohibition of banning books being exported. But according to the same law import is restricted to protect “the maintenance of the security of India” and “the maintenance of public order.”

Conclusion:

Despite of many benefits of Book Censorship which includes limiting the obscene and objectionable content to spread across the people, there are many deprivations and harms of Book Censorship which affects the society one or the other way. As we know people of India are very serious about their religion, if a little statement is made over some people or thing related to culture, religion or tradition. People start protesting against it and thousands of voices are raised in order to ban such content and this scenario can take a very violent face which can disturb the



internal peace and intense the environment. In order to avoid such situation, there was introduction of “Censorship¹” to limit the content which causes religious hurt or spread the hatred amongst the society. Book Censorship is very fruitful in order to prevent the obscene and politically wrong material spread across the society and influence the society in a wrong way. But from this research few things emerges out which is very disappointing from the context of justice. These days’ people are protesting more for such matters, where a little statement is made on religion or tradition. In a country of more than billion people which are divided in different religion, customs and traditions. Some people have a very narrow mindset, if right contents are made on wrong things then, people take this as an inflammatory statement and start doing riots and uproars. There are more serious matters in which there is a burning need to raise voice, such as rape cases, children getting stabbed, harassment, sexual assault and other serious offenses. These days several artworks and contents are at controversies of banning where people take these things so serious that they start doing violent public disturbance such as for movie “Padmavati”. Where people and Radicals are protecting a queen they have never seen and attacking a movie they have not yet seen¹. If such content is banned then it will lead to the underdevelopment and unawareness of the society.

In recent years we have seen censoring of books by governments of India on the pretext of hurting sentiments of certain section of population or defaming the country. Such bans are not even mentioned in the restrictions of article 19(1) (a) and still

judges give injunction order of ban without giving opportunity of being heard to publishers and authors. Judges and other legal authorities ban books without getting the details and idea of the content, by misusing their extreme powers under sec 95 of Code of Criminal Procedure, 1973. These bans and prohibition are not justified from the context of law and there is a need to introduce new laws related to Book Censorship in order to stop exploitation, injustice which publishers and authors have to bear which results in huge loss of money, reputation and time. So there should be introduction of strict provisions in order to inhibit the power of section 95 of Code of Criminal Procedure, 1973, which accord State enormous powers. If it “appears” to state that the written content is objectionable merely on any ground then, they can order to forfeit the copies of such content. Also judges who decide such case should have knowledge of literature, writing, compositions, literary texts etc. so that they can analyze every aspect of the case and come up with the most appropriate decision by keeping provisions of article 19(1) (a) in mind. Currently, existing structure of our judicial system have flaws and loopholes which are already discussed in the pretext of this article and can be conquered by making changes which will surely benefit the society, authors, publishers as well as such authorities related to censorship.

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