Defending freedom of speech

What is the issue?

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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.

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What are the legal provisions in this regard?

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- 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.
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- It authorises State governments to forfeit copies of any newspaper, book, or document that "**appears**" **to violate** certain provisions of the Indian Penal Code.
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- These include sedition, communal or class disharmony, obscenity, insulting religious beliefs, etc.
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- 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.
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What are the drawbacks?

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- In the Indian legal system, achieving censorship through law is almost costless for anyone inclined to try.
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- The only thing that could effectively counteract this is a strong, **judicial commitment to free speech** which often fails to manifest.
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- Evidently, Section 95 allows governments to ban publications without having to prove, before a court of law, that any law has been broken.
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- 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.
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- 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.
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- While the court deliberates and decides the matter, the default position remains that of the ban.
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- Also the litigation process is both expensive and time-consuming which is a blow to the creativity of writers and publishers.
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What is the way forward?

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

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