

CHAPTER VIII

LAWS EMPOWERING FORFEITURE OF DOCUMENTS AND THEIR CONSTITUTIONALITY

1. STATE GOVERNMENT'S POWER TO FORFEIT NEWSPAPERS, BOOKS AND DOCUMENTS FOR SEDITIOUS CONTENT

If the objectionable matter is disseminated by speech, the prosecution of the person responsible for the dissemination is the only sanction to be applied. If the matter is reduced to writing and is being circulated, either the person publishing may be prosecuted or the writing may be banned or both may be done in appropriate cases. When a publication is really destructive of the public order, power of punishment without the power of forfeiture serves little purpose. Thus the power of forfeiture is the more effective sanction, when publications contain material threatening the public order within the State.

In the early times, governments were very sensitive and they did not allow certain kinds of publications to be circulated. Sometimes the objections were on moral grounds. At others they were based on religious and political grounds. No state at any time permitted circulation of every kind of matter.

With the growth of printing in India, the Government had to deal with the problem of restraints on the circulating material. Act XI of 1835 declared that the Press in India became free and that it was not subject to any previous restraints like licensing of the press or pre-censorship. The Press Act of 1857 re-introduced the licensing system for a short time during the Indian Mutiny. Thereafter the licensing system was not in vogue. But a different method was adopted for controlling the circulation of undesirable publications.

The Vernacular Press Act, 1878, introduced drastic restrictions on the Press. For publishing matter which was declared by the act to be objectionable, the publication itself might be forfeited. In the first instance a warning to the printer not to repeat printing of such matter might be given. If the printing was repeated the printer might be required by the executive to deposit security which might be forfeited if the printer persisted in the publication of the

matter of the nature objected to. Or straight away, security might be demanded and on repetition of the offence it might be forfeited. If the executive thought it necessary, the press itself might be forfeited. There was no appeal to the courts in any of the matters. Appeal lay only to the Governor-General-in-Council, whose decision was final. The Act applied only to the publications in native languages. It had no application to publications made exclusively in English. The Act was repealed in 1882.

The Press Act, 1910, essentially retained the scheme of the Vernacular Press Act in imposing penalties. But the Act applied to the publications made in English as well as in native languages. The grounds on which the forfeiture might be ordered were enlarged.¹ Under section 17 of the Act, power of review was given to the High Court. But the burden of proving that publication in question did not contain any objectionable matter was placed on the applicant. The High Court's power of review was very limited. Jurisdiction of the court was barred from questioning the order of forfeiture otherwise than by an application under the Act.² On the High Court's power of review under the Act, Jenkins C.J. said:³

"The Advocate-General has convinced me that the Government's view of this piece of legislation is correct, and that the High Court's power of intervention is the narrowest; its power to pronounce on the legality of the forfeiture by reasons of failure to observe the mandatory conditions of the Act is barred: the ability to pronounce on the wisdom of the executive order is withheld; and its functions are limited to considering whether the applicant to it has discharged the almost hopeless task of establishing that his pamphlet does not contain words which fall within the all comprehensive provision of the Act. I describe it as an almost hopeless task, because the terms of section 4 are so wide that it is scarcely conceivable that any publication would attract the notice of the Government in this connection to which some provision of that section might not directly or indirectly whether by inference, suggestion, allusion metaphor, implication or otherwise apply."

Describing the comprehensive nature of section 4(1) of the

1. Section 4(1) of the Act.

2. Section 22.

3. *In re Mahomed Ali*, I.L.R. 41 Cal. 466, 483-484.

Act enabling the executive to order forfeiture, the learned Chief Justice said:⁴

“The provisions of section 4 are very comprehensive, and its language is as wide as human ingenuity could make it; indeed it appears to me to embrace the whole range of varying degrees of assurance from certainty on one side to the very limits of impossibility on the other.

It is difficult to see to what lengths the operation of this section might not plausibly be extended by an ingenious mind. They would certainly extend to the very limits of impossibility on the other.

An attack on that degraded section of the public which lives on the misery and shame of others would come within this wide spread net; the praise of a class might not be free from risk. Much that is regarded as standard literature might undoubtedly be caught.”

A repressive statute of such nature provoked resentment. In 1921, the Sapru Committee was constituted to examine the then existing laws restricting freedom of the press in India and to suggest alterations therein. Pursuant to the recommendations of the Committee, the Press Act of 1910, was repealed and the provisions thereof, to the extent necessary, were embodied in the Press Laws Repeal and Amendment Act, 1922,⁵ and enacted into section 99A to G of the Criminal Procedure Code.

Under the original provision, only seditious writings, that is writings falling under section 124-A of the Penal Code, were liable for forfeiture. Section 99A- of the Criminal Procedure Code was subsequently amended so as to make writings provoking enmity and hatred between different classes of citizens⁶ and writings leading to religious insult or insult to religious beliefs of a class of citizens liable for forfeiture.⁷ Section 99-A to G of the Criminal Procedure Code now reads as follows:

“99-A. *Power to declare certain publications forfeited and to issue search-warrants for the same:*

4. *Ibid.*, 478.

5. Act 14 of 1922.

6. Act 36 of 1926.

7. Act 25 of 1927.

(1) Where—

(a) any newspaper, or book as defined in the Press and Registration of Books Act, 1867, or

(b) any document,

wherever printed, appears to the State Government to contain any seditious matter or any matter which promotes or is intended to promote feelings of enmity or hatred between different classes of citizens of India or which is deliberately and maliciously intended to outrage the religious feelings of any such class by insulting the religion or the religious beliefs of that class, that is to say, any matter the publication of which is punishable under section 124-A or section 153-A or section 295-A of the Indian Penal Code, the State Government may, by notification in the Official Gazette, 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 authorize 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.

(2) In sub-section (1) “document” includes also any painting, drawing or photograph or other visible representation.

99-B. *Application to High Court to set aside order of forfeiture :*

Any person having any interest in any newspaper, book or other document, in respect of which an order of forfeiture has been made under section 99-A, may, within two months from the date of such order, apply to the High Court to set aside such order on the ground that the issue of the newspaper, or the book or other document, in respect of which the order was made, did not contain any seditious or other matter of such nature as is referred to in sub-section (1) of section 99A.

99-C. *Hearing by Special Bench :*

Every such application shall be heard and determined by a Special Bench of the High Court composed of three Judges.

99-D. *Order of Special Bench setting aside forfeiture :*

(1) On receipt of the application, the Special Bench shall, if it is not satisfied that the issue of the newspaper, or the book or other document, in respect of which the application has been made, contained seditious or other matter of such a nature as is referred to in sub-section (1) of section 99A, set aside the order of forfeiture.

(2) Where there is a difference of opinion among the judges forming the Special Bench the decision shall be in accordance with the opinion of the majority of those Judges.

99-E. Evidence to prove nature or tendency of newspapers :

On the hearing of any such application with reference to any newspaper, any copy of such newspaper may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper, in respect of which the order of forfeiture was made.

99-F Procedure in High Court :

Every High Court shall, as soon as conveniently may be, frame rules to regulate the procedure in the case of such applications, the amount of the costs thereof and the execution of orders passed thereon, and until such rules are framed, the practice of such Courts in proceedings other than suits and appeals shall apply, so far as may be practicable, to such applications.

99-G. Jurisdiction barred :

No order passed or action taken under section 99A shall be called in question in any Court otherwise than in accordance with the provisions of section 99B."

By Act I of 1951, wherever the word "States" occurs, "India" is substituted. Thus the word India finds a place in the section.

2. FORFEITURE OF POSTAL ARTICLES IN TRANSIT

Any postal officer authorised by the Post-Master-General may detain any article in the course of transmission by post if he suspects it to contain seditious matter, that is matter the publication of which is punishable under section 124-A of the Penal Code.⁸ Such a publication detained by the postal authorities may be examined by the State Government.⁹ If it appears to the State

8. Section 27-B (a)(ii) of the Indian Post Office Act, 1898.

9. Section 27-B (3).

Government to contain seditious matter, it may pass such orders as it thinks fit.¹⁰ Any person interested in the detained article may apply within two months from the date of detention to the State Government for its release.¹¹ If the State Government rejects the application, within two months of the rejection, the aggrieved party may apply to the High Court for an order of release of the detained article.¹² Before the High Court, the same procedure as is followed under section 99-B of the Criminal Procedure Code should be followed for obtaining an order of release of the detained article.¹³ The ground on which the High Court may pass an order of release is that the article does not contain any seditious matter.¹⁴ Jurisdiction of courts to question the validity of the orders of detention made by the postal authorities is barred otherwise than by an application before the High Court to obtain an order of release.¹⁵ By following this procedure, any drawing, printing, photograph, printed matter or blocks may be detained in the course of postal transmission.¹⁶

One of the modes of disposal open to the State Government in the case of detained articles is to order forfeiture. Order of the State Government need not be published in the Official Gazette. Nor is it obligatory on the part of the State Government to state the grounds of its opinion. The postal authority is required to inform to the sender of the article the fact of detention.¹⁷ It is not obligatory on the part of the State Government to give reasons for rejecting an order of release. Thus one of the important safeguards provided under the Criminal Procedure Code to the aggrieved party is absent in obtaining a remedy under the Post Office Act. The scope of operation of the orders passed under the Criminal Procedure Code and under the Post Office Act are different. In the former case, all publications, whosoever may have been for the time being in possession, are covered by the notification and they become liable to forfeiture. In the latter case, only the sender of the article is affected. Thus there is a substantial difference between the number of publications affected by the orders. This explains the difference in the form of notice between the two cases. But the State Govern-

10. *Ibid.*

11. *Ibid*, proviso (1).

12. *Ibid*, proviso (2).

13. Section 27-C.

14. Section 27-B(3) proviso 2.

15. Section 27-D

16. See the definition of "document" in section 27-B(4).

17. Section 27-B (2).

ment should make an order of rejection on an application made by the aggrieved party for the release of the article. This provision is wide enough to be understood as requiring that an order of rejection should state reasons. Thus, by interpretation, a possible objection to the constitutionality on the ground of unreasonableness may be obviated.

3. FORFEITURE WHEN A PUBLICATION IS IMPORTED ACROSS THE CUSTOMS BORDER

Under the Sea Customs Act, 1878, the Chief Customs Officer or other officer authorised by the State Government may detain any package brought by land or sea into India, if it is suspected to contain seditious matter.¹⁸ The detaining officer should send by post to the addressee or consignee a notice intimating the fact of detention.¹⁹ Thereafter the remedy of the aggrieved party to obtain release of the detained package is the same as that provided under the Post Office Act for the release of a detained article in the postal transit, that is by an application to the High Court for an order of release. Under the Post Office Act and the Sea Customs Act, the High Court may pass an order of release only on the ground that the article or the package in question did not contain seditious matter, that is to say, matter the publication of which is not punishable under section 124-A of the Penal Code. In both, the application should be heard by a Bench of three judges of the High Court, as is under the Criminal Procedure Code. In both, matters the publication of which is punishable under sections 153-A or 295-A of the Penal Code are not liable to forfeiture. Under the Sea Customs Act, forfeiture of documents imported by air is not expressly provided for.

4. FORFEITURE UNDER THE CRIMINAL LAW AMENDMENT ACT, 1961

If any book, newspaper, or document appears to the State Government to contain matter the publication of which is punishable under section 2 or 3(2) of the Criminal Law Amendment Act, 1961, it may by order published in the Official Gazette, after stating the grounds of its opinion declare that every copy of such publication is forfeited.²⁰ The same power may also be exercised by the Central Government.²¹ So far as forfeiture of matter the publica-

18. Section 181-A of the Sea Customs Act.

19. Section 181-A(2).

20. Section 4(1) of the Criminal Law Amendment Act, 1961.

21. Section 4(2).

tion of which is punishable under section 2 of the Act is concerned, the construction of the sections presents no difficulty. Any document containing material, the publication of which is made criminal under section 2 of the Act is liable to forfeiture anywhere in India. The power under the section is used to confiscate "China Today" published by the Chinese Embassy in New Delhi.²² As the Chinese Embassy cannot claim the fundamental right to freedom of speech, constitutionality of the action is not in doubt.

To the extent to which it empowers forfeiture of documents, the publication of which is punishable under section 3(2) of the Act, the meaning of the section is not clear. Section 3(2) of the Act comes into force on a notification issued under section 3(1) of the Act.²³ Section 3(1) of the Act makes it clear that an area notified under section 3(1) is a notified area for the purposes of section 3. Thus the operation of section 4(1) of the act entailing forfeiture seems to be independent of the operation of section 3(2) of the Act making an act criminal. The result is, that a document, for containing matter considered to be objectionable under section 3(2) of the Act, may be subjected to forfeiture anywhere in India because in a remote corner of the country, the publication of the matter is, *inter alia*, likely to be prejudicial to the maintenance of public order. For instance, a document may be forfeited in Kerala on the ground that its contents have a prejudicial effect on the public order in the remote areas of Himachal Pradesh or Uttar Pradesh. When the Parliament itself has chosen that an act should be punishable in a particular area, it does not stand to reason if freedom of speech is restricted in the whole of India.

On account of this absurdity which would otherwise result, the word "punishable" under section 4(1) should be taken as "actually punishable". Therefore, a document may be forfeited only in the notified areas for containing objectionable matter, during the time the publication of the matter is therein actually punishable. The same matter might be in circulation in other parts of India.

5. RECOMMENDATIONS OF THE PRESS LAWS ENQUIRY COMMITTEE AND THE PRESS COMMISSION

(a) *Regarding Section 99-A of the Criminal Procedure Code*

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22. Issues of "China Today" of April 5, 13 and 21, 1962 were confiscated. See *The Statesman*, June 2, 1962, p. 7 Col. 5.
23. Section 3(1) of the Criminal Law Amendment Act, 1961.

Neither the Press Laws Enquiry Committee,²⁴ nor the All India Newspaper Editors Conference²⁵ thought it necessary to suggest any amendments. The Committee found that the administration of the law was just.²⁶

Having recommended the repeal of the section 124-A, the Press Commission recommended²⁷ the corresponding amendment of section 99-A of the Criminal Procedure Code so as to repeal the section to the extent to which it empowers the Government to forfeit documents the publication of which is punishable under section 124-A of the Penal Code.

(b) Power to intercept articles and packages in the postal transit or across customs frontier

The Press Laws Enquiry Committee did not suggest any amendments.²⁸ In regard to interception of postal articles, it said that "such provisions exist in the press laws of progressive countries."²⁹ In regard to the power under the Sea Customs Act, it said that "it is an improvement on the laws of certain foreign countries."³⁰ But it recommended that any imported matter inciting people to commit an offence be made liable for forfeiture by the Customs authorities.³¹ This recommendation has not yet been implemented. If it is implemented, it is very likely that publications inciting people to class hatred or tending to religious insult may become the subject of forfeiture.

The Press Commission suggested amendments on the same lines on which it suggested amendments to section 99-A of the Criminal Procedure Code.³²

6. CONSTITUTIONALITY OF THE PROVISIONS

The provisions creating crime, when construed in the interests

24. Report to the Press Laws Enquiry Committee, 40 (1948)

25. *Ibid*, 51.

26. *Ibid*, 40.

27. Report of the Press Commission, Part I, 405 (1954).

28. Report of the Press Laws Enquiry Committee, 42 (1948) in regard to interception of postal communications. *Ibid*, 41 in regard to power of interception across customs frontier.

29. *Ibid*, 42.

30. *Ibid*, 41.

31. *Ibid*.

32. Report of the Press Commission, Part I, 407 (1954).

of public order are constitutional. For the same reasons, if they are allowed to be circulated, they should become liable to forfeiture.

Under the statutory provisions, the Government has the initiative to take action. That power is absolutely necessary because sometimes unless immediate action is taken the copies of publications may go underground and thus be a source of greater evil. The initial power is not vested in any subordinate official. The highest authority in which all executive power of the state is vested exercises the power in the first instance.

The twin safeguards against Government's abuse of power are, its obligation to state reasons for the action taken and the judicial corrective. The High Court's power of review is real and substantial. Against the decision of the High Court, an appeal in appropriate cases may be taken to the Supreme Court. A more effective machinery ensuring freedom cannot be devised under any municipal system. Therefore, the constitutionality of the provisions does not seem to be open to doubt.

In *Harnam Das v. State of U.P.*³³ the Supreme Court assumed that section 99-A of the Criminal Procedure Code is constitutional. In *Veerabrahman v. State*,³⁴ the High Court of Andhra Pradesh without much discussion held that the section is a reasonable restriction on the freedom of speech.³⁴ In *Khalil Ahmad v. State*,³⁵ the Allahabad High Court held that the section in so far as it concerns forfeiture of documents the publication of which is criminal under section 295-A of Penal Code is constitutional because section 295-A is held by the Supreme Court to be constitutional.

33. A.I.R. 1961 S.C. 1662.

34. A.I.R. 1959 A.P. 572.

35. A.I.R. 1960 All. 715.