SILENCING WITHOUT PROOF: SECTION 295A, SECTION 95 CRPC, AND THE BARAGUR JUDGMENT

ABSTRACT

The presumption of innocence, which is one of the fundamental maxims of criminal jurisprudence, enshrined in the Latin maxim actori incumbit probatio, finds itself challenged by the law that criminalizes the act of speech in India. This paper explores the judgment rendered in the case of Baragur Ramachandrappa & Ors. v. State of Karnataka & Ors. (2007) 5 SCC 1, where the Court upheld[1] the State government's authority to seize an author's Kannada literary work through Sections 95 of the Code of Criminal Procedure, 1973, read with 295A of Indian Penal Code, 1860, respectively. Through the lens of a doctrinal-analytical approach, this paper attempts to address two major legal issues.

First, the paper argues that shifting the burden of proof on the author, which requires the accused to rebut the State's claim of forfeiture against him, without requiring the State to establish any prima facie case of evidence, is an unwarranted reversal of the presumption of innocence rule.

Second, the 'prudent man' test in the context of Section 295A is critically analyzed, with the question being posed on whether the prudent person test should be taken from the point of view of the member of the religious community affected or the viewpoint of an objective, disinterested observer.

Keywords: Section 295A IPC, Section 95 CrPC, Burden of Proof, Prudent Man Standard, Freedom of Expression, Forfeiture of Publications

I. INTRODUCTION

Right to freedom of speech and expression and expression lays the foundation stone for a constitutional democracy as it allows the free exchange of ideas, literature, and intellectual discussions. These rights are subjected to certain limitations too. Article 19(2) allows the State to place certain restrictions in order to protect the interests of public order, decency, and morality, among others. But the presence of a law restricting the fundamental right does not mean the arbitrary use of the laws, the state must justify the application of such laws in individual cases.

The provision in Section 95 of the Code of Criminal Procedure, 1973, along with Section 295A of the Indian Penal Code, 1860, grants the state[2] authority to confiscate those publications that are considered offensive to religious sensibilities. This provision appears to create an exception to the above rule, The state does not have to provide a justification for its action and even furnish any evidence. This raises a fundamental question is Section 95 is a valid restriction, and whether using it without asking the state to justify its action individually in each case is an issue of due process, arbitrariness and presumption of innocence.

The question comes to forefront in the Supreme Court's decision in Baragur Ramachandrappa & Ors. V. State of Karnataka & Ors. (2007) 5 SCC 1.[3] This case was about the petitioner Dr. P.V.

[1] Baragur Ramachandrappa v. State of Karnataka, (2007) 5 SCC 1 (India).
[2] The Code of Criminal Procedure, 1973, §§ 95–96; The Indian Penal Code, 1860, § 295A.
[3] Baragur Ramachandrappa v. State of Karnataka, (2007) 5 SCC 1 (India).

Narayana who published the novel Dharmakaarana about the lives of the 12th century Veerashaiva saint Basaveshwara and his sister Akkanagamma and her son Channabasaveshwara. later the state government put a notification under sec 95 CrPC to ban the book because they believed that certain statements in the novel were offensive to the veerashaiva community, the petitioner filed the appeal in supreme court after high court dismissed his appeal with prayer to Supreme court to set aside the forfeiture notification the state issued under sec 96 CrPC. The supreme court dismissed the appeal and also observed that the onus to prove that the publication did not fall within the parameters of Section 95 of the Code rested on the person who challenged the Notification by filing a petition under Section 96.

The court observed that:

> *Mr. Ramachandran's assertion that the onus of proof would lie on the State Government is not acceptable as the intention has, to some extent, to be inferred from the nature of the publication. It is true that a forfeiture of a newspaper or book or a document is a serious encroachment on the right of a citizen, but if forfeiture is called for in the public interest it must without a doubt have pre-eminence over any individual interest. We also endorse the argument of the learned Advocate General that the State Government must take a pragmatic approach in the matter as explained*

While further delineating the circumstances under which this provision could be applied this Court in (1989) 2 SCC 574 S.Rangarajan vs. P.Jagjivan Ram & Ors. Observed:[4]

> *"The standard to be applied by the Board or Courts for judging the film should be that of an ordinary man of common sense and prudence and not that of an out of the ordinary or hypersensitive man"*

And these observations raise further questions

First - The first issue is whether the placement of the burden of proof on the petitioner-author to refute the State's forfeiture order without the State having to prove anything at all amounts to an improper shift in the burden of proof of the presumption of innocence.

Second - The second issue is whether the "prudent man" test used in Section 295A should be interpreted from the point of view of an individual who belongs to the community that was offended or a neutral observer.

These 2 question stand at the centre of this case and which were not answered in a satisfactory way by the court. The 1st concern why must state didn't require to give any justification before using sec 95 leaving the author to prove why his book not be banned instead of state proving why it should, the 2nd concern is the question of who is a prudent men, when the whole case is about banning the book so certain community might feel hurt can we take a prudent person as someone who is not the part of the community.

[4] S. Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574 (India).

II. LEGISLATIVE FRAMEWORK

A. Section 295A IPC - Elements and History

i. Colonial Origins and the Rangila Rasul Controversy

Though introduced during British rule, Section 295A of the Indian Penal Code emerged directly from religious conflict in the 1920s. Prompted by the release of Rangila Rasul a tract authored by Mahashe Rajpal in Lahore it targeted speech seen as deeply offensive to faith. The writing examined aspects of Prophet Muhammad's private life. Because public tension grew quickly, authorities moved to hold Rajpal accountable. Yet attempts to convict him under Section 153A fell short at first. That section focused on actions fueling hostility among communities; without clear proof of such intent, charges did not stick. Later, in Rajpal v. Emperor (1927), judges at the Lahore High Court confirmed the legal gap.[5] Their decision emphasized intent to provoke discord as essential for conviction under that clause. Because the pamphlet focused solely on a single faith, it fell short of this standard. Public anger surged after Rajpal was cleared, ending in his killing during 1929.

Backed by rising tensions, Section 295A entered the Indian Penal Code via the 1927 Amendment Act. As a response to perceived legal shortcomings. stressing penalties for calculated insults meant to provoke religious groups. Where speech targeted faiths with clear intent to offend, punishment will follow. Because unrest often traced back to such provocations, authorities framed restraint as a necessity.

Later on, Faizan Mustafa and Jagteshwar Singh Kohli pointed out in their 2015 work Freedom of Speech: Reasonable Restrictions vs. Absolute Immunity[6] that Section 295A did not begin as a shield for personal faith. Instead, it emerged from the colonial priorities focused on public To curb unrest between groups, not defend sacred beliefs. Because of this, looking past its official justification reveals how deeply its role shifted once India became independent. Over time, enforcement often drifted far from original intent.

ii. Elements of the Offence

What matters most are two conditions: one involves offending a faith or its core tenets, while the other is clear ill will behind the act. Often, this second point the mindset involved which is highly debated topic. At the heart of Ramji Lal Modi v. State of Uttar Pradesh AIR 1957 SC 620 answered a crucial question about Section 295A[7]'s legality, later confirmed by India's top court. It made it clear that mere offense isn't enough for punishment only actions driven by purposeful hostility sentiments qualify.

[5] Rajpal v. Emperor, AIR 1927 Lah. 590 (India).
[6] Faizan Mustafa & Jagteshwar Singh Kohli, Freedom of Speech: Reasonable Restrictions vs. Absolute Immunity (2015).
[7] Ramji Lal Modi v. State of Uttar Pradesh, AIR 1957 SC 620 (India).

Yet judging this kind of intention proves difficult in real situations. According to Professor Upendra Baxi in The Future of Human Rights (3rd ed., 2008)[8], deciding whether speech shows ill will often comes after the fact shaped more by current societal and political forces than by any impartial look into the speaker's thoughts. Because the line for "deliberate and malicious" remains unclear, authorities and courts gain wide room to act authority sometimes exercised without full regard for constitutional norms.

In the case of Manzar Sayeed Khan versus State of Maharashtra (2007) 5 SCC 1, the Supreme Court emphasized viewing disputed expressions[9] as a whole rather than in fragments. While assessing such expressions, meaning arises not just from wording but from surrounding circumstances. Looking at parts alone without regard to broader aim was warned against by the judges. Still, when examined closely, the approach taken in Baragur Ramachandrappa did not fully align with this reasoning.

B. Section 95 CrPC - How Forfeiture Works

i. How the Provision Operates

When the state thinks a book or paper breaks laws like those in Section 295A of the Indian Penal Code, it may take them without court approval. Under Section 95 of the CrPC from 1973, such seizure begins with a notice published in the Official Gazette. Belief by officials suffices proof isn't checked beforehand. The process skips judicial review entirely. Authorities act even if the writer knows nothing about the move. A single decision by government hands allows confiscation. Judges play no role at this stage. Notification comes after taking action, not before. Ownership shifts once declared forfeit through official channels.

Though labeled a response after release, Section 95 functions more like a blockade put up before anything reaches readers Gautam Bhatia frames it this way in his 2016 work Offend, Shock, or Disturb: Free Speech Under the Indian Constitution.[10] He notes its timing may seem different on paper, yet what follows matches censorship done ahead of time; once seized, materials vanish from public view instantly. Courts do not weigh in beforehand, leaving an executive order to silence speech outright. Because no judicial check happens early, the effect feels familiar despite new wrapping. What appears delayed still halts expression just as thoroughly.

Surprisingly straightforward, the procedure begins when officials decide a view, send notice, then seize the publication. This whole sequence unfolds through administrative will alone - no chance given to the writer to respond. When governance relies on legal order and shared rights, unilateral control like this threatens free speech at its core.

ii. Section 96 CrPC - The Author's Only Way Out

Should a writer or publishing entity wish to challenge asset seizure via Section 95, recourse lies solely through a petition submitted to the High Court per Section 96 of the Code. Two months

[8] Upendra Baxi, The Future of Human Rights (3d ed. 2008).
[9] Manzar Sayeed Khan v. State of Maharashtra, (2007) 5 SCC 1 (India).
[10] Gautam Bhatia, Offend, Shock, or Disturb: Free Speech Under the Indian Constitution (2016).

after notice is issued, those affected provided they hold stake in the seized work may request judicial review aimed at reversing the ruling. Whether the contested text truly includes content violating applicable law becomes the central question for the High Court under subsection (3). Finality attaches to its conclusion on such matters, allowing no further appeal.

Though Section 96 appears fair on the surface, closer inspection shows an uneven process. Initiating legal proceedings falls entirely on the writer, who must cover expenses to contest government intervention. Meanwhile, the authorities face no burden to support their original move publication halted, objective met. Responding only when challenged lets them avoid early accountability. In Bhatia's words: "Section 96 shifts justification from the State proving its case to individuals defending themselves."

One reason comes from how constitutions work elsewhere. When publishers challenged a quiet warning process in Rhode Island, the U.S. Supreme Court stepped in during Bantam Books, Inc. v. Sullivan (372 US 58 (1963)).[11] That ruling found administrative silence on expression needs strong checks against control. A key point: those blocking words must file first not force others into legal steps. What happened there feels familiar when reading Sections 95 and 96.

iii. The Procedural Asymmetry - State Acts First, Author Reacts

What happens when Sections 95 and 96 work together? A clear imbalance takes shape. Power moves first from the state and does so without proof, without warning. Only afterward does the affected person step in, forced to challenge what was already done. Instead of the government showing cause, it acts freely at the start. That shift isn't merely awkward; it reveals something steeper beneath. There exists no baseline demand for evidence before rights get limited. Such absence shapes outcomes long before courts see cases.

Elsewhere, India's highest court recognized that limits on basic freedoms need to match their purpose while following proper steps. From Maneka Gandhi versus Union of India (AIR 1978 SC 597), it emerged: rules touching core rights require legal backing[12], yet also demand fairness, justice, and logic in how they operate. What stood out was this idea the process set by law under Article 21 ought to make sense; if flawed or slanted, it won't shield government actions from being questioned. Procedures lacking balance fail constitutional scrutiny. Though framed legally, the emphasis landed squarely on reasonableness shaping legitimacy.

Though Maneka Gandhi focused on Article 21, the underlying idea that procedures must meet constitutional standards when basic rights are involved extends directly to Article 19(1)(a). Without needing to show proof, if authorities can silence a writer while placing the burden of justification on them, such a process fails any meaningful test of fairness. At the heart of the initial legal concern explored here lies this imbalance in structure, which now becomes our focus. Moving forward, attention turns to Section III - the examination of the Baragur case.

III. THE BARAGUR CASE

[11] Bantam Books, Inc. v. Sullivan, 372 U.S. 58 (1963).
[12] Maneka Gandhi v. Union of India, AIR 1978 SC 597 (India).

A. The Factual Background

It begins with a legal dispute: Baragur Ramachandrappa & Ors. v. State of Karnataka & Ors. (2007) 5 SCC 1 reveals tensions[13] simmering beneath India's cultural surface since independence. Literary creation meets faith, then collides with state power not always quietly. Central to this conflict stands a Kannada novel titled Dharmakaarana, authored by Dr. P.V. Narayana. Into its narrative flow step historical personalities deeply honored within the Lingayat or Veerashaiva circles of Karnataka. Basaveshwara appears first a 12th-century spiritual leader tied to Veerashaivism. His sister, Akkanagamma, follows closely in the tale, alongside her son Channabasaveshwara. These characters carry weight far beyond fiction; reverence surrounds them. Their portrayal sparked discomfort among believers when rendered through fictionalized accounts.

Though rarely mentioned today, Dharmakaarana was far from ignored upon release. Winning the Karnataka Sahitya Academy Award for Best Novel in 1995 signaled strong approval within Kannada literary circles. Recognition by a government-backed institution suggested acceptance into established cultural narratives. Yet official endorsement did not shield it from later conflict. Objections arose among sections of the Veerashaiva community, who viewed portions as undermining revered spiritual personalities. Because of these concerns, authorities moved under Section 95 of the CrPC in 1973. All existing editions faced seizure through a state-issued notice.

Among those appealing was Baragur Ramachandrappa, a recognized Kannada author who at the time led the Karnataka Sahitya Academy; they contested the seizure order through a plea in the Karnataka High Court based on Section 96 CrPC. With backing from state authorities, the court rejected their request. Later moving forward, the matter reached the Supreme Court of India because, according to them, the book failed to satisfy the legal standard set by Section 295A IPC while also infringing upon essential free speech rights guaranteed under Article 19(1)(a) of the Constitution.

B. The Court's Rationale

One reason stood out clearly the top court saw intent under Section 295A as both willful and hostile. While reviewing the case, the bench emphasized that proof obligations under Section 96 tilted toward the appellant. Through its ruling, the judges backed government action rooted in practical judgment under Section 95. A two-judge team confirmed asset seizure, rejecting the challenge entirely.

i. Interpreting "Deliberate and Malicious Intent"

Looking at intent, the Court adopted an expansive stance. Rather than demanding proof of a calculated, harmful aim by the State, it suggested such intention might emerge from how the material was shaped and what it contained. In its words:

> *"The intention has, to some extent, to be inferred from the nature of the publication."*

[13] Baragur Ramachandrappa v. State of Karnataka, (2007) 5 SCC 1 (India).

This method stands out because of its exclusions. Removing any separate check on the writer's mental state, the Court merged expression with purpose. Because of this shift, offense taken by a religious group might lead a court or perhaps the State to assume bad intentions. That assumption rests on reasoning that turns back on itself: offensiveness suggests motive, while presumed motive confirms illegality. Reaction transforms into both basis and validation - the response serves as clue and conclusion.

This idea runs counter to what the Court previously said in Manzar Sayeed Khan v. State of Maharashtra (2007) 5 SCC 1, insisting back then that meaning must emerge from setting[14], shaped by the full piece rather than pulled from fragments torn away from artistic aim. Still, during Baragur, attention skipped past the book's wider creative nature, its recognition through prizes, even the writer's deeper goals when showing lives of Veerashaiva holy figures. Because judges leaned so heavily on drawing conclusions about motive, the surroundings in which Dharmakaarana was written got left behind.

ii. The Court's Treatment of Burden of Proof

One might say the core of the ruling lies in the Court's approach to evidentiary responsibility. Although petitioners claimed it was up to the State Government - the party starting forfeiture - to show the publication broke Section 295A, this view did not hold. Instead, the judges clearly dismissed such reasoning by pointing out their stance directly

> *"The onus to challenge and disprove the Government's initial assessment that the publication falls under the relevant offense, including its intent, lies with the applicant. This intention must be determined from the language, content, and overall message of the publication."*

The judges also set aside what the applicants claimed, pointing out:

> *"Mr. Ramachandran's claim that the State Government bears the burden of proof is unacceptable because the intention can, to some extent, be inferred from the publication itself."*

Putting the government's view forward as a "prima facie" call language that carries real legal weight the Court treated an unchecked bureaucratic choice like it was nearly proof itself. Then, suddenly, the burden fell on the writer to show why that assumption failed. Rarely does judicial logic shift so sharply from standard practice, especially when state authority limits individual freedoms normally, officials must explain and defend such moves. Here, though, the person affected needed to demonstrate they did nothing wrong. Later, in Section IV, these effects on fairness under law and trust in neutral rules get closer attention.

iii. The "Pragmatic Approach" Doctrine

Backed by the judiciary, a practical method was favored for state authorities exercising authority under Section 95, noting that -

[14] Manzar Sayeed Khan v. State of Maharashtra, (2007) 5 SCC 1 (India).

> *"The State Government must adopt a pragmatic approach... If forfeiture is necessary for the public good, it must undoubtedly take precedence over individual interests."*

Most times, calling something "in the public interest" lets the government act freely, even when it offers no proof. Because of the court's so-called pragmatic approach, decisions to seize materials escape close review at the start. Without showing facts, officials place their own sense of what matters above a writer's free speech rights. That balance shifts quietly, yet significantly, against individual liberty.

C. What the Court Left Unanswered

Even though the legal issues matter, the ruling stands out more for its silences than its statements. What went unmentioned reveals much. Notably absent were discussions on three key points.

Though the book had earned acclaim, including recognition from the Karnataka Sahitya Academy, the Court made no reference to such standing. Where free expression is better understood legally, value in art often shapes rulings on legality. Notably, back in 1965, the Supreme Court in Ranjit D. Udeshi v. State of Maharashtra (AIR 1965 SC 881) accepted that society benefits[15] from publishing meaningful work in literature and thought. Without comment on these points, the Baragur judgment reveals a narrow view missing how creative voice fits within constitutional rights.

Later in the analysis, clarity around the "prudent man" rule in Section 295A remains absent. Instead of settling the matter, the Court sidestepped whether offense should be measured by insiders' views or an impartial outsider's judgment. Without guidance, decisions may lean toward majority sentiment while reinforcing suppression through audience reaction. A different path appears in Section V, where this gap receives attention.

IV. Issue I: Who Must Prove What, Along with the Right to Be Considered Innocent Until Proven Guilty

A. The Classical Rule: Actori Incumbit Probatio - Origins and Meaning

One of history's longest-standing legal ideas lives at the heart of criminal trials - the idea that people are innocent unless proven guilty. In old Roman terms, it was phrased like this, the person making an accusation must bring the evidence. That line carries weight even now it says if government brings charges, then government must show they're justified. Breaking through takes more than claims it demands solid proof built step by step. This balance keeps power in check whenever liberty hangs in the air.

As England built trial-by-jury customs, this standard quietly entered common legal thought. During courtroom battles at the Old Bailey around the 1780s, advocate William Garrow helped spread the notion of presumed innocence through sharp defense arguments. Scholar John

[15] Ranjit D. Udeshi v. State of Maharashtra, AIR 1965 SC 881 (India).

Langbein highlights how such ideas solidified only when courts began explicitly assigning full proof duties to prosecutors.[16] .

One ruling stands out Woolmington v. Director of Public Prosecutions [1935] AC 462 from the House of Lords.[17] This moment reshaped how courts view fairness in criminal trials. From that judgment emerged a powerful idea, voiced by Viscount Sankey. He insisted the burden of proof must rest with the prosecution. Doubt, he argued, should benefit the accused. Over time, this stance became foundational. It frames rights in courtrooms across many nations. Few passages carry such lasting weight

> *"Throughout the fabric of English Criminal Law, a golden thread is always visible: the prosecution's duty to prove the prisoner's guilt... Regardless of the charge or where the trial takes place, the principle that the prosecution must prove the prisoner's guilt is part of England's common law, and any attempt to diminish it cannot be allowed."*

One certainty emerged from Woolmington: the duty to prove guilt rests firmly with the prosecution. Should exceptions appear crafted by statute or court rulings they invite deep scrutiny under constitutional values. Far past its origin, the ruling shaped criminal justice across common law nations, reaching even Indian courts.

Beginning in 1948, global standards began framing fairness in legal accusations as a core individual safeguard. Found within Article 11(1) of the Universal Declaration of Human Rights is the idea: anyone facing criminal charges should be seen as innocent[18] unless shown otherwise through lawful court proceedings open to the public. In much the same way, rules laid out in Article 14(2) of the ICCPR agreed upon by India uphold this very principle.[19] Such treaties make clear that treating accused persons as innocent isn't merely about local courtroom details; it carries weight across nations as a fundamental entitlement.

B. The Presumption of Innocence in Indian Law

Established by law, the basis lies within the Indian Evidence Act of 1872

In Indian law, the presumption of innocence is primarily expressed in Section 101 of the Indian Evidence Act, 1872[20], which states that "whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist." Section 102 further specifies that "the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side." Together, these sections codify the actori incumbit probatio principle in Indian evidentiary law,the party making a claim must prove it.

[16] John H. Langbein, The Origins of Adversary Criminal Trial (Oxford Univ. Press 2003).
[17] Woolmington v. Director of Public Prosecutions, [1935] AC 462 (H.L.).
[18] Universal Declaration of Human Rights art. 11(1), G.A. Res. 217A, U.N. Doc. A/810 (Dec. 10, 1948).
[19] International Covenant on Civil and Political Rights art. 14(2), Dec. 19, 1966, 999 U.N.T.S. 171.
[20] Indian Evidence Act, 1872, §§ 101–102.

Every piece of the crime charge must be shown past any fair uncertainty by prosecutors the government in criminal trials. Not once does the defendant need to show they did nothing wrong; instead, proof of wrongdoing falls entirely on state forces. Clarity arrived through India's highest court in Vijayee Singh v. State of Uttar Pradesh AIR 1990 SC 1459[21], where it said: "a bedrock idea in criminal law holds that people stand innocent unless their fault emerges clearly."

ii. Constitutional Dimensions

Though absent by name in India's constitutional text, the idea of innocent until proven guilty finds firm footing through judicial interpretation. Rooted in Article 21, it emerges not as a standalone guarantee but as woven into life and liberty. The Supreme court has treated it as inseparable from fairness during legal proceedings. In Noor Aga v. State of Punjab (2008) 16 SCC 417 , judges called this principle "a human right,"[22] underscoring its weight.

Crucially, in Noor Aga, the Court drew a line between two types of obligation one being the lasting need for the prosecution to prove guilt, the other involving the accused offering counter-evidence under rare legal conditions. Though the defendant might sometimes have to produce such evidence, it came with a condition the Crown must initially build enough strength in its own case to meet basic proof thresholds. Failure to lay that foundation beforehand made any transfer of responsibility on the accused invalid under constitutional standards. Only after this threshold could further demands appear lawful. Without prior demonstration, imbalance emerged. Legal fairness required this sequence.

This difference matters a great deal for the Baragur situation, something clear from what follows. Allowed legal turnarounds come with boundaries that shape their use

Occasionally, Indian legal frameworks allow Parliament to reassign who must prove a case, depending on context. Under statutes such as the 1985 Narcotic Drugs and Psychotropic Substances Act, the 1988 Prevention of Corruption Act, or the 2002 Prevention of Money Laundering Act, duties shift toward the defendant in differing measures. Whether provisions like these align with constitutional principles has been examined multiple times by the nation's highest court.

Though the legislature holds power to set up guilt assumptions, as confirmed by India's top court in a 1961 ruling involving Kathi Kalu Oghad,[23] such shortcuts face limits. Bound by Constitution, these legal fictions may exist only so long as they leave untouched the state's core need to back criminal charges with real proof. A later case Nikesh Tarachand Shah versus Union of India ((2018) 11 SCC 1)[24], the Supreme Court removed Section 45 of the Prevention of Money Laundering Act due to its rigid bail requirements. While explaining, judges noted that rules undermining a person's presumed innocence need clear alignment with their intended goal

[21] Vijayee Singh v. State of Uttar Pradesh, AIR 1990 SC 1459 (India).
[22] Noor Aga v. State of Punjab, (2008) 16 SCC 417 (India).
[23] State of Bombay v. Kathi Kalu Oghad, AIR 1961 SC 1808 (India).
[24] Nikesh Tarachand Shah v. Union of India, (2018) 11 SCC 1 (India).

otherwise they become unfair or excessive. Though designed for crime control, such clauses cannot ignore balance between state power and individual rights.

This legal past sets out a firm rule moving the burden of proof by law works just not without boundaries. While lawmakers may adjust such duties, each shift needs a sensible connection to an actual policy aim. Fairness remains essential any change failing this standard risks undermining the defendant's chance for justice.

C. How the Baragur Judgment Reverses the Rule - A Structural Critique

i. The State's Unilateral Opinion as a Prima Facie Finding

One might question how a judicial ruling could shift responsibility so heavily onto individuals seeking relief. In Baragur Ramachandrappa, the Supreme Court declared that challenging the government's initial stance falls entirely on the person affected a move raising concerns about fairness under constitutional principles. Though framed as a "prima facie opinion," the label softens what is actually a strong administrative act by state authorities. Far from being a neutral assessment, such a notification issued under Section 95 CrPC carries binding force. Unlike courts weighing evidence tentatively, governments exercise executive power when they declare something forfeit. This distinction matters because calling it merely an opinion blurs where real power lies. Without reviewing facts, listening to testimony, or following recognizable legal procedures, its conclusion holds no real weight in court terms. The so-called finding reflects an administrative or policy-based call, reached absent fair process or any duty to back claims with proof.

Putting faith in an official's view as if it were proven truth -something the writer has to overturn hands the government an advantage it neither deserves nor is granted by the Constitution. Gautam Bhatia observes in Offend, Shock, or Disturb: Free Speech Under the Indian Constitution (2016):[25]

> *"When the Court treats the Government's notification as a prima facie finding that shifts the burden to the petitioner, it effectively converts an administrative act into a quasi-judicial determination, without subjecting it to the procedural requirements that quasi-judicial determinations must satisfy."*

ii. The Absence of Any Evidentiary Threshold

It stands out as a constitutional issue because the State escapes not just the duty to prove wrongdoing, but even the step of showing supporting information. Without needing prior approval, authorities may declare seizure under Section 95 CrPC at their own discretion. Not one rule demands an early review, expert insight, or comparison between the written work and what Section 295A defines as unlawful. Once officials claim they are satisfied regardless of how they

[25] Bhatia, supra note 11, at 127.

can seize materials, leaving authors to fight alone in court. What matters most is who bears the weight when decisions rest on personal judgment.

In Noor Aga v. State of Punjab (2008), the Supreme Court made clear an evidential burden only moves once the prosecution builds a basic showing[26] of guilt. Though the Baragur bench treated the government's unverified stance as enough proof to transfer that duty, such reasoning clashes with earlier precedent. Despite the tension, judges in Baragur left the contradiction unresolved. Why constitutional norms around shifting obligations do not govern Sections 95 and 96 CrPC was never explored by the court.

What makes the Baragur Court's logic shaky is how it quietly frames Section 95 proceedings as if they belong strictly to civil or bureaucratic realms places where the presumption of innocence in criminal cases has no role. Yet this stance begins to fall apart once looked at closely. Since Section 95 of the CrPC flows straight from Section 295A of the IPC, a provision rooted in penal statute, the connection to criminality cannot be ignored. When authorities issue a forfeiture notice, they are stating outright that the published content includes elements meeting the criteria for a crime. What happens under Section 96 mainly comes down to deciding if publishing something amounts to a crime. Built entirely on ideas from criminal law, the framework rests on those foundations.

Not every case labeled non-criminal by a government truly belongs outside the realm of penal safeguards. In Engel v. Netherlands (1976) 1 EHRR 647, judges at the European Court of Human Rights emphasized substance over naming conventions.[27] Though authorities may classify proceedings as administrative, that label holds little weight when real consequences are on the line. Instead, attention shifts toward the core issue being challenged. Punishment severity becomes a key signal. If penalties risk significant personal cost, such processes start resembling criminal trials regardless of official titles. Innocence until proven guilty then steps into view. Labels mean less than impact. Applying this logic to the Section 95 forfeiture procedure reveals a striking outcome it results in treating a publication as criminal, yet sidesteps standard safeguards.

D. The Reaction - Consequences and Issues Created

i. The Chilling Effect on Literary and Artistic Expression

Should the state choose to act, an author may find themselves forced into defending written material without the opposing side first proving harm. Because of this imbalance, authorities gain leverage; removal orders become simpler to issue when the burden shifts entirely onto the authors. Facing high legal expenses, someone with limited funds might see little point in challenging a seizure through lengthy proceedings. Without financial backing, simply walking away from disputed subjects feels like the only realistic path. This chilling effect when individuals hesitate to speak openly was acknowledged as a constitutional issue by the Supreme

[26] Noor Aga v. State of Punjab, (2008) 16 SCC 417 (India).
[27] Engel v. Netherlands, 1 Eur. H.R. Rep. 647 (1976).

Court in Shreya Singhal v. Union of India (2015).[28] Not some unintended outcome of legislation; rather, stemming straight from the Baragur Court's choice to move the burden of proof elsewhere.

Writing about sensitive topics like religion, caste, or sexuality often brings legal risks, notes Professor Lawrence Liang in The Public is Watching: Sex, Power and Citizenship (2010).[29] Those voices facing such threats tend to be the ones engaging in vital public conversations. Because of this pattern, the weight of court battles skews sharply against them. Under the Baragur rule, authorities can block expression without showing proof. That absence of required justification deepens existing imbalances. Free speech protections then vanish when they matter most.

ii. Institutional Encouragement of Majoritarian Pressure

Unexpectedly, the Baragur ruling opened a gap in legal oversight, enabling coordinated demands by powerful religious communities to push authorities into restricting books and written works no thorough judicial review required. In that very instance, officials acted on public grievances rather than concluding themselves whether the book breached Section 295A. Authority shifted; it rested not with courts but with those who protested loudest.

From the start, worries about state responsibility mirror what justices said in S. Rangarajan v. P. Jagjivan Ram (1989) 2 SCC 574[30] there, they stressed that authorities must shield free expression, given it is a right held by citizens, not granted by rulers. Although framed differently, allowing unrest to justify silence runs counter to earlier rulings; after all, officials cannot claim helplessness when crowds react badly. In truth, calling suppression a practical solution clashes directly with past guidance: permitting limits due to public anger violates constitutional norms. So long as protection of speech remains central, yielding to social pressure fails legal scrutiny.

iii. The Unresolved Tension with Shreya Singhal

One key outcome from the Supreme Court ruling in Shreya Singhal v. Union of India (2015) 5 SCC 1 was tighter rules for laws limiting free speech.[31] Because clarity matters under constitutional scrutiny, the judgment required such laws to strictly align with Article 19(2)'s defined exceptions. While precision is expected, the Court emphasized that legislation cannot extend beyond those narrow categories. Where uncertainty creeps in, risk grows; vague wording might trap lawful expression within criminal penalties.

Though the Baragur approach lets authorities block publications using unverified claims while shifting the burden to writers to justify themselves, such practice sits uneasily beside the principles affirmed in Shreya Singhal. Given that Section 66A fell partly due to its ambiguity sparking fear and offering little procedural safety it stands to reason similar concerns apply to how Section 95 CrPC has been understood under Baragur. So far, the highest court has not ruled

[28] Shreya Singhal v. Union of India, (2015) 5 SCC 1 (India).
[29] Lawrence Liang, The Public Is Watching: Sex, Power and Citizenship (Alternative Law Forum 2010).
[30] S. Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574 (India).
[31] Shreya Singhal v. Union of India, (2015) 5 SCC 1 (India).

squarely on this tension, leaving a key gap in India's jurisprudence around expression. Revisiting Baragur after Shreya Singhal would not just improve clarity it may well be required by constitutional logic.

V. ISSUE II - THE PRUDENT MAN TEST UNDER SECTION 295A

A. Origins and Meaning - The Reasonable Man in Law

A yardstick known as the prudent individual rule stands among the oldest benchmarks in legal systems rooted in tradition. its roots lie in cases about careless actions. This idea helped judge how carefully someone should act toward others. One landmark moment appeared in an old English ruling Blyth v. Birmingham Waterworks Company (1856) 11 Ex Ch 781[32] saw Baron Alderson define negligence in striking terms omitting an act a rational individual would perform, influenced by common life patterns, or performing what someone prudent and alert would avoid. Far from measuring private character, the figure in question stands apart not the claimant, nor defendant, nor drawn from any narrow group. Rather, this standard imagines a neutral, informed observer, constructed purely for legal clarity.

From injury cases, the rule slowly spread reaching corners such as criminal justice, constitutional matters, yet also expression rights. Imagining how someone fair-minded might react helped keep personal leanings out, anchoring rulings in shared expectations. As Herbert Hart wrote in The Concept of Law (Oxford University Press, 1961)[33], this idea functions like a societal midpoint a stand-in shaped by calm, aware, neutral public sense. Still, aiming for neutrality stumbles when dealing with disputes rooted in faith, where opinions split sharply, influenced heavily by private convictions.

One way courts assess religious establishment is by imagining how a careful person might see things. During Allegheny County v. ACLU in 1989, judges looked through the eyes of such a viewer to judge public displays involving faith.[34] This figure understands background details, knows legal traditions, yet stays neutral in perspective. Instead of relying on members tied to specific beliefs, the system opts for someone more detached. That selection reflects a structural preference that outcomes should not hinge on emotional reactions within particular congregations.

B. The "Prudent Man" Test in Indian Law: Its Development and Use

One way the courts approached obscenity in India was by asking how ordinary people might react. Though borrowed from England, the old Hicklin rule didn't fit here. Instead, judges began adjusting it during key trials involving banned books. A turning point came when the highest court reviewed a novel by D.H. Lawrence. That case Ranjit D. Udeshi against Maharashtra included questions about literary merit and moral danger.[35] Reading Lady Chatterley's Lover

[32] Blyth v. Birmingham Waterworks Co., (1856) 11 Ex. 781 (Eng.).
[33] H.L.A. Hart, The Concept of Law (Oxford Univ. Press 1961).
[34] County of Allegheny v. American Civil Liberties Union, 492 U.S. 573 (1989).
[35] Ranjit D. Udeshi v. State of Maharashtra, AIR 1965 SC 881 (India).

could supposedly lead some astray, officials claimed. Yet the justices shifted focus toward who exactly would be led astray. They rejected imagining readers as unusually impressionable. Rather than assuming weakness, they pictured someone balanced, typical, familiar with everyday ideas. This person wouldn't collapse morally after encountering provocative writing.

Though focused on curbing harm, the ruling in Udeshi also made space for free speech concerns. Because serious artistic or scholarly value exists, it cannot be ignored just because material might upset some people. Instead of measuring content by the most sensitive group, the judgment leaned toward how a typical thoughtful adult would see things. Such a person does not lose composure at every controversial idea. They weigh context, purpose, and substance before judging meaning. That shift meant legal tests began accounting for more than public reaction alone. Literary worth became part of the balance, subtly changing how courts view expressive work.

ii. The Key Definition: S. Rangarajan v. P. Jagjivan Ram

The clearest take on the "prudent man" principle in matters of speech a view came from S. Rangarajan v. P. Jagjivan Ram (1989) 2 SCC 574, where tensions around representation shaped legal debate.[36] A Tamil cinema had its approval pulled after claims it questioned reservation systems, prompting backlash. Political weight influenced the censorship call, yet the apex court stepped in to restore permission. Expression, the judges stressed, cannot be curbed unless a reasonable person would see genuine harm. Boundaries matter; so does restraint. What counts is how an ordinary sensible observer reacts under real-world conditions.

The Court stated:

> *"The standard the Board or Courts should use to judge the film is that of an ordinary person with common sense and sound judgment, not someone extraordinary or overly sensitive."*

Still, the judges emphasized how pressure through fear must not shape what people are allowed to say

> *"The State cannot claim it's unable to handle a hostile audience. It has a duty to prevent such situations and protect freedom of expression, as it's a right guaranteed against the State. The State didn't create the problem, but it's the State's responsibility to manage it."*

What matters most comes down to how a typical person would see things not someone quick to take offense. A reaction from one group alone does not justify silencing speech. Judgment rests on steadier ground when guided by common sense rather than extreme responses.

C. The "Prudent Man" in Baragur: How It Was Used and Where It Fell Short

i. How the Court Applied the Idea

[36] S. Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574 (India).

Out there among the pages of legal thought, the Supreme Court leaned on a familiar yardstick the prudent person who is not overly sensitive. Borrowing from what once shaped thinking in S. Rangarajan, they applied it here without hesitation. Reading between lines marked by concern, judges examined how certain sections might strike followers of Veerashaivism. From that view, someone reasonable, grounded in everyday experience, could see offense enough. The book's phrasing didn't sit well beside respect for faith clear.

Still, the Court gave no clear picture of who counted as a "prudent man." Could that person belong to the Veerashaiva group? Maybe someone familiar with Kannada literary works stepped into that role instead. Perhaps it meant a reader up to date on regional culture. Then again, it might simply be a bystander untouched by religious ties in the story.

Imagine judging something based on faith. The identity of the so-called "prudent man" shifts how facts are seen in court. For someone from the Veerashaiva tradition, reverence for Basaveshwara shapes every impression of his portrayal. Distance changes everything an outsider perceives it differently. Without a clear explanation from the Court about why it picked that perspective, matching the ruling to the S. Rangarajan benchmark feels uncertain. The reasoning simply isn't spelled out enough to feel content with court's decision.

ii. The Problem at the Heart of the Test

Here lies trouble. Applying the so-called prudent man rule to matters of faith stirs confusion without fix. That law, number 295A, sets its mark by emotional response not facts, but hurt within a circle of believers. Not how someone neutral might see it. Instead, did these people feel their beliefs were attacked.

Still, the "prudent man" rule from S. Rangarajan deliberately leaves out those too easily upset, focusing instead on someone typical and balanced. Should that sensible figure be seen as part of the religious group involved, things shift suddenly it's less about general reason and more about internal feelings. Their sense of insult then shapes legal outcomes. So long as a group can rally together, they might silence speech simply by claiming offense.

A stranger without ties to the group might seem fair-minded, yet their distance means real spiritual emotions the heart of the issue carry no weight under law.

Legal scholar Tarunabh Khaitan, in his book A Theory of Discrimination Law[37], points out that offense-based speech restrictions have a built-in flaw. He says that "the prudent person standard, when applied to offense that is constitutively group-specific, faces an unavoidable dilemma it either imports the group's subjectivity through the back door, or it excludes the group's perspective entirely, in either case failing to achieve the objectivity it promises."

D. Cases Where the "Prudent Man" Test Didn't Work: Limitations in Practice

i. K.M. Nanavati v. State of Maharashtra

[37] Tarunabh Khaitan, A Theory of Discrimination Law (Oxford Univ. Press 2015).

Looking back at moments when free speech suffered shows how weak the "prudent man" rule really is. Though K.M. Nanavati v. State of Maharashtra focused on criminal procedure and juries[38], something else slipped through judges acknowledged that using a "prudent man" test might just mirror society's old habits instead of challenging them.

Though the case didn't center on free speech, its view of the prudent person as shaped by social context quietly reshapes how courts assess religious hurt. The judgment hints that fairness can't float above culture it lives inside it. A so-called sensible observer is never blank.

Second case involves Ajay Goswami against the Union of India

One person's shock might be someone else's normal, the judges said. Differences in belief, background, and tradition make shared taste hard to pin down. The case questioned if newspapers crossed a line most people would notice. Not every offended group agrees on where boundaries should sit. Laws risk misstep when forcing one view of decency on many worlds at once. Their conclusion moved slowly, aware that culture isn't monolith. Public reaction varies wildly across communities and contexts. Judgment should err on the side of caution instead of fixed rules.

Most people agree the "prudent man" rule does not fit well with India's many faiths. Though laws like Section 295A rely on such ideas, reality paints a different picture. With so many spiritual groups holding unique customs and emotional boundaries, one shared definition for speech feels more imagined than real. Often, what seems reasonable to some appears deeply wrong to others. A nation where beliefs vary widely cannot fairly judge words by only majority standards. When courts look for this prudent person who never reacts the same way twice, they risk letting one group define limits for everyone else. Critical voices examining religion might then face unfair pressure just because their views unsettle prevailing norms.

When the Supreme Court looked at Pravasi Bhalai Sangathan v. Union of India[39], what counts as hateful talk. A person might shrug, yet others bear deep cuts from the same phrase. Laws such as Section 295A stand firm on paper but crack under real-world strain. An expert panel traced the paths laws miss when culture twists through speech. The Court stressed out how today's version of a "prudent person" lacks clarity. It fails to separate true hate-driven expression from mere annoyance. Telling one from the other matters deeply, they noted, when shaping free speech laws under the Constitution.

Here's perhaps the clearest glimpse into where judging conduct by cautious standards starts to crack in judgment by Madras High court. A writer named Perumal Murugan found himself pushed hard by those around him after his novel stirred unrest. Public outcry followed, tied tightly to how one scene portrayed an old tradition linked to a shrine near Tiruchengode. Because some faith-based circles objected strongly, he stepped forward during a tense moment to declare

[38] K.M. Nanavati v. State of Maharashtra, AIR 1962 SC 605 (India).
[39] Pravasi Bhalai Sangathan v. Union of India, (2014) 11 SCC 477 (India).

literature finished for him. His book, titled Madhorubhagan or known elsewhere as One Part Woman, got withdrawn under that weight.

Yet the Madras High Court moved to shield both the author and his work. It ruled he had every right to speak through his words, calling the objections from local groups misplaced. With sharp clarity, the judges challenged the logic behind the cautious individual standard

> *"A writer's freedom to express themselves shouldn't be held back because some people might twist their religious beliefs into a piece of fiction... The real question is not whether someone from the affected community finds the work offensive, but whether a well-informed, reasonable reader, who knows the context and purpose of the work, would think it goes too far and shows genuine malice."*

E. The Basic Problems with the Prudent Person Test - A Theoretical Critique

i. The Impossible Culturally Neutral Standard

One tough problem with applying the prudent person standard in religious offense matters lies in locating anyone fully impartial within communities shaped deeply by faith. Philosopher Alasdair MacIntyre points out that reasonableness cannot be measured apart from specific communal histories and convictions.[40] So, under this framework, expecting an unbiased onlooker feels unrealistic. Since each thoughtful individual carries inherited views about religion, their sense of offensiveness always comes filtered through background assumptions. Just because of this, tossing out the prudent person test isn't the answer..

VI. RECOMMENDATIONS AND WAY FORWARD

A. Initial Thoughts

Not only did the Baragur Ramachandrappa decision get the law wrong, but it also set up a censorship setup where authors must prove innocence, judgment swings on unclear public sentiment, while state actions slip past review. These ideas aim at legislators and courts alike, shaped by those two core legal troubles laid out earlier.

One key shift needed? Requiring judicial approval before seizing items under Section 95 of the CrPC. At present, authorities label content objectionable then take it no notice to the creator, no prior court review. That clashes with fairness, especially when rights are on the line. As seen in Maneka Gandhi v. Union of India (AIR 1978 SC 597), fairness matters when rules touch basic rights. Without warning, proof, or court check, seizure feels more like force than justice. Fair play slips away if no one gets a say beforehand.

It would help if Parliament updated Section 95 CrPC to require officials to seek judicial approval Magistrate or High Court before seizing materials. Instead of acting alone, authorities must explain their reasons directly to a judge. At the same time, letting authors or publishers respond first keeps things balanced. The seizure only goes through when the judge sees strong signs the content breaks Section 295A rules on harmful intent. Similar thinking shaped the US Supreme

[40] Alasdair MacIntyre, Whose Justice? Which Rationality? (Univ. of Notre Dame Press 1988).

Court ruling in Bantam Books, Inc. v. Sullivan (372 US 58 [1963]). There, judges insisted censors[41] not speakers should carry the burden of going to court. That shift protects free expression while still allowing oversight.

ii. Changing Who Has the Burden of Proof Under Section 96

If lawmakers change Section 96 CrPC, and proof not assumption must back every claim tied to Section 295A. That means officials can't just declare hostility they must demonstrate intent. The moment someone objects, must show evidence. Right now, after Baragur, the scales tip too easily toward state. A small change could bring fairness. Evidence should be asked from the authorities to prove their claim.

This change fits what was laid down in Noor Aga v. State of Punjab [(2008) 16 SCC 417][42]; there, judges stressed that while laws might move the burden of proof around, prosecutors must still show some starting foundation. Instead of relying on mere assertion, authorities need more than their own stance when accusing someone. On its own, without facts or proper steps taken, a view held by officials cannot stand without sufficient groundwork.

iii. Judges Should Reconsider Based on Shreya Singhal

Building on what emerged in Shreya Singhal v. Union of India [(2015) 5 SCC 1], the Court could reorient its stance.[43] That earlier moment dismantled Section 66A of the Information Technology Act. Clarity guided the outcome there vague phrasing combined with sweeping reach threatened free speech too deeply. What stood out was the absence of proper checks, making suppression easier than intended. Without precise boundaries, enforcement drifted into overreach. Expression wavered under that weight. Because safeguards were missing, risk tilted too far against individual voice. Much like before, the Baragur method creates a quieting impact Evidence no longer rests with the state; instead, writers must fight to show their rights still stand. That reasoning from Shreya Singhal, which tore down Section 66A, hits even harder when aimed at Section 95 CrPC under Baragur's reading. Clear words from the Court are what matter now.

C. Recommendations on Issue II - The Prudent Man Standard Under Section 295A

i. Statutory Specification of the "Prudent Man"

Offense under Section 295A IPC lacks a clear measuring stick today. That silence leaves room for shaky judgments. Back in 1979, the European Court of Human Rights laid it out plainly through its ruling in Sunday Times v. United Kingdom, documented at 2 EHRR 245.[44]

A fresh look at the law ought to clarify how outrage against religion is measured through eyes of someone balanced, aware, not involved. That individual grasps creative or academic background behind speech yet stands apart from those taking offense. This is used by the Madras High Court

[41] Bantam Books, Inc. v. Sullivan, 372 U.S. 58 (1963).
[42] Noor Aga v. State of Punjab, (2008) 16 SCC 417 (India).
[43] Shreya Singhal v. Union of India, (2015) 5 SCC 1 (India).
[44] Sunday Times v. United Kingdom, 2 Eur. H.R. Rep. 245 (1979).

during the Perumal Murugan matter along with U.S. courtroom logic seen in Allegheny County versus ACLU 492 US 573 (1989).

ii. Proportionality as a Mandatory Judicial Inquiry

One thing stands clear limits on speech using Section 295A or Section 95 CrPC should pass the scrutiny laid out in K.S. Puttaswamy v. Union of India (2017) 10 SCC 1.[45] When courts examine seizure orders made under Section 96, they need clarity on whether the goal justifies control. A link must exist between taking material and that objective, nothing vague. It cannot be an excessive response either; milder options ought to come first. Only if no lighter method works may such a step hold. Could the gains from limiting speech ever balance out its damage to free expression.

VII. CONCLUSION

This piece suggests India's laws on religious offense Section 295A of the IPC, Sections 95 and 96 of CrPC, plus how the top court saw them in Baragur Ramachandrappa & Ors. v. State of Karnataka & Ors. (2007) carry twin constitutional issues that amplify one another. Instead of proving wrongdoing, authorities act as if guilt is clear, making writers show they did nothing wrong, here, the judges ignored a long-held principle seen in Woolmington v. DPP (1935), later confirmed in India as essential under Noor Aga v. State of Punjab ruling from 2008: when basic rights are restricted, the state must explain why. Yet the idea of what a "reasonable person" would think gets used unevenly across cases. Since the judges never clarified whose viewpoint counts nor looked at the novel's setting or its honors the test bends toward those quickest to take offense. That shifts power into shaky ground, far from the guidance set in S. Rangarajan versus P. Jagjivan Ram back in 1989, where courts warned against letting loud noises shut down minority voices. Seen in K.S. Puttaswamy v. Union of India (2017), fairness means limits must match actual danger[46], nothing more.

That 2015 ruling in Shreya Singhal v. Union of India backs up a key legal argument here.[47] Writers steering clear of religious topics scared off not by laws but by looming court cases and public shaming shows damage similar to being silenced completely. When rules like the one from Baragur let officials accuse without proof yet force writers to spend heavily just to defend themselves, it fits precisely what the chilling effect principle warns against.

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