

Social Media And Fake News: How To Avoid Panic Without Infringing Freedom Of Speech?

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Guest Author

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India previously has been accused of taking too stringent measures to curb fake news



The Covid-19 pandemic has forced government machinery to adapt and evolve. From relaxing stringent compliance timelines, permitting shareholder meetings through video-conferencing and online redressal of disputes, desperate times have indeed called for desperate measures.

That said, in this 21st century neo-liberal order, built on the concepts of the free market and the social contract, where free speech and privacy is held sacrosanct, mere intervention in relation to settled legal compliances may not be enough. Case in point, '*social media universities*' and fake news creating panic around the country and the consequent (over) reaction by authorities in certain cases.

Debates around fake news and measures to regulate it are not new, however, Covid-19 has begged the question for democracies across the world – how to avoid panic ensuing from **fake news** without infringing freedom of speech?

Chaos (And Order)?

In April, based on fake news, hundreds of migrant workers gathered outside the Bandra station in Mumbai, in contravention of the lockdown orders and social distancing guidelines creating a riot-like situation, as a result of which FIRs were filed against over 800 migrant workers. Similarly, in Noida, panic struck when a news agency had incorrectly published news on certain persons of a locality being quarantined (which they later corrected).

Add to that, other fake news floating around – forged government notifications, **false information on reported cases**, owners abandoning pets in fear of contracting the virus and various reports on '*alleged*' cures for the virus, ranging from cow urine to alcohol!

In order to control the spread of fake news in relation to the pandemic, the central government in March had urged social media players to have in place awareness campaigns on their platforms. Even the Supreme Court issued an order directing media outlets to be responsible and ensure dissemination of verified news only (while refusing to interfere with the right to free discussion on the pandemic).

Interestingly, the provisions of legislations such as Epidemics and Diseases Act, 1897 and Disaster Management Act, 2005 give wide powers to the state machineries whereby, under the former (read with the Indian Penal Code), liability can extend up to six months of imprisonment and in the latter, can extend up to three years, for not adhering to the instructions of the authorities.

Moreover, the Maharashtra government, by way of the Maharashtra Covid-19 Regulations, 2020 framed under the Epidemics and Diseases Act, has specifically made 'dissemination of any information regarding Covid-19 without ascertaining the facts and prior clearance (of the Commissioner, Health Services)', a punishable offence.

The result of the intermingling of social media universities and wide ambit of the states' powers – over 600 cases have been lodged against individuals for alleged

spread of fake news since the country has been on lock-down. In some instances, it has been alleged that the arrests have been made only to silence the governments' critiques. India previously has been accused of taking too stringent measures to curb fake news.

Ordered Chaos

While the world is still grappling with the pandemic, some countries like the USA and Australia have put in place framework for media literacy to contain the general spread of fake news, while Singapore has adopted a statute setting out binding measures to be undertaken to curb fake news. In the larger debate around free speech, a one-size fits all approach may not be the answer.

That said, similar to Maharashtra, guidelines around disinformation during the pandemic are necessitated such that arbitrary actions (arresting an accused for merely forwarding social media messages, for example) are avoided while the action is taken against '*panic mongers*'.

To this end, each state government may consider promulgating guidelines (under any of the laws empowering such state / local authorities) *inter alia*, setting out:

- the information that would constitute 'fake news' – the ambit of which ought to be restricted to false factual information in relation to Covid-19;
- adequate grounds to determine the source of fake news prior to initiating any penal action; and
- penalties for different classes of offenders (ie, a source disseminating fake news will have a higher penalty than a person relying on fake news from some other established source).

Clearly, from the experiences in normal times (read '*pre-Covid times*'), a straight-jacket solution to balance fake news and government overreach may be far-fetched in the short term, let alone overnight. That said, we are no longer living in '*normal times*' and as the state machinery has showcased its flexibility to the needs of the '*new normal*', it needs to continue to do so, not only to address the direct consequences of the pandemic, but also to stabilise the impending panic without any (in)advertent government overreach. Desperate times call for desperate measures indeed!

[This article is co-authored by Vineet Shingal (Partner), Nayantara Kutty (Principal Associate) and Probal Bose (Associate) at Khaitan & Co.]

Coronavirus

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