

The Doctrine of Free Speech in India in the light of Covid-19 Pandemic

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Introduction:

“Freedom of expression is the matrix, the indispensable condition, of nearly every other form of freedom”¹ - Benjamin N. Cardozo

The freedom of speech and expression is an inalienable human right², standing just below the need to sustain life itself. It is regarded as the first condition of liberty in a civil society where people are sovereign rulers. Thus, terming it as “lifeblood of democracy”.³ The advent of technological advancements such as the emergence of e-newspapers, online surveys, opinion polls, tweets, and the growing importance of media has fastened the accessibility of information, thus widening the realm of media.

In light of the global outbreak of the coronavirus where there is a steady surge of COVID 19 cases and a resultant rise in mortality rate and on the other hand recession crashing the floor, people are forced to stay indoors as a preventive measure to curb the spread of the virus. These uncertain times make people’s mind anxious and make them accept the most irrational and illogical facts. Thus, heightening the risk of the spread of misleading, fake and hoax news. And making the battle against the virus harder.

At this juncture, the state imposed various stringent restrictive measures upon free speech. Thus, providing an open ground for prior censorship of content which has an effect of posing threat to legitimate expression of one’s divergent views. Hence, this article envisages examining the proportionality and legal lacunae in the law regulating freedom of speech and expression and the effects of misinformation in the times of the COVID-19 pandemic.

Doctrine of free speech and its limitations:

¹ Palko v. Connecticut, 302 U.S. 319, 327, (1937).

² *The Universal Rights to Free Expression: An Interpretation of the Library Bill of Rights*, AMERICAN LIBRARY ASSOCIATION (Aug. 7, 2020, 10:04 PM), <http://www.ala.org/advocacy/intfreedom/librarybill/interpretations/universalright>.

³ Pushp Sharma v. D. B. Corp. Ltd., FAO (OS) 92/2018 & C.M. APPL.23799/2018.

The doctrine of free speech is a legal doctrine which provides the liberty to express one's divergent views, opinions, and ideas and to receive, seek, and impart information through publication and other public discourse without the fear of retribution, restriction or repression by the state. The right to free speech also includes the right to print, advertise, commercial speech, and artistic speech as well.⁴ The freedom of speech and expression coincides with the freedom of the press which is implicitly guaranteed right under Article 19(1)(a) of the Indian constitution.

However, these rights are not absolute, but cannot be curtailed in the interest of the general public. As the state cannot make a law which directly restricts one freedom even for securing the better enjoyment of another freedom.⁵ In furtherance, such restrictions imposed must not be arbitrary or beyond what is required in the interest of the public.⁶

There are three important components of freedom of speech which include (i) discussion, (ii) advocacy, and (iii) incitement.⁷ The discussion and advocacy are regarded as the heart of the article 19(1)(a) of the Indian constitution, only when the discussion reaches the stage of incitement it is subject to reasonable restriction under Article 19(2) of the Indian constitution. Thus, whenever there is a restriction imposed on limiting the fundamental rights a standard review of its proportionality and reasonability must be the touchstone.

Effects of the spread of fake news amidst COVID 19 crisis:

Fake news in India refers to misinformation or disinformation, but the term fake news has a much wider connotation namely including satire, propaganda, unverified or fabricated news or inconvenient truth spread via print, electronic or social media.⁸ Thus, making it difficult to ascertain its true perspective. India, in absence of any specific legislation dealing with fake news labels everything together under the category of speech. Hence in the event of curbing fake news delimits the right to free speech and expression.

In the light of COVID-19, the severity of the spread of fake news doubled, terming it as a flow of infodemic i.e. excessiveness of information about a problem that makes it difficult to

⁴ Tanu Priya, *Freedom of Speech and Expression*, LAWCTOPUS (Aug. 6, 2020, 10:00 AM), <https://www.lawctopus.com/academike/freedom-of-speech-and-expression/>.

⁵ Sakal Papers (P) Ltd. v. Union of India, (1962) A.I.R. 305.

⁶ Chintaman Rao v. State of M.P, (1951) A.I.R. 118.

⁷ Shreya Singhal v. Union of India, (2015) A.I.R. 1523.

⁸ Vasudev Devadasan, *"Fake News" and the constitution*, INDIAN CONSTITUTIONAL LAW AND PHILOSOPHY (Aug.7, 2020, 10:00 PM), <https://indconlawphil.wordpress.com/2020/06/17/fake-news-and-the-constitution/>.

ascertain which is true or false. In response to it Dr.Tedros Adhanom Ghebreyesus, Director-General, World Health Organisation stated that, “*We are not just fighting an epidemic; we are fighting an infodemic. Fake news spreads faster and more easily than this virus, and is just as dangerous.*”⁹

As a result, provoking various devastating effects such as:

- The panic among migrant workers forcing them to move on foot to their hometown in the apprehension of the fake news stated of the continuation of lockdown for more than three months.¹⁰ Which brought untold suffering to the migrant workers- some even lost their lives due to starvation and various other reasons.
- The social stigmatization of persons who took part in the Tablighi Jamaat religious congregation took place at Delhi in early March 2020 and in furtherance, social media platforms flooding with hashtags such as Islamophobic, CoronaJihad, and NizamuddinIdiots¹¹ and fake videos posed a severe threat to their right to life, dignity, personal liberty, and right against discrimination based on religion enshrined under article 21 and 15 of the Indian constitution.
- And in the initial stages of lockdown, misleading social media posts causing a false impression of the spread of coronavirus through chicken slashed the poultry sales by 50%.¹²

Legal Lacunae in the law regulating free speech in the realm of the pandemic situation:

In the light of the COVID19 crisis, the state has imposed restriction upon various civil liberties as an emergency measure. Moreover, in the event of the rampant spread of misinformation provoking complexities, the government and the Supreme Court-imposed various stringent restrictive measures on the right to free speech. The government took reliance on the specific provisions of special legislation such as the age-old Epidemic Disease Act,1897, the Disaster

⁹Alakh Alok Srivastava v. Union of India, (2018) 5 S.C.C. 651.

¹⁰ T.K.RajaLakshmi , *Centre blames media “fake news “for mass migration during lockdown*, FRONTLINE (Apr. 01, 2020), <https://frontline.thehindu.com/dispatches/article31228357.ece>.

¹¹ Aditi Chattopadhyay, *Top Five Fake News Targeting Muslim Community Amid Nationwide Lockdown*, THE LOGICAL INDIAN (Apr. 10, 2020), <https://thelogicalindian.com/news/islamophobia-covid-19-coronavirus-fake-news-muslim-tablighi-jamaat-20543>.

¹² Mayank Bhardwaj, *Indian chicken sales slashed almost 50% by false virus rumor-Godrej Agrovet* ,THOMSON REUTERS (Feb. 27, 2020), <https://in.reuters.com/article/china-health-india-poultry/india-chicken-sales-slashed-almost-50-by-false-virus-rumour-godrej-agrovet-idINKCN20L22K>.

Management Act,2005, Section.144, 505(1)(b) and 505(1)(c) of the Indian Penal Code and also used certain sections of Information Technology Act,2000.

Firstly, the Sec.6(1),18(1) of the Disaster Management Act,2005 and 2(1) of Epidemic Disease (ED) Act,1897 lay down unlimited powers in the hands of the state authority or the state in the case of Epidemic Disease Act by empowering them to take any measures or issue guidelines as an effective response at these times of pandemic. And it is also significant to note that Sec.4 of the ED Act states that there can be no legal suits enforced against an action of any person done in good faith intended to be done under the act.¹³ Thus proves to be highly regulatory and lacking sensibility in addressing the human and legal rights of citizens during the epidemic.

And besides, the vagueness and a great deal of subjectivity in the case of Section 54 of Disaster Management Act,2005 and the need to establish the presence of bad intent in the case of sec.505(1)(b) and sec.505(1)(c) to make it a chargeable crime concerning the magnitude of the spread of fake news, the identification of the generator and transmitter is crucial making it less efficient in the curtailment of the spread.

In a recent Public Interest Litigation filed pertinent to the welfare of migrant workers affected due to lockdown, the Supreme Court of India directed the media to publish only the official version of development and to ensure that unverified news capable of causing panic should not be disseminated.¹⁴

The aforementioned restrictions upon freedom of speech at the times where access to information and transparency is of utmost importance proves to be disproportionate to meet the threat posed by the content rather implicitly opening grounds for prior censorship of content of media results in delimiting the legitimate expression of divergent views and grievances.

Conclusion:

In the light of pandemic in India, there was no single source information owing to the magnitude of day to day updates of various discoveries and responses from the scientist and medical experts in absence of a specific legislation on fake news in India it is difficult to distinguish between the truth and false news. Thus, imposing such restrictions on free speech as a whole thus leading to suppression of criticism and public debate in the name of health emergency measures does not prove to be proportionate. There should be a balance between

¹³ Epidemic Disease Act 1897, No. 3 of 1897, INDIA CODE (1993), § 4.

¹⁴ Alakh Alok Srivastava v. Union of India, (2018) 5 S.C.C. 651.

individual rights and security measures of the state. These circumstances necessitate the need to establish specific legislation dealing with fake news and there should be spread of constant awareness regarding the official order of the state and should establish a distinction between an official page of the government and other fake pages by means of using verification marks.