

Fixing Digital India Bill: How government can combat misinformation without attacking free speech

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The digital public square has been tainted by the spread of misinformation. Indeed, the list of controversies triggered by it only seems to grow every day. Given this, it is important to institute an effective fact-checking mechanism. However, recent reports that the government might include a provision in the **Digital India Bill** requiring the registration of online fact-checkers has generated valid concerns. This could have a chilling effect on speech. It could discourage legitimate speech and actions of online fact-checkers, digital platforms and public personalities, especially from vulnerable and marginalised backgrounds.

Ideally, this proposal should be shelved. Instead, the government can work towards setting up an independent body to exercise oversight over online fact-checkers. The exact nature and scope of such a body can be determined over the course of several

rounds of public consultation. It must incorporate the inputs of a wide gamut of stakeholders to fashion a law that doesn't infringe on free speech but attacks misinformation.

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The right to free speech of various entities will likely be compromised if this proposal becomes law. First, online fact-checkers. A lot of public discourse online is about the government. The concern follows that these persons/bodies might be reluctant to fact-check content that favours the government, which will happen in the case of compulsory registration. They may face sanctions — explicit or implicit. Alternatively, they might be prevented from looking at government-related content altogether. This is counter-productive to the goal of combating misinformation effectively, given that a large swathe of public discourse will be off limits.

Second, digital platforms. Although notices sent by private online fact-checkers do not carry the weight of a government notice, if platforms have to register with the Centre then, in effect, the impact may be the same. If platforms think that a private notice has government backing, or in some way expresses the will of the government, they may overcomply. This is especially so if non-compliance will trigger loss of safe harbour protection for platforms, that is, protection from liability for third-party user-generated content.



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Third, public personalities and speakers online. Valid user speech may get suppressed while comments that should be fact-checked may escape scrutiny. Users may self-censor for fear of consequences should their stance be against the government. This is especially so if, as is being reported, the DIA criminalises “deliberate misinformation”.

This fear is precisely what the Supreme Court condemned while striking down section 66A of the Information Technology Act in the landmark *Shreya Singhal v Union of India* (2015) judgment.

It must also be noted that the digital public square is one of the few places where marginalised and vulnerable groups can gain access to mass communication channels. Efforts to curtail harmful speech online — like misinformation — while perhaps driven by noble intentions, often end up disproportionately targeting the speech of the vulnerable. At a time when the online world is increasingly becoming our gateway to participate in modern society, we are at risk of shutting out the voices which rely most on the space to speak and be heard, to participate in democratic discourse and have their impact felt. So paradoxically, an effort guided by the desire to promote the well-being of such groups — by protecting them from misinformation — may well end up harming them.

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Democracy indeed requires access to a reliable information ecosystem, which the government is trying to promote via the registration of online fact-checkers. But an alternative route is available to achieve this objective without compromising free speech. It could be pursued in two steps.

To begin with, the government can, through the DIA, direct online fact-checkers to register with the International Fact-Checking Network (IFCN). This will ensure a baseline of thoroughness and competency in fact-checking efforts.

Subsequently, the government can hold public consultations and perhaps issue a White Paper on the ways in which an independent body can be set up in India to oversee the ecosystem of fact-checkers. This can be followed up with further consultations and perhaps dissemination of a draft provision for feedback before enacting it into law.

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