

# WhatsApp in Kashmir: When Big Brother wants to go beyond watching you

Pranesh Prakash      Vidushi Marda

2016-04-28

Scroll.in

## Abstract

Instead of enforcing punitive measures for spreading violence through rumours, the administration sought to prevent private group conversations.

---

Last week, Kumar Rajiv Ranjan, district magistrate of Kupwara in Jammu and Kashmir [issued a circular](#) requiring registration of “WhatsApp news groups” following violent protests in Handwara and Kupwara in which 5 people were killed.

The circular was issued with a view to “restrict the spreading of rumours”. The circular laid down five conditions:

1. It asked group administrators to register their “WhatsApp news groups” with the ‘District Social Media Centre’ within 10 days of the issuance of the circular.
2. It required this Centre to keep a “vigil on the activities of these WhatsApp groups”.
3. It made group administrators responsible for all posts on their group, with any “irresponsible remarks leading to untoward incidents” to be dealt with by the law.
4. It restrained government employees serving in the Kupwara district from “making any comments/remarks with regard to the policies and decisions” of the Government, failing which strict action will be initiated against them.
5. It required authorities in Kupwara and Handwara to maintain a list of individuals (with evidence) involved in provoking the creation of law and order problems in the district.

The Jammu and Kashmir department of information and public relations in a [press release](#) also noted that the divisional commissioner “directed the operators of social media news agencies to obtain proper permission from the concerned Deputy Commissioners for posting news on social media news groups along with sources.”

## Information Technology Act

As the [Centre for Internet and Society](#) has previously pointed out, alarmist news reports, which proclaim that administrators of WhatsApp groups are liable for what the group’s participants post, are wrong.

Unlike many other laws passed by the Indian Parliament, the Information Technology Act is applicable to Jammu and Kashmir. In 2008, the provision that deals with liability of “intermediaries” for the actions of third parties – Section 79 of the IT Act – was amended following the notorious Bazee.com case, where Avnish Bajaj, the chief executive officer of Bazee.com – which is now eBay India – was arrested for a sexually explicit video being sold on that website.

Post-amendment, Section 79 provides strong protection for intermediaries against liability for actions by others, with limited exceptions. The district magistrate of Kupwara roundly ignores this, and in doing so contravenes a law passed by Parliament. His circular states:

“Group admins of each group will be responsible for all the posts on their groups and for any irresponsible remarks/deals leading to untoward incidents will be dealt under law.”

This is a gross violation of Section 79, and is beyond the powers of the district magistrate.

## Freedom of expression

There is a difference between the press release provided by the department of information and public relations of Jammu & Kashmir, and the circular issued by the district magistrate of Kupwara. The circular states that registration is required, whereas the Divisional Commissioner Dr Asgar Hassan Samoon is quoted as stating that “proper permission from the concerned Deputy Commissioners” is required for “posting news on social media news groups along with sources” and also that “action will be taken against the violators.”

The latter smacks of the pre-censorship of the Emergency days. It is actually even worse since this applies not just to the mass media, but to *everyone*. If “permission” of a government official is required to engage in speech, what remains then of the guarantee of freedom of speech and expression in our Constitution?

While the circular – which doesn’t require taking of permission, but requires registration – is nominally better, it is no more within the powers of the district magistrate. The Press and Registration of Books Act, 1867, which (since 1965) is applicable to Jammu & Kashmir, requires registration by all newspapers published in India, but does not cover social media – nor does the Jammu and Kashmir State Press And Publication Act, 1932 cover social media. It is clear that the district magistrate can’t make up requirements when Parliament and State Legislature have opted not to.

## Chilling effect

What the district magistrate has sought to do is *not* to strongly enforce punitive measures for spreading violence through rumours, which would be welcome.

What he has instead sought to do is to prevent private group conversations from taking place, thus directly striking at the intersection of the rights to freedom of expression and opinion, the right to privacy, and the right to assembly. Rumour-mongering with an intention to cause disharmony and violence is clearly undesirable, but it is far more reasonable to counter these both by spreading the truth using the same channels of communication, and through punishment of those engaging in such malicious acts.

Requiring prior permission from, or even registration with, authorities to simply post messages on a WhatsApp group cannot be considered a “reasonable restriction” under Article 19(2) of our Constitution. Having such onerous requirements will only cause the chilling of speech – discouraging of even legitimate and lawful speech because of fears that Big Brother is reading all that you write.

There is unfortunately a long history of such repression in Jammu & Kashmir. Restrictions on text messages – SMSes, as they are called – have been frequent. Internet shutdowns – which caused an uproar when they happened in Egypt – are considered commonplace. Since 2013, there have been at least 15 instances of Internet shutdowns in Jammu & Kashmir.

Rather than countering rumours with truth, the government seeks to counter rumours with fear and the chilling of speech. *Satyameva Jayate.*