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“Dharma is to protect the Needy”

Article on

LAW ON COMMUNICATIONS

(PROPAGATION OF FAKE NEWS ACROSS THE WORLD)

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Abstract:

The world has learned of the menace of fake news in the internet age the hard way. Social media and instant messaging platforms have established themselves as an almost essential part of every person's life. Similar to every other tool, they have also been used for bad things by disruptive forces, to the extent that the world is still unsure about the best way to deal with their consequences. One such repercussion of the cheap and easily accessible internet is the propagation of fake news through it, spread easily by various entities and for various purposes including monetary profit, political gain and propaganda, personal vendettas, and others. All of this has already caused considerable damage to societies across the world, as was seen in the Cambridge Analytica case wherein private data of millions of people was compromised in order to serve them with paid political advertisements and fake news. In India, fake news has been utilized by politically motivated miscreants and bigots to spark communal violence and spread rumors through easy WhatsApp forwards that almost every Indian is familiar with, which has even resulted in needless deaths. India does not have dependable laws or guidelines to deal with this issue which is only going to get worse with time as the means of faking things become easier and it becomes harder to identify what's fake and what isn't, something already surfacing in the form of deep fakes. This article discusses all of this and more.

Keywords:

Fake News
Social Media
Internet
Laws
Remedies

INTRODUCTION:

Information, or its lack thereof, has always been the most powerful tool to influence the beliefs and the thoughts of the masses, to manipulate their opinions and to garner their loyalty. Lying, or distorting facts, has never been beyond individuals and entities seeking to surf the wave of the support of the public opinion. Spreading such information through word of mouth was mostly discarded with the arrival of print news and subsequently the television, which made it much easier to reach millions of people. Now, with the advent of the internet, hosting countless news and social media websites, fake news is spread easier and is more rampant than ever before, posing a complex problem that is baffling governments the world over.

The primary issue in tackling the menace of lies presented in the form of fake news is the difficulty in identifying it. Freedom of speech and freedom of the press cannot be curbed on the pretext of banning fake news. Identifying fake news correctly thus becomes all the more essential in order to formulate good laws which do now encroach on the freedoms of the people or become a tool in the hands of the government to stifle dissent and discontent. Fake news is of various kinds, some easier to spot than the others, but all of them posing as facts. Be it clickbait, propaganda, satire, or simply misleading headings, fake news has invaded every outlet of information dissemination in an attempt to attract more viewers or to influence them.

THE LEGAL ASPECT

There are no laws in place to regulate the propagation of fake news in India. The right to freely publish news is protected under the fundamental right to freedom under Article 19 of the constitution. However, there are legal recourses under certain statutory and self-regulatory bodies to prevent or remedy the spread or consequences of fake news. The News Broadcasters Association (NBA), a self-regulatory entity that represents the private television news & current affairs broadcasters and comprising 72 news and current affairs channels¹, deals with complaints against any member or associate member of the NBA. The Indian Broadcasting Foundation (IBF) is another such independent not-for-profit organization whose members comprise both News and Non-News Channels and manage more than 350 channels and about 90% of television

¹ <http://www.nbanewdelhi.com/about-nba>

viewership across country. Since June 2011, the Broadcasting Content Complaints Council (BCCC), an independent self-regulatory body set up by IBF, has been examining content-related complaints against non-news general entertainment television channels.²

There is also the Press Council of India, a statutory body formed by the Press Council Act of 1978. It has the power to censure and to hold inquiries under Articles 14 and 15 of the Act and can warn, admonish or censure the newspaper, the news agency, the editor or the journalist³ if it has reason to believe that a newspaper or news agency has offended against the standards of journalistic ethics or public taste or that an editor or a working journalist has committed any professional misconduct. However, the Press Council does not have any real powers to check the spread of fake news. Simply admonishing or warning a news outlet for peddling fake news is not punishment enough to deter others, considering the large stakes in a country like India where even a morphed photograph depicting religious figures in a disrespectful light may lead to riots communal violence.

A better remedy available to aggrieved parties is to approach the courts under various sections of the Indian Penal Code. Defamatory fake news can be dealt with under Section 499 of the IPC, which makes defamation a criminal offense. Section 500 lays down a punishment for the same as imprisonment for up to two years with or without fine.⁴ The IPC also provides for a means to tackle fake news, if it qualifies as “hate speech”, under sections 153 and 295. The former lays down punishment for “wantonly giving provocation with intent to cause a riot”⁵ while the latter for “injuring or defiling place of worship with intent to insult the religion of any class.”⁶ These remedies, although effective, are limited in their scope of application. They are not equipped to deal with those creating and spreading fake news as propaganda or misleading

² <https://www.ibfindia.com/about-ibf>

³ http://presscouncil.nic.in/Content/29_3_History.aspx

⁴ Sec 500 Indian Penal Code, 1860.
<https://indiankanoon.org/doc/1408202/>

⁵ Sec 153 Indian Penal Code, 1860.
<https://indiankanoon.org/doc/857209/>

⁶ Sec 295 Indian Penal Code, 1860.
<https://indiankanoon.org/doc/305995/>

advertisements. The necessity for framing guidelines and laws to curb the ever-growing menace of fake news is evident, but the balance between freedom of expression and checks on fake news is difficult to achieve. Criminalizing fake news, as under Singapore's Protection from Online Falsehoods and Manipulation (POFMA), may do more harm than good if used as a tool to curb the freedom of expression by the government.

COMPLEX ISSUES

Social media platforms and messengers make it particularly difficult to identify what is true and what isn't because of the ease through which any information can be forwarded, and the sheer amount of fake information that is generated on them. India has the second-largest number of social network users, only behind China.⁷ Furthermore; fact-checking is also a costly and time-consuming process that requires resources that many companies lack. The government can choose to completely ban such platforms in India to prevent the spread of hoaxes and rumors that have led to violence and lynchings in the past. However, that would prevent millions of genuine users who employ such messaging applications to communicate with their friends and families and run their businesses from using them, and would most likely be ineffective as the users could very easily switch to different platforms, as many of a similar kind are available. The government should consider imposing fines on companies like WhatsApp and Facebook if they fail to check the spread of fake news. This too, however, will not be very practical as messaging platforms can read messages in order to filter them only if they are unencrypted, something that would endanger the privacy of the users if implemented. Social media networks also have the option of hiring third-party fact-checkers in addition to employing fake news filters to control the menace of fake news to some extent, which becomes even more essential in times of elections. There is also a major issue of paid news and political advertisements which is even trickier to tackle.

Even if the correct laws and guidelines were to be put in place, they would not be enough to protect the consumers and prevent damage in every instance of misleading reporting and

⁷Number of social network users in selected countries in 2018 and 2023, Statista, February 2019.
<https://www.statista.com/statistics/278341/number-of-social-network-users-in-selected-countries/>

propaganda, because of the simple fact that the amount of fake news on the internet is too great to regulate, and the effects of which are often intangible or not of such value to merit resorting to legal measures. This is all the more reason for viewers and users to be vigilant and on the lookout for fake news, which can be spotted by taking small steps in most cases, so as not to be duped. The government, as well as social media platforms, must take steps in order to ensure greater media literacy of the users to prevent them from falling for stories designed to deceive them. While looking into any news story, readers must delve deeper than the headlines, which are often sensationalist and meant to catch eyeballs, rarely conveying the truth of the matter. Readers must also consider the source and the author of such news stories and whether they are credible enough to be trusted, or even real. Stories from sites and outlets known to have published false reports must be taken with a grain of salt, and should not be trusted from the get-go even if they align with our views and biases. Personal prejudices must be checked and beliefs must not be allowed to cloud the judgment of the readers regarding the veracity of the news and the authenticity of the source. Sometimes old stories are reposted so as to make them seem relevant to current issues and fetch clicks, and therefore the date of the publishing of the stories must also be checked lest it creates false impressions in the mind of the reader. It should also be considered that the story might be a joke or satire, which is popular on the internet and might lead readers to believe parodies.

In order to collectively make social networking spaces more trustworthy, and free from misleading reports, a system of active participation of the entire community of users who act as watch guards must be implemented, similar to what Facebook introduced in Germany⁸ where it allowed users to flag potentially false stories. These stories are then verified by a team of fact-checkers and marked as “disputed” if found to be unreliable. Considering the amount of reach and influence social networks have to influence opinions, and even elections, such initiative of the people is vital.

⁸Facebook to roll out fake news tools in Germany, BBC News, 15th January 2017.
<https://www.bbc.com/news/business-38631847>

IMPACT

The impact of the effects of news can be seen worldwide which is done through social media; the rise of fake news highlights the erosion of long-standing institutional rampart against misinformation in the age of the internet. Erroneous beliefs are a great threat to the established form of government and fake news presents an egregious and direct avenue by which imprecise and erroneous information is spread through the internet. There are major instances which highlight the conundrum of fake news or misinformation in the current time like Cambridge Analytica -Facebook Data Scandal, WhatsApp scandal, and 2016 US elections, in India- WhatsApp fake news, fake news at the time of demonetization, in Jammu and Kashmir and many others.

In the scandal, Cambridge Analytica, a political consulting firm, had harvested personal data of 87 million peoples' Facebook profiles⁹ without taking consult of them and used it in the campaigning of Donald Trump in the general elections. Aleksandr Kogan, a research associate at Cambridge University, builds an application "This Is Your Digital Life" which was basically a quiz, the one who takes the quiz his all personal information was harvested, it also exposed a loophole in Facebook API that allowed it to collect data from the friends of the people taking the quiz as well. This data are used for Ted Cruz, the United States Senator in 2016 elections.

Following the 2016 US Election, a specific concern has been the effect of false stories—"fake news," as it has been dubbed—circulated on social media. Recent evidence shows that: 1) 62 percent of the US elders get news on social media; ¹⁰ 2) the most well-liked fake news stories were more widely shared on Facebook than the most popular mainstream news stories; 3) many people who see false news stories report that they believe and accept them, and 4) the most discussed false news stories tended to favor Donald Trump (Republic Party) over Hillary

⁹ Chang Alvin, "The Facebook and Cambridge Analytica scandal, explained with a simple diagram", 2 May 2018. <https://www.vox.com/policy-and-politics/2018/3/23/17151916/facebook-cambridge-analytica-trump-diagram>

¹⁰ Gottfried, Jeffrey, and Elisa Shearer. 2016. "News Use across Social Media Platforms 2016." Pew Research Center, May 26. <https://www.journalism.org/2016/05/26/news-use-across-social-media-platforms-2016/>

Clinton. Putting these facts together, numerous commentators have suggested that Trump would not have been elected president were it not for the influence of fake news.¹¹ The new evidence we present clarifies the level of overall exposure to fake news, and it can give some sense of how persuasive fake news would need to have been pivotal. Estimation suggests that the average US adult read and remembered on the order of one or perhaps quite a lot of fake news articles during the election period, with higher exposure to pro-Trump articles than pro-Clinton articles. How much this affected the election results depends on the effectiveness of fake news exposure in changing the way people vote. As one benchmark, show that exposing voters to one additional television campaign ad changes vote shares by approximately 0.02 percentage. This suggests that if one fake news article was about as swaying as one TV campaign advertisement, the fake news in our database would have changed vote shares by an amount on the order of thousandths of a percentage point. This is much smaller than Donald Trump's margin of victory in the pivotal states on which the outcome depended.

In India, much fake news has been circulated through social media (the major one is WhatsApp and Facebook) which led to deadly consequences sometimes. Once the news was spread that Mumbai was going to be hit by Cyclone Phan, because of which many events, important meetings were canceled and later it turns out that it was struck 8 years ago in Sri Lanka, 14000 miles away and the rumors have been going for years.¹² Common sense has been extinct because of the excess usage of platforms like WhatsApp, Facebook, Instagram, etc. Some misinformation has led to violence in the country, after reading information that a child was abducted by several people in a village in Jharkhand, spooked villagers, mostly tribals, led to lynching and killing of 7 people on the basis of false information. It was done because tribals lack the ability to distinguish between a rumor and news. Everything shared on the phone is regarded as true, prompting people to react with emotion and anger. There have been multiple instances of pictures from Iraq and Syria being passed off as of Jammu and Kashmir to fuel unrest into insurgencies like a small boy protecting his younger sister from riots, a woman

¹¹ Parkinson, Hannah Jane. 2016. "Click and Elect: How Fake News Helped Donald Trump Win a Real Election." *Guardian*, November 14.

¹² Doshi Vidhi, "India's millions of new Internet users are falling for fake news — sometimes with deadly consequences", *The Washington Post*, 1 October 2017.

https://www.washingtonpost.com/world/asia_pacific/indias-millions-of-new-internet-users-are-falling-for-fake-news--sometimes-with-deadly-consequences/2017/10/01/f078eaee-9f7f-11e7-8ed4-a750b67c552b_story.html

bleeding from her head, blast of vehicles and represented them as of Pulwama attack. In the states of Maharashtra, Jharkhand, Andhra Pradesh, Madhya Pradesh, fake news was spread that there are Bachcha Chor (who kidnaps children), due to which people started to live in fear. The fear and anger of the people then converted into a rage when they see someone in the suspicion situation, which led to the death of five people of a family in a mob attack because villagers think that they were involved in kidnapping and it was just a rumor. Similarly, many non-Hindus were killed as the rumor was spread that they are involved in eating and selling beef and based on these fake news mob lynching occurred.

THE WAY FORWARD

To probe this fake news, misinformation, spreading morphed photos that disturb internal peace of a country, strict laws and regulations are required so that no one dares to spread the rumors which affect the stableness of the country. Many countries have started taking steps to probe these activities. For instance, The German Network Enforcement Act imposes fines more than 50 million Euro on social media companies if they fail to remove “obviously illegal” content within 24 hours after receiving a complaint about the same.¹³ Illegal content includes hate speech, defamation, and incitements to violence; Singapore has imposed new law which requires social media sites like Facebook to carry warnings on the post against the government and remove comments which entices hatred towards government and which is against the public interest. Violations regarding the same could attract fines of up to \$ 1 million and 10 years in prison; Russian President Vladimir Putin has passed new law which allows authorities to block websites that do not meet requests to remove inaccurate information and according to that law Individuals can also be fined up to 400,000 Rouble (\$6,109.44) for circulating false and inappropriate information online that leads to a “mass violation of public order”. France had passed two anti-fake news laws, to bridle in fake information during election campaigns following allegations of Russian prying in the 2017 Presidential elections of France. Argentina has proposed legislation to create a Comisión de Verificación de Noticias Falsas (CVNF)

¹³ Hillary Grigonis, “Delete hate speech or lose millions, the German Network Enforcement Act says,” Digital Trends, June 30, 2017
<https://www.digitaltrends.com/social-media/network-enforcement-act-germany/>.

(Commission for the Verification of Fake News) within the Cámara Nacional Electoral (CNE),¹⁴ which would be in charge of the detection, prevention, labeling, and recognition of fake news exposed through digital media broadcasts only during national election campaigns. In 2015, China's National People's Congress (NPC) Standing Committee adopted the Ninth Amendment to the Criminal Law of the People's Republic of China (PRC). The Amendment added to the Law crime of spreading fake news that seriously disturbs public order through an information network or other media. This offense is punishable by up to seven years in prison.¹⁵ The legislation isn't sufficient to counter these activities; many other steps have to be taken to stop spreading rumors, misleading information, false or fake data. Some countries try to beef up old legislations instead of making new ones. In Indonesia, online smear campaigns had affected electoral candidates standing in elections since 2012. There is evidence present that some of these politically-motivated smear campaigns have been assisted by well organized "fake news factories" such as the Saracen Cyber Team, an online consortium that created many social media accounts to spread hate speech for patrons willing to pay for them.¹⁶ The Indonesian government hence has beefed up existing laws not only by introducing new provisions in that¹⁷ but also by issuing guidelines and procedures to aid their implementation and setting up enforcement agencies such as forming the Police Multimedia Bureau in 2017.¹⁸ This Bureau aims to counter disinformation campaigns.

Non-legislative measures may also inculcate media literacy and critical thinking in youths and elder ones also. Countries such as Taiwan, Canada, and Italy have introduced a school curriculum that teaches children to discern between false and credible information. In recognizing the role of online opinion leaders towards society, some country leaders such as

¹⁴ Proyecto de Ley Creación de Comisión de Verificación de Noticias Falsas, Aug. 28, 2018, art. 1, Honorable Cámara de Diputados de la Nación, <https://www.hcdn.gob.ar/proyectos/texto>

¹⁵ Ninth Amendment to the PRC Criminal Law (adopted by the National People's Congress (NPC) Standing Committee on Aug. 29, 2015, effective Nov. 1, 2015),

http://www.npc.gov.cn/npc/xinwen/2015-08/31/content_1945587.htm

¹⁶ Wahyudi Soeriaatmadja, "Indonesian police probe alleged fake news factory's protest links," The Straits Times, August 26, 2017,

<http://www.straitstimes.com/asia/se-asia/indonesian-police-probe-alleged-fake-news-factorysprotest-links>

¹⁷ Kristo Molina, "Indonesian Electronic Information and Transactions Law Amended," White & Case, December 15, 2016,

<https://www.whitecase.com/publications/alert/indonesian-electronic-information-and-transactions-lawamended>.

¹⁸ Farouk Arnaz, "National Police Form New Unit to Tackle 'Fake News' on Social Media," Jakarta Globe, February 22, 2017,

<http://jakartaglobe.id/news/national-police-form-new-unit-to-tackle-fake-news-on-social-media/>.

Indonesian President Joko Widodo had encouraged social media influencers to fight fake and false news by promoting unity and accord.¹⁹

Governments have also funded into research that uses technology such as machine learning (ML) and artificial intelligence (AI) to counter fake news. The US National Science Foundation has supported projects such as Claim Buster, which uses national language processing techniques to spot factual and appropriate claims within texts. Claim Buster has been used to check facts during the US 2016 presidential election. The software has also checked Hansard, the report of the proceedings of the Australian parliament and its committees, for possible false claims on a wide variety of issues of national interest such as budget and citizenship.²⁰

There can be three measures to combat fake news-

- 1) Pr-emptive Measures- that can be either issue-based or collaborative, an issue-focused approach to combat fake news is formed for particular purposes such as elections. This allows the targeted definition of fake news in a particular context thus expedites the identification of related fictitious information on the other hand collaborative measure comprises of regional engagements, non-governmental collaborative efforts.
- 2) Immediate- Immediate measures comprise transparent, timely and accurate communication carried out in tandem with affected bodies to dispel confusing information, it includes crisis communication, flagging, fact-checking.
- 3) Long term measures- Long-term measures to counter fake news include (i) initiatives to inculcate media literacy in schools that the elderly may also find useful²¹;(ii) encouraging social norms against fake news such as responsible information sharing practices; and (iii) defining the responsibilities of technology companies in countering fake news within the spectrum of collaborative engagements.

¹⁹ “Jokowi tells social media influencers to step up fight against fake news”, The Jakarta Post, August 24, 2017, <http://www.thejakartapost.com/news/2017/08/24/jokowi-tells-social-media-influencers-to-step-up-fight-against-fakenews.html> .

²⁰ Naeemul Hassan, et al, “ClaimBuster: The First-ever End-to-end Fact-checking System,” Proceedings of the VLDB Endowment 10, No. 12 (2017): 1945-1948.

²¹ Ang Peng Hwa, “Framework for Regulating the Internet,” in The Internet and Governance in Asia: A Critical Reader, ed. Indrajit Banjee (Asian Media Information and Communication Centre (AMIC) and Wee Kim Wee School of Communication and Information Nanyang Technological University (WKWSCI-NTU):2007, 328, 329, 330.

Because of the judgment in the case K.S Puttaswamy v. UOI, the Right to Privacy has also become an intrinsic part of fundamental right under Article 21, which had become the protector of the frauds and scams happening because of fake information. The right to privacy was reinforced by the concurring opinions of the judges in this case which recognized that this right includes autonomy over personal decisions (e.g. consumption of beef), bodily integrity (e.g. reproductive rights) as well as the protection of personal information. Many people have been trapped in the scam related to aadhaar card as false data is being spread asking the person of his/her aadhaar card and then their money is being withdrawn by the use of aadhaar number as UPA government had made it mandatory to connect aadhaar card with the bank details. Certain cases have come into notice that messages have sent to the person regarding the winner of a bumper prize, for instance, three crore rupees and then asking them to give their bank details and thus with that their money is withdrawn.²²

CONCLUSION

The phrase ‘fake news’ sounds too playful, too much like a child faking illness to get out of school and tests. Thus, it can be said that both legal and non-legal measures are required for communication throughout the world so that there are peace and stability in the humankind and the scandals happened throughout the globe not happen again like fake news and rumors had played the main role in corrupting the elections of several countries which forced them to make stringent laws against spreading of fake news. Yes, it is difficult for a layman to detect or identify the fake news, although there are many measures through which one can identify it but a simple task he can do that before believing it he can cross-check what he is going to accept and realizing that he is making his decision on the basis of false data and there is also a common saying that

“Don’t believe whatever you see, because there are conspiracies behind conspiracies now.”

In India, fake news has been utilized by politically motivated miscreants and bigots to spark communal violence and spread rumors through easy WhatsApp forwards that almost every

²² Ganjoo Shweta, Ex-banker warns about growing Aadhaar scams, here's how you can save yourself from being tricked, India Today, 26 December 2018,

<https://www.indiatoday.in/technology/news/story/how-to-save-yourself-from-aadhaar-scams-1416910-2018-12-25>.

Indian is familiar with, which has even resulted in needless deaths, India specifically doesn't have any laws by which it can probe fake news, so it can adopt laws prevailing in different countries or make a new one so that this specific problem did not harm the posterity of the country in any form as

“Fake news is like ice; once it comes in contact with the heat of the truth it melts quickly and suddenly evaporates.” - Oche Otorkpa.

