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FAKE NEWS: LEGAL ANALYSIS OF FALSE AND MISLEADING NEWS AND CYBER PROPAGANDA

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Abstract

Today 'Fake News' has become a menace in the society and which is difficult to deal with as it may come in conflict with the right to freedom of speech and expression. Because of losing trust in mainstream media and the availability of choice of media to receive news, most of the readers have shifted to social media. It is very easy to create fake news and as consumers are not aware so often they fail to differentiate between fake news and news that is real. This article aims to discuss the role of fake news in spreading violence; cyber propaganda; role of Facebook as a social media platform in spreading false news; and the legal position in different countries like France, UK, Egypt and India.

Keywords: Fake News, Propaganda, Social Media, disinformation.

Introduction

The menace of Fake news has gained much attention during the recent time. “Fake news” is a term that may have different meaning in different context. Fake news or junk news can also be called propaganda and intentional wrong with misleading information or hoaxes. Generally, it is an intentional item to mislead public about anything in order to increase viewership or readership. Sensationalist, dishonest, or totally fabricated headlines are used either about entity, or person or community etc., in order to gain financially or politically.

Whenever Fake news is discussed then two terms i.e. „disinformation“ and „misinformation“ are often combined. But UNESCO published a new edition from their series “Handbook for Journalism Education and Training” where these two terms were defined differently. According to UNESCO, “**disinformation** is generally used to refer to deliberate attempts to confuse or manipulate people through delivering dishonest information to them. This is often combined with parallel and intersecting communications strategies and a suite of other tactics like hacking or compromising of persons. **Misinformation** is generally used to refer to misleading information created or disseminated without manipulative or malicious intent.”¹

The sources of fake news may be through print or electronic news media or through social media.² When Fake news finds its ways in mainstream media then this type of news can be very hard to correct and may have long lasting effects even after it is discredited. The Internet has grown to heights, and its boundaries are unlimited as well as unimaginable it is loaded with tons of information or misinformation, which can be made by anyone. The content which is fabricated, and headings which are misleading, and false context convinced millions of internet users worldwide. Sometimes, the Fake news publishers earn revenue by collaborating with companies like Google AdSense, Media.net and marketing affiliate programs like Amazon Associates which put advertisements on their Web pages.

According to survey conducted by Pew Research Center in 2016 it was found that most Americans suspect that fake news is having an impact. And even some Americans said they themselves shared fake news. Nearly 1/3 adults (32%) said they often see fake political news online, while 39% sometimes saw such stories and 26% hardly ever or never done that.³

The freedom to inform also suffers as journalists are expected to work fairly and fearlessly. But, it becomes difficult for them to do so when they get threatened and insulted on social networks. The Council of Europe published a survey in April 2017, relating to harassment against journalists which was conducted in its 47 member

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¹ Handbook on „Journalism, „Fake News“ & Disinformation“; UNESCO. 2018, available at https://en.unesco.org/sites/default/files/journalism_fake_news_disinformation_print_friendly_0.pdf

² Tufekci, Zeynep (January 16, 2018). "It's the (Democracy-Poisoning) Golden Age of Free Speech", available at <https://www.wired.com/story/free-speech-issue-tech-turmoil-new-censorship/>

³ Michael Barthel, Amy Mitchell And Jesse Holcomb, *Many Americans Believe Fake News Is Sowing Confusion, 23% say they have shared a made-up news story – either knowingly or not*, available at <https://www.journalism.org/2016/12/15/many-americans-believe-fake-news-is-sowing-confusion/>

countries. Out of the 940 journalists polled, 40% of them said they had been subjected to forms of harassment that had “affected their personal life” in the previous 3 years. Out of these cases, 53% consisted of cyber harassment.¹

Political actors have created a system of misinformation and propaganda war room and have utilized this digital opportunity to put anything as news and to weaken any information that is against their political agenda by calling it as Fake News. This system of fake news factories controlled by political actors has not been studied in depth. There is a basic difference between what is actually fake news and for what purpose the term of fake news is used for. First is *fake news genre*, where deliberate creation of misinformation takes place, and the latter is *fake news label*, where the term is used to delegitimize news media.

Misuse Of Information Technology In Indian Politics

Political parties are exploiting digital technology and social media platforms to spread fake news and undermine trust in the media, public institutions, and science. It is being done to manipulate public opinion to bring them in their favor.

At a time when news consumption is increasingly digital, artificial intelligence, big data analytics, and “black-box” algorithms are being leveraged to challenge truth and trust: the cornerstones of our democratic society.² According to a survey done by Microsoft, India³ topped fake news menace globally. The report showed out of the total Indians surveyed, 64 percent have encountered fake news as against the global average which was 57 per cent.

Major political parties in India have established separate cyber cell and information technology departments. They work in a very systematic way to create social networking profiles and disseminate information, disinformation and propaganda news to their supporters. Thousands of pages over Facebook and Twitter profiles with several thousand Whatsapp groups all comprising millions of users and members are being created by various political parties to influence voters and the public in general. Recently, low-cost internet data helped increase online news websites, You Tube channels, Facebook pages and Whatsapp groups.

A large number of Indians are unaware of system of Fake News factories which utilizes this large number to push their agenda. This mega online system is encouraging trolls to create man dominant web space where it is easy to harass women on social networking sites. Known journalists, activists and politicians are victims of fake news and online harassment.

Role Of Fake News In Spreading Violence

Thousands of fake viral message, photoshop pictures reaches to crores of people daily on one or another issue supporting one party or targeting another party or community. It has torn the social fabric of the country and has presented a very nasty picture of the political system. Investigations in numerous incidents of violence and mob lynching against Tribals, Dalits, Minorities other the weaker sections have established fake news spread mostly through WhatsApp groups. The hate created against weaker section of the society by these organized factories of producing fake messages has resulted in lynching and killing of many people around the country.

Billions of Indians use WhatsApp and Facebook and other social media networks but the same social media may turn anti-social at the hands of rumor mongers leading to lynching.⁴ In 2018, during May and June at least 22 people have been killed by mobs on the suspicion of being child-lifters or involved in cow slaughter in different parts of the country and the police blamed fake news for these lynching.⁵

According to an investigation by Indian Express after interviewing senior police officials it was reported that from mid of 2017 to July 2018 various whatsapp viral messages led to the killing of 27 people in 15 cases of lynchings by uncontrolled mobs blinded by viral rumours of child-kidnappers across nine states from Assam to Tamil Nadu.⁶

Infamous fake news factory i.e Postcard News continues to post with impunity. Though, in 2017, Alt News, which is Fake news buster website, had chronicled numerous instances of fake news posted on this website. It never was punished for creating fake news and for spreading misinformation.¹ Danik Jagran, popular Hindi daily published false news, still on its website,² that victim girl was not raped, though several fake news buster websites such as The Wire, News Click exposed Jagran.^{3,4}

When Padmaavat movie related protests were happening in 2017 and the Karni Sena was out on the roads (because they claimed that the Hindu princess Padmavati's story was being distorted in the movie), a school bus was attacked in Gurgaon (a city in Haryana). Suddenly a message went viral to show five Muslims were involved.⁵

In India, since 2015 lynching has become a major problem. It became prominent especially when a Muslim villager named Akhlaq, a resident of Uttar Pradesh was killed by a mob after rumors spread that he was storing beef in his freezer. In this case the accusation was spread by a loudspeaker from a nearby temple. Mohammad Ali, an Indian journalist, said that "crime and the killings of the past months had a common thread, linked to rising nationalist sentiment in the country".⁶

According to a Reuters report, in India, a total of 63 cow vigilante attacks had occurred between 2010 and 2017. In that period also it occurred mostly since the NDA government came to power in 2014. In these attacks, 28 Indians were killed and 124 were injured. Out of the 28 killed, 24 of them were Muslims.⁷ Majority of these incidents are directly supported by online fake news messages and indirectly by hatred created through these messages.

¹ Online Harassment Of Journalists Attack of the trolls Reporters Without Borders (RSF); available at https://rsf.org/sites/default/files/rsf_report_on_online_harassment.pdf

² Samantha Bradshaw & Philip N. Howard, "Challenging Truth and Trust: A Global Inventory of Organized Social Media Manipulation." Working Paper 2018.1. Oxford, UK: Project on Computational Propaganda. [comprop.oii.ox.ac.uk](https://comprop.oii.ox.ac.uk/research/cybertroops2018/). 26 pp. available at <https://comprop.oii.ox.ac.uk/research/cybertroops2018/>

³ India topping fake news menace globally: Microsoft survey; available at <https://www.bgr.in/news/india-topping-fake-news-menace-globally-microsoft-survey-770984/>

⁴ Malik, Dr. M. Asad, Government, Governance, Lynching And Rule of Law, 5 July 2017 published at Live Law online Journal of Law; available at <https://www.livelaw.in/government-governance-lynching-rule-law/>

⁵ Dutta, Prabhaskar K., "16 lynchings in 2 months. Is social media the new serial killer?"; available at <https://www.indiatoday.in/india/story/16-lynchings-in-2-months-is-social-media-the-new-serial-killer-1275182> updated on 02, July, 2018

⁶ Rashmi Rajput et al, Murderous mob-9 states, 27 killings, one year: And a pattern to the lynchings; available at <https://indianexpress.com/article/india/murderous-mob-lynching-incidents-in-india-dhule-whatsapp-rumour-5247741/>

Role Of Facebook

Human rights groups and researchers have cautioned Facebook that it is being used to spread half-truth and promote hate about Muslims, particularly the Rohingya, since 2013. In April, the Guardian reported that hate speech through Facebook in Myanmar had burst during the Rohingya crisis, which was caused by a crackdown by the military in Rakhine state in August, 2017. Several thousands of Rohingya Muslims were massacred, sexually exploited and assaulted, houses and villages were leveled to the ground and more than 700,000 Rohingya escaped over the border to Bangladesh.⁸

As the users of Facebook touched to 18 million, so too did hate speech, but it reacted very slowly and earlier in 2018 found its platform accused by a UN investigator of fuelling anti-Muslim violence.⁹ In mid-2014, after rumours online about a Muslim man raping a Buddhist woman started lethal riots in the city of Mandalay, the Myanmar government requested a crisis meeting with Facebook. It said that government should send an email when they saw examples of dangerous false news and the company would review them.¹⁰ The report by San Francisco-based nonprofit Business for Social Responsibility (BSR) found that, in Myanmar, "Facebook has become a means for those seeking to spread hate and cause harm, and posts have been linked to offline violence."¹¹

This trend has led to create more fake pages on Facebook just as Info wars is a fake news page over Facebook. Facebook not just allow Infowars but it earns profit from the it and its audience. Facebook's advertising tools, allow advertisers to pay Facebook to target the 743,220 users who "like" the InfoWars page.² These types of pages are flourishing on Facebook in innumerable number and revenue generation is continued.

What's happening on the Facebook platform raises doubts about its public relations campaign where it claims to have removed 652 fake accounts and pages meant to influence world politics. It also announced removal of pages, groups and accounts linked to Russia and Iran, citing "coordinated inauthentic behavior"³

In 2016, Facebook and Google faced sharp public criticism that fake news on their sites may have prejudiced the presidential election's result. Google also permanently barred approximately 200 AdSense publishers for alleged violations of the updated AdSense Program Policies, which regulate the use of "misrepresentative content" on publisher Web sites.⁴

¹ Fake News website "PostCard News" strikes again!, available at The Times Headline <https://www.timesheadline.com/opinion/fake-news-website-postcard-news-strikes-20897.html>

² Chauhan, Avadesh, Jammumu, Girl was not raped, 21 Apr 2018 available at <https://www.jagran.com/news/national-kathua-case-reveals-that-the-girl-was-not-raped-17850643.html>

³ Exposed: Dainik Jagran Posts Fake Story on Kathua Murder-Rape Case, Peddles the Hindutva Cause The story written by Advesh Chauhan from Jammu claimed that the eight-year-old Bakarwal girl from Kathua was not raped, available at <https://www.newsclick.in/exposed-dainik-jagran-posts-fake-story-kathua-murder-rape-case-peddles-hindutva-cause>

⁴ Rahul Kotiyal, 22/04/2018, Dainik Jagran Fake news on Kathua rape case, <http://thewirehindi.com/40786/dainik-jagan-fake-news-on-kathua-gangrape-murder-case/>

⁵ Ibid

⁶ Jason Burke, "Inside the Indian village where a mob killed a man for eating beef", 2 Dec 2017; available at <https://www.theguardian.com/world/2015/oct/03/inside-bishari-indian-village-where-mob-killed-man-for-eating-beef>

⁷ Tommy Wilkes, Roli Srivastava "Protests held across India after attacks against Muslims"; available at <https://in.reuters.com/article/india-protests/protests-held-across-india-after-attacks-against-muslims-idINKBN19J2C3>; updated on 28 June, 2017.

⁸ Hannah Ellis-Petersen, "Facebook admits failing over incitement to violence in Myanmar; published on Tue 6 Nov 2018; available at <https://www.theguardian.com/technology/2018/nov/06/facebook-admits-it-has-not-done-enough-to-quiet-hate-in-myanmar>

⁹ Olivia Salon, *Facebook's failure in Myanmar is the work of a blundering toddler*; available at <https://www.theguardian.com/technology/2018/aug/16/facebook-myanmar-failure-blundering-toddler>

¹⁰ Ibid

Legal Position In Different Countries

Several countries like France, Germany, Malaysia, Singapore, Egypt, Russia and U.K have started deliberations to frame Laws and rules to check abuse of free speech and to curb and control the menace of Fake News.

France

The France's Parliament in 2018 passed a new law against fake news. It has given power to Courts in France to order the immediate removal of "fake news" which was published during election periods. The same law allows to suspend foreign television if they "deliberately disseminate false information likely to affect the sincerity of the elections." This implies that France has the power to take on any foreign TV station suspected of spreading "false news."⁵As penalty, law provided for one year imprisonment and a fine. This law has been criticized a lot.

United Kingdom

The Office of Communications (OFCOM) in the UK controls broadcast media. The Independent Monitor for the Press (IMPRESS) and Independent Press Standards Organisation (IPSO) which are UK Press watchdogs will regulate only those newspapers whether traditional and online that sign up to their terms and conditions. The fact is that these are limited in number.⁶ Also neither IPSO nor IMPRESS have taken any significant as a regulatory action. Therefore, a UK parliamentary committee (the Culture, Media and Sport Committee) commenced an enquiry into tackling the problem of fake news.⁷ The committee looked into various important questions like „what is fake news“; „its impact on public understanding“; „effect of sale and purchase of advertisements over the growth of fake news“ etc. Further, the committee looked into the responsibility of social networks for harmful and illegal content on their platforms.⁸

Egypt

In 2018 Egypt's Parliament passed an anti-fake news law. Under the law, the social media accounts and blogs which will have more than 5,000 followers on sites such as Twitter and Facebook will be treated as media outlets. It will make them subject to prosecution if they will publish fake news. This law also regulates the establishment of

¹ Facebook says human rights report shows it should do more in Myanmar, Nov 6, 2018

<https://www.deccanchronicle.com/technology/in-other-news/061118/facebook-says-human-rights-report-shows-it-should-do-more-in-myanmar.html>

²Judd Legum, "Facebook's pledge to eliminate misinformation is itself fake news", published on 20 Jul 2018; available at <https://www.theguardian.com/commentisfree/2018/jul/20/facebook-pledge-to-eliminate-false-information-is-itself-fake-news> ³ Ibid

⁴ Nick Wingfield, Mike Isaac and Katie Benner, "Google and Facebook take aim at Fake News site"; available at <https://www.nytimes.com/2016/11/15/technology/google-will-ban-websites-that-host-fake-news-from-using-its-ad-service.html>

⁵Michael-Ross Fiorentino, 'France passes controversial 'fake news law', published on 22 Nov 2018; available at <https://www.euronews.com/2018/11/22/france-passes-controversial-fake-news-law>

⁶ "Government seeks to tackle the fake news" problem; available at <https://www.nortonrosefulbright.com/en/knowledge/publications/4a0c020f/uk-government-seeks-to-tackle-the-fake-news-problem>

⁷ Ibid

⁸ Jim Waterson, "Democracy at risk due to fake news and data misuse, MPs conclude", published on 27 Jul 2018; available at <https://www.theguardian.com/technology/2018/jul/27/fake-news-inquiry-data-misuse-democracy-at-risk-mps-conclude>

websites and it can be done only after obtaining a license from the Supreme Council for the Administration of the Media¹, which allows it to suspend or block existing websites, or impose fines on editors.²

The Legal Position On Fake News In India

There is no specific law to deal with fake news in India. The Right to freedom of speech and expression as laid down under Article 19(1) (a) of the Constitution is the basic Law which supports publication or broadcast of news freely. But one should remember that the freedom under Article 19(1)(a) is not absolute and is subject to reasonable restrictions under Article 19(2).

If there are cases of fake news, the complaints can be filed with the:

- ✓ News Broadcasters Association (NBA) which represents the private television news and current affairs broadcasters.
- ✓ Broadcasting Content Complaint Council (BCCC). A complaint relating to objectionable TV content or fake news can be filed to the Broadcasting Content Complaint Council.
- ✓ The Indian Broadcast Foundation (IBF)

In April, 2018, the Information and Broadcasting Ministry withdrew its earlier order on fake news. Under that order “if any journalist was found guilty of disseminating fake news then his accreditation could be cancelled”.³ The government then said that the matters relating to fake news should be dealt with in the ambit of the Press Council of India which is already an established regulatory body. It is to be noted that under Section 14 of the Press Council Act, 1978, the Press Council has the power that “it can warn, admonish or censure the newspaper, the news agency, the editor or the journalist or disapprove the conduct of the editor or the journalist if it finds that a newspaper or a 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.”⁴

Government is trying to give more power to authorities under section 79 (Exemption from liability of intermediary in certain cases) of the Information Technology Act, 2000. The first amendment will make it compulsory for online mediums to utilize technology which would enable finding 'unlawful' content. But the second amendment is more alarming as it requires breaking end-to-end encryption so that origin of messages can be traced.⁵ Here the important concern is this breaking of encryption can breach the privacy and authorities may use genuine messages and mails to intrude the privacy.

Various Sections of Indian Penal Code like section 153, 153A, 295 and 295A can be invoked to guard against fake news. Seen from the prism of these sections, action can be initiated against someone creating or spreading fake news if it can be termed as hate speech. The Defamation suit is another legal tool available in the case of fake news. If a person finds fake news defamatory s/he can file a civil or criminal case⁶ for defamation. So, here also we can see that under IPC also there is no specific provision which deals with all types of fake news.

Recommendations

The IT (Amendment) Act, 2008 is itself adequate for monitoring and blocking internet sites and services. A positive approach regulates viral messages and restricting the number of forwards can be a great step. The masses must be educated about fake messages over the internet. Messages and news items should be tracked to avoid anonymity of the message creator and thus to make him/her liable.

There must be effective execution of penal laws to punish habitual offenders and organization which are running fake news propaganda. The government should engage in International collaboration with countries to help stop the spread of fake messages. The mainstream media must also work towards investigative journalism to gain the public trust.

Conclusion

At the end of this article, it can be concluded that freedom of press is covered under freedom of speech and expression but Fake news system has exploited this freedom. The web of fake news is all over now especially because of these digital technologies. People have turned towards social media platforms because of their lack of trust in mainstream media. But, the more news you read over social media platforms, the more are the chances that you are reading fake news.

The phenomenon of fake news has become a problem in India and in the world. It should be handled legally as many countries have made or started working on anti-fake news laws. Similarly, specific laws are required in India making a fine balance between freedom of speech and expression and abuse of this freedom.

What we need is a free and diverse media and its platforms along with relevant and user state policy which is more open and this will be a good answer to fake news items. There must be due diligence obligations on journalists to fact-check and be transparent. The Press Council must be given more teeth so that it can take stringent action against those journalists who are not following journalistic norms and conduct.



¹ The Supreme Council for the Administration of the Media, headed by an official appointed by President, will supervise the law and take action against violations.

² “Egypt targets social media with new law”, 17 Jul 2018; available at <https://www.reuters.com/article/us-egypt-politics/egypt-targets-social-media-with-new-law-idUSKBN1K722C>

³ „Ministry withdraws order on fake news“; published in The Hindu, New Delhi, 04 April 2018; available at <https://www.thehindu.com/news/national/ministry-withdraws-order-on-fake-news/article23428180.ece>

⁴ Press Council Act, 1978; available at <https://mib.gov.in/acts/press-council-act-1978>

⁵ “Govt. In Talks To Make Amendments To Sec 79 Of It Act To Include Breaking End To End Encryption”, 24 Dec 2018; available at <https://www.firstpost.com/tech/news-analysis/govt-in-talks-to-make-amendments-to-sec-79-of-it-act-to-include-breaking-end-to-end-encryption-5781971.html>

⁶ Section 499 of IPC, 1860 makes defamation a criminal offence. Section 500 provides for punishment for criminal defamation