



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed Edition :

[www.ijlra.com](http://www.ijlra.com)

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# ISSUES, CONCERNS AND REGULATION OF FAKE NEWS: A CRITICAL ANALYSIS

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## Abstract

“Fake news,” or fabricated information that is patently false, has become a major phenomenon in the context of Internet-based media. It has received serious attention in a variety of fields, with scholars investigating the antecedents, characteristics, and consequences of its creation and dissemination. As the scourge of “fake news” continues to plague our information environment, attention has turned toward devising automated solutions for detecting problematic online content. But, in order to build reliable algorithms for flagging “fake news,” we will need to go beyond broad definitions of the concept and identify distinguishing features that are specific enough for machine learning. With the mushrooming of smartphone users and the easy access to the internet, fake news is spreading at very high speed from people to people. Some are primarily interested in the nature of misinformation contained in false news, so that we can better detect it and distinguish it from real news. Others focus on the susceptibility of users—why we fall for false news and how we can protect ourselves from this vulnerability. Both are geared toward improving media literacy to protect consumers from false information. Despite the fact that fake news is not a new phenomenon, technological advances have constructed a fertile environment for the fake news to be spread rapidly. Social media platforms, such as Facebook, Twitter or YouTube, offer ground for generation and distribution of fake news. Consequently, it is important to study the way social media operates, how fake news is produced and spread through social network sites and what is the role users play.

**Keywords:** Fake News, Social Media, Misinformation, Damages

## Introduction

“Sensationalism always sold well. By the early 19th century, modern newspapers came on the scene, touting scoops and exposés, but also fake stories to increase circulation. The *New York Sun*'s 'Great Moon Hoax' of 1835 claimed that there was an alien civilization on the moon, and established the Sun as a leading, profitable newspaper.”<sup>1</sup>

We all have entered a new world of the media with a speed unheard of in human history. The current media environment means not just the non-stop appearance and development of new media platforms, products of convergence of traditional legacy media with the internet and mobile telecommunications. The process is accompanied by the revolutionary new approaches that media outlets should take towards the reader and/or viewer, to their own finances and business models, to the ever-increasing and louder than ever user-generated content, to gate-keeping and news-aggregation. The media outlets have lost the ability to control the public dissemination of information, and thus to set the public agenda. They have lost the privilege of access to confidential sources who now fully use the anonymity that internet provides, such as the “black boxes.” Today media tools allow politicians and other individuals to bypass traditional media. For example, through tweets, and investigative media blogs.

At least in the short perspective it all leads to weakening of professional media entities and places heavier burden on professional journalists. Thereby, bringing about an unlimited growth in online media which does not necessarily adhere to professional standards of journalism. That creates a situation when legitimate expressions of personal views are merged with false or doctored information, hate campaigns against individuals, often in a political context, with the objective of sewing insecurity and fear that result in harming democratic political processes. The advance of new forms of digital media, as was noted by the European Parliament, have posed serious challenges for quality journalism. These challenges include a decrease in critical thinking among audiences making them more susceptible to disinformation and manipulation.<sup>2</sup> The most recent developments in the dissemination models for media content, mostly online, have brought about the notion of “fake news,” which subsequently gained great currency in intergovernmental and national policies and regulation.

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<sup>1</sup> J. Soll, “The Long and Brutal History of Fake News,” *POLITICO Magazine*, Dec. 18, 2016. <http://politi.co/2FaV5W9> (accessed Jan. 02, 2023).

<sup>2</sup> See Resolution on EU Strategic Communication to Counteract Propaganda Against it by Third Parties, EUR. PARL. DOC. PV 23/11/2016 - 10.6 (2016).

Some believe it is an old media practice of disseminating “false information” that has been in existence since the media was established and journalism became a profession.<sup>3</sup> Others see it as a brand new threat and challenge to democracy and international order. At the same time no general normative, institutional, and judicial framework on how to deal with the phenomena behind the notion of “fake news” has been found so far.

False and distorted news material isn't exactly a new thing. It's been a part of media history long before social media, since the invention of the printing press. It's what sells tabloids. On the internet, headline forms called *clickbait* entice people to click to read more, by trying to shock and amaze us. What's more outrageous to read about than fake things that didn't actually happen?

Fake news has existed since the dawn of the printing press but in the age of internet and social media, it has found a tremendous application. Manipulation of algorithms of social media and search engines—to reach large audiences and mislead news consumers is a global trend now. Fake video clips, news stories with morphed media logos, bots, paid commentators for favourable online reputation (troll farm) have become very common. Governments are using the threat of fake news to clamp down on free speech. Globally, Snopes and in India Social Media Hoax Slayer, AltNews are some forums which expose fake news. Editor of Postcard News (India) was arrested for spreading falsehoods aimed at creating communal discord. Russia has been accused of manipulating the 2016 US elections through bots and fake news; it is a well-documented case of inter-national online manipulation. Russian interference in elections in the US and West Europe has been the biggest content manipulation concern in recent years. Facebook in the light of mounting criticism in the wake of Cambridge Analytica data scandal has announced that it will fight fake news and political misinformation, with new controls intended to ensure authenticity and transparency among advertisers and publishers.

## History

There's lots of examples of false news throughout history. It played a role in catalyzing the Enlightenment, when the Catholic Church's false explanation of the 1755 Lisbon Earthquake prompted Voltaire to speak out against religious dominance. The very first American colonial

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<sup>3</sup> Robert G. Parkinson, Fake news? That's a Very Old Story., WASH. POST, Nov. 25, 2016, [https://www.washingtonpost.com/opinions/fake-news-thats-a-very-old-story/2016/11/25/c8b1f3d4-b330-11e6-861652b15787add0\\_story.html?utm\\_term=.3497739aeb9d](https://www.washingtonpost.com/opinions/fake-news-thats-a-very-old-story/2016/11/25/c8b1f3d4-b330-11e6-861652b15787add0_story.html?utm_term=.3497739aeb9d).

newspaper ran a fake story about France's Louis XIV.<sup>4</sup> In the 1800s in the US, racist sentiment led to the publication of false stories about African Americans' supposed deficiencies and crimes. It was used by Nazi propaganda machines to build anti-Semitic fervor.

In the 1890s, rival American newspaper publishers Joseph Pulitzer and William Hearst competed over the audience through sensationalism and reporting rumors as though they were facts, a practice that became known at the time as "yellow journalism." Their incredulous news played a role in leading the US into the Spanish-American War of 1898. Eventually there was a backlash against the lack of journalistic integrity: The public demanded more objective and reliable news sources, which created a niche that the *The New York Times* was established to fill at the turn of the 20<sup>th</sup> century. Yellow journalism became less common. That is, until the rise of web-based news brought it all back in full force.

One of the motivations for 1890s newspapers engaging in yellow journalism is the same as for fake news creators today: Exaggerated news with shocking headlines gets attention and sells papers (or prompts mouse-clicks), promoting the sale of advertising. In the form of traditional news media, most people have learned better than to take outrageous news articles as seriously as they did at the height of the yellow journalism era. More recently, tabloids like *The National Enquirer* and *The New York Sun*, and fad magazines like *The Freak* and *The Wet Dog* are generally known as false news sources. Similarly, people recognize that the parody news productions on the web and TV feature satire and ironic, but unreal, accounts of current events.

But that clarity simply isn't available when news stories appear out-of-context via social media. Of course, *fake news* is also used as a term to discredit news stories that individuals (particularly former president Donald Trump) don't like, in order to suggest that they were made up or that they blow out of proportion something that should be trivial (even if other sources can verify their accuracy). In a conversation with Fox Business in October, 2017, Donald Trump claimed that he had "really started this whole 'fake news' thing." (Ironically, Hillary Clinton used the term in a speech two days before Trump's first use of the phrase<sup>5</sup>.)

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<sup>4</sup> Yeoman, "That's Fake News!," *The Saturday Evening Post*, Jul. 06, 2022. <https://www.saturdayeveningpost.com/2022/07/thats-fake-news/> (accessed Jan. 06, 2023).

<sup>5</sup> M. Wendling, "The (Almost) Complete History of 'Fake News,'" *BBC News*, Jan. 22, 2018. <https://www.bbc.co.uk/news/blogs-trending-42724320> (accessed Jan. 02, 2023).

Although Donald Trump may have appropriated the term in a whole new way, the term itself has been in use for many years. The first documented uses of the term occurred in the 1890s, according to *Merriam Webster*.<sup>6</sup>

## The Scale of the Problem in India

Misinformation and disinformation spread in media is becoming a serious social challenge. It is leading to the poisonous atmosphere on the web and causing riots and lynchings on the road. In the age of the internet (WhatsApp, Facebook, Twitter,) it is a serious problem as rumours, morphed images, click-baits, motivated stories, unverified information, planted stories for various interests spread easily among 35 crore internet users in India. There have been many instances of online rumours leading to killings of innocent people. In some cases, ministers have deleted tweets after realizing the fake news which they shared earlier. In India, WhatsApp is the platform most vulnerable to fake news. Millions of Indians (a vast percentage is uneducated) using mobile internet innocently forwarding 'good morning' messages every day are seen as most vulnerable to fake news. In the recent Karnataka Assembly elections (2018) fake news about rival parties and candidates flooded the media. It may not be a coincidence that India has the highest number of selfie deaths (person dying while trying to take a selfie) in the world (76 deaths out of 127 reported globally between March 2014 and September 2016). Use and abuse of mobile and internet remain a concern.

### Fake News Damages: Popular Examples from India

- Muzzafarnagar riots of 2013: fake video fuelled communal passions
- UNESCO has declared 'Jana Gana Mana' best national anthem in the world (WhatsApp)
- Dawood properties worth Rs 15000 Cr seized in Dubai (Zee News, ABP)
- President Kovind makes Twitter debut; gains 3 million followers in one hour (Republic, Zee news, TOI etc.)
- Nostradamus had predicted the rise of supreme leader Narendus (Zee News)
- Dying Woman Molested, Video shows (The Hindu)
- Fatwa in Saudi Arabia; Men can eat wives when hungry (AajTak)
- GPS tracking nanochip in 2000 Rupee notes (Nov 2016)

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<sup>6</sup> Merriam-Webster, "The Real Story of 'Fake News,'" Mar. 23, 2017. <https://www.merriam-webster.com/words-at-play/the-real-story-of-fake-news> (accessed Jan. 02, 2023).

- Salt Shortage rumours (Nov 2016)
- Child kidnapping rumours lead to lynchings by a mob in Jharkhand
- Minister using a Russian photo to show LED-electrification of streets
- Ministry of Home Affairs (MHA) annual report used a picture of Spain-Morocco border to show Indian border floodlighting
- Missing JNU student Najeeb Ahmed has joined the ISIS

## Categories of fake news:

Harmful fake news: Following are examples of fake news in India:

i) Dhule mob lynching: A rumour was shared on social media in Dhule district fake news on child-lifter gang: A WhatsApp message was disseminated stating that there is a child-lifter gang in the district. Many people believed it to be true. They saw some tribal persons sitting together at a particular place. People suspected that it was a child-lifters gang and hence they lynched the innocent persons. This caused death of people who were not the members of any child-lifters gang. The same fake news trailed in different parts of India which caused death of many innocent persons in 2018-2019.

ii) Fake news on train from Bandra station to north India during covid-19: During the lockdown in India, fake news was shared about starting a train from Bandra station to north India. Due to this fake news, thousands of migrant workers had gathered at the railway station which broke the law and order situation.

iii) Fake news on Extension of lockdown: Fake timetable about the extension of lockdown was shared which created the atmosphere of fear and panic among the migrant workers in many parts of India. They walked thousands of kilometres to their hometown with their families. The above fake news resulted into crime and harm to individuals [including person society or state]

## Non-harmful fake news:

Following are few examples of non-harmful fake news.

i). A Kumbh Mela Preparation: Several images from Mecca were shared claiming it as the arrangement for Kumbh mela. Even though it was fake news, it did not harm any person

or property. This news did not harm in anyway to any individual, organization, state and society.

ii). Fake news on Blooming of Brahma Kamal flower: During the lockdown, an old video of Brahma Kamal flower was shared with a caption that it bloomed during lockdown as there was less pollution in India. It was fake news but it did not harm anyone.

iii) Gold chadar offered by a devotee to Sai Baba Samadhi:

A false image was shared claiming that a devotee offered a diamond-studded gold chadar to Sai Baba's shrine. Actually, no such thing happened but it did not cause any harm to anyone. After examining these two categories, it can be concluded that some fake news is harmful which causes harm or loss to the person or property or society. On the contrary, there are some examples of fake news which do not cause any harm to anyone by any means. It is become necessary to prevent harmful fake news to save lives and property society and state in effective manner. It is necessary to protect various rights like the right to reputation, right to life & personal liberty, and many other rights of people by lawful means. For that, there is a need for a law to curb the menace of fake news.

## Conceptual analysis and fake news

As far back as Socrates and Plato, philosophers have tried to find concise definitions that help us to better understand important concepts, such as justice, knowledge, and beauty. In line with this tradition, a number of philosophers have recently proposed definitions of fake news.<sup>7</sup>

As usual with conceptual analysis, we would like a definition of fake news that agrees with our intuitions about whether particular cases are or are not instances of fake news. For example, the definition should count 'Pope Endorses Trump' as fake news, but should not count 'Dewey Defeats Truman' as fake news. Also, we would like a definition that can help us deal with the threat to knowledge and democracy posed by fake news.<sup>8</sup> In this paper, we propose a new definition of fake news. We argue that it satisfies these two desiderata better than the previous proposals.

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<sup>7</sup> Levy, Neil. 2017. "The Bad News About Fake News." *Social Epistemology Review and Reply Collective* 6: 20–36; Rini, Regina. 2017. "Fake News and Partisan Epistemology." *Kennedy Institute of Ethics Journal*. <https://kiej.georgetown.edu/fake-news-partisan-epistemology/>; Gelfert, Axel. 2018. "Fake News: A Definition." *Informal Logic* 38: 84–117; Mukerji, Nikil. 2018. "What is Fake News?" *Ergo* 5: 923–946; Jaster, Romy, and David Lanius. 2018. "What is Fake News?" *Versus* 2: 207–227; Aikin, Scott F., and Robert B. Talisse. 2018. "On 'Fake News'." *3 Quarks Daily*. <https://www.3quarksdaily.com/3quarksdaily/2018/05/on-fake-news.html>.

<sup>8</sup> Gelfert, Axel. 2018. "Fake News: A Definition." *Informal Logic* 38: 84–117.

It should be noted at the outset that carrying out a conceptual analysis of fake news is a particularly difficult task. Indeed, a few philosophers have suggested that such a project is doomed to failure.<sup>9</sup> Unlike many other terms of philosophical interest, such as knowledge and lying, fake news is a fairly new term. Moreover, what people take to be prototypical instances of fake news has changed over time.<sup>10</sup> A few years ago, the term fake news was more likely to be applied to satirical news sources, such as the Daily Show and The Onion, than to fraudulent news sources, such as the Denver Guardian. And even now, different people use the term in apparently different and incompatible ways.<sup>11</sup> Furthermore, Robert Talisse (2018) argues that the phenomenon of fake news is so politically charged that we cannot agree on what counts as fake news.<sup>12</sup> For instance, people of different political persuasions clearly disagree about whether or not CNN is a source of fake news. Thus, we might worry that, in the case of fake news, competent speakers of the language do not have the stable and shared intuitions about cases that conceptual analysis requires. Despite these difficulties, we think that enough clear cases of fake news and non-fake news can be identified to guide our conceptual analysis. Moreover, it is important to remember that the goal of conceptual analysis is not simply to capture how people use a term. That is just a means to an end. The goal here is to understand an actual phenomenon in the world that clearly has important epistemological implications. And, contra Joshua Habgood-Coote (2019), we argue that the phenomenon of fake news is not adequately captured by existing epistemological terminology, such as ‘lies, misleading, bullshitting, false assertion, false implicature, being unreliable, distorting the facts, being biased, propaganda, and so on.’<sup>13</sup>

## Why does Fake News exist?

Fake news has become ubiquitous in United States news cycles, and it exists because people make money through the advertising on fake news articles. This isn’t new, however. According to Humphrey, sensational and fake news stories have been used to sell newspapers as far back as Jack the Ripper in the 19th century and a “hoax involving life on the moon enraptured readers of

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<sup>9</sup> Talisse, Robert B. 2018. “There’s No Such Thing as Fake News (And That’s Bad News).” 3: AM Magazine. <https://www.3ammagazine.com/3am/theres-no-such-thing-as-fakenews-and-thats-bad-news/>; Habgood-Coote,

Joshua. 2019. “Stop Talking about Fake News!” Inquiry 62: 1033–1065

<sup>10</sup> Gelfert, Axel. 2018. “Fake News: A Definition.” Informal Logic 38: 84–117.

<sup>11</sup> Habgood-Coote, Joshua. 2019. “Stop Talking about Fake News!” Inquiry 62: 1033–1065.

<sup>12</sup> Talisse, Robert B. 2018. “There’s No Such Thing as Fake News (And That’s Bad News).” 3: AM Magazine. <https://www.3ammagazine.com/3am/theres-no-such-thing-as-fakenews-and-thats-bad-news/>

<sup>13</sup> Habgood-Coote, Joshua. 2019. “Stop Talking about Fake News!” Inquiry 62: 1033–1065.

The New York Sun in 1835.”<sup>14</sup> In the era of Thomas Jefferson, political parties had their own newspapers and it was up to the readers to decide for themselves what the truth was and what was false.<sup>15</sup> Our current news reports and the obligation of the reader to understand bias and falsity and evaluate accordingly have come full circle.<sup>16</sup>

The current proliferation of fake news online and on the air is motivated by money. Any click, even if only for a moment, makes money; therefore, fake news creators are incentivized to create fake news articles. It is the clicks and the website/video views that fuel the money for fake news websites, so the more outrageous and false the story, the more incentive there is for the author to disregard the facts or truth of the story. Eventually, people started creating fake news websites that, at first glance, look like credible news sources and/or mimic the names of credible news sources to tempt more people to go to the site and click on the stories. Fake news websites mushroomed during the 2016 United States Presidential election and many of those websites were created in a “small city in Macedonia”. The phrase the “Macedonia teens” became synonymous with fake news websites and stories, a verbal shorthand for the most egregious examples of fake news. In this Macedonian town, “teenagers [were] pumping out sensationalist stories to earn cash from advertising” and making more money than they could have dreamed of before solely on fake news websites. “A Macedonian teen is claiming to have made at least \$60,000 producing fake news in the past six months, mostly by appealing to the supporters of Donald Trump.” This teen is just one of hundreds in Macedonia who are making money in ad revenue through fake news websites.

Even more disturbing, there is no incentive for anyone in Macedonia to stop the spread of fake news websites and stories.<sup>17</sup> The truth is that the city itself is getting rich from fake news.<sup>18</sup> The mayor, scolding a reporter, says, “There’s no dirty money in [Macedonia],....before adding curiously that he is rather proud of the entrepreneurs of his tiny little city, thousands of miles from the U.S., [who] have influenced the outcome of the American election.”<sup>19</sup> And as one of the teens noted, “[t]eenagers in our city don't care how Americans vote, ... [t]hey are only satisfied that they

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<sup>14</sup> Joshua Humphrey, *The Plague of Fake News and the Intersection with Trademark Law*, 8 CYBARIS AN. INTELL. PROP. L. REV. 126, 133 (2017).

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> Emma Jane Kirby, *The City Getting Rich from Fake News*, BBC NEWS (Dec. 5, 2016), <http://www.bbc.com/news/magazine-38168281>.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

make money.”<sup>20</sup> This “digital gold rush” in Macedonia is a problem for social media companies like Facebook.<sup>21</sup> The websites created there are pushing out plagiarized content, both real and fake, aimed at getting U.S. political readers to use their sites, not necessarily to influence elections or political views.<sup>22</sup> These fake news sites are not limited to the “Macedonian teens” with plenty of the same type of websites being created right here in the United States. All of these websites started trending in Facebook, because Facebook is built to engage its users. The truth or falsity of the news didn't factor into Facebook’s algorithm.

The public is easily confused about what is real news and what is fake news on many Internet websites due to the blurred lines in vocabulary and format surrounding sponsored advertising. The lines have become so skewed, that only those persons who have had media literacy training, or are technologically savvy, can evaluate of news online correctly. The prevalence of social media has enabled news of all kinds, even when not real or not complete or false, to spread quickly and muddle true journalism. Social media and Google make real news articles harder to find because blogs, fake news websites, and other “suspect” news sites are usually easier to find and easier to spread. Moreover, [w]e live in a sound-bite society. There is no time to delve into news for lengthy explanations, because “the nature of broadcast news is to focus on mostly providing information quickly, in short chunks.”

Today's society has a short attention span, which means many people are not hearing complete reporting and explanations from MSM news. Many Americans are only watching fake news programs or primarily entertainment programs as their only source for news. Programs like The Daily Show, along with Fox News, MSNBC, talk radio, myriad blogs and social networking site[s], have become significant sources of political information. These MSM, radio and other fringe media sites have become common for many people in the U.S., with viewer numbers usually organized by age. The Daily Show and The Colbert Report were the media outlets for the younger generation and Fox News for the over 65 crowd. Political information no longer comes to us primarily from news broadcasts or newspapers, nor are the myriad sources through which it does flow clearly and consistently labeled.

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<sup>20</sup> Ibid.

<sup>21</sup> Max Read, Can Facebook Solve Its Macedonian Fake-News Problem?, N.Y. MAG. (Nov. 4, 2016), <http://nymag.com/selectall/2016/11/can-facebook-solve-its-macedonian-fake-newsproblem.html>.

<sup>22</sup> Ibid.

## **Laws and Regulation to Curb Fake News in India**

There is no specific law against fake news in India. Free publication of news flows from Article 19 of the Constitution guaranteeing freedom of speech.

- Press Council of India, a regulatory body, 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 violated journalistic ethics.
- News Broadcasters Association (NBA) represents the private television news and current affairs broadcasters. The self-regulatory body probes complaints against electronic media.
- Indian Broadcast Foundation (IBF) also looks into the complaints against contents aired by channels.
- Broadcasting Content Complaint Council (BCCC) admits complaints against TV broadcasters for objectionable TV content and fake news.
- Indian Penal Code (IPC) has certain sections which could curb fake news: Sections 153 (wantonly giving provocation with intent to cause riot) and 295 (injuring or defiling place of worship with intent to insult the religion of any class) can be invoked to guard against fake news.
- Section 66 in The Information Technology Act, 2000: If any person, dishonestly or fraudulently, does any act referred to in section 43 (damage to computer, computer system), he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five lakh rupees or with both.
- Civil or Criminal Case for Defamation is another resort against fake news for individuals and groups hurt by the fake news. IPC Section 499 (defamation) and 500 (whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both) provide for a defamation suit.

## **Importance of Fighting Fake News, Alternative Facts, and the Spread of Disinformation**

It is critical that lawyers are prepared to evaluate and combat fake news, alternative facts, and disinformation campaigns. Their professional competence and ability to effectively practice law

is shaped by their ability to see through media manipulation and bias.<sup>23</sup> In addition to the everyday practice of law, lawyers and judges will be standing in the front lines of the war on the media and the First Amendment as officers of the court. The media literate attorney is going to be critical to the defense of democracy and the Constitution.

Alternative facts are a fairly new concept.<sup>24</sup> Attacks on democracy and truth and justice are not new. Lawyers and judges must be ready, and being media literate is only one weapon in the war against disinformation and charges of fake news against the legitimate media. Authority figures who spread fake news and disinformation to others are dangerous because of the tendency of people to model “conformity, or social proof, by imitating the behavior of other people.”<sup>25</sup> This encourages groupthink where “[m]embers of the in-group have a stronger feeling of group-safety compared with members of the out-group.”<sup>26</sup> This feeling of safety in group conformity makes social media a space that exacerbates disinformation and fake news spread by authority figures. Facebook's Deputy General Counsel weighed in on this saying, “[t]here are important economic and financial underpinning [fake news] that are just as critical at getting to the bottom of as the technological questions.”<sup>27</sup>

Alternative facts and fake news are the edge of an abyss, where society is watching the real-time amalgamation of “TV news morph[ing] into infotainment and reality television.”<sup>28</sup> News, especially cable news, has become the purview of “news personalities” rather than journalists. News has become nothing more than “reporting what experts on both sides think about events as sufficient to tell the “truth” about events rather than undertaking more costly (and perhaps more off-putting and less entertaining) investigative reporting characteristic of print journalism. In the end, “the media left it up to the audience to choose what to believe based on competing opinions, rather than on presentation of evidence.” If we are not careful, soon we will have lost what it

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<sup>23</sup> Aaron Blake, Kellyanne Conway Says Donald Trump's Team has 'Alternative Facts.' Which Pretty Much Says It All, WASH. POST (Jan. 22, 2017), [https://www.washingtonpost.com/news/the-fix/wp/2017/01/22/kellyanne-conway-says-donald-trumps-team-has-alternate-facts-which-pretty-much-says-it-all/?noredirect=on&utm\\_term=.cab81d437929](https://www.washingtonpost.com/news/the-fix/wp/2017/01/22/kellyanne-conway-says-donald-trumps-team-has-alternate-facts-which-pretty-much-says-it-all/?noredirect=on&utm_term=.cab81d437929).

<sup>24</sup> Ibid.

<sup>25</sup> Jan-Willem H. Bullee et al., The Persuasion and Security Awareness Experiment: Reducing the Success of Social Engineering Attacks, 11 J. EXP. CRIMINOLOGY 97, 97 (2015), <https://link.springer.com/content/pdf/10.1007%2F1292-014-9222-7.pdf>.

<sup>26</sup> Ibid.

<sup>27</sup> Ross Todd, Facebook Lawyer Details 'Fake News' Fight, RECORDER (July 20, 2017), <https://www.law.com/therecorder/almlD/1202793548492/Facebook-Lawyer-Details-FakeNews-Fight/?s1return=20180506182425>.

<sup>28</sup> Phillip N. Meyer, Alternative Facts and the Law: Is Justice a Reality?, ABA J. (June 2017), <http://www.abajournal.com/magazine/article/alternative-facts-law-justice-reality>.

means to agree on facts, and that is something that lawyers and judges must never let happen because the consequences are too severe.<sup>29</sup> Even the Pope has weighed in on fake news and the dangers of “spreading ... disinformation online or in the traditional media”, calling it a “grave sin.”<sup>30</sup>

To heighten the absurdity, or alert us to the grave danger of an alternative facts miasma, the Oxford dictionary chose “post-truth” as its 2016 Word of the Year.<sup>31</sup> It defined post-truth as “relating to denoting circumstances in which objective facts are less influential in shaping public opinion than appeals to emotion and personal belief.”<sup>32</sup> The objective and mission of everyone in the legal community is to fight back against a “post-truth” world before it overtakes our real world. It may be that we have reached a point of no return, and there is no going back.<sup>33</sup> Lawyers, however, must be educated on how to recognize and evaluate facts, media messages, and the implicit bias or objectivity of the media, remaining the arbiters of truth in a “post-truth” world.<sup>34</sup> Media literacy education is critical to this ability because it not an innate talent. 'Media literacy is a learned skill, similar to learning to analogize facts to law.'<sup>35</sup>

## Things that Help, but Do Not Fix the Problem

The proliferation of fake news and alternative facts have “inaugurated the golden age of fact-checkers-news sites that expose public lies with well-crafted barrages of 'real' facts and data.”<sup>36</sup> There have always been some attempts to stay ahead of fake news in the media, but “[fact-checking is particularly challenging in the current era of ‘fake news’, ‘alternative facts’, and gaslighting coming from the [U.S. government].”<sup>37</sup> In the past, fact-checking was done by librarians or staff in newsrooms.<sup>38</sup> Those who are fighting fake news are taking a new approach, however, creating multiple fact-checking Internet websites, such as FactCheck.org, The

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<sup>29</sup> Ibid.

<sup>30</sup> Rosa Flores, Pope Warns Against 'Fake News' and Likens it to 'Crafty Serpent' in Genesis, CNN (Feb. 26, 2018), <https://www.cnn.com/2018/01/24/world/pope-condemnsfake-news/index.html>; Paulina Dedaj, Pope Criticizes 'Fake News, Calls it a 'Grave Sin', Fox NEWS (Dec. 18, 2017), <http://www.foxnews.com/world/2017/12/18/pope-criticizes-fakenews-calls-it-grave-sin.html>.

<sup>31</sup> Gleb Tsipursky, Towards a Post-Lie Future, HUMANIST (Feb. 21, 2017), <https://thehumanist.com/magazine/march-april-2017/features/towards-post-lies-future>.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Mick O'Leary, Fact-Checkers Resist Alternative Facts, QUESTIA (Oct. 2017), <https://www.questia.com/magazine/1GI-507185452/fact-checkers-resist-alternative-facts>

<sup>37</sup> Amrita Khalid, The Best Political Fact-Checking Sites on the Internet, DAILY DOT (Sept. 21, 2016), <https://www.dailydot.com/layer8/best-fact-checking-websites/>.

<sup>38</sup> Ibid.

Washington Post's The Fact Checker, and PolitiFact.<sup>39</sup> The ABA has created a “web-based fact-check service to help the public find dependable answers to swirling and sometimes confusing legal questions.”<sup>40</sup> The ABA’s service uses case law and statutes to combat fake legal news.<sup>41</sup>

As much as efforts to combat fake news are out there, though, there are still many setbacks in the technological giants that helped create the fake news proliferation.<sup>42</sup> “Nearly a year after Facebook and Google launched offensives against fake news, they're still inadvertently promoting it-often at the worst possible times.”<sup>43</sup> In October 2017, the New York Times reported fact-checking websites contained fake news ads, such as Politifact and Snopes, as recently as the week before.<sup>44</sup> Only with sharp eyes and a complete understanding of the ways fake news creators and media companies craft these misleading and false stories, can people be prepared to evaluate the media messages for themselves.

### RECOMMENDATIONS:

The author has provided following recommendations to combat the menace of fake news in India:

**i. Need to have a regulatory body:**

There is a need to have a dedicated body to regulate fake news. The Press Council of India monitors the print media in India. It serves as a watchdog on the press in India. The press is monitored in order to promote freedom of press and to ensure that the standards and ethics that must be observed by the press are met. Any aggrieved person can approach it for grievance redressal. In India, such a statutory body is required for social media platforms which can act as a watchdog on social media. It can also be useful to promote ethics and standard modes of expression. This will help to reduce fake news. The aggrieved person/company can easily approach it for grievance redressal. It can also help to reduce the burden of the judiciary in cases relating to social media.

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<sup>39</sup> Ibid.

<sup>40</sup> ABA Rolls Out New Fact Check Website to Help Separate Legal Fact From Fiction, ABA (Sept. 1, 2017), <https://www.americanbar.org/news/abanews/aba-news-archives/2017/08/aba-rolls-out-newfa/>

<sup>41</sup> Hilarie Bass, ABA Legal Fact Check Sorts Fact from Fiction On Legal Issues, ABA J. (Jan. 2018), [http://www.abajournal.com/magazine/article/aba\\_1legal-fact\\_check](http://www.abajournal.com/magazine/article/aba_1legal-fact_check).

<sup>42</sup> Ibid.

<sup>43</sup> Fake News Ads are Reportedly Popping Up On Fact-Checking Websites, Fox NEWS (Oct. 19, 2017), <http://www.foxnews.com/tech/2017/10/19/fake-news-ads-are-reportedlypopping-up-on-fact-checking-websites.html>.

<sup>44</sup> Ibid.

**ii. There is need to explore technological solution**

Central government to establish a body of tech experts to explore tech solutions to fake news and other cybercrimes.

**iii. Need of comprehensive definition:**

At present, the existing laws have not adequately defined the term 'fake news'. If it is defined appropriately by the legislature, the judiciary will be able to decide the cases relating to fake news. Countries like Singapore, Malaysia, the Philippines, and the U.K. have adequately defined the term in their special laws and in a special report on fake news. Currently, in the absence of a comprehensive definition, there is an ambiguity about the term fake news.

**iv. Need to have a special law:**

Currently, there is no special law dealing with fake news in India. Some provisions of the IPC and the IT Act are generally used to deal with cases relating to fake news. Considering the impact of fake news such as mob lynching, riots, internet shutdown, voting, and defamation, it can be said that rights like the Right to Life and Liberty, the Right to Vote, the Right to Reputation, and the Right to Information are commonly violated by the people at large. In order to protect these rights and to prevent damage, there is either a need for a special law or an amendment to the existing provisions of the IPC and the IT Act in India.

**v. Need of dedicated website/ portal:**

The government must start a portal, website on which authentic information about government measures and other information shall be provided. It should be mandatory to use this portal's reference while citing any information on any media.

**vi. Need to provide Due Diligence mechanism by companies:**

In order to prevent offensive content, social media companies must implement some sort of due diligence mechanism. WhatsApp incorporated a forwarding feature into the content which is not original. Such short-term solutions must be incorporated by the tech companies. This will help curbing the fake news.

**vii. Classify fake news:**

There is a need to classify fake news into harmful and non-harmful fake news under legislation. In order to differentiate, punishment and fine to be imposed.

## **Conclusion: Education, Awareness, Regulation Needed**

Fake news is often created and circulated for gaining electoral currency and political gains. Often government's own party and agencies (through the undisclosed purchase of political ads and IT cells) may be involved. It is a rising trend seen in many countries led by China and Russia where internet manipulation and control is very high. Any future legislation to curb fake news should take the whole picture into account and not blame the media and go for knee-jerk reactions; in this age of new media anyone can create and circulate new for undisclosed benefits. Controlling fake news is a tricky issue: not controlling trolls could lead to national and international instability while doing too much to control it could harm democracy. Countering content manipulation and fake news to restore faith in social media without undermining internet and media freedom will require public education, strengthening of regulations and effort of tech companies to make suitable algorithms for news curation. Italy, for example, has experimentally added 'recognizing fake news' in school syllabus. India should also seriously emphasize cybersecurity, internet education, fake news education in the academic curriculum at all levels.

