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# **"COMBATING FAKE NEWS IN THE WORLD'S LARGEST DEMOCRACY: A CRITICAL ANALYSIS FOR THE NEED OF ANTI-FAKE NEWS LEGISLATION IN INDIA"**

AUTHORED BY - DEBMALYA SINHA<sup>1</sup>

This article aims to explore the legislative gap in curbing fake news circulation in social media in India. This article also explores the concept of misinformation, disinformation and fake news in detail and subtle differences between them in real world scenarios. The spread of misinformation, disinformation and fake news in digital form via social media though it is not a new concept, in this day and age countries across the globe are struggling to put together a proper legislation to curb and stop the spread of misinformation via social media. In the early 1890s we find the first proper definition of fake news which clearly indicates the intentional spread of false information either to harm a person's reputation or for financial or personal gains. This article used a doctrinal research approach and secondary data review research methods. The transition from print media to digital media caused a surge in spread of fake news. Lack of accountability, fast and free internet in the 4G & 5G age and the Covid 19 pandemic also encouraged the spread of viral fake news across the country and the globe. The continuous surge of fake news remains a pertinent problem as we face an upcoming A. I. revolution, in the world of deep fakes and artificial intelligence the need to curb and stop the spread of fake news, misinformation and disinformation has increased by many folds.

## **Keywords:**

1. Fake News
2. Misinformation
3. Disinformation
4. Social Media
5. Digital Media Platforms
6. Legislation on Fake News in Social Media

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## Introduction

*“The sole aim of journalism should be service. The newspaper press is a great power; but just as unchained torrents of water submerges the whole country side and devastated crops, even so an uncontrolled pen serves but to destroy. If the control is from without, it proves more poisonous than want of control. It can be profitable only when exercised from within.”*

**Mahatma Gandhi<sup>2</sup>**

The concept of fake news globally emerged as an unruly concept in the early 19<sup>th</sup> century. Many eminent scholars have defined “**Fake News**” and has given us a way forward. The global connectivity in the Digital Era have brought the citizens of world closer to each other digitally. In India we witnessed the effects of fake news during the last Covid 19 pandemic, an infodemic was caused artificially which adversely affected lives of common people drastically. This led to the open discussion on the role of legislatures in Indian Parliament in curbing the ongoing infodemic.

Fake news basically means False or untrue information published, distributed and circulated via print media, social media and broadcasting media with the sole aim to earn revenue by advertising and harming or damaging a person's reputation and entity.

The essential ingredients of Fake News are:

1. Small News events or petty news presented in an exaggerated way
2. Scandal mongering
3. Sensationalism or fabrication of news which does not exist in reality

## Article 19 and Freedom of Press

Since the British Rule Indian press has been subjected to heavy censorship and also many laws and regulations. If you look at the long list of legislations drafted by the then British legislators, we will find the Indian press act 1910, Indian press emergency act 1931-32 etc. During the Second World War the Britishers subjected the Indian press to heavy censorship under the Defence of India Act. These censorship and regulations on the Indian press were used by the Britishers to control and rule India.

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<sup>2</sup> <https://www.newslaundry.com/2019/10/02/meet-mahatma-gandhi-the-journalist-when-a-newspaper-is-a-means-of-making-profit-serious-malpractices-are-likely>(last visited on June 20<sup>th</sup>, 2024)

At the stroke of our country's independence, the freedom of Indian press broke out from its shackles of regulations and censorships. Prime Minister Jawaharlal Nehru said "I would rather have a completely free press with all the dangers involved in the wrong use of that freedom than suppressed and regulated press". The framers of our constitution also had the idea of free press. According to them freedom of press is an indispensable part of an operating democratic system. To many people's surprise freedom of press was not specifically enlisted in the fundamental rights. Dr BR Ambedkar the chief architect of the Indian constitution assured the members of the constituent assembly that the freedom of press is included within the ambit of freedom of speech and expression under Article 19 of the Indian Constitution and it was hardly necessary for providing it specifically.

Supreme Court in its series of judgements since 1950's has been justifying its view that freedom of press is included within the ambit of freedom of speech and expression under Article 19 of the Indian Constitution. According to the Supreme court of India the freedom of press is regarded as a species and the freedom of expression is its genus.

Article 19 is considered to be the backbone of Indian Constitution and fundamental rights which are guaranteed to the citizens of India. In the Article 19 of the Indian Constitution two sets of rights are provided, one set of rights are provided to the citizens of India under Article 19(1) and under Article 19 (2) to 19(6) the other set of rights are provided to the state to enforce regulations upon those rights guaranteed under Article 19(1).

If we look at the landmark judgement of **Brij Bhushan v. State of Delhi**<sup>3</sup>, we will find the observation of the honourable apex court were, the concept of freedom of speech and expression in the Article 19 of the Indian Constitution is mainly influenced from the 1<sup>st</sup> Amendment of the United States Constitution<sup>4</sup> where the heading contains Freedom of Speech or of the Press, here the constitutional drafting committee absorbed all the essential features of the of the 1<sup>st</sup> Amendment of the United States Constitution<sup>5</sup> including the concept of free press into freedom of speech and expression guaranteed under Article 19 of the Indian Constitution. In **Sakal Papers v. Union of India**<sup>6</sup> the honourable apex court held that in accordance to Dr

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<sup>3</sup> 1950 AIR 129, 1950 SCR 605, AIR 1950 SUPREME COURT 129, 1963 MADLW 934

<sup>4</sup><https://constitution.congress.gov/browse/amendment1/#:~:text=First%20Amendment%20Fundamental%20Free%20doms,for%20a%20redress%20of%20grievances> (last visited on June 20<sup>th</sup>, 2024)

<sup>5</sup> *ibid.*

<sup>6</sup> 1962 AIR 305, 1962 SCR (3) 842, AIR 1962 SUPREME COURT 305

B.R. Ambedkar the right of free press is contained within freedom of speech and expression, where freedom of press is a species and the freedom of speech and expression is the genre and thus the need for a special or separate article is absent in context of the Indian Constitution.

In Article 19(2) to (6) itself contains provisions for regulations of free press and such power is provided by the Indian Constitution to the parliament or the legislature of India. Thus the need for specific laws to regulate the creation of dissemination facts and figures in the name of exercising free speech and expression can be statutory controlled by the Government with a proper legislative approach.

No freedom can be absolute or completely unrestricted. Article 19 (2) of the Indian Constitution the state can impose reasonable restriction on the freedom of press for public interest under the following grounds

1. Sovereignty and integrity of India
2. Security of the state
3. Maintaining public order
4. Contempt of court
5. Decency or morality etc.

### **Legislative Gap**

The need for legislation on Fake News in India is eminent. A legislation which aims to address the solutions and gaps in the current Indian society is the need of the hour. The study of the bills on Fake News which were produced in front of the Indian Parliament gives us a preview for the need of a statutory authority to curb and control false news or mis information in the Indian society without violating any of the fundamental rights guaranteed under the Indian constitution especially Article 19 of the Indian Constitution.

**On 26<sup>th</sup> June 2019, Bill No. 138 of 2019<sup>7</sup>** was introduced in Lok Sabha (House of People) by **Shrimati Rama Devi, Member of Parliament**. The title of the bill was **“The Fake News Prohibition Bill, 2019”**. The major aim and objective of the abovementioned bill introduced by Shrimati Rama Devi, Member of Parliament was to prohibit the distribution and creation of Fake News in media. Here in this bill, media included both the print media and digital media.

<sup>7</sup><https://sansad.in/getFile/BillsTexts/LSBillTexts/Asintroduced/998LS%20As%20Int....pdf%20fake%20news.pdf?source=legislation>(last visited on June 22<sup>nd</sup>, 2024)

This bill was a noble effort taken by the Legislative Pillar of our country to forbid the creation and distribution of disseminating information through media in various forms and mediums in the modern digital era. This bill was made with the intention to check the early advent of an upcoming Infodemic in India. The shifting of traditional news reporting in the form of print media to social media platform in the age of fast and free internet services has created a grey area of concern for the future of media in our country. The distribution of fake news in country has led to many incidents of causing panic amongst the Indian citizens, division, chaos, violence and incidents of mob lynching.

As we are moving into the era of 5G internet services India still has no specific legislation regarding Fake News whereas other countries have made strides in both preventing the creation and spread of false information in media through various legislation in their own respective countries. Penalizing mass media enterprises and social media platforms which fails, neglects and refuses to remove false news or false information within a reasonable period of time after having the knowledge or having reasonable ground to believe the falsity of the news or facts is also required. This bill basically aims to encourage responsible and credible journalism as well as creating the awareness regarding the harmful effects of spreading Fake News or misinformation or dis-information in the modern Indian society.

**On 20<sup>th</sup> January 2023, Bill No. 47 of 2023<sup>8</sup>** was introduced in Lok Sabha (House of People) by **Shri Manoj Kotak, Member of Parliament**. The title of the bill was “**The Prohibition of Fake News on Social Media, 2023**”. The major aim and objective of the abovementioned bill introduced by Shri Manoj Kotak, Member of Parliament was to provide for the establishment of a Fake News Social Media Regulatory Authority to prohibit circulation of fake news on social media and for matters connected therewith. The concept of “word of mouth” in the modern digital era was recognized by this bill. Social Media platforms such as WhatsApp, Facebook, Twitter, LinkedIn etc was recognized as powerful tool for expression and also circulation of Fake News in a much more free and fast mode than previously dealt Print Media. This bill introduced the concept of social media regulatory authority for curbing of fake news in India, it also provided a complete structure for the above-mentioned social media regulatory authority.

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<sup>8</sup><https://sansad.in/getFile/BillsTexts/LSBillTexts/Asintroduced/47%20OF%202023%20AS%20INTRO84202372634PM.pdf?source=legislation> (last visited on June 22<sup>nd</sup>, 2024)

It also recognizes the existing law under the information technology intermediate guidelines and digital media code amendment rules of 2022; however, the above-mentioned law did not contain any provision to ban Fake News. So, it became important for India to legalise the provision of Fake News on social media platforms and to implement the law at the earliest possible opportunity to maintain and ensure topics on social media platforms are in line with the Indian society, decency and culture.

### **Comparative Legislative Study**

The legal framework aiming to curb fake news in UAE (United Arab Emirates) is a fine example of effective legal application to curb and control disseminating information.

From 2016 onwards United Arab Emirates have upgraded its law related to Cyber-crime which aid in the addition of new penalties and brooding jurisdiction of laws relating to Cyber-crimes and securities moving beyond the laws of defamation in the country. The laws in the United Arab Emirates provided a regulatory control on identification and generation of fake news and scanning of various other social media post for false or misinformation. Any person in the United Arab Emirates if found creating or distributing Fake News will be held guilty under the common law and will be penalised with a fine of 250,000 Dirhams, along with imprisonment<sup>9</sup>. The nature of stringent laws which were introduced in 2016 by the UAE was a result of a judgement given by United Arab Emirates court. Where the court had found in a retrial of an alleged man swearing online with his cell phone using WhatsApp. The judgement of the above mention trial resulted in the court penalising the alleged man with a fine of 3000 Dirhams. This decision by the UAE courts was considered as a corner stone for anti-fate news laws in UAE. The present Federal law in the UAE penalises the offenders of social media uses for proven offences of creating and spreading of fake news on mis-information along with the content and rumours that are meant to be detrimental for the reputation of the UAE or the Institutions of state.

The Government of UAE all is also very vocal about the approaches of social media network in the point of view of the UAE government the social media networks are not doing enough to stop or to curb the provocation and slander put in by the uses of social media. The criminal

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<sup>9</sup>Dr. Robin Kabha, Dr. Ahmad Kamel, Dr. Moataz Elbahi, Dr. Sumit Narula, 'Comparison Study between the UAE, the UK, and India in Dealing with WhatsApp Fake News' 10 Year 5 *JCCCASC* (ISSN: 2395-7514) (2019)

content which is needed to be eliminated by the social media networks are not being acted upon readily. The telecommunication experts present in the UAE are continuously monitoring every post and deleting fake news messages on WhatsApp and on other social media networks but this is a daunting task to carry out in application and working terms which is creating a permanent mechanism of censorship<sup>10</sup>.

If we look at the United Kingdom there are existing laws to deal with fake news and spreading of defamatory materials under the Defamation Act of 2013<sup>11</sup> which address is both slander and libel. The Communications Act of 2003<sup>12</sup> in the United Kingdom has also been effective to punish provocative, obscene or delegatory content circulated and distributed in the social media platforms which causes harm to any individual or organisation but it lacks the specific soft touch regarding fake news.

To provide better or optimal data protection service to the uses of social media platform the Data Protection Act of 2018 is being used by the United Kingdom authorities. The Data Protection Act of 2018 of United Kingdom keeps a constant and close eye for tracing fake news which are generated on social media platform it is very fear that these laws of United Kingdom are somewhat enough to identify and combat fake news on social media but they are not stopping the generation and distribution of news throughout the social media platform in the United Kingdom completely.

In a recent study conducted by different researchers of Indian laws an observation came into the light, Indian cyber laws do not contain any direct provisions to govern the rumours which are circulated in the social media platforms across the country. The Indian Information Technology Act of 2000 provides for limited liabilities on the intermediates such as search engines for providing a digital blockade and filter to all the objectionable content, for example Google Search Engine. This is done while exempting the intermediaries from any kind of liability for any third-party content which is violative the Indian society under the Information Technology Act of 2000. Under section 79 of the information technology act of 2000 imposes an obligation upon the third party should remove any such violative content from their respective platforms within a reasonable time period. The lack of media regulatory authority

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<sup>10</sup> *Ibid.*

<sup>11</sup> Defamation Act of 2013 of United Kingdom

<sup>12</sup> Communication Act of 2003 of United Kingdom

in the Indian laws is eminently visible as compared to other countries Indian Legislation has a long way to catch up.

### **Existing Machineries to curb Fake News**

The Press Council of India, News Broadcasters Association (NBA), Indian Broadcast Foundation (IBF) and Broadcasting Content Complaint Council (BCCC) are existing bodies which are used to control and curb the distribution and creation of fake news through all forms of media in India.

If we look at statutory provision already existing in India, then the Indian Penal Code 1860 contains few provisions which could be used to control and curb fake news under **Section 153** of the Act which states whoever malignantly, or wantonly by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both<sup>13</sup>.

**Section 295 of the Indian Penal Code 1860** states Injuring or defiling place of worship, with intent to insult the religion of any class.-- Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both<sup>14</sup>.

**Section 499 and Section 500** of the Indian Penal Code of 1860 talks about defamation in India both slander and libel are punishable offence

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<sup>13</sup>[https://www.indiacode.nic.in/showdata?actid=AC\\_CEN\\_5\\_23\\_00037\\_186045\\_1523266765688&orderno=163#:~:text=Whoever%20malignantly%2C%20or%20wantonly%20by,such%20provocation%2C%20be%20punished%20with](https://www.indiacode.nic.in/showdata?actid=AC_CEN_5_23_00037_186045_1523266765688&orderno=163#:~:text=Whoever%20malignantly%2C%20or%20wantonly%20by,such%20provocation%2C%20be%20punished%20with)

<sup>14</sup>[https://www.indiacode.nic.in/showdata?actid=AC\\_CEN\\_5\\_23\\_00037\\_186045\\_1523266765688&orderno=330#:~:text=%2D%2D%20Whoever%20destroys%2C%20damages%20or,as%20an%20insult%20to%20their](https://www.indiacode.nic.in/showdata?actid=AC_CEN_5_23_00037_186045_1523266765688&orderno=330#:~:text=%2D%2D%20Whoever%20destroys%2C%20damages%20or,as%20an%20insult%20to%20their)

**Section 66 of The Information Technology Act of 2000** Computer related offences which states if any person, dishonestly or fraudulently, does any act referred to in section 43, 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.

Explanation. For the purposes of this section,

(a) the word "dishonestly" shall have the meaning assigned to it in section 24 of the Indian Penal Code (45 of 1860);

(b) the word "fraudulently" shall have the meaning assigned to it in section 25 of the Indian Penal Code (45 of 1860).]

Though there are various quasi-judicial bodies and existing statutes which are present in the Indian legal system the need for a specific statute to control the distribution of Fake News in the Indian society is absent.

### **Conclusion and Suggestions**

**“Satyamev Jayate” the truth alone shall triumph**, this noble and conscious thought is engraved into our Indian constitution. The role of media is to actively inform people about the governance policies that has been taken by the government. India being the largest democracy in the world and its government being an elected one by the people, thus citizens acquire the right to know about the various policies which are been implemented by their elected government.

The major takeaways from the above discussion regarding fake news legislation are summarize below:

1. There is a dire need for a specific statute which is drafted and enacted to serve the sole purpose of curbing the creation and distribution of disseminating information digitally or via print media throughout India. An establishment of statutory authority by using such statute, the members of such statutory authority should comprise of experts from all the existing quasi-judicial bodies used to curb fake news,
2. A public private collaboration is required as we are standing at the edge of A.I. revolution without proper digital infrastructure it will be challenging to curb the creation of Fake News in the digital playground,
3. Speedy disposal of disseminating facts and mis-information already in circulation throughout the web or print media should be the priority of the statutory authority if so established by law.

The menace of fake news in social media is on the rise, in today's world it cannot be regulated simply by one authority or simply by a government. It can only be regulated when citizens become more aware of their surrounding circumstances and verify each news before believing on it. Thus, taking into account the motto our constitutional framers vested in our Indian constitution of the people, by the people, for the people, media has an important duty to play in this. As a weak press makes a democratic society weaker where as a strong press makes a democratic society stronger.

