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LEGAL PERSPECTIVE OF FAKE NEWS AND PREVENTIVE MEASURES

Whoever Controls the Media, Controls the Mind

-Jim Morrison

INTRODUCTION

The concept of 'fake news' has planted considerable attention in past few years, growing from its satirical literary origins into overpoweringly criticized internet phenomenon. Whether described as rumours, misinformation or just plain lies these false statements are published on web sites and are disseminated via social media for profit purposes. A person remains unaware of the legal issues surrounding the publication of the fake news. In recent years, social media has turned out to be a massive player in shaping public disclosure in a democratic space. Fake news has become a global concern since the rise of unpleasant incidents that have challenged the users, trust in news especially through social media. In India, there has been a consistent increase of social media users and instances of the misuse of this medium. Lack of implementation of laws has led to make the situation more complex and challenging. Fake news has certain associated characteristics like short time span of fake news, faster share and likes on social media etc. India, having a massive market for WhatsApp, has more than 200 million active users and its number is only increasing making it as one of the fastest growing network. It is claimed that fake news can be defined as 'untrue and unverified news'. Untrue refers to false facts while unverified refers to the facts that might be true but the numbers of characters are false.

SOCIAL MEDIA AS PUBLIC SPHERE

Over the years, social media has become a platform where any person can post absolutely anything from any place at a given point of time. Research shows how false the news and information sell faster than the true ones on twitter, it also shows how the rumours tweeted spread rapidly and are faster retweeted when is compared to true news. Previously, media used

to work as a bridge between information provider and the audiences. However, this has changed with the advent of social media where information is not generated but also propagated. Social media platforms like Facebook and Twitter caused one of the greatest threats to a democratic public sphere. They manipulate the civic opinion by using ambiguous operations, fake news and click baits which is not supported by facts. A new form of communication through personal public has become popular where communication happens through big media platforms like Facebook, Instagram, Twitter, WhatsApp.

In the recent example of Tablighi Jamatis densely populated in the Nizamuddin Basti which led to a COVID-19 hotspot. The maulana of the jamaat went missing and is avoiding political activities and debates with media. Some videos and audios came out in which the Maulana of the Jamaat was found saying to spread the corona virus as much as they can. This could be an offence under Section 307 of IPC. These so-called heads of the religion claim themselves to be God and provoke people for wrong doings. This could also be called as man slaughtering where people are sent to various parts of the country to spread the virus. The people from jamaat who were positive of Covid-19 were also found spitting on the officials like doctors and the police. This act could not be justified in any way. The Dharam gurus of different religions use media to create misconceptions between their followers. In India there has always been a conflict between Hindus and Muslims which is supported by Dharam gurus. Fake news thus provides them a platform to create hatred amongst people. Fake news could be regulated only when there will be strict laws and guidelines to regulate it. People should understand that humanity is above all.

LEGAL PERSPECTIVE OF FAKE NEWS

In order to understand the constitutional validity of fake news there is a need to look the primary factors like whether such law is reasonable or not. There is a continuous debate on whether fake news can be regulated or not. The people who are in support of regulation believe that fake news is a novel phenomenon and hence we can not rely on the old laws to regulate the same. To regulate the fake news, it is important to frame the necessary guidelines and framing the appropriate laws and bye-laws and with that fixing of apt punishment and penalties for violation of concerned guidelines and laws are required. There is a need so that the news which should be published keeping in mind about the welfare and well being in the interest of the public. On the other hand, who do not support the regulation of fake news argues that regulation could be in contravention of Article 19 of Constitution of India, 1950.

International perspective in regulating the fake news can be understood as, when Italy came up with the rules to criminalise the sharing and posting of false, exaggerated and biased information by imposing fines and bringing in imprisonment provisions, it challenged the Freedom of Expression and Speech. Germany too, earned its share of criticism when it mandated online platforms to remove illegal post within 24 hours to levy of exorbitant fines. Similarly, Malaysian government also attempted to repeal the existing Anti-Fake News Bill, 2018 to safeguard the democratic space where people enjoy a right to free speech. France faced backlash for its move, which was argued as a threat to democracy and censorship to foreign media outlets. However, India can learn lessons from criticism the countries mentioned faced in the implementation of policies in their countries. It could be understood that the policies required to regulate content are highly sensitive. Therefore, public voice and their rights are to be considered before implementing such policies. Policies should be as such to create awareness among stakeholders instead of regulating content and violating the constitutional provisions¹.

Following are some of the points which explains the legal perspective of fake news.

- **FREEDOM OF SPEECH AND EXPRESSION**

People who do not support the regulation of fake news argue that such regulation will be in the contravention of the freedom of speech and expression (Article 19(1)(a) of Constitution of India, 1950), which is a fundamental right.

In *Maneka Gandhi v. Union of India*², it was said that democracy is based essentially on free debate and open discussion. If government means government of the people by the people, it is free to participate in the democratic process and is entitled to exercise his rights of making a choice, free and general discussion of public matters.

In *Life Insurance Corpn. Of India & Ors. v. Prof. Manubai D. Shah*³ and *The Secretary Ministry of India and Broadcasting v. Cricket Association of Bengal*⁴, the Supreme Court held that a citizen has a right to publish for circulation his views in periodicals, magazines and journals or

¹AASITA BALI & PRATHIK DESAI, *Fake News and Social Media: Indian Perspective*, Media Watch, <http://mediawatchjournal.in/fake-news-and-social-media-indian-perspective/> (Last visited on May 01, 2020)

² *Maneka Gandhi v. Union of India*, AIR 1978 SC 597

³ *Life Insurance Corp. of India & Ors. v. Prof. Manubai D. Shah* (1992) 3 SCC 637

⁴ *The Secretary Ministry of India and Broadcasting v. Cricket Association of Bengal* (1995) 2 SCC 161

through electronic media since these communication channels are great purveyors of news and views.

- **DEFAMATION**

Section 499 of Indian Penal Code, 1860 defines Defamation, as whomever either by words spoken, signs, and publishing harms the reputation of any person is said to defame the person. This section seeks to protect the reputation of a person which may be harmed through social media in the form of fake news.

In the case of *Subramanian Swamy v. Union of India*⁵, court held that a person is given a fundamental right of freedom to speech under Article 19 of Constitution of India, 1950 but it doesn't mean that a citizen can defame the other. Protection of reputation is a fundamental right.

In the era of fake news, it becomes very easy to defame a person and get a huge number of likes and shares. People believe on rumours so easily that the true news sounds to be fake for them. WhatsApp is the biggest source of fake news middle aged people believes that news so easily and share with others without even thinking ones.

- **INFORMATION TECHNOLOGY ACT, 2000**

There are certain sections of this act which helps in regulation of fake news. Section 69(1) of the act relates to how a controller can extend decryption of information facilities to any agency for intercepting any information transmitted through any computer resource. Also, Section 79 act provides for cases when network service providers intermediaries are not held liable. This provision comes into play when he proves that the information or contravention was provided without his knowledge or he has tries to prevent such contravention⁶.

There is always a need to remove such fake news form the platform. But main question here arises as to who would decide what news is fake or what is true. And who would decide to remove such fake news or not. This responsibility could be given to private social media handles and they need to understand how social media algorithm functions and by detecting the keywords to remove the fake news from internet.

⁵ *Subramanian Swamy v. Union of India* (2016) 7 SCC 221

⁶ Asher Job, *Examining the concept of fake news and the legal viability of its regulations in India*, (September 2019), https://www.researchgate.net/publication/335789344_Analyzing_the_concept_of_fake_news_and_the_legal_viability_of_it's_regulation_in_India/ (Last visited April 30, 2020)

ROLE OF INVESTIGATING AGENCIES

One of the most underrated steps towards forming policies and regulations to curb the fake news is played by the citizens. Audience play a significant role in circulating the misinformation and fake news. Investigating agencies can implement and enhance the role played by the civil societies in controlling the spread of fake news. Videos, posts, blogs become viral in a blink of an eye. This trend of becoming viral had somewhere taken humanity of the audience. Everyone wants to become famous either by making fun of others or by playing with other persons emotions. Tiktok now a days has been topping the list where people are so indulged in making videos that they sometimes harm the religion of others.

Investigating agencies are required to curb the use of social media so that no misuse could be done of it. Concerns have been raised in India regarding the liability of WhatsApp users. There are some places in India where the administrators of WhatsApp groups were arrested for forwarding incorrect rumours and misleading information. End-to-end encryption is there to find the true source of fake news and get him arrested. The crime done by them is unconstitutional and a criminal act. Circulating a mysterious message intended to create ill-will or enmity is a cognizable and non-bailable offence under Section 505 of Indian Penal Code, 1860.

In the case of *Ashish Bhalla v. Suresh Chaudhary & others*⁷, Delhi High Court clarified that holding administrators responsible for content someone has posted was illogical. The court said that to make an administrator of an online platform liable for defamation is like making the manufacturer of the newsprint on which defamatory statements are published liable for defamation.

PREVENTIVE MEASURES

News audience has become more vulnerable to the fake news. There is less importance is given to awareness of regulating the content sharing on social media.

- **Media or News Literacy-** This has been one of the most promising solution recommended by many experts around the world. There is a need that schools should

⁷ CS (OS) No. 188/2016

teach their students to differentiate between the fake news from the credible ones. News literacy can act as vaccine against fake news.

- **Awareness Campaigns-** In India, awareness campaigns released by the service providers to alert the users about the consequences of spreading fake news and why is it important to be self-aware before forwarding the message. In December 2018, WhatsApp rolled out three films as a part of their strategy to fight back the circulation of fake news and ahead asked the users to check the integrity of the information received before sharing it to others.
- **Restrictions on Forwards-**To prevent the fake news from spreading there is a need to restrict the forwards on internet. Fake news gets forwarded at a large scale as compared to the real ones. WhatsApp has also given guidelines for its users where messages cannot be forwarded by broadcasting it to the list or not more than five forwards at one time. Heinous crimes starting taking place through social media which made it difficult to use. So, there is a need to curb the forwarding of messages.
- **Privacy Policies-** One more preventive measure that could be taken is that every operator should require its users to agree to abide with websites terms and conditions as a part of registration process to enjoy the online services. Privacy policies include appropriate notices, restrictions, liability disclaimers and governing laws and also important other guidelines⁸.
- **Copyright Protection-** Obtaining copyright registration enables a copyright owner to sue for copyright infringement in the event of copyright dispute and may entitle the owner to recover the attorney fees and statutory damages. And this will prevent the spreading of fake news.
- **Web sites and search advertising restrictions-** Fake news publishers often monetize their articles by partnering with advertising networks that may place banner advertisements on their web sites. In response to sharp public criticism many internet advertising agencies have updated their program policies to deny services of publishing of fake news.

CONCLUSION

⁸ David O. Klein and Joshua R. Wueller, *Fake news: A Legal Perspective*, SSRN, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2958790 (Last visited on April 28, 2020)

Thus, to conclude it can be said that the purpose of news is to make people aware of what is happening around them and not to make a fuss around them. Social media with its reach and popularity can be used as a patent tool for communication development. Otherwise, it could become a double-edged sword. Fake news could only be curbed when collective efforts are mad from every individual. It is believed that fake news undermines our faith in the mainstream media and the very foundation of democracy. More lawmakers, regulators, courts, audience should explore legal and regulatory solutions that balance the society's importance of truth seeking and the constitutional right to speak freely.



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