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FAKE NEWS AND INTERNET

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ABSTRACT

In this Paper, I shall be focusing on one mode of propaganda called “Fake News” which has become a household issue and has gained attention in the journalistic as well as academic circles. The circulation of Fake News in the 21st century is not limited to the social media sphere but transcends to traditional media like Print and Broadcast.

Keywords: Fake News, Cyber, Social Media, Disinformation

INTRODUCTION

The purposeful publicity called "Counterfeit News" which has turned into a family issue and has acquired consideration in the editorial as well as scholastic circles. The dissemination of Fake News in the 21st century isn't restricted to the web-based media circle however rises above to conventional media like Print and Broadcast. As of now, we can see that both the media and its crowd have developed over the course of the years because of medialization of society and the impacts of various periods of private enterprise. Medialization eludes to the bigger cycles by which media assists us with rising above the restrictions of presence, distance and time. At the end of the day, it is the various courses through which different media helps us comprehend and encounter sounds and pictures not present in our nearby environmental elements. Individuals are merging both old and new media advancements in their lives and perceiving it in more mind-boggling ways as a result of both of these cycles, demanding both individualization and democratization of these innovations and stages. Where when tuning in and seeing were bunch exercises in the home, presently individual tuning in and seeing is the standard. Moreover, people actively add complexity to the range of information to which they are exposed by mixing media, media sources and media activities. We have seen that people receive information with

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regard to the world around them using these different media and there have been various experiments that have been conducted to study the influence of media over its viewership.

In the context of a declining trust in media, capitalism has led to the development of social media platforms which offers spaces and tools for anyone to share information. This platform has played a major role in the 21st century to intensify the medialization process. Social media may be defined as a collection of web-based apps that are built on the conceptual and technological underpinnings of Web 2.0 and allow users to create and share user-generated content.² The internet has changed the social conditions of speech and expression. The human right to freedom of expression's cultural and participative aspects are emphasized³. It has assured that everyone has a voice and that they may reach out to audiences that are not in their immediate neighborhood. Podcasts, videos, statuses etc. ensured that people could reach out to a larger crowd. Further, it is admittedly true that the internet can prove to be an effective mechanism for political activism, particularly when combined with traditional forms of communications media.⁴ These changes in the political landscape have compelled political parties to improve their marketing strategies. The media has long been seen as a useful instrument for political communication. To bridge the gap between voters and leaders, political parties must enlist the help of the media to promote themselves and their ideologies.

The opposing perspective of social media's development is that it fosters weak political relationships and low-risk activism ('slacktivism'), because 'liking' something on Facebook or retweeting news requires minimal work but fools individuals into thinking they are engaging meaningfully.⁵ The vast quantity of information available through the internet can readily distract individuals from important political issues.⁶ Further, Social media tools, like other forms of communication, are susceptible to abuse. Its ability to increase democratic engagement should

² A. Kaplan. & M. Haenlein. (2010). *Users of the world, unite! The challenges and opportunities of Social Media*, 53(1) BUSINESS HORIZONS 59, 59-61 (2010)

³ J. Balkin, *Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society*, 79(1) NEW YORK UNIVERSITY LAW REVIEW 3, 3-4 (2004).

⁴ D. Denning, *Activism, Hacktivism, and Cyberterrorism: The Internet as a Tool for Influencing Foreign Policy*, NAUTILUS INSTITUTE FOR SECURITY AND SUSTAINABILITY (Apr. 13, 2019, 10:05AM), <https://nautilus.org/global-problem-solving/activism-hacktivism-and-cyberterrorism-the-internet-as-a-tool-for-influencing-foreign-policy-2/>

⁵ M. Gladwell, *Small Change*, THE NEW YORKER (Oct. 4 2018, 11:07 AM), <https://www.newyorker.com/magazine/2010/10/04/small-change-malcolm-gladwell>

⁶ E. MOROZOV, THE NET DELUSION: THE DARK SIDE OF INTERNET FREEDOM 81-2 (Public Affairs, 2011)

not be underestimated. Promoting social media as a tool for progressive political change should be approached with caution.⁷ The fact of unequal access and involvement among citizens, as well as 'digital divides' between states and technological obstacles facing government institutions, deserves consideration. Governments may specifically undermine the value of social media platforms by following and profiling dissidents, distributing misinformation, and constructing fake identities in cyberspace ('sock puppets') that weaken public confidence.⁸

In this environment, there has been widespread concern about the phenomena of fake news and its impact on citizens. I believe that there is a need to conceptualize the phenomenon of Fake News before we focus on its regulations. In this dissertation I endeavor to re-conceptualize the concept of Fake News and use such a concept to understand whether Fake News can be regulated in India.

IS IT LEGALLY VIABLE TO REGULATE FAKE NEWS IN INDIA?

➤ How is Fake News different from other forms of propaganda?

Claire Wardle has differentiated 7 types of problematic content in the information Ecosystem and it is as follows⁹:

This demonstrates that there are several sorts of deception and misinformation, necessitating a better understanding of how fake news differs.

➤ How can Fake News be defined?

Axel Gelfert in his survey realized that there are three different characteristics that all existing definitions of fake news consisted of and he summarized it as follows:

First, there is the recognition that the medium of the internet (and social media, in particular) has been especially conducive to the creation and proliferation of fake news. Second, the connection between the substance of false news and the rest of the world is questionable at best. Third, an element of deliberateness is imputed to the creation and circulation of fake news, which in turn is

⁷S. Joseph, *Social Media, Human Rights and Political Change*, 35(1) BOSTON COLLEGE INTERNATIONAL & COMPARATIVE LAW REVIEW, 145 (2011)

⁸S. Tully, *People You Might Know: Social Media in the Conflict Between Law and Democracy*. In Patmore G. & Rubenstein K. (Eds.), *Law and Democracy: Contemporary Questions* (pp. 153-172). ANU Press. (2014)

⁹ Claire Wardle, *Fake News. It's complicated*, FIRST DRAFT NEWS (Apr 19, 2019), <https://firstdraftnews.org/fake-news-complicated/>

deemed “deliberately misleading” and involving “intentionally or knowingly false statements of fact”, “deliberate spread of misinformation”, along with the “intention to deceive”¹⁰.

➤ **Is it constitutionally possible to regulate Fake News in India?**

There has been a major hue and cry within the social activist circles to regulate Fake News. In this chapter, I shall focus on the constitutional viability of doing the same. In the context of the proposed amendment to Section 79 of the Information Technology Act, 2000¹¹ and the withdrawal of the Press information Bureau guidelines for Accreditation 2018¹², there is a need to understand whether such regulations would come within the purview of Article 19(2)¹³ of the Indian Constitution.

➤ **Can Fake News Be Regulated?**

It is understood from both the previous two chapters that the linguistic form and the medium is integral to the concept of Fake News than the content of the same. One important legal debate around the contemporary version of fake news is whether it can be regulated or not. People who advocate regulation argue that fake news is a new phenomenon, and that we can't rely on outdated regulations to govern it. They say that in this age of information overload, there is a need to govern the transmission of Fake News. They suggest that the greatest tools for this are law and media literacy.

Opponents of legal restrictions on false news argue that such restrictions would violate freedom of speech and expression, which is recognized worldwide as a fundamental right. They further believe that such laws would be seized by the government and utilized to influence and control the populace. To determine if a control on speech or expression (including fake news) is constitutional, we must look at whether it falls under the purview of Article 19. (2). In such a

¹⁰ Alex Gelfert, Fake News: A Definition, 38(1) INFORMAL LOGIC, 96 (2018).

¹¹ S. Chishti, *Govt moves to access and trace all 'unlawful' content online*, INDIAN EXPRESS (Apr 19, 2019), <https://indianexpress.com/article/india/it-act-amendments-data-privacy-freedom-of-speech-fb-twitter-5506572/>

¹² N. Marwaha, *Fake News Crackdown Highlights: Broadcasting Ministry Withdraws The Circular On New Rules For Journalists*, NDTV (Apr 19, 2019), <https://www.ndtv.com/india-news/fake-news-crackdown-live-updates-outrage-after-centre-issues-new-rules-for-journalists-1832076>

¹³(2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence

case, we must consider the constitutional validity of a rule if we are to engage in the aforementioned argument.

Article 19(1) (a) of the Indian Constitution guarantees to its citizen's the freedom of speech and expression. It says as follows, "*all citizens shall have the right to freedom of speech and expression*". This freedom includes the right to express one's views and opinions over any medium. It is considered a basic fundamental right of a citizen and is a cornerstone of a democracy. In *Maneka Gandhi v. Union of India*¹⁴, the Supreme Court had emphasized on the significance of this fundamental right in a democratic set up and said as follows: "*Democracy is based essentially on free debate and open discussion, for that is the only corrective of government action in a democratic set up, If democracy means government of the people by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his rights of making a choice, free & general discussion of public matters is absolutely essential.*"

ANALYSIS OF ARTICLE 19(2)

Grounds for Restriction

When we examine the grounds set forth in Article 19(2), we can see that they are all designed in the national or societal interest. I'll look at these reasons for restriction further down.

Sovereignty and Integrity of India

The Sixteenth Amendment to the Constitution, which took effect on October 6, 1963, adds this ground as a basis for restricting freedom of speech and expression.¹⁵ The goal was for the state to be able to contain secessionist crises from groups like the Dravida Kazhagam in the south and the Plebiscite Front in Kashmir, as well as operations in pursuit of secession that might not be covered by the phrase "security of the state".¹⁶ The Sixteenth Constitution Amendment Bill was considered necessary because the words 'security of the State' in Article 19(2) were considered insufficient to prevent a person from using the electoral process to advocate secession peacefully.

¹⁴Maneka Gandhi v. Union of India, A.I.R. 1978 S.C. 597 (India)

¹⁵ A. Chandrachud, *The House is in cession*, HINDU BUSINESS LINE (Apr 13, 2019), <https://www.thehindubusinessline.com/blink/know/the-house-is-in-cession/article9926186.ece>

¹⁶ D.D. Basu, *Commentary on the Constitution of India*, Vol. 2, 8th Ed., Wadhwa and Co. Law Publishers, New Delhi, p. 2436 (2007)

The amendment bill did not only seek to add an exception to the right to free speech but it also made ‘the sovereignty and integrity of India’ an enumerated exception to the rights to assembly and association contained in Articles 19(1) (b) and (c).¹⁷ We can see from the genesis of this ground that any speech or expression that promotes cessation of states from the country or the integrity of the country can be regulated.

Friendly relations with foreign states

In order to preserve cordial ties with other states, this premise was introduced in the first Constitutional Amendment of 1950. Even though Article 367(3) of the Indian Constitution states that a foreign State means any state other than India, the Constitution (Declaration of Foreign State) Order, 1950, directs that a Commonwealth country is not to be a foreign State for the purpose of the Constitution¹⁸. The aforementioned order by the Supreme Court in *Jagannath Sathu v. Union of India*¹⁹ and held that there is a distinction between Foreign State and Foreign Power. The Court held that a country may not be regarded as the foreign State for the purposes of the Constitution but may be regarded as a foreign power for other purposes. Therefore, any country, even a Commonwealth country is a foreign country for the purposes of Article 19(2).²⁰

Public order

This ground was added by the First Amendment in 1951, to overcome the Supreme Court’s ruling in Romesh Thapar’s case²¹ which held that restrictions could be imposed on grounds of “public order”. The Public order described herein would cover public peace, safety and tranquility.²² The term “in the interests of” gives this ground a wider scope. The scope of this ground was restricted by the Supreme Court in *O.K. Ghosh v. E.X Joseph*²³ and it was held as follows, "This phrase cannot be read to suggest that the limitation can be claimed to be in the interests of public order even if the link between the restriction and public order is remote and indirect." Only if the link between the limitation and the public order is near and direct can it be claimed to be in the interests of public order. A link between the limitation and public order that is indirect, implausible, or imaginary would not be covered by the phrase "in the interests of

¹⁷ A. Chandrachud, *supra* note 80

¹⁸ M.P. Jain, *Indian constitutional law*, Nagpur, India: Wadhwa. p.1014 (2006)

¹⁹ *Jagannath Sathu v. Union of India* A.I.R. 1960 S.C. 675 (India)

²⁰ M.P. Jain, *supra* note 87 at p.1012.

²¹ *Romesh Thapar v. Union of India* A.I.R. 1950 S.C. 124 (India)

²² *OK Ghosh v. E.X Joseph*, A.I.R. 1962 S.C. 812, at 814

²³ *supra* note 91

public order." Section 295A of the Indian Penal Code penalizes a person who 'with deliberate and malicious intention', by words either spoken or written or by visible representations, insults or attempts to insult the religious beliefs of any class. This section was challenged in *RamjiLal Modi v. State of Uttar Pradesh*²⁴ and the Supreme Court held as follows, "*The calculated tendency of this aggravated form of insult is clearly to disrupt the public order and the section, which penalizes such activities, is well within the protection of cl. (2) of Art. 19 as being a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression guaranteed by Article 19(1) (a).*" We can see that the Supreme Court has looked into this ground in various cases and we have Indian Penal Code Sections that breathes life to this ground.

Defamation

"Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person," according to Section 499 of the Indian Penal Code. The extent of defamation in India is fully covered in this section. Defamation is dealt with in Section 500 of the Indian Penal Code. These sections aim to safeguard a person's reputation as well as his person or possessions.²⁵ "One cannot be unmindful that right to freedom of speech and expression is a highly treasured and cherished right, yet the Constitution conceives of reasonable restriction," the Supreme Court wrote in *Subramanian Swamy v. Union of India*, concentrating on the constitutionality of Section 499/500. In that context, criminal defamation, as defined by Sections 499 and 500 of the Indian Penal Code, is not a disproportionate limitation on freedom of expression. The right to free expression does not allow one person to slander another. A basic right is the protection of one's reputation. It is also a fundamental human right. In the long run, it benefits society." The Supreme Court further found that the presence of defamation as a criminal offence does not go beyond the scope of Article 19(2) of the Constitution, particularly when the term "defamation" is employed in the Constitution.

CONCLUSION

²⁴ *RamjiLalModi v. State of Uttar Pradesh* A.I.R. 1957 S.C. 650

²⁵ M.P. Jain, *supra* note 87 at p.1014

This paper has revolved around examining the concept of Fake News and the legal viability of regulating this phenomenon in India. In order to understand whether this form of information manipulation can be regulated, it was necessary to understand what Fake News is and how is it different from the other forms of media.

We have seen how Fake News is different from other forms of disinformation due to its manipulation of linguistic forms and use of Social Media for its proliferation. I've transformed the perspective from which we look at Fake News, from its substance to the linguistic forms it takes and the media it utilizes to spread it. When we examine current definitions of the phenomena via this lens, we can observe that they all limit the concept's breadth. As a result, I've defined Fake News as "disinformation or misinformation that imitates or quotes traditional news sources with the purpose of being extensively re-transmitted through any form of media."

The government is under pressure to regulate fake news in Social Media and as mentioned above it wouldn't be constitutionally viable to do the same. I am of the opinion that the government should ensure that school and college kids are taught on how to utilize social media efficiently. The government's recent collaboration with social media giants like Whatsapp and Facebook to advertise the existence of Fake News is an example of a media awareness initiative.