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FAKE NEWS AND ITS IMPACT: A COMPARISON OF NATIONAL LAWS WITH A SPECIAL REFERENCE TO THE INDIA CONSTITUTION

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ABSTRACT

People are increasingly addressing how fake news affects them. Although deception is not new, technological advances have accelerated its spread. False information is quickly disseminated on social media sites like Facebook, Twitter, and YouTube. People must immediately understand the inner workings of social media platforms, the methods used to manufacture and spread wrong material on these platforms, and the roles certain people play in these dynamics. This project aims to better understand how Greek social media users behave and interact to identify and stop the spread of false information. This study's findings also address how readers interact with the news and participate in the digital age. This bolsters the argument that the word is fabricated. Given the increasing focus on the role of social media in propagating false information regarding crucial political and social topics, it is essential to know how the public reacts to incorrect information on social networking sites. If individuals comprehend this, they will be better able to prevent the spread of false information (SNS). To prevent the spread of incorrect information on social media, we need highly educated and informed individuals who can identify and counteract propaganda and top-tier journalists who can reliably report the news. Two elements that contributed to the shift in the media ecosystem are the rise of social media in the digital era and the realisation that disseminating false information may be profitable. Incorrect information is being manufactured and circulated in vast quantities. The

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author of this research paper is particularly interested in whether or not there are laws in place to combat the issue of fake news and whether or not these laws correspond to constitutional standard.

KEYWORDS- *Fake News, Social Media, Spread of False Information, The act of Authentication, Social Networking, Activism, Collaboration.*

1.1 INTRODUCTION:

“We are not just fighting an epidemic; we are fighting an info emic. Fake news spreads faster and more easily than this virus and is just as dangerous.”

– Dr T.A. Ghebreyesus, Director-General, WHO

Since the invention of the printing press, there has been such a thing as fake news, but in this day and age of the internet and social media, its prevalence has surged. Misinformation can come in many forms, including when search engine algorithms and social media platforms are used to spread false information. Fake videos, fake news stories, messed-up logos of major media sites, automated uploads, and paid placement are becoming more common worldwide. People who post online comments to boost their reputations are on the rise. These places are sometimes called "troll farms." In recent years, governments worldwide have been trying to reduce the risk that disinformation and propaganda pose by limiting the rights of their citizens to free speech. Snopes is a website that is well-known around the world for debunking urban legends. Social Media Hoax Slayer and Alt News are other trustworthy websites in India.

Numerous claims have been faked. According to reports, the editor of the Indian newspaper Postcard News has been detained on suspicion of spreading false information and intended to sow dissension among the general population. There have been allegations that Russia interfered in the electoral process in the United States in 2016. It is a known case of foreign control over the internet, including bots and operations meant to spread false information. Manipulation³.

³ Butler, P. 2018. How journalists can avoid being manipulated by trolls seeking to spread disinformation. <http://ijnet.org/en/blog/howjournalists-can-avoid-being-manipulated-trolls-seeking-spread-disinformation>

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Russia's interference in the elections of Western countries has led to the following: Recently, there has been a rise in the level of worry around the alteration of materials. In the face of growing competition, Facebook has threatened to take retaliatory action in response to the controversy over Cambridge Analytical's usage of user data. The proliferation of false news and disinformation driven by political motivation has resulted in adopting of new procedures to verify information. As well as openness and honesty in the partnership between advertising and news organisations.⁴

Social networks and messaging are frequently used to distribute misinformation and incorrect information, which begs the question of how much regulation or self-regulation these corporations are subject to. In their capacity as middlemen, platforms, rather than content providers, have traditionally dominated these industries. Only light-touch regulations apply (except in the area of copyright). Given this, however, they are also conscious of the mounting demands on them and the dangers they represent to the right to free expression. When there is too much regulation, there are more steps in the self-regulation framework, but they are sometimes different. The Special Rapporteur of the United Nations on Freedom of Expression and Opinion In his annual report, he discussed it and advised Internet corporations to take note. Improve the news media's ability to share, find, and get information by following UN rules and self-regulate. In this rapidly evolving set of regulations, journalists have a crucial role in business and government.⁵

1.2 THE CONSTITUTION OF INDIA: FREEDOM OF SPEECH AND EXPRESSION:

⁴“Manjoo, F. (2018). What Stays on Facebook and What Goes? The Social Network Cannot Answer. New York Times, 19 July, 2018. <https://www.nytimes.com/2018/07/19/technology/facebook-misinformation.html> [Accessed on 20/09/2022]; <https://www.rt.com/usa/432604-youtube-invests-reputable-news/> [Accessed on 15/07/2018]; <https://youtube.googleblog.com/> [Accessed on 15/09/2022]; <https://sputniknews.com/asia/201807111066253096-whatsapp-seeks-help-fake-news/> [Accessed on 15/09/2022].”

⁵ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. UN Human Rights Council 6 April 2018. A/HRC/38/35. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/096/72/PDF/G1809672.pdf?OpenElement> [accessed on 20/09/2022].

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Article 19(1)(a) protects the right to freedom of expression. Still, Article 19(2) says that "reasonable restrictions" can be put in place to watch (I) India's sovereignty or integrity, (ii) the security of the state, (iii) public order, (iv) public decency or morality, (v) defamation, or (vi) incitement to commit an offence.⁶ In India, it's clear that a person's freedom of speech can be limited by the content of what they say and the possibility that their words could hurt someone (if their meaning is judged illegal). The State wants to limit speech that makes people want to fight. But when the government decides something is hurtful or slanderous, it can pass laws restricting free speech. Even though there is no link between swearing and physical violence, the government thinks that it contributes to the decline of social morality.

However, Article 19 of the Constitution lists the legitimate government interests that can be used to stop people from speaking out (2). Article 19 of the Constitution says that neither "public interest" nor "falsity" can be used as a reason for the government to censor speech (2). So, for the government to ban "fake news," it would have to show that it either encourages violence or has harmful content (in terms of defamation, decency, or morality) (public order, incitement to an offence). Lastly, a long list of examples shows that the word "proximate connection" refers to a real and immediate risk of harm caused by the statement, not to possible consequences in the future.

Because the term "fake news" is used so often, everyone seems to think that everyone agrees on what is being talked about, but there isn't much agreement on what counts as "fake news" and what doesn't. This name has been given to satire, propaganda, biased reporting, content that is paid for or promoted, reporting that isn't true, completely made-up stories, and unpleasant truths. Notably, the statement doesn't say if it applies to print media, social media, online media, private communications (like WhatsApp conversations), or even social media. In the post-Trump era, the term has a negative meaning that Habgood-Coote calls an "epistemic insult." This often has nothing to do with a fair assessment of the material. On the other hand, because people get their news from so many different places now, they don't trust "journalists" as much.

⁶ Article 19, The Indian Constitution

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Therefore, "fake news" describes a wide range of information, some of which may be wrong in multiple ways. This is clear when we look at the words we used before using "fake news" as a catch-all phrase. There are many ways to describe what we now call "fake news," such as wrong, misleading, biased, sensationalist, advertising, and propaganda. When we know exactly what's wrong with a piece of content, we can fix it in a way that helps. On the one hand, the rules for factual errors in a newspaper story differ significantly from those for telling editorial content from commercial content. Instead of using a broad definition of "fake news," it is essential to point out the actual harm that the speech in question causes. There is a political debate about the difference between "fake" and "real," which affects the right to free speech.

People from different parts of society are less likely to agree on the same political reality in a divided society. Because of this, it's hard to keep track of what's real and what's fake, as Singapore showed when the government told Facebook to "correct" some content. The posts said that the Singaporean government had rigged elections, put too much pressure on investment companies, and punished people who spoke out (here). This episode shows how governments could use a ban on "fake news" to stop a lot of different kinds of criticism. The Indian government's attempts to change the story in Kashmir have been written about a lot (here). Being able to tell what is "fake" and what is "real" goes a long way toward shutting down different points of view and making political thought more similar. Ultimately, governments put much value on their survival and favour their political ideology.

1.3 PROVISION REGULATING TO FAKE NEWS UNDER INFORMATION TECHNOLOGY ACT, 2000:

One definition of what is known as an "overbroad" limitation on freedom of expression forbids communication that is both constitutionally protected and speech that the government is allowed to control (such as speech that incites hatred) (e.g. dissent).⁷ In the case of Shreya Singhal, the Supreme Court was asked to rule on the validity of Section 66A of the Information Technology

⁷ N. Nougayrede, in this age of propaganda, we must defend ourselves. Herse how, THE GUARDIAN, Available at: <https://www.theguardian.com/commentisfree/2018/jan/31/propaganda-defend-russia-technology> , Accessed on 17/09/2022

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Act, which forbade "grossly offensive" communication. Shreya Singhal challenged this section of the law. The court emphasised that everyone has the right to an opinion on problems that are political, literary, or intellectual, even if that position is "grossly insulting" to some people. This right was given to everyone regardless of whether or not they had the ability to express such an opinion. Even while there are situations in which some viewpoints need to be prohibited from being spoken, not all utterances that are considered "grossly offensive" rise to the level of constituting an urgent threat to the peace or an incitement to violence. The phrase "grossly offensive" was added to Section 66A, which resulted in the eventual criminalization of expression that the Constitution previously guaranteed.

“Section 66-A purports to authorise the imposition of restrictions on the fundamental right contained in Article 19(1) (a) in language wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action. It must, therefore, be held to be wholly unconstitutional and void.”

1.4 FAKE NEWS REGULATION IN INDIA:

How news is delivered has also changed because all influential newspapers have tried to build a solid online presence in addition to traditional newspaper publishing. In recent years, social media has become a valuable source of information. However, in recent years, it has also become a source of unconfirmed and, for the most part, fake news, which has had terrible effects. At the moment, India does not have any laws in place that are meant to control false information. But in these situations, specific rules come into play, like Section 505 (1)⁸ of the Indian Penal Code of 1860. With this clause, it is against the law to spread any rumour or report that could cause fear or chaos among the general public. Section 66D of the Information Technology Act, 2000, and Section 491 of the Indian Penal Code say that anyone who tries to pose as another person or organisation to pass off a false claim as genuine and legitimate will be punished. Section 54 of the Disaster Management Act says that it is a crime to spread rumours or incorrect information that could cause panic during a disaster. The intermediaries are held responsible by Section 79 of the IT Act, which says that they must take down content that can't be proven true or false. But

⁸ Section 505(1)(b) of The Indian Penal Code, 1860

the current laws could be better at dealing with fake news or information that can't be verified. There aren't fake news-specific laws that make it possible for someone to go to jail for something as simple as forwarding a message. In other words, the current rules can't deal with the problem of fake news because they don't create situations where fake news can spread. According to the case of *Shreya Singhal v. Union of India*,⁹ social media platforms are not held to a higher standard of responsibility. This is because the ruling says offensive information can only be taken down if the government says so.

1.5 THE GOVERNMENT AND THE TRUTH OF FAKE NEWS:COMPARISON IN INDIA AND USA:

Before concluding, one more thing can be said. In the *Alvarez case*, the US Supreme Court threw out a law that said it was against the law for people to lie about getting military medals. In its decision to throw out the Act, the court said it was worried about the government claiming "broad censorial jurisdiction to stop lying" because even the possibility of such power would make people less likely to speak out.¹⁰ In the end, the court ruled that the law wasn't valid. To be clear, the government has rules about lying in some cases, especially concerning perjury, consumer protection, and slander. This is legal because speech restrictions are only allowed when they are likely to cause much trouble, and they can only be challenged in court when they hurt people who can be identified. A rule against "fake news" covers a much more comprehensive range of actions. Even though "fake news" usually attacks ideas instead of people, there is always the legal option of defamation to get back at those who spread it. A healthy news ecosystem is more like a public good, a clean place to live. Similarly, India already has several old laws that can be used to control and punish speech that could cause violence. These laws can be used when "fake news" is upsetting and encourages violence. Any democracy should know that regulating "fake news" raises the possibility of a government truth. There is no clear link between handling "fake news" and real risks.

⁹AIR 2015 SC 1523

¹⁰ <https://timesofindia.indiatimes.com/india/ib-team-to-counter-fake-news/articleshow/72079340.cms?from=mdr>
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1.6A LEGAL ANALYSIS OF INDIA'S STANCE ON FALSE NEWS

In India, there need to be more laws specifically addressing false or misleading data. Article 19(1) (a) of the Indian Constitution protects the freedom of speech and expression, making it possible for the unfettered publication or transmission of news. Remember that the liberty outlined in 19(1) (a) is not absolute; it is subject to reasonable constraints in the same article.

You can file a complaint with any of the following agencies if you think you've been given false or misleading information:

- The National Broadcasters Association (NBA) is a group of independent TV news and current events stations.
- The Broadcasting Material Complaint Council is an agency that investigates viewer complaints concerning programming (BCCC). You can contact the Broadcasting Content Complaint Council to complain about lousy programming or fake news.
- The Indian Broadcast Foundation is a non-profit group that works only to promote India's broadcasting sector (IBF).
- In April 2018, the Ministry of Information and Broadcasting abolished a law that had been in place to prevent false news. The law says that a journalist's credentials could be taken away if it turned out that they had spread false information about the event.
- The Indian Government said that the Press Council of India, another existing regulatory agency, should address concerns about disseminating fake news. Section 14 of the Press Council Act of 1978 gives the Press Council the power to "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 determines that a newspaper or news agency has violated journalistic ethics or public taste, or that an editor or working journalist has committed any professional misconduct. Using this provision, the Press Council can now issue formal "warnings."¹¹

1.7 ARE ANTI-FAKE NEWS LAWS INVALID:

¹¹ Job, Asher. (2019). Analyzing the concept of Fake News and the legal viability of its regulation in India.

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A fundamental obstacle to the validity of the legislation against fake news that India is considering implementing is the country's commitment to the free flow of ideas and information. Therefore, to pass legislation prohibiting communication that is judged to be "fake news," the government must go against Article 19(2) of the Indian Constitution. It is against the law for the government to suppress speech because it is "false" or "inaccurate," as this is a constitutionally protected right.¹² So, the government must clarify that "fake news" discourse threatens public safety, incites violence, and smears individuals' reputations. Even if a phrase like "fake news" were to be included in such a precise categorisation, it may still be left out for two main reasons: "vagueness" and "overbreadth." In addition, it may be debunked if put forward because doing so is extremely difficult.¹³

Since the word "fake news" has so many different meanings and applications, it may be used to designate not just misleading articles and stories but also satire, parody, and inaccurate reporting. Similarly, it will limit constitutionally protected speech such as dissent, and because these limits go "overboard," they will have a chilling impact on all addresses. The media, as the fifth estate of democracy, is in grave danger if any error in reporting leads to government action. As a result, such a regulation is now in effect. Thus, it is questionable under the Constitution to prohibit speech labelled fake news. Also, because both the causes and consequences of fake news are short-lived, constitutionally sound laws will not be able to solve the problem.¹⁴

1.8 CONCLUSION:

Conflict, electoral system damage, and even death may result from "fake news." There is concern that any attempt to regulate "fake news" would run afoul of India's freedom of expression law. Remember that the government cannot prevent people from expressing themselves simply because they believe something to be "false." Keep this in mind. To be constitutionally valid, a

¹² Ghosh, Sweta. "Spreading of Fake News on Social Media." INTERNATIONAL JOURNAL OF BASIC AND APPLIED RESEARCH (2017): n. pag. Print.

¹³ Mishra, Anamika and Amoghavarsha [Khttps://seclpp.wordpress.com/2020/08/05/fake-news-and-looming-regulatory-issues-in-india/](https://seclpp.wordpress.com/2020/08/05/fake-news-and-looming-regulatory-issues-in-india/) accessed 22/09/2022

¹⁴ Malik, Shahnawaz & Faizan, Neelam. (2019). FAKE NEWS: LEGAL ANALYSIS OF FALSE AND MISLEADING NEWS AND CYBER PROPAGANDA. Volume 6: 51-56.

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restriction on "fake news" must: (i) demonstrate an actual, imminent, and identifiable injury; (ii) show that the harm is a cause to limit free expression under Article 19(2); (iii) consider the medium, timing, and impact of the "fake news;" (vi) be the government's least restrictive measure. This is not to say that legislation against "fake news" cannot be enacted (several countries have already done it). Increased vigilance to prevent the dissemination of false information may be warranted in times of heightened stress (e.g. the run-up to elections). However, eliminating "fake news" is seldom that simple, and restricting free speech under the Constitution won't fix the underlying issues it causes.

For starters, the term "fake news" is a red flag for deeper issues in the media. The first step in solving any problem is identifying what it is. With these guidelines in place, the general public will better grasp how the media functions, and there will be less of a financial and political motive to spread misinformation. Investing in an independent public broadcaster, fostering media literacy in schools, and using specific legal tools to enforce constitutional speech constraints are all examples. The term "fake news" can potentially lead to censorship and more government oversight.

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