

## **The Menace of Fake News in the Rise in the Use of Social Media**

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### **Abstract**

*Communication and the transfer of information are the keys to human civilization, progress and development. Proper channels of receiving information are very essential for a developing society. The updates about the world not only give intellectual benefits in an individual's life but also provide structure to society. Manipulation in information makes it misinformation and disinformation, which is a layman's term known as fake news. This manipulation could be intentional with a motive to distort the understanding of a particular issue or could be unintentional coupled with ignorance and unawareness. Regardless of the intention, fake news causes serious problems which expand from disrupting individuals' rights and safety to posing national and international challenges. There are many facets of fake news and it has a multi-dimensional impact on the society. Not only has it posed the issue of individual security, and communal chaos but also national security and safety. The role of every single unit of the society and government is critical in handling the menace of fake news. Responsible citizens and State authorities are vital for handling it. The conflict of free speech with national security is the center of the problem. Rather than elucidating it as only a legal problem, the sociological aspect is of more relevance as people are the ones who are committing the act and they are being affected by it the most. Digital access is important as it aids awareness and connectivity with the pace at which the world is growing. But this digital access should be accustomed to the ability to scrutinize the information received, control the dissemination of unauthorized or illegal information and digital literacy to be able to access the information in a constructive manner and without manipulation for a robust democracy. Spirit of democracy is always challenged and questioned in situations like this, but it is crucial to understand that all rights with no restrictions create bigger chaos than autocracy.*

### **Keywords**

*Fake news, Free speech, Democracy, Digital literacy, Social media.*

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## **Introduction**

The affordable nature of electronic devices and internet services has given birth to new obstacles and new nature of crimes i.e., cyber-crimes. Cyber-crimes include both mild (socio-economic offenses) and severe penal offenses (like obscenity, and pornography). Data has become the treasure of 21<sup>st</sup> century and its misuse is the biggest problem.

The vast and diverse nature of cyber-crimes makes it harder for authorities to create awareness and tackle the culprit, as majority of people are so ignorant that they do not take proper precautions while dealing on internet and become victims of internet cyber-attacks and crimes. Data has become the biggest goldmine in the 21<sup>st</sup> century. Companies are making billion-dollar investments based on customers' data; political parties are winning elections based on internet campaigns and teenagers are earning lakhs of money monthly by just providing entertainment content created from the corner of their house.

State censorship is not completely unwarranted, as limitless dissemination of information via any mode might create national security issues. Public duty cannot be undermined in managing the menace of fake news as more sincere effort should be made by internet users to scrutinize while sharing the data, as the internet and online platforms have more and faster reach to the audience.

## **Cause and Effect of Fake News**

The give-and-take relationship of information (which includes opinions, facts, humor, information etc.) that has emerged on the internet is the biggest threat to regulating authorities. People are consuming data daily without any hesitation and this gives room to manipulation of data and information and its unwarranted reception to millions of people resulting in their unfair and unjustified actions. Fake news, also known as junk news, refers to the mal-information that is spread in a country through the informal exchange of words and traditional media in the form of edited videos, memes, unsubstantiated ads and web-based life which engenders bits of gossip (Sharma, 2020). Spread of fake news and misleading information is a very serious issue as it causes and gives a platform to other crimes, such as:

- Several cases of mob lynching were encountered based on the circulation of fake news of child kidnappers on WhatsApp and Facebook.
- Many a times, hate speech was made against people by spreading wrong information against them and infuriating the community by same.
- A sense of uneasiness and fear was initiated during the whole demonetization process in November, 2018, when the new currency notes were incorporated with chips that would track every move of the currency.

- Fake news of COVID-19 being just a hoax and is not a real disease, made people believe that there is no need for masks, quarantine, lockdown, social distancing and following government orders.
- The fake news of taking the vaccine of COVID-19 is dangerous and could cause serious illness and even death

The spread of false news has thus been characterized as a social problem creating negative externalities by threatening the ability of the public to trust legitimate news outlets and the ability of traditional journalism to serve its role in preserving democratic institutions (Ton, p. 2).

Reading the reports relating to fake news, it poses a few questions:

- How come people believe anything that comes in the form of a short message, video or audio on their phones or web without any source backing the information received?
- Why people do not seek to check the validity of the information received in this era of technology where it is very easy to validate or rectify any data?
- Why people do not report these fake news and misleading information but instead forward it that makes the problem even bigger?

### **State Intervention in Dispersion of Information**

The purpose of the law is to render order to society. As per the social contract theory, the citizens submitted their rights to the State in response to get security. Dispersion of information or news has always been part and parcel of society, through the word of mouth which could reach a handful of people instantly, or through print media by newspapers and magazines that could reach a few thousand but it takes some time and could be easily traced down to the source and even easier to trickle down the flow of information, or through the posting of the content on a social media which could reach millions or even billions of people instantly and makes difficult for authorities to trace the source or even disrupt the flow of information.

Between free speech and peace in society, it is important to understand that the State has to intervene in the exercise of the right of free speech with few limitations. Similarly in Article 19(1)(a) of the Constitution of India, fundamental right to free speech and expression is provided but it is also countered by reasonable restrictions in Article 19(2) in the interests of the sovereignty and integrity of India, 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 offense. This fundamental right is available only to citizens. It would be the burden of the State to prove that any law or restriction that violates Article 19 is within the

permissible restrictions allowed in the clauses (2) to (6) of Article 19 (*Bijoe Emmanuel v. State of Kerela*, 1986).

### **Provisions to Curb Fake News: Threat to Free Speech?**

Fake news can be viewed as untrue information, including myths, rumors, conspiracy theories, and hoaxes as well as deceptive or erroneous content intentionally or unintentionally disseminated on social media platforms. Based on this definition, there is a divergence between the creation and dissemination of fake content on social media platforms. By implication, fake news sharing may be unintentional, but its creation could be highly intentional (Apukea & Omar, 2021 p. 3).

An infodemic is too much information including false or misleading information in digital and physical environments during a disease outbreak. It causes confusion and risk-taking behaviors that can harm health (WHO, n.d.). Law enforcement agencies however vigilant may be, cannot keep check on billions of people.

Following are the legal entanglements that are employed to control the issue of the spread of misleading and fake news:

- **DISASTER MANAGEMENT ACT, 2005:** Section 54 of the Act provides for punishment if anyone disseminates the wrong information in the reference to a ‘disaster’ which would create panic. The major drawback of this provision is that its scope is very narrow and can be only used in case if a situation is categorized as a ‘disaster’ and till it continues. Also, it should be taken into consideration that only a fine as punishment is not enough as fake news creates major problems and many a times leads to loss of lives too.
- **INFORMATION TECHNOLOGY ACT, 2000:** Section 66D of the Act deals with the provision to penalize those who try to cheat people by serving them wrong and misleading information. Although it could be easily debated that Section 66A which was struck down after *the Shreya Singhal v. Union of India* (2015) case, that dealt with the problem of fake news in a better way, but taking into account the unreasonable restriction of the State on the fundamental rights the court’s decision is appreciable. A balance between State control and the rights of citizens is a very delicate task. Section 69 which provides power to the Central Government or State Government to issue directions for interception or monitoring or decryption of any information Section 69A which provides for power of the Central

Government to issue directions for blocking for public access to any information through any computer resource and if any intermediary fails to comply with such directions, it would be punished with an imprisonment for a term which may extend to seven years and fine, along with Rule 3(1)(b)(vii) is the structured way to counter fake news and in coherence with Article 19 of the Constitution of India.

- **INDIAN PENAL CODE, 1860:** Section 505 of the Act deals with the circulation of rumors to create mischief and panic among armed forces or citizens. It also incorporates the issue of fake news about the communal violence. The good factor of this provision is that it is not some draconian law, it also takes caution of good faith and gives reasonable security and safety to receivers of information. One of the effective remedies has been introduced by the legislator, i.e., making or transmitting the false information as an act of forgery in section 464 of IPC by way of amendment introduced through the Information Technology Act, 2000. Section 153 of the Act provides for wantonly giving provocation with intent to cause a riot to be punishable with imprisonment of either term which may extend to one year or with a fine or both; Section 153A punishes promoting enmity between different classes; and Section 153B penalizes words whether spoken or written or by signs or by visible representation or otherwise makes or publishes imputations, assertions prejudicial to national integration. All three of these provisions can be used while dealing with fake news if consequence of fake news leads to rioting or enmity among different groups on grounds of religion, race, place of birth, residence, language etc., or creates imputations or assertions prejudicial to national integration.

Section 295A punishes deliberate and malicious acts intended to outrage religious feelings of any class, by insulting its religion or religious beliefs with imprisonment of either description for a term which may extend to three years or with a fine or with both. Section 504 is also relevant for fake news as it punishes intentional insults with intent to provoke a breach of the peace or to commit any other offense.

- **The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021:** Rule 3(2) provides that intermediaries have to make efforts to restrict display, upload, modify, publish, transmit, store, update or share any information that promotes enmity between different groups on the grounds of religion or caste with the intent to incite violence and deceives or misleads the addressee about the origin of the message; or

knowingly and intentionally communicates any misinformation or information which is patently false and untrue or misleading in nature or, in respect of any business of the Central Government, is identified as fake or false or misleading by such fact check unit of the Central Government. Rule 7 provides for provision for non-compliance of Rules by intermediaries by not giving protection under Section 79(1) Information Technology Act, 2000.

Fake news hasn't been defined and it is essential to have proper parameters of definition of fake news i.e., whether it will include misinformation or disinformation or not. Rule 3 provides provisions that provide for making a Fact Check Unit by the Union to have a check on the dispersion of fake news on the matters of government. The government has notified the Fact Check Unit, on which a few issues are being raised i.e., it will censor the opinions of the citizens and would be a direct hit on freedom of speech (*Kunal Kamra v. Union of India*, (2024)). Also, the government will be the sole authority on deciding the matter as fake news. It will also take away the neutral nature of inquiry and would be a direct State censorship. It is also not clear that whether the Fact Check Unit will control the e-content of a factual nature or opinions and criticism also. As, a healthy democracy requires free speech and a safe space for dissent, this Fact Check Unit might not be in the best interest of the democratic character of India.

The whole debate of free speech versus reasonable restrictions is very much important for a healthy democracy. But it is also important to understand that governments that are elected in democratically sound nations are there to serve the people and not harm them. Other bodies and autonomous authorities are there to overlook the workings of government and to keep it within bounds. But the fake news takes many forms such as political agendas to purposely prove the failure of government, communal angle in rumors to create havoc for local authorities, to gain popularity among people by spreading facts that are hot topics or sometimes just to create mischief.

### **Conclusion**

Digital literacy is different from education and literacy in general sense. The title itself of the research paper 'Too Good to Be True, Too Good Not to Share: The Social Utility of Fake News' (Duffy et al., 2019), gives the complete picture of how much users of social media are concerned with the genuineness of the data received from social media platforms and their response on it. While disseminating such falsehoods does not constitute a direct call to commit physical violence, it nevertheless sows the seeds for mass atrocities (Holvoet, M. 2022, p. 223).

There are many laws on point but no one has anticipated the role and stature social media will entail in the future. It is very important to make these social media platforms responsible for their part in the reach of fake news. The indemnities these platforms enjoy make only people directly circulating the fake information, but the means should be punished as well as ends.

New and exclusive social media regulations would help to encounter this cyber problem better. The types of cyber-crimes are evolving every day and tackling them with the same legislation that was made two decades ago defies the purpose of the Information Technology Act, of 2000. Although two specific legislations were introduced in the Parliament in the past 5 years, but didn't get the required response i.e., the Fake News (Prohibition) Bill, 2019 by Shrimati Rama Devi and the Prohibition of Fake News on Social Media Bill, 2023 by Shri Manoj Kotak. The positive aspect of these Bills was that they incorporated a specific definition of fake news and defined social media users as any person or group of persons, natural or juridical, organized or unorganized, which has expanded the scope of definition and hence made it more effective.

Awareness advertisements should be displayed on these platforms as well as other media platforms, so that people should know that how they could contribute to curbing the fake news by reporting to respective authorities. Although SMS from government organizations have become more frequent by giving a redressal phone number if one encounters fake or misleading information through digital platforms.

Infodemic management aims to enable good health practices through 4 types of activities (WHO, n.d.):

- Listening to community concerns and questions
- Promoting understanding of risk and health expert advice
- Building resilience to misinformation
- Engaging and empowering communities to take positive action.

The underlying issue of 'good faith' and 'free speech' should always prevail while hearing of the cases as it causes more harm to society if an innocent gets prosecuted and the culprit remains a menace for all. Also, the affordable and easy access to the internet has brought new challenges in the arena of digital governance; the issues of digital literacy and anonymity are big ones. The fourth pillar of democracy is media and social media is nothing less than its extension. It is very important for a healthy democracy that information flow not to be only unrestricted but also for the information to be true.

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