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THE CONCEPT OF FAKE NEWS AND ITS IMPACT ON THE SOCIETY

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ABSTRACT:

The purpose of this research paper is to understand the impact of the biggest challenge in today's technological world, i.e., fake news. In the present world people are constantly exposed to different news feeds from different sources. It is difficult for a reader to know the authenticity of any such feeds and condition becomes grave when it is published by a news disseminating source. Therefore, it is very important that the court must be very crucial while allowing such evidence and at a minimum, allegations made where electronic communications are to be used as supportive evidence should have alternative methods of proof as well. This paper will discuss the spread of fake news through two platforms. One is Social media and the other is trial by media. Fake news has treacherous impacts on the society. Irresponsible media propagating fake news and a media trial can have precarious effects on the opinions of the people which more than often results in miscarriage of justice. There is no specific law in Indian Statutes to curb the fake news. However, there are certain other provisions which indirectly prevent the spread of fake news.

FAKE NEWS:

Fake news is nothing but a false story that appears to be news, spread on the internet or using other media, usually created to influence political views or as a joke.¹ It is a type of propaganda that consists of *deliberate misinformation* or hoaxes spread via traditional print and broadcast news media or online social media. Fake news is written and published with the *intent to mislead* in order to damage an agency, entity, or person, and/or gain financially or politically, create disturbance and unrest, often using sensational, dishonest, or outright fabricated headlines to increase readership, online sharing, and Internet click revenue.

India is a country with more than 50,000 newspapers, 400 news channels, thousands of online news portals, lakhs of blogs, social connection platforms, and other news feed sources. It is difficult for a reader to know the authenticity of any such news and condition becomes grave when it is published by a news disseminating source. A lot of times people fall prey to such

¹ Cambridge Dictionary, Cambridge University Press 2018.

fake news. With the advent of technological advancements T.V news channels, online media became the main source for instant and breaking news. Fake news is largely spread over the internet via the social media and there have been instances where it has entered the mainstream media as well. Thus, it is very important to implement strict measures to deal with fake news. This research paper deals with the impact of fake news and the platforms through which these fake news are spread.

FAKE NEWS VERSUS FREE SPEECH:

Everyone has a right to know what is happening around them and to express their views on it. Article 19(1) (a) of the Indian Constitution is one such right which gives the right to freedom of speech and expression to all the citizens. Also, freedom of press is implied from the freedom of speech and expression guaranteed by Art. 19(1) (a).²

However, Article 19 is not an absolute right and is subject to certain restrictions contained within Art. 19(2) of the Constitution.³ Section 66 A of Information Technology Act 2000, which directly hit the root of liberty and freedom of expression, was declared unconstitutional by the Hon'ble Supreme Court in *Shreya Singhal v. Union of India*⁴.

It used to punish any person who sends any information which is offensive or causes annoyance through electronic means. Section 66 A arbitrarily, excessively and disproportionately invaded the right of free speech and upsets the balance between such right and the reasonable restrictions that may be imposed on such right. Section 66 A actually had no proximate connection with public order or with incitement to commit an offence. The information disseminated over the Internet need not be information which 'incites' anybody at all. Written words may be sent that may be purely in the realm of 'discussion' or 'advocacy' of a 'particular point of view'. Further, the mere causing of annoyance, inconvenience, danger, etc., or being grossly offensive or having a menacing character are not offences under the Indian Penal Code at all.

However, free speech does not means spreading false information or falsely accusing any person for any offence. Restrictions can be imposed to prevent such fake news which can spread disharmony among the people or can tamper the reputation of any person.

² M.P. JAIN, INDIAN CONSTITUTIONAL LAW, 1026 (7th Ed. 2014).

³ Article 19(2), Constitution of India 1950.

⁴ *Shreya Singhal v Union of India*, (2013) 12 SCC.

Social media platform and press media are two modes through which fake news are spread to mislead people. Media is considered as the fourth pillar of Indian democracy but there are numerous instances where the media in exercising its freedom of speech has infringed other laws.

In this paper, the impact of fake news and its admissibility will be dealt via two platforms; one is *through Social Media* and the other is *Trail by media*.

FAKE NEWS AND SOCIAL MEDIA:

The best way to define social media is to break it down in two terms i.e., media and social. Media is an instrument of communication. Social media is a social instrument of communication. Social Media is an Internet based medium which facilitates conversation between people and allows them to stay connected.⁵ In other words, it is best understood as a group of new kinds of online media which encourages participation among people, drives them to be more open to each other, starts a two-way conversation, forms a community and keeps them connected in a resourceful way.⁶ It is an open platform where anyone can share any information.

But the major drawback is people can make false accusations or can spread any false news with ease. There is no specific law to tackle the fake news. The fake news propagated on Social Media has far reaching consequences like impact on the Financial Markets⁷, hate speech resulting in mainstream violence⁸ and media trial. The probative value of social media evidence and various impacts of fake news through social media will be dealt in the later part of this paper.

IMPACT OF FAKE NEWS THROUGH SOCIAL MEDIA:

Fake news has the potential to cause irreparable damage to any person, any agency, or any entity. As the access to internet and social media is increasing so is the menace of fake news.

⁵ Steve Coughlan and Robert J. Currie, *Social Media: The Law Simply Stated*, 11 C.J.L.T. 229, 230.

⁶ ANTONY MAYFIELD, WHAT IS SOCIAL MEDIA 5 (2008).

⁷ Shimon Kogan, Tobias J. Moskowitz, Marina Niessner, *Fake News: Evidence from Financial Markets*, SSRN (Aug 2018).

⁸ K.V. Aditya Bharadwaj, *Peddlers of hate*, THE HINDU (Oct 26, 2018, 00:15 A.M.).

According to a report, India has seen the second highest growth in social media users in 2017 to 2018 which is of about 31% growth in social media users annually.⁹

There have been cases in India, where fake news has led to caste-based or religion-based violence amongst people or there have been rumours which often interfered with public policies. For instance, in 2016 during demonetization, rumours were spread over social media platforms like Facebook and Whatsapp where it was alleged that there were Nano GPS chips in the newly launched currency which were later dismissed by the Finance Minister.¹⁰ Rumours about the shortage of salt were spread which prompted a rush on salt in four Indian states. Apart from that in southern India, a rumour about a measles and rubella vaccine thwarted a government immunization drive.¹¹ Not only are this, various cases of mob lynching also reported. Two people were lynched in Tripura due to fake news through Whatsapp that those two persons are child lifters. In June 2018, a man was lynched in Hapur district of Uttar Pradesh following rumours of cow slaughter.

Mob lynching or caste based violence is one impact of fake news spread through social media. There are various instances where social media platform is used for filing allegations against people. In the recent past, many women have come out of their nut-shell and had narrated the harassment done to them by men. But can these accusations be considered as actual complaints are answered in the following part of this research paper.

Can social media accusations be considered actual complaints?

An allegation on a person made on social media cannot be treated as a complaint against him without the consent of the person making that allegation. Social media accusations cannot be considered as actual complaints. The law, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 makes no mention of social media in this regard. There have, however, been some precedents. In 2013, a law intern's blog post about being sexually harassed by former Supreme Court judge AK Ganguly was taken up, with her consent, as an official complaint.¹² A three-judge panel was set up to probe her allegations,

⁹ Anonymous, *After Saudis, most Indians got on social media last year*, THE TIMES OF INDIA, (Jun 27, 2018, 12:35 IST).

¹⁰ Anonymous, *Arun Jaitley dismisses rumours of nano GPS chip on Rs 2000 note*, ZEE NEWS, (Nov 09, 2016, 23:09 PM IST).

¹¹ Vidhi Doshi, *India's millions of new Internet users are falling for fake news sometimes with deadly consequences*, THE WASHINGTON POST, (October 1, 2017).

¹² "Intern deposes before panel probing sexual harassment charge". Times of India. 18 November 2013. Retrieved 8 January 2014.

and after a chain of events, Justice Ganguly was eventually asked to resign from his post as the head of the West Bengal Human Rights Commission.¹³

More recently, Twitter user Naomi Barton had a positive experience with her company when she tweeted about being verbally harassed by a colleague. Her company not only took cognizance of the tweet as a complaint, but also ensured her that it was their responsibility to provide their employees with a safe environment.

In 2014, another law intern filed a complaint of sexual harassment against another Supreme Court judge, Swatanter Kumar. Following the news reports on his case, Justice Kumar sought, and obtained, an order from the Delhi High Court restraining the media from writing about the case.

Without an official complaint to help aid a proper investigation, online allegations can always be dismissed as suspect. But social media has now become such a large part of our lives that it is perhaps time for the law to include clear guidelines on how much weightage should or should not be given to online allegations.

Another thing which is going on in social media is *#Metoo Movement*. As a second wave of #MeToo, allegations have taken over social media timelines in India over the past couple of weeks, a wide range of accusations from inappropriate behaviour to rape have been levelled against public personalities from the fields of media and entertainment. But these allegations will be considered as complaints only with the consent of the complainant as anyone can make false accusations with ease.

Equally disturbing is that a significant number of people believe what they read on the Internet as if it were always fact. A single negative rating or review or story about someone can disproportionately stain an otherwise sterling reputation. It can be incredibly difficult to counter false accusations on social media.

GUIDELINES ISSUED BY WHATSAPP TO FIGHT WITH FALSE INFORMATION:

Recently the social messaging app, i.e., whatsapp has issued certain guidelines to fight with false information. These guidelines are listed below:

¹³ "SC Panel names judge accused of sexual harassment". *Times of India*. 29 November 2013. Retrieved 29 November 2013.

- Understand when is message is forwarded.
- Check information that seems unbelievable.
- Question information that upsets you.
- Look out for messages that look different.
- Check photos in messages carefully.
- And check links too.
- Use other sources.
- Be thoughtful about what you share.
- You can control what you see.
- Fake news often goes viral.

FAKE NEWS AND PRESS MEDIA:

Media is always considered as the fourth pillar of the Indian democracy. Under the Indian Constitution, Article 19(1) confers the Right to Freedom of Speech and Expression to every Indian Citizen.¹⁴ Freedom of Press is incorporated in Article 19(1).¹⁵ There is no specific provision ensuring freedom of the press as such. It is a species of what Art. 19(1) (a) is a genus.¹⁶ Thus, being only a right flowing from the freedom of speech, the freedom of press in India stands on a no higher footing than freedom of speech of a citizen.¹⁷ Therefore, the press enjoys no privilege as such distinct from the freedom of a citizen and thus with freedom comes the responsibility. The media has the responsibility to abide by the principles of accuracy, objectivity, truthfulness, fairness, impartiality and public accountability. It is the duty of media to furnish true information since this information plays a crucial role in shaping the public opinion and without proper caution such information can cause irreparable damage.

Trial by media has not been defined anywhere. In simple terms, it is an exercise by media where it virtually assumes the role of a court and adjudicates upon a particular matter giving its opinion and verdict with respect to a cause.¹⁸

¹⁴ Indian Constitution, Art 19.

¹⁵ M.P. JAIN, INDIAN CONSTITUTIONAL LAW, 1026 (7th Ed. 2014).

¹⁶ Sakal Papers v. Union of India, AIR 1962 SC 305.

¹⁷ Supra 25.

¹⁸ Justice V Ramkumar, *Trial By Media*, LIVE LAW, (September 9, 2016, 5:23 PM).

According to Frankfurter, J. of United States of America, “the press has the right to criticize and to advocate. But the public function of the press makes it an obligation of honour to exercise this function only with the fullest sense of responsibility. Without such a lively sense of responsibility a free press may readily become a powerful instrument of injustice. It should not and may not attempt to influence Judges or juries before they have made up their minds on pending controversies.”¹⁹

Despite the positive aspects of trial by media, there are innumerable instances of press encroaching upon the judicial ambit, and therefore, the Supreme Court has held that a trial by press, electronic media or by way of a public agitation is the very anti-thesis of rule of law and can lead to miscarriage of justice.²⁰ One notable controversy which portrays the injustice caused due to trial by media is the *Sarvjeet Singh Case* where a Delhi university student Jasleen Kaur claimed that Sarvjeet harassed her on the roads of Delhi. She took to Facebook, wrote a long status and posted his picture. The post went viral within hours and Sarvjeet was traced by the police and was arrested on charges of molestation. Even though action taken by Jasleen was appreciated, the trial by the media had an adverse impact. A prejudice was formed against him entirely on the basis of a Facebook post. Sarvjeet reverted back on the social media platform but his side of the story was neglected. Even though the result is awaited, he was and he will always be treated as a culprit.

The brutal murder of *Aarushi Talwar and Hemraj* is seen as a classic case of mistrial by media.²¹ The media had given its verdict much prior to the decision by the court. There were news reports published on the mornings of the hearing anticipating what would take place. The speculations were made headlines. Various theories on how the parents had murdered were published. The media coverage, which included salacious allegations against Aarushi and the suspects, was criticized by many. The Talwar family was demonised in various articles as immoral, decadent, resourceful and stone hearted. They were seen as guilty in the eyes of the media and the public. The prejudice was widespread and deep. The acquittal of the Talwars after the guilt wasn't proved 'beyond reasonable doubt' shows how, at times, media can act like an enemy to the accused.

¹⁹ Pennekamp v. State of Florida, (1946) 90 Law Ed 1295 (C), pg. 1313.

²⁰ State of Maharashtra v. Rajendra Jawanmal Gandhi: 1997 (8) SCC 386.

²¹ Dr. Rajesh Talwar And Another v. Central Bureau Of Investigation, 2013 (82) ACC 303.

Another most notable social media movement of recent times is the #MeToo Movement against sexual harassment where people from all background especially the women have come forward and opened up about their personal accounts of having been subjected to sexual harassment. These allegations have only been raised over social media and many a times no formal complaint is filed. In this scenario, trial by media again can serious harm to a person's reputation where there exists a doubt with regard to the credibility of such statements. The practice of trial by media has been condemned by the courts as it is believed that media often creates an atmosphere where not only fair trial becomes impossible, but also people assume the accused to be guilty irrespective of the verdict of the court. It has long lasting repercussions. Even if the person is acquitted, people's perception about him does not change and the person is unable to resume rest of his life.

ACTION AGAINST MEDIA TO CURB FAKE NEWS:

With a view to combat fake news, the Ministry of Information and Broadcasting in April 2018, announced that journalists involved in propagating fake news would lose their accreditation and the request for accreditation will be granted only if the journalistic ethics were adhered to.²² This statement, however was later retracted since it was subject to a lot of criticism.

In *Tehseen S. Poonawalla v Union of India*,²³ the Apex Court has blamed the circulation of fake news on social media for the acts of mob lynching among other things. It has further issued directions for designation of a Nodal Officer in each district for procuring intelligence reports about the people who are involved in spreading hate speeches, provocative statements and fake news. The Nodal Officer is required to hold regular meetings to discuss steps for prohibition of dissemination of offensive material through different social media platforms.

In the 200th Report²⁴ of the Law Commission on Trial by Media, recommendations have been made to address the issue of sensationalized news item and its negative impact on the administration of justice. The Law Commission has recommended making a law which

²² Akanksha Jain, *Journalists Propagating Fake News Will Now Risk Losing Accreditation As IB Ministry Amends Guidelines*, LIVE LAW, (APRIL 3, 2018 11:42 AM).

²³ *Tehseen S. Poonawalla v. Union of India*, (2018) 6 SCC 72.

²⁴ *200th Report on Trial By Media, Free Speech and Fair Trial under Criminal Procedure Code, 1973*, LAW COMMISSION OF INDIA, August 2006.

restricts the media from publication of any material prejudicial to the rights of the accused in a criminal proceeding immediately from the time of arrest to the duration of trial. It has further recommended that such publication should amount to criminal contempt of court under the Contempt of Court Act, 1971.

PROVISIONS TO CURB FAKE NEWS:

There is no specific law in India which deals with fake news. The Information Technology Act²⁵ enacted in the year 2000 was a special law aimed to address the needs of information technology advancements. However, the law was amended only once in the past 18 years i.e., in the year 2008 and it doesn't effectively address the recent rapid technological advancements. While the Indian Penal Code²⁶ enacted in the year 1860 has certain provisions to curb hate speech and incitement which can be used to punish the offenders of fake news.

To understand who is liable for dissemination of fake news, it is pertinent to note the elements in the spread of fake news through an online medium. These elements are i) the Content Creator, the person who actually creates the fake content. ii) The Content Forwarder, who shares the fake content and iii) the Internet Platforms. While prime facie mala fide intentions can be established against the Content Creator, the Content Forwarders are often merely unsuspecting users who believe in the veracity of the content received.

IPC Provisions

The people spreading fake news viz., the Content Creator and the Content Forwarder are generally punished under Sections 182, 211, 228. Section 182 talks about false information given to any public servant. It relates to giving information which he himself believes to be false, to a public servant with the intent to cause injury. Section 211 deals with the offence of making a false charge of an offence with the intent to cause injury.

Other important provisions regarding fake news in IPC are Section 500 and Section 505. Section 500 deals with punishment for defamation when the information is aimed at tarnishing the reputation of a person. Section 505 of the IPC deals with spreading of false and mischievous news intended to upset the public tranquillity.

²⁵ Here in after referred to as "IT Act".

²⁶ Here in after referred to as "IPC".

We have strong laws against defamation in India. Too strong, in fact, given that a charge of criminal defamation can stick even if the defamatory statement is true, if there is no “public good” in its publication.²⁷

The *Arvind Kejriwal Apology Show to Arun Jaitley* demonstrates just how difficult it is to make statements against someone else – if the statement is false, it would make it even easier to use our defamation laws to make the life of whoever published it a living hell.²⁸

False stories about judicial proceedings would be covered by contempt of court laws. False stories about Parliament and other legislative bodies would violate privilege.

Other provisions which indirectly deal with fake news are Sections 124A, 153A, 153B, 295A, 500, and 505 of the Indian Penal Code. Section 124A of the IPC deals with punishment for any form of speech as an act of sedition when it is aimed against the State. Section 153A punishes the offenses related to promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony. Section 153B of the IPC safeguards the interests of “class of persons” and “national integration” by providing punishment against imputations and assertions prejudicial to national integration. Section 295A deals with actions that are intended to outrage religious feelings of any class by insulting its religion or religious beliefs.

IT Act Provisions

Under the Section 67 of IT Act, spreading of fake news is punishable with a term which may extend to five years and with fine which may extend to one lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to ten years and also with fine which may extend to two lakh rupees. Section 67A of IT Act has similar provision for punishing transmission of material containing sexually explicit act.

Under Section 69A of the Information and Technology Act, 2000 the Central Government has the power to issue directions for blocking for public access of any information through any computer resource for any valid reason. Therefore, fake content can be regulated and blocked.

²⁷ Section 499, IPC 1860.

²⁸ Arun Jaitley v Arvind Kejriwal 2018.

Other legal resources available to people affected by fake news

Free publication in India flows from the fundamental right to freedom of expression as enshrined under Article 19 of the Constitution.

Complaints can be lodged with the News Broadcasters Association (NBA) which represents the private television news and current affairs broadcasters. It is self-regulatory in nature and probes complaints against news broadcasters in a fair manner. There is another body called the Indian Broadcast Foundation (IBF) which was created in 1999 to look into the complaints against contents aired by 24x7 channels. Complaint against any broadcaster can be filed in English or Hindi to IBF online or offline for promoting smoking, abuse or any violent action. Then there is the Broadcasting Content Complaint Council (BCCC). A complaint relating to objectionable TV content or fake news can be filed to the Broadcasting Content Complaint Council if a broadcaster incites communal hatred, encourages violence against women or child abuse, airs contents having gory scenes of violence, promotes superstition or consumption of drugs and other contraband substances.

There are some statutory bodies too. According to the Press Council Act,²⁹ it can warn, or censure the newspaper, the news agency, the editor or the journalist or disapprove the conduct of the editor or the journalist if it finds that a newspaper or a news agency has offended against the standards of journalistic ethics or public taste or that an editor or a working journalist has committed any professional misconduct.

LIABILITY OF SERVICE PROVIDER:

To curb the process of spreading fake news, the IT Act was amended in the year 2008³⁰ to provide shelter to intermediary internet platforms from the actions taken by users without the interference of such internet platforms.

Under section 79 of the IT Act, an intermediary is someone i) who does not select the content, ii) does not modify the content, iii) does not select the viewer of the content, iv) nor does it select the recipient of the content. If the platform satisfies these four conditions, it is

²⁹ Press Council Act, 1978.

³⁰ Information Technology Act, 2000, amended in 2008.

an intermediary on the Internet and can take the defence of *safe harbor principle*³¹ to absolve itself from the liability.

Internet platforms from Facebook to Pinterest, Twitter to Whatsapp clearly fall within the ambit of safe harbor protection available to intermediaries. However, merely being just an intermediary does not absolve the intermediary from liability. The section³² also provides that if upon receiving actual knowledge or on being notified that any information, data or communication link residing in or connected to a computer resource controlled by it is being used to commit an unlawful act and it fails to expeditiously remove or disable access to that material, the intermediary will lose his immunity and cannot take the defence of safe harbour principle.

Under the Information Technology (Intermediaries Guidelines) Rules 2011 ('Intermediary Rules') the intermediary shall have to remove any objectionable content within 36 hours from its servers if the objectionable content is brought to the notice of the intermediary. Failure to comply with Intermediary Rules can make the intermediary be liable as the content provider.

While the Intermediary Rules specify a grievance redressal officer to be appointed, the location of such officer is not specified. Taking benefit of this ambiguity, the grievance redressal officers of several online intermediary platforms are often located outside India. Whatsapp, the leading messaging platform until recently has no representative in India. The Facebook owned messaging platform was forced to appoint a grievance redressal officer located in India in the last week of September 2018.

Can Whatsapp Group Admins be considered as an intermediary?

There is no clear provision in the Indian law in this matter. What is generally used by many experts and commentators is the 2016 Delhi High Court Judgement in *Ashish Bhalla v. Suresh Chawdhary & Ors*³³, wherein the judge stated that "I am unable to understand as to how the administrator of a group can be held liable for defamation, even if any, by the statements made by a member of the group. To make an administrator of an online platform liable for defamation would be like making the manufacturer of the newsprint on which defamatory statements are published liable for defamation"

³¹ Supra 16.

³² Sec 79, Information Technology Act, 2000.

³³ Ashish Bhalla v Suresh Chowdhary & Ors, 2016 SCC OnLine Del 6329.

Calling a group admin an intermediary is defiant of Section 2(w) of the IT Act, 2000. If one were to absolutely think of online spaces as restricted modes of communication with a group admin doing the actual job of receiving and sending the communication, perhaps then this wild assumption may be right. The legislators' opinion and intent in drafting Section 2(w) of the IT Act are clear from the text itself- there is a degree of control or at least technology enablement at their end which makes them intermediaries for facilitation in the true sense.

But recently, to curb fake news, Whatsapp has launched new safety features in addition to a label which identifies forwarded messages i.e., who is actually sending those messages and the group admins can now regulate the conversations of the groups.³⁴

CONCLUSION:

In the end, it can be stated that there should be certain stringent provisions in IT Act for preventing the misuse of social media by the communal forces. To some, social media may appear a progressive and positive platform but, it cannot be denied that it can have a negative impact as well. Freedom of speech and expression is our fundamental right but misuse of this freedom is not acceptable. Media trial also plays a crucial role in keeping a close watch over the investigations and activities of police administration and executive. But there must be a reasonable self-restriction and it should not enter into the ambit of the court. It is the duty of the court to punish the ones who commit wrong. Media while discharging its moral responsibility to portray the truth to the people should not disrespect the fundamental laws. Also, there should be an amendment in Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 which makes no mention of allegations made on social media. Strict laws should be made in Indian Penal Code and IT Act to deal with fake news.

³⁴ Anonymous, *Mob lynching: Whatsapp COO apprises govt. steps taken to curb fake news*, TIMES OF INDIA Jul 24, 2018.