

A Socio-Legal Study of Fake News in the Digital Age: Issues and Challenges

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Abstract

With the development of Internet technology and social media platforms in the recent times, fake news is rapidly spreading in the contemporary society. The proliferation of a large amount of inaccurate information and the dissemination of deceptive content on social media platforms not only elicit public apprehension and jeopardize the physical and psychological well-being of individuals, but also present significant obstacles to the maintenance of effective governance and social stability. According to National Crimes record Bureau (NCRB), there was a significant rise of 214% of cases relating to fake news in the pandemic year i.e. 2020, which resulted in undermining policy responses and increasing distrust and concern among citizens. The dissemination of such fake news poses a significant threat to public safety, demanding a comprehensive legal analysis to devise effective strategies for mitigation.

This paper delves into the multifaceted dimensions of fake news, factors leading to spread of such news and impact of such misinformation on the society at large. The paper finally explores the various aspects of striking a balance between preserving freedom of speech and the paramount need to preserve public safety.

Keywords: fake news, public safety, social media, freedom of speech

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Introduction

In the year 2018, the village of Panjuri Kachari in Assam experienced a particularly horrific incident of mob violence resulting in death. The widely circulated smartphone video depicted two individuals covered in blood, desperately begging for their lives, only to meet their demise shortly thereafter. Two individuals hailing from Guwahati, the capital of Assam, a state in northeastern India, were fatally assaulted by an enraged group of villagers armed with bamboo sticks, machetes, and rocks. The attackers mistakenly believed that the victims were child-lifters. The case was deliberated upon across many media platforms on the manner in which rumours disseminated on Facebook and WhatsApp in India resulted in the demise of two individuals. In the same year, over 20 individuals fell victim to incidents of lynching as a result of the rapid dissemination of news through Facebook and WhatsApp. A minimum of 18 individuals lost their lives due to the violence instigated by the dissemination of rumours or fake news on WhatsApp in 2018.

Social media has revolutionized the dissemination of information, resulting in a dynamic environment for communication and connectivity. Nevertheless, this progression has also engendered a disconcerting phenomenon - the spread of fake news or misinformation. The intentional spread of false information, known as fake news, presents a substantial danger to the safety of the public and the overall welfare of the society. The proliferation of inaccurate information and the dissemination of rumours and deceptive content on social media platforms not only elicit public apprehension and jeopardize the physical and psychological well-being of individuals, but also present significant obstacles to the maintenance of effective governance and social stability. The spread of fake news in contemporary society poses a significant threat to public safety, demanding a comprehensive legal analysis

to devise effective strategies for mitigation. It would be interesting to understand the multifaceted dimensions of fake news, exploring its origins, dissemination mechanisms, and, critically, the ensuing implications for public safety through a legal lens. Drawing on case studies and contemporary examples, the paper examines real-world scenarios where fake news has had tangible consequences on public safety, such as the spread of false information during public emergencies, health crises, and instances of civil unrest. By analyzing legal frameworks and precedents, the research seeks to elucidate the existing gaps in legislation and jurisprudence that may hinder the effective prosecution of those who intentionally manipulate information to the detriment of public safety.

Fake news encompasses a wide range of false information intentionally created to deceive the readers or the recipients. This can include misinformation, disinformation, and malinformation. The rapid dissemination of such content on social media platforms has the potential to incite panic, influence public opinion, and even lead to real-world consequences, affecting public safety. False information circulated on social media regarding lockdown measures, transportation, and availability of essential services during the COVID-19 pandemic. This led to panic among migrant workers, causing mass migration on foot, posing health and safety risks.

A significant aspect of the responsibility of facilitating public information about the functioning of the Government of India involves countering the dissemination of fake, false, and misleading information. The Press Information Bureau (PIB), the nodal agency of the Government of India to ensure accurate dissemination of information on government schemes, policies, programmes and initiatives to the print and electronic media, has been instrumental in carrying out

this function since long through wide distribution of accurate and reliable information, issuing rebuttals, etc. In the age of social media where information spreads rapidly, the spread of fake and manipulated information, especially related to the functioning of a democratically elected Government, is dangerous to society as it has the potential to intensify social, economic and political conflicts, weaken public trust in democratic institutions, and even endanger life of the citizens.

Spreading misinformation or disinformation is a criminal offence under the Indian Penal Code, 1860 and the Information Technology Act, 2000. With the replacement of the Information Technology (Intermediary Guidelines) Rules, 2011 (framed under Section 87(2) of the Information Technology Act, 2000) by the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 further amended in 2023, it has become very pertinent to critically examine the role of the existing regulatory framework in combating misinformation and fake news while imposing obligations on the intermediaries.

2. Dissemination of Fake News on Social Media and its impact on Public Safety

Social media platforms provide a quick and easy means for the rapid spread of information. False information can be shared widely within seconds, reaching a large audience before fact-checking can occur. Besides, social media algorithms may contribute to the prevalence of fake news by promoting content based on user preferences, creating filter bubbles that reinforce existing beliefs and limit exposure to diverse perspectives. People tend to share information that aligns with their beliefs or emotions, contributing to the virality of fake news. The social aspect of sharing can lead to the rapid and widespread dissemination of false information. Some individuals or groups create fake news for financial gain, leveraging the advertising revenue generated by the increased traffic to their content. Hence, social media users may be more susceptible to fake news that confirms their existing beliefs, leading to the reinforcement of misinformation within online communities.

During crises or emergencies, the spread of fake news can hinder effective responses by providing inaccurate information about the situation, evacuation procedures, or safety measures. False information related to health, such as misleading medical advice or fake cures, can have severe consequences, potentially leading to misguided treatments and compromised public health outcomes. Fake news, especially when it involves threats or imminent danger, can induce fear and panic among the public, leading to unnecessary stress and chaos. The dissemination of fake news erodes trust in authoritative institutions, including government agencies and public health organizations, making it challenging to convey accurate information during crises. Misleading information can influence public behavior, leading to actions that may compromise safety, such as avoiding necessary vaccinations or refusing to follow recommended safety protocols. False information regarding security threats or geopolitical events can have implications for national security by influencing public perception and potentially leading to misguided responses. Additionally, Fake news can create challenges for law enforcement by spreading false accusations,

inciting violence, or hindering investigations, impacting the overall safety and security of communities.

Furthermore, the curation of news to align with our preconceived views and perspectives, amplified by the vast reach of social media platforms, not only affects our ability to think critically, but also fundamentally alters the dynamics of our social lives. The display of a single banner on a double-decker in London claiming that Britain would generate over 350 million pounds per week upon exiting the European Union (EU), was widely regarded as a compelling factor influencing individuals to vote in support of the nation's withdrawal from the EU. However, it is important to note that Britain's highest annual net contribution to the EU, which occurred in 2014, amounted to less than £100 million. The British citizens cast their votes in favour of a move that is highly likely to significantly change their country's international relations despite being heavily swayed by false information.

Fake news not only influences significant social and political choices but also serves as a means to amplify social discord and disseminate communal disharmony. Communal unrest and violent protests arose in Muzaffarnagar, a district in the state of Uttar Pradesh, resulting in the unfortunate death of 41 innocent villagers and onlookers. A video depicting a mob allegedly from one community engaging in the act of lynching two boys from another community gained significant prominence on WhatsApp and Facebook, thus inciting aggressive reactions from communal groups, who indulged in destroying households in the vicinity. Subsequently, it was discovered that the video originated from a neighbouring country and was disseminated only with the intention of instigating disturbances. This is but one instance among many others where false information and unverified data were employed to promote personal agendas. However, the implications of the dissemination of unverified information extend beyond the mere limitation of human critical thinking. They also encompass the manipulation of political decisions and the instigation of communal riots. These three profound and destructive social consequences emphasize the need for revisiting the regulatory measures. These occurrences highlight the importance of regulating the dissemination of information on social media and emphasize the necessity of considering existing legislation to create a fair and authentic digital environment.

Unlike traditional media, social media lacks stringent editorial oversight, allowing misinformation to circulate without proper verification or fact-checking. It is also worth mentioning that anonymous accounts and automated bots on social media can be used to amplify fake news, making it challenging to trace the origin and intent behind the dissemination of false information.

3. Legal Framework for combating Fake News

Social media platforms have an unrestricted space unlike traditional media outlets. Users have the freedom to express their opinions and speech on these platforms, making it difficult to enforce laws that restrict their freedom. Consequently, it is nearly impossible to completely eliminate fake news from social media as the flow of information cannot be entirely controlled. However, this does not mean that regulating the platform is out of the question.

An intricate matter arises about the implementation of anti-disinformation laws by governments to establish criminal liability for those involved in disseminating false information. Proponents of implementing anti-disinformation legislation, which would make spreading disinformation a criminal offence, contend that the freedom of expression does not encompass the freedom to disseminate false or misleading information. Conversely, anti-disinformation legislation could potentially infringe upon freedom of expression and be considered a kind of censorship.

3.1. Legal framework regulating fake news in various countries:

Various countries have criminalized disinformation/misinformation due to the differing norms, ethical standards, and ideals about the balance between civil rights, national security, and civilian protection in different global contexts. In 2016, China enacted legislation that criminalized dissemination of materials that had the potential to “subvert economic and social stability.” In order to enhance the control over potential dissemination of fake news, a legislation implemented in 2017 additionally mandates that social media platforms are obligated to exclusively distribute news content originating from officially registered news outlets. In China, a new app has been introduced that enables users to report individuals who may be disseminating false information.

The United States relies on the First Amendment to protect free speech but has been exploring regulatory measures. Section 230 of the Communications Decency Act provides liability protection for online platforms. However, discussions continue about potential amendments.

Turkey enacted an anti-disinformation legislation in 2022. According to Article 29 of the law, those who disseminate inaccurate information on the internet regarding Turkey's security with the intention of instilling fear and disrupting public order will be subject to a prison term ranging from one to three years. The number of sentences can be augmented if the dissemination of disinformation occurs via anonymous accounts.

The European Union has officially embraced the Code of Practice on Disinformation, urging online platforms to proactively combat the dissemination of false information on a voluntary basis. The General Data Protection Regulation (GDPR) governs the protection of data, while the European Union (EU) is currently contemplating the Digital Services Act to tackle issues related to online harm.

Singapore introduced the Protection from Online Falsehoods and Manipulation Act (POFMA) to combat fake news. POFMA grants authorities the power to issue correction orders and take down false content.

In 2022, Russia lawmakers implemented a law imposing imprisonment of up to 15 years for spreading intentionally "fake" news about the military. They also impose fines for public calls for sanctions against Russia.

3.2. Development of legal framework on fake news in India:

With the significant rise of incidents of fake news, India is developing regulations to combat fake news, with draft rules for intermediaries and digital media. The

Information Technology Act, 2000 (along with the amended versions), empowers the government to issue directions for content removal. The Government of India recently issued an advisory to social media intermediaries to identify misinformation and deepfakes, remove any such content when reported within 36 hours of such reporting and ensure expeditious action, well within the timeframes stipulated under the IT Rules 2021, and disable access to the content / information. Intermediaries were cautioned that any failure to comply with the applicable provisions of the IT Act and Rules would invoke Rule 7 of the IT Rules, 2021 and could result in the organization forfeiting the protection provided under Section 79(1) of the Information Technology Act, 2000.

“It is a legal obligation for online platforms to prevent the spread of misinformation by any user under the Information Technology (IT) rules, 2021. They are further mandated to remove such content within 36 hours upon receiving a report from either a user or government authority. Failure to comply with this requirement invokes Rule 7, which empowers aggrieved individuals to take platforms to court under the provisions of the Indian Penal Code (IPC). It is imperative that platforms take proactive measures to combat this threat.”

In a recent development, India has expressed concerns about the legal responsibility of WhatsApp group administrators, specifically citing cases where administrators have been arrested. A joint order issued by the District Magistrate and Senior Superintendent of Police of Varanasi in 2017 said that if any factually incorrect, rumour, or misleading information was published on a social media group, the group administrators could be subject to filing a FIR. The State Cyber Crime of Maharashtra (2018) acknowledged the difficulty posed by the authorities in monitoring WhatsApp material due to the platform's end-to-end encryption. Imposing legal responsibility on WhatsApp group admins for the actions of another individual is unconstitutional and a clear abuse of criminal law. Distributing a cryptic message with the intention of causing hostility or animosity is a punishable offence under Section 505 of the Indian Penal Code (Singh, 2018), and it is not eligible for bail. It is not feasible to hold group moderators accountable for their failure to monitor fake news and hate speech by deleting such posts from WhatsApp due to additional legal consequences. If the administrator deletes such content, it would constitute the destruction of evidence, which is subject to punishment under Section 204 of the Indian Penal Code, 1860.

3.3. Need for incorporation of certain factors in legal framework

3.3.1. Incitement to Violence and Public Order: Legal frameworks should address instances where fake news on social media contributes to the incitement of violence or public disorder, ensuring the protection of public safety.

3.3.2 Emergency Response and Crisis Communication: Laws need to be analyzed to ensure effective emergency response and crisis communication, particularly in situations where the spread of false information can impede safety measures and response efforts.

3.3.3. Health and Safety Regulations: Legal analysis is crucial for developing and enforcing regulations that safeguard public health, ensuring that fake news related to health and safety is appropriately addressed.

3.3.4. Liability for Harm Caused: Legal frameworks should consider establishing liability for individuals or entities that knowingly spread false information leading to harm, whether physical or psychological, to the public.

3.3.5. Dissemination During Natural Disasters: Specific legal measures may be necessary to address the dissemination of fake news during natural disasters, as false information can affect evacuation efforts and emergency response strategies.

3.3.6. Protection of Vulnerable Populations: Legal analysis should focus on protecting vulnerable populations, such as children or the elderly, from the potential harms caused by fake news, ensuring their safety and well-being.

3.3.7. International Collaboration for Public Safety: Given the global nature of social media, legal frameworks should facilitate international collaboration to address fake news that poses threats to public safety across borders.

3.3.8. Defamation and Libel Laws: Indian legal frameworks should address instances of fake news leading to defamation, incorporating measures to hold individuals or entities accountable for false and damaging statements.

3.3.9. Election Laws and Electoral Integrity: Legal provisions need to be strengthened to combat the impact of fake news on elections, safeguarding the integrity of the democratic process in India.

3.3.10. Cyber security and Data Protection: Given the rising incidents of cyber threats associated with fake news, Indian laws should be updated to enhance cyber security measures and protect individuals' privacy from malicious activities.

To conclude, there is a need for legal analysis to determine the extent to which social media platforms should be held responsible for the spread of fake news, necessitating discussions on effective content moderation and liability. Besides, given the global nature of fake news, Indian legal frameworks must address jurisdictional challenges and promote international cooperation to combat misinformation that transcends national boundaries. Indian laws should consider the unauthorized use of intellectual property, trademarks, or copyrighted material in fake news, and legal mechanisms should be explored to address such instances.

4. Challenges in Combating Fake News

4.1. Rapid Dissemination on Social Media: The speed at which fake news spreads on social media platforms poses a significant challenge, making it difficult to address and contain misinformation before it reaches a wide audience.

4.2. Encryption and Anonymity: Encryption technologies and the ability to spread information anonymously contribute to the challenge of tracing the source of fake news, hindering efforts to hold responsible parties accountable.

4.3. Lack of Effective Legislation: In some jurisdictions, including India, there may be gaps or inadequacies in existing legislation to address the unique

challenges posed by fake news on social media, making enforcement challenging.

4.4. Cross-Border Nature of Fake News: Fake news often transcends national borders, requiring international cooperation for effective regulation and enforcement. Variations in legal standards and practices among countries add complexity to this challenge.

4.5. Technological Advances in Deep fakes: The rise of deepfake technology, which allows the creation of realistic-looking fabricated content, poses a new challenge in distinguishing between genuine and manipulated information.

4.6. Limited Media Literacy:

Insufficient media literacy among the public contributes to the challenge, as individuals may struggle to discern credible sources from misinformation, leading to the inadvertent spread of fake news.

4.7. Political Manipulation and Propaganda: Fake news is often weaponized for political purposes, with misinformation campaigns aimed at influencing public opinion and destabilizing democratic processes. Political motivations can complicate efforts to address the issue effectively.

4.8. Challenges in Content Moderation: Social media platforms face difficulties in developing and implementing effective content moderation policies, striking a balance between freedom of expression and the need to combat fake news.

4.9. Technological Challenges

The advancement of deepfake technology poses a significant challenge as it allows for the creation of highly convincing fake content, making it difficult to discern real from fake. The use of automated bots to amplify and spread fake news rapidly complicates efforts to trace and mitigate misinformation.

4.10. Jurisdictional Challenges

Fake news often transcends national borders, creating difficulties in enforcing regulations and collaborating with other countries. Varying legal frameworks globally make it challenging to create unified regulations to combat fake news effectively.

4.11. Social Media Platforms

Social media algorithms can unintentionally amplify fake news by promoting sensational content, contributing to the rapid spread of misinformation. The lack of strict liability for social media platforms may hinder effective regulation and enforcement.

4.12. Information Verification

Rapid dissemination of information makes it challenging to verify the accuracy of news before it spreads widely. Besides, the rise of citizen journalism introduces challenges in distinguishing reliable sources from unreliable ones.

4.13. Cultural and Linguistic Diversity

India and many other countries have diverse linguistic landscapes, making it challenging to monitor and combat fake news in various languages.

4.14. Government Regulation and Freedom of Speech

Striking a balance between regulating fake news and upholding freedom of speech poses a challenge for governments. Government interventions may be susceptible to misuse, leading to concerns about censorship and political bias.

5. Social Media Platforms and Accountability

Social media platforms establish terms of service outlining acceptable content. Violations may lead to content removal or account suspension. Platforms like Facebook and Twitter have community standards that define the rules users must follow, including policies against misinformation. Platforms employ algorithms and human moderators to identify and remove fake news. Fact-checking partnerships are also established. Besides, users can report content, aiding platforms in identifying and addressing fake news. However, this relies on user vigilance.

5.1. Legal Responsibilities of Social Media Platforms

In the United States, Section 230 of the Communications Decency Act provides platforms with immunity from liability for user-generated content. It encourages self-regulation. Intermediary liability refers to the legal responsibility of online platforms for the content they host. It involves determining to what extent platforms are accountable for user-generated content. Many jurisdictions provide platforms with intermediary liability protection to encourage innovation and freedom of expression. However, balancing freedom of expression with the need to combat misinformation poses challenges. Some argue for stricter liability to hold platforms accountable for harmful content. Platforms cooperate with law enforcement and regulatory authorities to address legal concerns and share information about users involved in spreading fake news. On many occasions, such platforms receive requests from governments to remove content or provide user data, raising questions about privacy and censorship.

5.2. Ethical Considerations

Ethical considerations involve making algorithms transparent to users and addressing biases that may influence content visibility. Platforms must balance the interests of users, advertisers, and society while upholding ethical standards in content moderation.

6. Legal measures to enhance accountability of Social Media Platforms in combating Fake News

Efforts have been made from time to time to amend the Information Technology Act, 2000, to enhance the legal framework for holding social media platforms accountable for the spread of fake news. There is a need for clarifying and potentially amending intermediary liability provisions to balance freedom of expression with the responsibility of platforms to curb misinformation. Additionally, the following measures may be considered for enhancing the accountability of social media platforms in combating fake news:

6.1. Worldwide International Collaboration

Establishing a global task force or consortium involving governments, tech companies, and civil society may lead to collaboratively address cross-border challenges posed by fake news.

Encouraging international agreements for the sharing of information related to fake news, enabling coordinated responses across jurisdictions may be a step forward to achieve the same.

6.2. Standardizing Reporting Mechanisms

Proposals may be put forward for standardizing reporting mechanisms across social media platforms to streamline the process of identifying and reporting fake news. A global database may be created to track reported

instances of fake news, facilitating coordinated action by authorities and platforms.

6.3. Regulation on Algorithmic Transparency

Regulations may be introduced that require social media platforms to disclose and explain the algorithms governing content visibility to ensure transparency and accountability. There should be regular third-party audits and assessments of algorithms to identify and rectify biases contributing to the spread of misinformation.

6.4. Public Awareness and Digital Literacy

Educational programs may be implemented to enhance digital literacy, educating users on identifying and critically evaluating information shared on social media. Public awareness campaigns need to be launched to inform users about the consequences of sharing fake news and the importance of responsible online behavior.

6.5. Stricter Content Moderation Policies

Platform policies must be revised with clearer definitions of fake news and misinformation, accompanied by stricter content moderation policies and consequences for violations. Such platforms to take proactive measures to identify and remove potentially harmful content before it gains widespread circulation.

The Indian government has expressed the need for stricter regulation of social media platforms and increased cooperation with these platforms to address misinformation. The ministry of Electronics and Information Technology is learned to have asked social media platforms like Tiktok, Facebook etc. to remove rogue messages spreading misinformation and weakening the government efforts to fight against the coronavirus.

7. Conclusion: The way forward

Addressing the complex issue of fake news for public safety requires a multifaceted approach involving legal, technological, and educational interventions. Despite legal responses, challenges persist in effectively curbing the spread of fake news due to the rapid nature of social media and the difficulty in tracing the origin of misinformation. Collaboration among policymakers, legal professionals, and social media platforms, both nationally and internationally, is crucial to effectively combat misinformation and safeguard public safety in the digital age. The following recommendations may be put forwarded with regard to specific stakeholders involved directly or indirectly in the process of dissemination of fake news:

7.1. Policy Makers

- ☐ Strengthen existing laws and consider amendments to address the challenges posed by fake news.
- ☐ Foster international collaboration to create unified standards and response mechanisms.
- ☐ Invest in public awareness campaigns and digital literacy programs to empower users.

7.2. Legal Professionals

- ☐ Advocate for clear definitions and regulations on fake news within existing legal frameworks.
- ☐ Collaborate with technology experts to develop effective legal responses to emerging technological challenges.
- - Work towards global standardization of reporting mechanisms and information sharing.

7.3. Social Media Platforms

- ☐ Enhance content moderation policies with a focus on algorithmic transparency and accountability.
- ☐ Collaborate with governments, law enforcement, and civil society to address challenges in a coordinated manner.
- ☐ Implement proactive measures to identify and remove harmful content swiftly.

7.4. Future Research and Development

- ☐ Research on improving transparency and accountability in algorithms to reduce biases in content visibility.
- ☐ Development of auditing tools and assessments to ensure fairness in algorithmic decision-making.

7.5. Cross-Border Collaboration:

- ☐ Explore models for enhanced international collaboration in addressing cross-border misinformation.
- ☐ Develop frameworks for standardized reporting mechanisms and information sharing globally.

7.6. Legal Frameworks and Intermediary Liability:

- ☐ Examination of the impact of stricter intermediary liability regulations on the behavior of social media platforms.
- ☐ Research on the development of legal frameworks that balance freedom of expression with platform responsibility.

7.7. Technological Solutions

- ☐ Development of advanced technologies to detect and counter deepfakes and automated bots.
- ☐ Research on innovative approaches, such as block chain, for securing the integrity of information shared on social media.

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