

## MANAGING INFODEMIC DURING PANDEMIC THROUGH SOCIAL MEDIA: REGULATORY MEASURES

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*Abstract*—The freedom of speech and expression is the most enshrined principle of the Constitution of a democratic State. The technological development in general and cyberspace in specific has equipped netizens to explore and exploit the above right to its fullest extent breaking the traditional barriers of physical borders. The sudden empowerment with such power to voice one's opinion incite amateur netizens to express their view on any issue in the regulatory background of non-universal and non-uniformed normative standards. This gives rise to the uncontrolled proliferation of fake news in cyberspace. The outbreak of Covid19 has shown an exponential growth in fake news, misinformation, disinformation among people relating to the origin of virus, nature of virus, curative diets, supplement for the cure, and protection from the virus. Social media has been recognized as important tool for spread of fake news. Dissemination of fake news, misinformation, or disinformation has severe consequences on the State's public health, social well-being, social fabric, political and economic interest. Appreciating the nature and impact of fake news on society and State around the globe, the stakeholders are making legislative and non-legislative efforts to control the rise of fake news and provide adequate and accurate news/information to the public. Globally States like Malaysia, Russia, Singapore etc., have introduced various legislative measures to effectively regulate the dissemination of fake news on social media within their territorial boundaries. So far India has not legislated any specific separate legislation of such nature, though the State has witnessed waves

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*of instances of infodemic/fake news nature on various online platforms. In the above background the paper is an attempt to identify and highlight the legislative and non-legislative measures in India to deal with the fake news during this pandemic.*

**Keywords:** INFODEMIC, Fake News, Information Technology Act, Covid19, Due Diligence

## I. INTRODUCTION - RISE OF INFODEMIC

*“We are not fighting an epidemic; we are fighting an infodemic.”*

Referring to the astounding rise of false information at online and offline platforms globally, Director General of World Health Organisation, Tedros Andhanom Ghebreyesus made the famous above-quoted statement in mid-February 2020.<sup>1</sup> The timing, context, and technology involved in disseminating information make the above statement an extraordinary one for all to realize. The term ‘*infodemic*’ is composition of word *information* and *epidemic*. Oxford dictionary defines *infodemic* as “an excessive amount of information about a problem that is typically unreliable, spreads rapidly, and makes a solution more difficult to achieve.”<sup>2</sup>

The practice of fake news, misinformation, or disinformation is not new to human civilization. History is witnessed of many such instances when false information was cultivated and harvested intentionally by powerful and resourceful ones. The intrinsic human tendencies to lie for their benefit at the cost of other losses are natural gifts to human beings. The internet in general and social media in particular have amplified the magnitude of the menace of fake news at a global level with severe socio-economic and political implications.

There are various forms and channels through which fake news is circulated and made viral. Right from news coverage by journalists on traditional print or digital media to upload on the social media platform with misleading

<sup>1</sup> Tedros Andhanom Ghebreyesus at Munich Security Conference on February 15, 2020 (April 10, 2021, 10.15 a.m.), <<https://www.who.int/director-general/speeches/detail/munich-security-conference>>.

<sup>2</sup> Oxford Dictionary, (April 10, 2021, 10.32 a.m.), <<https://www.lexico.com/definition/infodemic>>.

and alarming sensational headlines, fake news gets more robust and makes the reader aware of it. In each form and platform, it is potentially manipulated or fabricated intentionally with ulterior objectives. Fake news is enough to create fear factors or conflicting opinions about the genuine solution. There are many dangers or consequences of fake news of social, economic, and political. However, two prominent dangers to society are that it can reduce the trust in all information available on a variety of sources. Secondly, this may result in less consumption of news overall, resulting in less participation. People will only pay attention to reliable sources as per their understanding, resulting in political polarization.

## II. TYPES OF FAKE NEWS DURING PANDEMIC

Globally the year 2020 started with the pandemic of Covid19. Initially, the world took time to understand the impact of the covid19. Due to limited scientific investigation and research & development on the disease, State delayed its response. Taking advantage of absence of scientific knowledge, the fake news industry started manufacturing misinformation, disinformation, etc. India also witnessed various kinds of fake news during this time till now. While certain fake news is common in nature according to global standards, some are unique to our identity and diversity. Fake news can be analyzed from various perspectives. For our understanding, we categorized it as pre-vaccination fake news and post-vaccination fake news.

During the pre-vaccination of Covid19, fake news was focused on following issues;

1. Regarding origination of Covid19. It was targeted to Wuhan City of China in the scientific laboratory or animal market. The authentic international report is still pending.
2. Conspiracy theory of Covid19 as biological weapon.
3. Covid19 is a bacterial infection.
4. Some specific religious group responsible for the spreading of covid19.
5. Remedy from Covid19 possible through traditional medicine without any scientific justifications.
6. Discouraging appropriate protective measures as health hazards.
7. Quality of mask and its effectiveness.
8. Effectiveness of Cow dung and urine in prevention of Covid19.

Post-vaccination, the trend of fake news was with regards to;

1. Questioning and doubting the effectiveness of vaccination.

2. The frivolous claim of wrong chemical components/Material used in the vaccination
3. Adverse side effects of the vaccinations in males or female leading to infertility.
4. Conspiracy theory of creating one world and one system.

### III. REASONS FOR FAKE NEWS

In the last few years, there has been a rise in the fake news industry from the time of social media. A distinction has to be created between fake news and misinformation. While fake news is intentional, misinformation can be innocent. Constitutional fundamental rights of freedom of speech and expression allow every citizen to express their opinion with the rider of reasonable restrictions of public order, decency, morality, defamation, incitement of offence, sovereignty, and State integrity.<sup>3</sup> Accordingly, everyone has the right to analyze and express their choice of topic, form, and format as per their understanding. The strength of a democratic state is to have divergent constructive views. Till the time the opinion is reasonable and constructive, it is fair use of the right. Supreme Court rightly recognized the limits of freedom of speech and expression in the famous case of *Shreya Singhal v. Union of India*<sup>4</sup>. The apex court categorized the freedom of speech and expression into three categories i.e., discussion, advocacy and incitement. It held that;

“Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of right, and the law may curtail the freedom only when a discussion or advocacy amounts to incitement.”

However, for the above rationale, the statement or news has to be true to the understanding of the originator. If the originator creates false news intentionally with the ulterior motive for wrongful gain, then it is not to be covered under freedom of speech and expression. The rise in fake news can be attributed to the falling ethical and moral values; absence of professionalism in reporting the real or non-factual incidents; absence of responsible editorial standards & filtration; political affiliation of the originator; absence of an effective regulatory mechanism to govern or regulate the fake news etc.

### IV. CONTROLLING MECHANISM

As discussed above, the nature of social media and fake news is dynamic. Therefore, it is not possible to regulate or control the infodemic effectively

<sup>3</sup> India Constitution. Art. 19.

<sup>4</sup> *Shreya Singhal v. Union of India*, (2013) 12 SCC 73.

with regulatory measures only. It requires collective measures such as regulatory measures on the part of the State, technical measures on the part of the technological giants/social media/intermediaries, and due diligence on the part of the individuals. It is the collective responsibility of all the stakeholders i.e., State, intermediaries, and consumers, to take specific action against fake news and discourage its dissemination.

### A. Regulatory Measures

The cross-border nature of social media makes the issue of infodemic a serious one. This characteristic of cyberspace poses a technical problem for the State to regulate or control any wrongdoing from other territories. In the absence of any international uniformity of agreement on the issue, it is one of the bottlenecks in creating any effective regulatory mechanism in controlling cross-border infodemic. International conventions like Budapest Convention on Cybercrime, 2000<sup>5</sup> also is silent on the issue of fake news. Infodemic originating from one territory can cause a severe impact on receiving States. To deal with it effectively, a bilateral or multilateral treaty may be a viable option.

Nationally, India has no specific legislation on the issue; however certain provisions of the already existing laws can be made use of.

**Constitution of India:** The freedom of speech and expression is the cornerstone of Constitution of India. The fundamental right is the heart and soul of free India. Article 19 of the Constitution guarantees all citizens the right to express in any medium of expression i.e., digital or non-digital medium. The rights are sacrosanct as it is the litmus test of a democratic state.<sup>6</sup> The Supreme court in the landmark case of *Kesavananda Bharati v. State of Kerala*<sup>7</sup> has defined it as the basic structure of the Constitution, making it fundamental to the Indian society. State cannot reduce the importance of the rights under any pretext except Article 19(2)<sup>8</sup> which permit the state to restrict the right to freedom of speech and expression on nine grounds. Therefore, the State can always control the fake news of such above nature by specific legislation. However, such legislations should not be vague in nature. The court can always

<sup>5</sup> Ch. II of the International Convention on Cybercrime, 2000, deals with various kinds of Cybercrime such as illegal access, illegal interception, data interference, system interference, misuse of devices, computer related forgery and frauds, infringement of copyright and related rights, etc.

<sup>6</sup> The UN Charter and International Covenant on Civil and Political Rights also makes this right of freedom of speech and expression a fundamental one. India being founding member and member of UN charter and International Convention is committed to promote the freedom of speech and expression.

<sup>7</sup> *Kesavananda Bharati Sripadagalvaru v. State of Kerala*, (1973) 4 SCC 225 : AIR 1973 SC 1461.

<sup>8</sup> Indian Constitution, Art. 19(2) restrict the fundamental right of freedom of speech and expression on the grounds of national security, sovereignty of state, friendly relation with the States, defamatory, public order and contempt of court.

evaluate the constitutional validity such legislation/provision. In the landmark case of Shreya Singhal<sup>9</sup> relating to constitutional validity of section 66A of the Information Technology Act, 2000, the Supreme Court held that the language of section 66A does not differentiate between *mere discussion* or *advocacy* of a particular view. It fails to establish proximate relation with the public order. The court relied on the US court's ratio to decide the reasonableness of section 66A, as follow:

“Where no reasonable standards are laid down to define guilt in a Section which creates an offense, and where no clear guidance is given to either law abiding citizens or to authorities and courts, a Section which creates an offense and which is vague must be struck down as being arbitrary and unreasonable.”

***Indian Penal Code, 1860:*** The Penal Code is the oldest law of the land with continuous updating to deal with the challenging issues and crime trends. Various provisions of the Code can be used to deal with fake news related crime, such as:

Section 124A criminalize any deliberate attempt to spread hatred or excite or attempt to excite by any mode of communication.

1. Section 153A discourage any attempt to aggravate the situation by promoting enmity among groups on religious, racial, place of birth, residence, language grounds.
2. Section 295A criminalize the deliberate and malicious acts with the intention to outrage the religious feelings by insulting one's religion or religious beliefs by any mode of expression.
3. Section 499 discourage defamatory statement created through any mode of communication with intention to harm reputation of human being.
4. Section 504 criminalizes causing provocation to any victim, knowing well that such provocation will cause him to break public peace or commit any other offense.
5. Sections 505 penalizes the making, publication, or circulation of any statement, rumor, or report (a) which cause or likely to cause fear to the public or any section of the public, inducing them to commit any crime against State<sup>10</sup>; (b) which is intentionally created to incite any class or community of person to commit offense against other class/community<sup>11</sup>; (c) with the intent to create or promote or likely to promote enmity, ill will, and hatred among a section of society on the

<sup>9</sup> *Supra* note 5.

<sup>10</sup> Penal Code, S. 505 (1)(b).

<sup>11</sup> *Ibid.*, S. 505(1)(c).

grounds of religion, race, place of birth, residence, language, caste, or community<sup>12</sup>.

**Information Technology Act, 2000:** The Act is specific legislation dealing with civil and criminal issues regarding digital contraventions and crimes. The Act is heavily inspired by the UNCITRAL Model Law of Electronic Commerce, 1996. Therefore the initial adoption of the Act was from the perspective of recognizing and validating digital/electronic transactions under law. However, the dynamics of cyberspace and its influence on State and society forced the Government to amend it in 2008<sup>13</sup> with significant remarkable changes. Now it deals with the civil and criminal offences conducted on digital media having ramifications on society. The Act identifies the offender and the intermediaries under specific sections. The Act does not define social media, but recognize it as one of intermediary<sup>14</sup>. Following are specific provisions of the Act which can be used to deal with fake news;

1. The Act provides the legal validity & recognition to the electronic records created as per the requirement for applying the law.<sup>15</sup> Therefore, any statement created with the purpose of contravention or offense under the law will be recognized if it satisfies the requirements of section 4 of the Act i.e., availability in electronic format and access ability of the information for subsequent references.
2. Section 79 of the Act elaborates on the immunity aspect of the services provided by the intermediaries to the end-users. As per it, the intermediary including social media is exempted from any liability if it confines its function of providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted<sup>16</sup> or if it does not initiate the transmission, select the receiver of the transmission, and select or modify the information contained in the transmission<sup>17</sup>. Provisions of the Act make it amply clear that the immunity provisions of shall not apply if, the intermediary has conspired or abetted or aided or induced, whether by threats or promise or otherwise in the commission of the unlawful Act and upon receiving the actual knowledge of the unlawful Act as per the directions of the appropriate Government, if the intermediary fails to take action of removing it expeditiously or disable access to the information.

<sup>12</sup> *Ibid.*, S. 505(2).

<sup>13</sup> Information Technology (Amendment) Act, 2008.

<sup>14</sup> Information Technology Act, 2000, S. 2(w) defines the intermediary.

<sup>15</sup> Information Technology Act, 2000, S. 4.

<sup>16</sup> *Ibid.*, S. 79 (2) (a).

<sup>17</sup> *Ibid.*, S. 79(2) (b).

3. Further, the Act expects due diligence behavior from intermediaries while discharging their duties of providing access to information.<sup>18</sup> Central Government under Section 87 of the IT Act is empowered to introduce the Rules. After a lengthy discussion of almost two years, the new rules have been inducted to regulate the intermediaries effectively. The new Rule is known as The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

The New Guidelines recognize the function of social media as enabling the interaction between users and enable them to create, upload, share, disseminate, modify or access information using its services.<sup>19</sup> Further in its definition of users<sup>20</sup>, it identifies the two categories of users as one who access or avail services of intermediary and the other, who publishes the information by hosting, publishing, sharing, transacting, displaying, downloading, or uploading the information.

Section 3 of the New Guidelines makes it mandatory on the part of social media to inform users by rules and regulations, their privacy policy or user agreement not to host, display, upload, modify, publish, transmit, store, update or share any information, (1) that violate any law in force<sup>21</sup>, (2) threaten the public order or cause incitement to the commission of any offense or insulting to other nations<sup>22</sup>, (3) which is false and untrue, published to mislead.<sup>23</sup>

If the user doesn't comply with the rules, privacy policy or user agreement with social media, after informing the users about this to the users at least once a year, the intermediary has the right to terminate the access or usage rights to its computer resources immediately.<sup>24</sup> Social media is supposed to remove or disable access to such information as soon as possible within 36 hours from receiving court order or notification regarding appropriate authority.<sup>25</sup> Such information needs to be preserved by the intermediary for investigation for 180 days or for a longer period as per the court's requirement or appropriate authority.<sup>26</sup>

The guidelines introduce the grievances redressal mechanism by an intermediary. The intermediary must publish on its website or mobile-based application, the name of the grievance officer, contact details, and the specific

<sup>18</sup> *Ibid.*, S. 79(2) (c).

<sup>19</sup> The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. S. 2(w) (India).

<sup>20</sup> *Ibid.*, S. 2(x).

<sup>21</sup> *Ibid.*, S. 3(v).

<sup>22</sup> *Ibid.*, S. 3(viii).

<sup>23</sup> *Ibid.*, S. 3(x).

<sup>24</sup> *Ibid.*, S. 3(c).

<sup>25</sup> *Ibid.*, S. 3 (d) 2nd proviso.

<sup>26</sup> *Ibid.*, S. 3(g).



mechanism by which users or victims can make compliant. The grievances officer need to acknowledge it within 24 hours and dispose of it within 15 days.<sup>27</sup>

Apart from due diligence, the guidelines require social media to appoint a chief compliance officer, a nodal contact person, and a resident grievance officer to coordinate with law enforcement agencies.<sup>28</sup> The messaging social media shall enable the identification of the first originator of the information on the order of enforcement agencies for prevention, detention, investigation, prosecution, or punishment of an offense related to public order or incitement to an offense relating to sovereignty and integrity of India, security of State, friendly relation with foreign states, etc.<sup>29</sup> To deal with the cross-border sharing of messages, where the first originator is located outside the territory of India, for this enactment, he will be the first originator of the information.<sup>30</sup> For the smooth functioning of social media, they must establish physical contact addresses in India and publish on their websites or app.<sup>31</sup>

For publishers publishing a variety kinds of information, the guidelines seek to enforce the Code of ethics. To address the grievances of any type, it set up three-tier structures as Level I, Level II, and Level III. Level I require the self-regulating mechanism at the ground level by the publishers. They are required to set up grievance redressal mechanism and appoint a Grievances officer based in India. Level II deals with self-regulating bodies of publishers or their associations. It is to be headed by a retired judge of SC, HC or an independent eminent person from media, broadcasting etc. Such self-regulatory body needs to get register with Ministry.

4. Section 69A of the Information Technology Act, 2000 further provides the Central Government's power to block the websites, if it is satisfied that it is in the interest of the sovereignty, integrity or public order or for preventing incitement to the commission of cognizable offence. It has to record the reasons for writing and block for access of any information generated, transmitted, received, stored, or hosted in any computer resources. The procedure for blocking of the website has been prescribed in the Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009.

The attempts to regulate social media with regulation are well-appreciated attempts by the Government to control the creation and dissemination of information on digital format.

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<sup>27</sup> *Ibid.*, S. 3(2).

<sup>28</sup> *Ibid.*, S. 4.

<sup>29</sup> *Ibid.*, S. 4(2).

<sup>30</sup> *Ibid.*, S. 4(2) 4th proviso.

<sup>31</sup> *Ibid.*, S. 4(5).

***Disaster Management Act, 2005:*** The Act was created to regulate and manage the disaster effectively and for other incidental issues thereto. It provides sweeping powers to the central, State and district authorities constituted under the Act to control the disaster. Doing so it bypasses the civic group, local representative, NGO's role in management. There are two sections that directly deal with the false information;

1. Section 52 of the Act punishes the person who makes a false claim knowingly for obtaining any relief, assistance, repair or benefit under the Act.
2. Section 54 deals with the false warning. According to it anyone making false alarm or warning about the magnitude and severity of disaster, which lead to panic in society is punishable as per the Act.

## **B. Technological Measures**

Technology is inevitable for the socio, economic development of any State and its subjects. While technologies provide solutions to already existing traditional problem, it is also genesis of new problems. Infodemic is also one such new problem. Technology makes the access of information at global level with authenticity. This new technological effect cannot be solely dealt with traditional means of dealing with menace. It has to be responded with same alacrity and audacity. Therefore, technological measures are an important factor in dealing with the menace of infodemic. Following are some suggested technological measures:

Development of dynamic fact-check tools. Social media giants have used it as per their declaration in the policy. Fact-checking tools are widely available online freely. Before relying on information widely in circulation or suspicious, a fact-check is a viable option for users.

1. Crowdsourcing the detection of information important to fight back. Crowdsourcing would be more effective given the amount of information generated and shared across the world. Due to its popularity and accessibility globally, social media giants are claiming to use crowdsourcing to verify information.
2. The New Guidelines i.e., The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, advocates for the use of Artificial Intelligence to identify the fake news and filter it out.
3. Blocking the information once it is identified of such nature fake news. Blocking of website may be in violation of freedom of speech and expression guaranteed under Constitution of India. Therefore blocking the fake news page would be more appropriate.

4. Online dispute and enforcement mechanism has to be updated and innovatively used to deal with the fake news. Niti Ayog in its report is identifying the possibility of expanding the online dispute resolution in the future.<sup>32</sup>
5. Identify the origin and originator of the information for investigation, enforcement of law. This can be possible with the technological support of the social media. The New Guidelines of the Digital Media ethics Rules makes it mandatory on part of social media to identify the originator.
6. Community co-operation in dealing with the problem. Google plan to contribute to the tune of \$25 million to European Media and Information Fund, a body constituted by the Gulbenkian Foundation and The European University to fight the fake news.<sup>33</sup>

### C. Due Diligence

While regulatory and technical measures are doing their part to control the damage, the reader or consumer can also take adequate measures by the application of self prudence in dealing with the fake news. Every human being are gifted with intelligence by nature. Making its best use to minimize the losses is a must in this kind of scenario. Following are some of the basic things that should be done.

1. Not to rely on one source of information. Read a variety of sources related to the issues if the information is suspicious and controversial in nature..
2. Fact check software are easily accessible on online platforms. Do the fact check to verify your claim with statistics if available.
3. Social media news can be part of conspiracy theory by the vested interest. Therefore, please don't rely on them for decision-making.
4. Avoid as much as possible politically driven and biased content.
5. On an individual basis there is a need to develop a critical mindset.
6. Not to share the information further if you don't rely on it.
7. Try to identify the source of information and the reporter.
8. Don't invest your faith on anyone without justify grounds to believe.

<sup>32</sup> Niti Ayog, Expert Committee on ODR, October 2020, Report on Designing the Future of Dispute Resolution: The ODR Policy Plan For India, (May 1, 2021, 2.13 p.m.), <<https://niti.gov.in/sites/default/files/2020-10/Draft-ODR-Report-NITI-Aayog-Committee.pdf>>.

<sup>33</sup> Hindustan News, "Google to Contribute \$25 Million to New EU Fund to Fight Fake News", (May 1, 2021, 10.20 p.m.), <<https://www.hindustantimes.com/world-news/google-to-contribute-25-million-to-new-eu-fund-to-fight-fake-news-101617167499861.html>>.

## V. CONCLUSION

Internet has been described as the biggest photocopy machine of the world due to its ability of replicating without diluting the quality and quantity of information and disseminating it across the world. Social media in particular, has been the most usable service platform on internet providing instantaneous dissemination of information. The same social media have been great source of fake news dissemination across the world through their platform. Understanding their role and under criticism for causing disruption in the past in State's social and political life, social media are under tremendous pressure to create a platform free from fake news. Governments around the world in the mean times have introduced adequate legislation to control the damage. However, apart from internal co-operation among Government, intermediaries and consumers, there is an urgent need to take the issue at the international level, so that an effective mechanism can be introduced at the international arena regarding cross border dissemination of information. Without international co-operation and uniformity on the issue, it will not be easy to deal with effectively.