ONLINE FAKE NEWS: PAVING THE WAY FORWARD

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Abstract

Penetration of the internet into our lives has given rise to a wealth of issues in the online space. Fake news being one such problem where different nations are finding it difficult to identify, track, and control the content which is circulating on the internet. Striking a balance between monitoring fake news and allowing free expression have become as close as two coats of paint. For instance, the Union Government of India in a recent move has announced the creation a 'fact-check' body to flag fake news pertaining to the government. This article aims to identify the issues and challenges around the complexity of fake news, ways to navigate the obstacles, and possible solutions to look at.

I. Introduction

Despite its prominence, *fake news* is yet to be defined by the law of almost every country, and even the one's where there exists a definition for 'free speech'. Ethical Journalism Network defines fake news as information deliberately fabricated and published with the intention to deceive and mislead others into believing falsehoods or doubting verifiable facts. In a study by *Hunt Allcott* and *Matthew Gentzko* (2016), they defined fake news as a news story that has no factual basis but is presented as news.[1] Fake news and disinformation has always been a global issue, even before the pandemic. A study by MIT in 2018 found that the tweets containing misinformation have higher chances of going viral than factually correct tweets. In some cases misinformed tweets spreads six times faster, thereby reaching tens to hundreds of thousands more.[2] However, the current situation created by the pandemic has led to the rise of an infodemic - an overabundance of information—some accurate and some not—that makes it hard for people to find trustworthy sources and reliable guidance when they need it.[3]

Fake news menace has been troubling countries across the globe, and they are trying to come up with different mechanisms to curb the spread of fake news [especially online]. For instance, in the United States, the then President Mr Donald Trump signed an executive order directing federal regulators to crack down on companies like *Twitter* and to consider taking away the legal protections that shield them from liability for what gets posted on their platforms. He thereby diluted all safe harbour protections that intermediaries enjoyed under Section 230 of the Communications Decency Act [hereinafter, "CDA"] in an attempt to tackle dangerous speech online. Even in India, recognising the threat of disinformation and fake news, an amendment was proposed in January 2023 to the The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. The amendment, put forward in January 2023, stipulates that social media platforms must take down content that has been verified as false by the Press Information Bureau's fact-checking unit.

While countries across the world are grappling with ways to curb the spread of fake news, understanding the complexity of the problem and tackling it at its root remains a challenge. This blog aims to unmask the complexity of fake news, examine the challenges in curbing its spread, and explore potential solutions to fix accountability and liability.

II. Unmasking the Complexity of Fake News

We can classify fake news into three main types[4] and all of these should be tackled in different ways. The first type of fake news is the deliberate one's, which are frequently used on the internet to spread false and misleading information intentionally. The second type of fake news could be the result of serving a propaganda. Such fake news is very frequent among publishers or media houses that are politically aligned. The third type of fake news is those which are unintentional. While deliberate and propaganda fake news may require legal action, unintentional fake news may be better tackled through education, training programs, and general awareness. Additionally, understanding the motivations behind each type of fake news can help to better target and combat the issue(s) at its root.

III. Demystifying Fake News: Navigating the Obstacles

Fake news is not an easy problem to solve, as it becomes extremely difficult to identify, track, and control the content which is circulating on the internet. Striking a balance between monitoring for fake news and allowing free expression is also difficult. For instance, what could happen if a story posted on *Facebook* shows early signs of

falsehood, and the platform decides to remove it and prevent further sharing? Of course, this could be well interpreted as censorship and an attempt to intervene in content generation. Thus, determining when to act in such situations is a delicate matter.

The Problem of Passive Re-sharers

The massive userbase of the online audience who become the first-point sharers of content, *albeit* without having the tools to fact check a piece of content before sharing are a major concern. The problem multiplies because of the 'passive re-sharers', the ones who are not creating the original content but rather resharing whatever they find likable without due diligence. One potential solution to this problem is the availability of fact-checkers to the general public. As mentioned later in the article, several countries have witnessed the growth of independent fact-checkers in the last decade. By providing ready-access to fact-checkers, online users can be empowered to verify the authenticity of content before sharing it with their audience.

Fixing Accountability and Liability

Defamation:

The publishers of fake news are frequently sued by individuals or businesses seeking monetary damages or an injunctive relief. The most common legal claim against the publishers of fake news is the common law tort of defamation. The very tort of defamation rests on the foundation of spreading false statement of fact that harms the reputation of others. However, the legal problem that arises in some of the jurisdictions for attributing the tort of defamation are in the cases where the subject information was 'provided by' another user of the internet. For instance, if a customer leaves a negative review of a restaurant on a popular review website and the owner believes it to be false and harmful for their reputation, they might want to pursue a legal action against the person. However, in some jurisdictions, attributing the tort of defamation to the individual posting the review might be difficult since this review is 'provided by' another internet user, and the website or platform on which the review was posted may have certain legal protections as an intermediary under certain circumstances. Nonetheless, such defenses are often not abided by, and the publishers of fake news are still regularly sued for libel. For instance, in September 2016, the then First Lady of the US, Mrs Melania Trump filed a libel lawsuit in Maryland State Court against blogger *Webster Tarpley* for publishing an online article referring to her as a "high-end escort" (among other things). While *Tarpley* originally denied all wrongdoing and described the lawsuit as "a direct affront to First Amendment principles and free speech," he settled the dispute with Mrs Trump, issued a formal retraction/apology and agreed to pay a "substantial" settlement amount.[5]

Right of Publicity

Just like defamation, the publishers of fake news are often sued for infringing the intellectual property rights of third-parties, such as names, symbols, or any other identifiers that may confuse consumers and cause harm to the third party's reputation. Unlike a lot of countries, the United States even recognises the 'right of publicity', granting an individual the rights to control the commercial use of their identity. In the context of fake news, this means that if someone publishes false information about a well-known person's identity, it could potentially violate that person's right of publicity if it is used in a commercial context. Therefore, consequences of violating the right of publicity can be more severe in the United States compared to other jurisdictions, as it is a recognised legal concept in many US states.

IV. Winning the War Against Fake News: Innovative Solutions

How can we then tackle the menace of fake news? I very well acknowledge the fact that in the contemporary times where each one of us are connected *via* the internet, it becomes quintessential for us to curb and put restraint to the spread of misinformation and disinformation. But regardless of the approach we take, it is also essential for us to not violate the freedom of expression.

Social and Educational Strategies

There are various governments that are adopting social and educational strategies, instead of a legal one, to overcome this issue. Finland, for example has been recently rated as Europe's most resistant nation to fake news. Children are being taught to identify false news through media and information literacy. The Finnish method of combating fake news involves a comprehensive approach of teaching media and information literacy skills to secondary school students across multiple subjects. This includes critical thinking, analysing information across different platforms, and understanding how information can be manipulated. By integrating media and information literacy education into the national curriculum, students are better equipped to detect and avoid spreading fake news. Even countries such as Sweden, and the Netherlands are taking similar approaches. While this Finnish approach is viable in India, it needs to be adapted to address the unique challenges faced by the country. It requires significant investment in infrastructure, resources, and training, and must be tailored to different regions and communities in India.

Availability of fact-checkers

Another mechanism that has developed recently is the growth of fact-checkers and the growing investment in fact-checking. In the last 10 years, the growth of independent fact-checkers could be witnessed in more than 50 countries and around 113 such fact-checkers groups are active today.[6] This has led to increased awareness and accountability. Fact-checkers have played a crucial role in verifying and debunking false information, making it more difficult for purveyors of fake news to spread misinformation without being held accountable. While it is challenging to measure the tangible impact of fact-checkers, their efforts have been effective in the fight against fake news. However, it also raises fundamental questions about reliability of data, authority in assessing public truth, and balancing accuracy with other democratic ideals, often attracting controversy and criticism.

V. Conclusion

If we talk about addressing the fake news issues from the legal perspective, I strongly recommend creating more resources. For instance, if we look at the USA's Child Safety Act, it created a mandatory funding amounting to $5 billion and infused 100 FBI agents and created 65 more positions in the National Centre for Missing and Exploited Children to tackle Child Sexual Abuse Material (CSAM). Secondly, global soft-law principles could be adopted for platform regulation. The Manilla principles and the Santa Clara principles are considered to be the global soft laws for intermediary liability that is based on the foundation of transparency and accountability. The former provides guidelines for intermediary liability legal frameworks that encourage innovation while safeguarding users' rights in line with international human rights principles. The latter provides concise guidelines for content-hosting services to integrate human rights and due process into moderation processes, while ensuring cultural competence in content review. These are used as a reference point for policymaking and legal decisions, reflecting global consensus on the importance of intermediary transparency and accountability. Such an approach could strike a balance between limited platform liability, i.e., online platforms would be held accountable for illegal activities that occur on their platforms, such as hate speech or illegal content, but they would not be held responsible for all user-generated content. This will assure online safety of users', without hindering their right to free speech and privacy.

In terms of India's position in respect to these principles, India complies with the first and second Manila principles on intermediary liability laws, which shield intermediaries from third-party content liability and restrict content takedown without a judicial order. However, compliance with the third, fourth, fifth, and sixth principle is limited, with issues around due process, proportionality, transparency, and accountability in laws and content restriction policies and practices. Thirdly, as a general rule, the laws should not restrict free speech. A good example of this could be the proposed Eliminating Abusive and Rampant Neglect of Interactive Technologies [EARN IT] Act in the US that is aimed to amend Section 230 of the CDA which historically allowed the operators of websites to remove content from users that they deem inappropriate. But there may be certain exceptional circumstances where curbing free speech would be justified. In regard to Indian jurisprudence, one might rope in Article 21 by using the proportionality test and considering countervailing factors that may justify curbing free speech in certain cases.

[1] American Economic Association, 'Social Media and Fake News in the 2016 Election' < https://www.aeaweb.org/articles?id=10.1257/jep.31.2.211> accessed on 08 April, 2023. [2]Digital Trends, 'Social (Net)Work: Fake news spreads faster than truth, but bots aren't to blame' https://www.digitaltrends.com/social-media/fake-news-spreads-faster-than-truth-but-bots-arent-to-blame/ accessed on 08 April, 2023. [3] World Health Organization, 2020. [4]Price Waterhouse Coopers Australia, 'The fake news problem (and what to do about it)' < https://www.pwc.com.au/digitalpulse/fake-news-problem-business.html > accessed on 08 April, 2023. [5] The Washington Post, 'Melania Trump Reaches Settlement in Libel Lawsuit Against Maryland Blogger' https://www.washingtonpost.com/local/public-safety/melania-trump-reaches-settlement-in-libel-lawsuit-against-maryland-blogger/2017/02/07/3b8ecd86-ed3e-11e6-9973-c5efb7ccfb0d_story.html> accessed on 08 April, 2023. [6]Digital News Publications, 'The Rise of Fact-Checking Sites in Europe' < https://www.digitalnewsreport.org/publications/2016/rise-fact-checking-sites-europe/ > accessed on 08 April, 2023.

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