



‘INFODEMIC – ANOTHER PANDEMIC TO FIGHT

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Introduction

The Director General of the World Health Organization, Dr Tedros Adhanom Ghebreyesus, has stated: “We are not just fighting an epidemic; we are fighting an infodemic. Fake news spreads faster and more easily than this virus, and is just as dangerous”¹. This article attempts to delve into the phenomenon of fake news and see how it can be prevented with the help of legislations. While doing so, the conflict between the freedom of expression and the restrictions placed on it to curb the spread of fake news will be reconciled using John Stuart Mill’s Doctrine of Free Speech, and few important Supreme Court judgments.

The problem regarding the spread of misinformation is certainly not new; however, the threat is more imminent now, when COVID-19 has posed a serious challenge to mankind. The term “fake news”, being a neologism², does not find a place in leading dictionaries. We can gather its definition from various other sources. Fake

news refers to fabricated news, found in traditional news, social media, or fake news websites, has no basis in fact, but is presented as being factually accurate³. It refers to misinformation, disinformation, or mal-information. Disinformation refers to false information that is deliberately created to harm some people; whereas, misinformation refers to false information that is created without intending to harm anyone. Mal-information is based on reality but, used to inflict harm on a person or a social group⁴. The spread of fake news can happen via two modes. It can be spread by journalists through media, or by private citizens, via social media. Both of these should be considered while combating the spread of fake news.

Fake news during COVID-19

The Government of India announced the lockdown on 24th March 2020, to prevent the spread of Covid-19. Many speculations regarding the nature of lockdown and the availability of essential commodities lead to wide unrest. Even the popular news channels were guilty of circulating fake news. On 15th April 2020, “Public TV”, a Kannada news channel, broadcasted an item “HELICOPTER MONEY”, which was false and mischievous⁵. Ever since the virus outbreak, while scientists were still trying to

¹Department of global communications, ‘UN tackles ‘infodemic’ of misinformation and cybercrime in COVID-19 crisis’, <https://www.un.org/en/un-coronavirus-communications-team/un-tackling-infodemic-misinformation-and-cybercrime-covid-19> accessed 27 April 2020.

² Paul Mihailidis, ‘This is not fake news (but Don’t go by the Headline)’ *The New York Times* (3 April 2017) <https://www.nytimes.com/2017/04/03/education/edlife/fake-news-and-media-literacy.html> accessed on 27 April 2020.

³ H.Allcott, M.Gentzkow, ‘Social Media and the fake news in 2016 election’, (2017) *Journal of Economic*

Perspectives 31(2) <https://web.stanford.edu/~gentzkow/research/fakene ws.pdf> accessed on 27 April 2020.

⁴ Journalism, ‘Fake News’ and Disinformation. A Handbook for Journalism Education and Training, UNESCO, (15 November 2018) <https://en.unesco.org/fightfakenews> accessed on 27 April 2020.

⁵ Shemin Joy, ‘Notice against Kannada news channel for running fake news’ *Deccan Herald* (16 April 2020) <https://www.deccanherald.com/national/notice-against-kannada-news-channel-for-running-fake-news-826215.html> accessed on 27 April 2020.



figure out the origin and cure, many false theories were propagated regarding the virus. Social media was flooded with various fake news suggesting the reasons for the outbreak and different kinds of cures that had no scientific backing. Few individual's medical records were made public, violating their privacy rights. There were also instances of fabricating and circulating false medical reports⁶. All these led to the formation of a certain myth regarding the virus while, the actual precautionary measures that one needs to take, did not gain much prominence. This widespread misinformation created unnecessary panic amongst the civilians rather than re-ushering them that we can fight this virus together.

The presentation of the news also matters when it comes to media reports. The kind of words used to describe an incident, or picture selection to showcase the incident has a huge role to play. The 'Norms of Journalistic Conduct' published by the Press Council of India in 2010 states: "In general, the caste identification of a person or a particular class should be avoided, particularly when in the context it conveys a sense or attributes a conduct or practice derogatory to that caste"⁷. Similar rules apply in case of disclosing the religion of an accused or a victim⁸. Not following these guidelines creates a stigma regarding a particular community and this has led to communal conflicts during the lockdown period⁹.

⁶ Subhimal Bhattacharjee, 'Fighting fake news amidst COVID-19' *The Hindu* (2 April 2020) <https://www.thehindubusinessline.com/opinion/fighting-fake-news-during-covid-19/article31233348.ece#> accessed on 27 April 2020.

⁷ Press Council of India, *Norms of Journalistic Conduct*, 2010

⁸ *Ibid.*

Freedom of Expression and Fake News

We have established the definition and consequences of fake news. Before exploring the legislative tools that are available to combat the spread of fake news, we need to check whether the imposition of restrictions is justified. For this purpose, I'll briefly put forth the Doctrine of Free Speech by John Stuart Mill, and the constitutional status of freedom of the press.

J.S.Mill's Doctrine of Free Speech

Furthering the concept of inalienable natural rights by John Locke, the libertarian philosopher J.S. Mill, argued that truth drives out falsity, therefore the free expression of ideas, true or false, should not be feared. Truth is not stable or fixed but, evolves with time¹⁰. Mill argues that whatever one expresses is his/her opinion and to put a restriction on that would amount to a deprivation of basic human rights. The core of his argument suggests that most of the assumed truths have turned out to be false, and hence falsity should not be a ground to restrict free speech. This argument, although might seem extreme, is not meritless. If we consider the present scenario, there is still a difference of opinion regarding the origin of the virus. What was initially held to be true has turned out not to be so. Since fake news is largely sought to be restricted on the grounds of falsity, it might seem that Mill's theory does not support it. But Mill acknowledges the 'harm principle' and states that the power can be used to restrict freedom

⁹ Helen Regan, Priyali Sur, and Vedika Sud, 'India's Muslims feel targeted by rumors they're spreading Covid-19' *CNN International* (23 April 2020) <https://www.cnn.com/2020/04/23/asia/india-coronavirus-muslim-targeted-intl-hnk/index.html> accessed on 3 May 2020.

¹⁰ Jon Stuart Mill, *On Liberty*, 32 (London: Longman, 4th edn, 1869)



of speech if it's affecting the rights of another person¹¹. What he meant by affecting the rights of others is left to interpretation and whether the publication of fake news affects any rights of another individual is an open question.

The issue at stake here is the right of a person to know the accurate information. Especially when we are dealing with a pandemic about which there is virtually no correct information available, spreading fake news affects the rights of another person to access correct facts and figures of the current situation.

Freedom of expression under the Indian Constitution.

Fundamental right to guarantee 'freedom of speech and expression' is provided under Article 19(1)(a) of the Indian Constitution subject to the qualifiers under Article 19(2). It has a long history in the form of Amendment I in the year 1951. Being upset by the Supreme Court's decision on the Crossroads case¹², upholding the right to freedom of speech and expression against the government's restrictions, the then leaders sought to remove the qualifier 'reasonable' from the clause to prevent judicial review¹³. As of now, the Government can make laws imposing reasonable restrictions on the right to freedom of speech and expression in the interest of the sovereignty and integrity of India, the security of the state, friendly relations with foreign countries, public order, decency or morality, or in relation to

contempt of court, defamation or incitement to an offense.

Various judgments also provide the extent of the freedom of expression and the power to restrict it. The recent one being *Shreya Singhal v. U.O.I.*¹⁴, where the Supreme Court struck down Section 66A of the Information Technology Act, 2000, as it goes beyond the restrictions provided under Article 19(2). The freedom of the press is regarded as a species of which freedom of expression is a genus¹⁵. Since freedom of the press is derived from Article 19(1)(a), all the restrictions mentioned under Article 19(2) apply to it. The essentials of freedom of the press

include:

1. Freedom to access all the sources of information either of one's views or borrowed from someone else or printed under the direction of the person¹⁶.
2. Freedom of publication.
3. Freedom of circulation¹⁷.

The situation becomes complex when misinformation is spread in the name of one's view or another individual's view. The Supreme Court has held that it is covered under Article 19. That does not lead to the conclusion that the media can report any such views expressed by an individual. In the case of the *U.O.I v. Association for Democratic Reforms*¹⁸, the Court has stated that "One-sided information, disinformation, misinformation, and non-information, all equally create an uninformed citizenry which makes democracy a farce." Through this judgment, it becomes evident that journalists

¹¹ Idib.

¹² *Romesh Thapper v. State of Madras*, 1950 SCR 594.

¹³ Granville Austin, *Working A Democratic Constitution*, (15th impression, Oxford University Press, 2019)

¹⁴ AIR 2015 Sc 1523

¹⁵ *Sakal Papers v. U.O.I* 1962 SCR (3) 842.

¹⁶ *M.S.M. Sharma v. Sri Krishna Sinha*, AIR 1959 SC 395

¹⁷ Supra note 13

¹⁸ (2002) 5 SCC 294



have a duty to check the authenticity of the claims made by persons in their capacity. All the judgments highlight the freedom of the press, but how these decisions can be utilized and implemented in the realm of social media is something that should be pondered upon. Though the form might be different, the substance is still the same. The same rules apply to people sharing their opinion or any individual's opinion on the social media platform. Since the spread of the rumours creates panic and anxiety amongst people, any reasonable restrictions placed on the freedom of speech and expression to ensure public order will not amount to a violation of Article 19.

Controlling the spread of fake news

To control the spread of fake news, the cooperation between stakeholders like the Government, civil society, the media, law enforcement authorities, etc., is significant. Additionally, the public also has a huge responsibility in preventing the spread of fake news. The lockdown might have prevented the spread of the virus but, it has certainly not contained the spread of fake news; in fact, the spread of fake news has increased. People should use fact check apps like Boom¹⁹ to verify the messages they receive or the posts they come across on social media. Various social media applications have started working towards curbing fake news. Mark Zuckerberg, the C.E.O of Facebook, posted on Facebook, "Through this crisis, one of my top priorities is making sure that you see accurate and authoritative information across all of our applications". In their process of curbing fake news, they have identified economic

incentives to be one of the major reasons for the spread of fake news. A majority of fake news that is published has a financial motive. It is generally done by spammers masquerading as legitimate news publishers and posting hoaxes that get people to visit their website, which is mostly ads, which in turn gets them money²⁰. Hence, it is necessary to eliminate such monetary incentives.

The legal tools available to penalize disinformation and mal-information should be used efficiently. Section 505(b) of the Indian Penal Code, 1860, provides for imprisonment up to 3 years, or fine, or both, for causing or likely to cause fear or alarm to the public. This can be read with Section 54 of the Disaster Management Act, 2005, to combat the current crisis. When it comes to social media posts and forwarded messages, the Government can block the content under Section 69A and intercept, monitor, and decrypt communication using Section 69(1) of the Information Technology Act, 2000. However, in using these tools, the Government needs to increase accountability and responsibility, and infuse reasonable checks and balances in exercising surveillance powers, as it involves curbing the right to privacy of an individual. A balance needs to be struck between individual rights and societal interests.

Conclusion

The 17th century English poet, John Milton wrote: "Give me the liberty to know, utter, and to argue freely according to conscience,

¹⁹ BOOM Live <https://www.boomlive.in/about-us/>

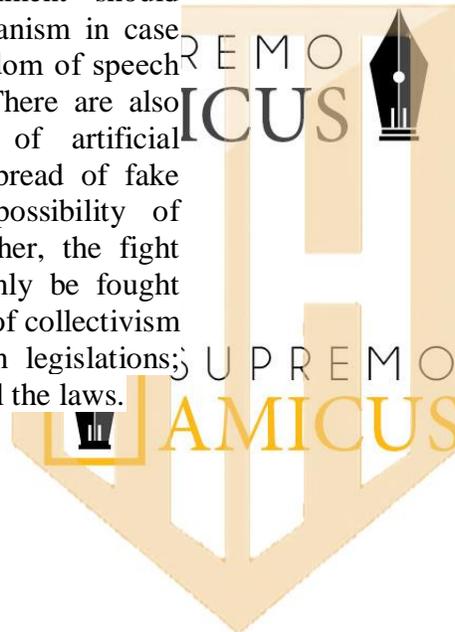
²⁰ Adam Mosseri, 'Working to Stop Misinformation and False News',

<https://www.facebook.com/facebookmedia/blog/working-to-stop-misinformation-and-false-news> accessed on 28 April 2020.



above all liberties”²¹. Freedom of speech and expression is vital to any democracy. But does it mean that such freedom is absolute and unfettered? Milton however, seems to argue that the freedom of speech and expression is guaranteed to honour the truth, and not for the sake of the freedom itself. If we allow the spread of fake news in the name of freedom of speech and expression, we will be doing contrary to what Milton argued.

The Government should also not exercise its power arbitrarily in censoring the media. Since the courts are not functioning in their usual capacity, the Government should provide for a redressal mechanism in case any individual’s right to freedom of speech and expression is violated. There are also suggestions to make use of artificial intelligence to combat the spread of fake news which reduces the possibility of arbitrary use of power. Further, the fight against any pandemic can only be fought efficiently with the true spirit of collectivism rather than to seek refuge in legislations; After all, necessity overrides all the laws.



²¹ John Milton, *Areopagitica*, (6th edn, Oxford: Clarendon Press, 1894)