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Right against Disinformation in Digital Era: A Critical Study

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ABSTRACT

In today's globalized world people reliance on technology and internet has been astonishing and it is becoming the core fourth generation human right. Technology and Internet comes with its own advantage and disadvantage. In the age of Internet fake news has become a big menace and social evil. The problem of fake news is not a new issue it existed even during the ancient times. The history states that around 2000 years ago in ancient Rome Octavian launched a fake news war against Mark Anthony to capture the kingdom and after the advent of printing press fake news was circulated to tarnish the image and reputation of the King . Now the outburst of internet has led to increased proliferation and explosion of fake news resulted in violence which gives people anonymity and geographical distance to be aggressive or unaccountable. Fake news in India refers to misinformation or disinformation in the country which is spread through word of mouth and traditional media and more recently through digital forms of communication such as – morphed images or edited videos, click-baits, motivated stories, hate speech, memes, unverified advertisements, and social media propagated rumours etc. Information disorder pose a major threat to security, sovereignty and integrity of India and impact various rights like right to free and fair elections, right to health, right to non- discrimination, right to life, right to privacy, right to freedom of opinion and expression. Disinformation and fake news are not new concepts; in fact, the term has been around since the 1950s. For many years, to influence people's political beliefs, individuals, organizations, and governments have attempted to damage public opinion by exposing them to fabricated or false information. In 2020, the number of cases filed against people 'circulating fake/false news/rumours' under Section 505 of the Indian Penal Code (IPC) has increased by 214%, according to the National Crime Records Bureau . Thus, it is the need of the hour to investigate the menace of fake news from a human rights perspective.

Keywords: *Disinformation, Misinformation, Freedom of opinion and expression, Information disorder, Information warfare.*

I. INTRODUCTION

India ranks second in the Internet population. Internet is becoming the most powerful medium

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of communication which helps to fight information poverty, spread awareness, mobilize communities, raise debates, and change stereotypes and mindset. It helps to bridge the gap between citizen and governance, society, and social issues, victims and aid providers and service- seeker. The usage of public internet can be traced back to 1995 where once it was a luxury item but now it is more affordable because of cheap smart phones, mobile internet infrastructure, falling data price. The technological revolution has introduced various messaging platforms to communicate with their loved ones daily. Digital based conversation such as greetings, sharing useful updates, emotions, political ideologies, and religious beliefs. A very common question that is posed is what is the use of technology to poor when they don't have enough money to afford two good meals a day. But still the usage of Internet stands beyond economic capabilities, social status, caste barriers, geographical terrains, literacy levels. Internet has removed the barriers of geography and time and in many ways, it is the reflection of the society[2]. In today's globalized world people reliance on technology and internet has been astonishing and it is becoming the core fourth generation human right. The link to this right is enshrined in Art 19 of UDHR which states that "everyone has the right . . . to seek, receive and impart information and ideas through any media and regardless of frontiers"[3]. Recently, the supreme court of India has also held that access to information via Internet is a fundamental right under the Indian Constitution[4]. Art 19 of the Indian constitution which guarantees right to freedom of speech and expression was interpreted by the judiciary to cope up with the technological advancements and UN recommendation that every country should make access to Internet a fundamental right. Kerala is the first state in India to declare access to Internet a basic human right[5]. Technology and Internet comes with its own advantage and disadvantage. In the age of Internet fake news has become a big menace and social evil. The problem of fake news is not a new issue it existed even during the ancient times. The history states that around 2000 years ago in ancient Rome Octavian launched a fake news war against Mark Anthony to capture the kingdom and after the advent of printing press fake news was circulated to tarnish the image and reputation of the King[6]. Now the outburst of internet has led to increased

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[2] Udita Chaturvedi & Rama Dwivedi, Fighting fake news whose responsibility is it?, Digital empowerment foundation, 2019

[3] Jason Woodroofe Senior Correspondant at OWP Jason is currently volunteering as a senior correspondant for OWP He is particularly interested in non-traditional security issues et al., "A Fourth Generation Of Human Rights?" *The Organization for World Peace*, 2020*available at*: https://theowp.org/a-fourth-generation-of-human-rights/ (last visited April 7, 2023).

[4] Anuradha Bhasin v. Union of India, (2020) 3 SCC 637

[5] "Internet access a fundamental right, Supreme Court makes it official: Article 19 explained," *India Today* *available at*: https://www.indiatoday.in/news-analysis/story/internet-access-fundamental-right-supreme-court-makes-official-article-19-explained-1635662-2020-01-10 (last visited April 7, 2023).

[6] "A brief history of fake news," *BBC Bitesize* *available at*: https://www.bbc.co.uk/bitesize/articles/zwcgn9q (last visited April 7, 2023).

proliferation and explosion of fake news resulted in violence which gives people anonymity and geographical distance to be aggressive or unaccountable. Fake news in India refers to misinformation or disinformation in the country which is spread through word of mouth and traditional media and more recently through digital forms of communication such as – morphed images or edited videos, click-baits, motivated stories, hate speech, memes, unverified advertisements, and social media propagated rumours etc. Information disorder rampantly spread through platforms like Face book, Whats App, Twitter, etc have targeted political figures, religious minorities, dissenting individuals, and increased efforts at polarisation. The introduction of AI technology has led to the creation of deep fake video contents using bots to micro-target populations with ads, and participate in human-like conversations, presents imminent future dangers of exponentially multiplying the current threats. The State and non-state actors are using the social media platforms for illegal and terrorist activities like radicalization, child pornography, human trafficking, selling narcotics etc[7]. Information disorder pose a major threat to security, sovereignty and integrity of India and impact various rights like right to free and fair elections, right to health, right to non- discrimination, right to life, right to privacy, right to freedom of opinion and expression. Recently, a malicious online disinformation campaign led to law-and-order issues in the state of Tamil Nadu. Disinformation shared on social media alleging that Bihar migrant workers are living in war zone Tamil Nadu and many migrant workers were attacked and beaten to death. The Tamil Nadu government countered this false claim efficiently and assured the Bihar counterpart that no harm will be committed against Bihar migrant workers[8]. This prompted the researcher to study and understand this alarming issue which is one of the biggest threats to the democracy and democratic institutions. Thus, it is the need of the hour to investigate the menace of fake news from a human rights perspective.

II. FAKE NEWS AND CRIME RATE

The rights like right to freedom of speech and expression and right to be informed has been greatly subjected to threat by fake news. News media is no longer seen as trusted source of real information because of the close association with dominant political class. News media lost the trust and credibility of the public which is seen as the main cause of fake news. The advent of

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[7] "Fake news in India and its Countermeasures | UPSC - IAS - Digitally learn," 2021*available at*: https://digitallylearn.com/fake-news-in-india-and-its-countermeasures-upsc-ias/ (last visited April 7, 2023).

[8] "Disinformation campaign in TN turns worse; DMK govt switches into firefighting mode," *The New Indian Express*available at: https://www.newindianexpress.com/states/tamil-nadu/2023/mar/04/disinformation-campaign-in-tn-turns-worse-dmk-govt-switches-into-firefighting-mode-2553159.html (last visited April 25, 2023).

technology and social media platforms has decentralised the creation and propagation of fake news[9]. In 2020, the number of cases filed against people 'circulating fake/false news/rumours' under Section 505 of the Indian Penal Code (IPC) has increased by 214%, according to the National Crime Records Bureau[10]. As per BBC world service has conducted study under the name "Duty, Identity, Credibility: Fake News and the Ordinary Citizen in India" to find out the cause for spreading fake news and found that driving factor behind fake news is nationalistic sentiments, emotion, not factual correctness, religion. Nowadays social media and messaging platform are becoming the first sources of news for many. Election time is the ripe time for miscreants to create an environment of misinformation for political gains. There is no clear universal definition or common understanding for the term disinformation. The International telecommunication, and UNESCO use the term disinformation to describe false or misleading content that can cause specific harm, irrespective of motivations, awareness, or behaviours. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression similarly defines disinformation as "false information that is disseminated intentionally to cause serious social harm." Censorship on disinformation supresses artistic, scientific, and journalistic work, public debate. In India there is no direct provisions to handle the fake news issue, the provisions of IPC and IT Act is used to regulate offences arising out of fake news. Apart from the legal provisions the government is now using internet shutdown as a tool to supress the circulation of fake news which attracted criticism from various human rights activists. The UNHRC also strongly condemned the disproportionate and blanket internet shutdowns. Recently the Supreme court of India has also warned against any clampdown on free speech. Justice Chandrachud, Justice Nageswara Rao, and Justice Ravindra Bhat declared that "clampdown on information on social media or harassment caused to individuals seeking delivering help on any platform will attract coercive exercise of jurisdiction by the court"[11]. In India the biggest social media platform is Whats App which has more than 220 million users. It has been stated that it is working to curb sinister content in India. Ministry of Electronics and information technology met Whats App executive to ask the Facebook Incorporation to trace the origin of misinformation spread through messaging platform as it led to many Human rights violations. Initially Whats App declined to trace the message because of privacy protection and security issues. It also taken step to educate people on misinformation by media literacy through

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[9] "Fake News," *Drishti IASavailable at*: https://www.drishtiias.com/daily-news-editorials/fake-news-1 (last visited April 7, 2023).

[10] CII 2020 Volume 2.pdf (ncrb.gov.in)

[11] "Upendra Baxi writes: How to protect human rights in the digital era," *available at*: https://indianexpress.com/article/opinion/columns/human-rights-supreme-court-of-india-free-speech-unhrc-7350022/ (last visited April 7, 2023).

print, radio, television, roadshows, limitation on message forwarding and labels for forward message also introduce[12].

III. FREE SPEECH V. DISINFORMATION

Social media plays a significant role in sharing information, expressing political opinion, and participating in debates, rationally voicing one's view and confronting others view. But hard truth is that Fake news transgressed all boundaries of social control. Fake news poses major threat to security, sovereignty, and Integrity of India. The main issue is that there is no acceptable definition of the term fake news and absence of appropriate legislation to address it. The terms like fake news, disinformation, misinformation, malinformation are interchangeably used which needs clear distinction. Presently the government is following certain measures to tackle fake news like advisories to intermediaries, internet blockades, Fact check websites. During the pandemic Supreme Court has also observed that panic generated by fake news would destroy more lives than the virus. In 2018 Rajya Sabha admitted calling attention motion on the misuse of social media platforms and spreading fake news. The article questions the constitutional validity of The Information technology (Intermediary guidelines and Digital Media ethics code), Draft Rules 2018. The questions posed were how a subordinate legislation can address the problem of fake news and imposing obligation on the intermediary to monitor third party control proactively will give a hammer strike on the right to privacy which is affirmed by the Supreme court of India recently[13]. A primary stand-alone legislation is required or amendment in IT Act 2000 and delegated legislation will not serve the purpose. The judgement of Shreya Singhal case[14] should be taken as guidelines in legislating fake news. As per TRAI 2017 report, India is the second largest country in Internet usage after China because of the affordable data plans and increased access to Internet especially after the entry of Reliance Jio. Availability of smart phones at low price is also one of the factors for increased internet usage. According to IMRRB report urban population use the Internet and mobile phones more than the rural population. In 2104 general election, internet is used as one of the propaganda tools to attract voters and to promote ideas, policies and propaganda which completely changed the nature of political discourse. Spreading misinformation was commercialised and played significant role in dissemination of hate speech. The digital ecosystem like Facebook, Twitter, Whats App are becoming prevalent modes of Misinformation. Few websites are listed under

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[12] "IT ministry meets WhatsApp over tracing of fake news: Report," *Hindustan Times*, 2018*available at*: https://www.hindustantimes.com/india-news/it-ministry-meets-whatsapp-over-tracing-of-fake-news-report/story-qJo8chxxiaC1LrzEwxym2N.html (last visited April 3, 2023).
[13] K.S. Puttaswamy v.UOI. Writ Petition (Civil) No. 494 of 2012.
[14] Shreya Singhal v. UOI, Writ Petition (Criminal) No. 167 of 2012.

misinformation ecosystem like Post Card, Satya Vijay, The Resurgent India, News dog which are termed to be a conservative website and propagate unverified reports and rumours. Many instances of fake news and rumours have led to grave consequences and Human Rights violations. Reputable media organizations were also misled by the misinformation. Online disinformation has resulted in dangerous repercussions like mob formation, lynching, communal hatred. The measures taken by the government is Internet shutdowns. There is neither clear definition for the term fake news nor legislation to tackle it. The current laws that are used are Indian penal code and Information Technology act 2000.

IV. JUDICIARY AND FAKE NEWS

Social media has revolutionized dispersal of data than beyond traditional media. The phenomenon of fake news is not new it is there from printing press but the speed in which it is spreading is unimaginable and has caused bloodshed in many instances. The instances like Exodus of north easterners from Bengaluru to Guwahati (2012), Muzaffarnagar riot (2013), Delhi riots(2020), The digital information ecosystem is stormed with troll farms, fake videos, news items, morphed media logos, bots and paid commentators. The Supreme court of India and Parliamentary debates have spoken about the intensity of problem caused by the amplification of fake news especially during the Citizenship amendment act 2019 and Covid-19 pandemic. Section 79 of the Information Technology act 2000 empowered to formulate subordinate regulations by which IT rule were formulated. The word "any government agencies" give wide power to the executive by which there is a risk of muscling the freedom of speech and expression. Another important aspect which is cited is understanding the cultural context behind the social media content. The current measures deployed were Digital news publisher association and self- regulation methods. Fake news itself a menace and dissemination of fake news causes multifarious harm. Laws to curb fake news scattered, insufficient, and indirect. Social media and internet are new avatar of free speech. Opportunistic people started to create misleading false information in order to generate attention and revenue. Once a false news is published in online medium it is difficult to remove it permanently. Because of the features like copying, downloading, screenshots it cannot be erased. One such controversial news is Arundati Roy fake interview about Indian soldiers which created tension and violence. It is also necessary to draw a distinction between fake news for commercial purpose and non - commercial purpose. The article states that IT act 2000 is deficient and there is no direct provision for imposing liability on the content creators and intermediaries. In the global scenario many countries are legislating direct laws to tackle the disinformation problems and notable one is Singapore has legislated stringent laws against disinformation with severe punishments. The

laws used in India are IPC, IT Act 2000, CrPC and CPC to tackle the disinformation problems. Regarding the question of extraterritorial jurisdiction of courts, the answer lies in Sec 4 IPC. In most the disinformation cases the offenders are unknown, where the court faces difficulty in punishing the perpetrators. This because the perpetrators use many software's like cleaner data wipe to remove the traces of the messages. Fake IP address, Virtual Private Network, and end to end encryption also poses challenge to find the offender. It is also important to see that all fake news is not harmful and all fake news are not with evil intention. So, it should also be decided that how the element of mensrea is going to be viewed in deciding the harmfulness of fake news.

V. CONSTITUTIONAL PERSPECTIVE

An important question that raises is that whether fake news can be brought under Art 19(2) reasonable restriction. What are the criteria to decide that certain content is fake and certain not. In today's world everyone is becoming journalist, so it is very hard to define the term. Fake news is a heterogenous content where there is no clear definition. The main reason for regulating fake news is to prevent human rights violation. The article states that the fake news itself cannot be directly punished but when it leads to defamation, consumer protection, fraud, perjury than only it attracts punishment. So, the article concludes that if any restriction is placed on fake news it should come within the reasonable restriction of Art 19(2) of the Indian Constitution. Freedom of speech and expression cannot be defense for circulation of false information. Social media platforms claim disinformation has content moderation problem. The report of 'The Future of India Foundation politics of Disinformation' states that how disinformation results in political problem. The reports point out the harm caused by the amplification of disinformation and the liabilities of social media platform. Political neutrality is the basic requirement of healthy democracy where certain social media platforms are adhering and some are not, like the case of twitter restricting the post of Trump but not Face book. Individual behaviour of consuming should also be understood to address the issue of fake news. The current system which social media platform is employed to check disinformation is very weak[15].

VI. UN SPECIAL RAPPORTEUR REPORT

The report focuses on Issue of disinformation and freedom of opinion and expression from a human rights perspective. The key societal challenges posed by disinformation is it has impacted various rights like right to free and fair election, right to health, right to non-

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[15] "'Free Speech Vs Disinformation Control': Report Says False Binary Serves Social Media Sites," *available at*: https://thewire.in/rights/disinformation-politics-social-media (last visited April 3, 2023).

discrimination, right to life, right to freedom of expression and privacy. Disinformation has negative impact upon public health, children rights, civil discourse, electoral process, and public security. In 2020 the forum on Information and Democracy established the working group on Infodemics to devise a framework to combat disinformation. Many State response to disinformation are stricter moderation of social media platforms and content based restriction and regulations. The report states that content-based restriction on disinformation pose risk to Freedom of speech and expression. The report suggests that to tackle disinformation transparency is required in advertisements, targeting practices, algorithm decision making. Independent entity or regulator is required to monitor the problem of fake news and strong data protection legislation is required[16]. In furtherance UN Special Rapporteur on the promotion and protection of freedom of opinion and expression: Report on Disinformation, the International Media support has submitted its views and suggestions. It calls for a universal approach and guidelines on disinformation and restrictions on media freedom. The report poses series of questions like what are the global challenges posed by the disinformation especially gendered and sexualised disinformation, what is the role of government and global tech companies in addressing the issues. It also makes few suggestions like adoption of Universal definition for the term disinformation, transparency and accountability of the platforms, Multi stake holder approaches and to secure balance between freedom of expression and harms caused by disinformation. Access to Internet is very important to ensure reliable information reaches the people but disinformation disturbs the individuals informed decision making. Disinformation is not only spreading online but also offline. The main difference is speed in which it spreads, in online the amplification of dissemination is very fast and wide. The opiniated information can be divided into i.e facts and fake news. So, there must be a clear distinction between the two. The article discussed the formidable global challenges posed by disinformation like increased political polarisation, decreased trust in public institutions, negative impact on public health, discrimination, boosts identity politics, gendered and sexualised disinformation. It also brings out various suggestions made by UNESCO, Council of Europe, OECD, and laws from different countries to tackle disinformation[17].

VII. CONCLUSION

Though it is evident that Information disorder is a great threat to society which hampers many

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[16] UN Special Rapporteur report on Freedom of opinion and expression: Report on Disinformation consultation,Global Partners Digital submission, Feb 2021.
[17] International media support Submission to the UN Special Rapporteur on the promotion and protection of freedom of opinion and expression: Report on disinformation, 15 February 2021

individual human rights and when technology is added the consequence are even more disastrous. The significant portion of the study focuses on the impact of information disorder in a Human right perspective. Based on the review literature analysed there is lack of research on the legal aspect of the subject. The advent of social media platform has increased and amplified the issue of disinformation and its implications on the rights of the individuals and democratic institutions. It is one of the pressing and contemporary social issue which requires immediate attention and significant research needed to be taken. So, it is important to have a special legislation to address this pressing social problem.

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2. ICESR (International convention on economic social and cultural rights)

3. UDHR (Universal declaration on Human rights)

4. UNESCO (United Nation Economic social and cultural organizations)

5. UNHRC (United Nation Human rights Council)

6. Guiding principles on Business and Human Rights

7. UN General Assembly resolution 76/227

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