

**FAKE NEWS, INFORMATION DISORDER AND THE COVID-19 CONTAGION:  
ASSESSING THE SCOPE FOR EXISTENTIAL JOURNALISM IN THE  
APATHETIC MEDIA CIRCUS**

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**Abstract**

Media engineers public debate. Advent and evolution of social media, has created a new information architecture, sometimes constructed with cynical and corrosive content. “Fake news”, is in essence, fabricated information masqueraded as “news media content in form, but not in organizational process or intent”<sup>1</sup> implying hereby, that aside from the traditional news media forums, such news may be disseminated by anonymous, untraceable non-news media actors, the propagation being driven by a revenue-crusade, propaganda, an impulse of imprudence or, a mere spoof. Incompatibility in news is pernicious to the society and parasitic to democracy. It engenders an “information-disorder” particularly, in times of the present, global COVID-19 crises. The article conceptualizes “fake news”, gives a glimpse into the ammunition deployed against it by diverse countries and agencies internationally, deliberates in-depth the regulatory measures adopted in India together with, the judicial stance on the issue and in the finality, proffers certain suggestions to combat the menace.

**I. Introduction**

**II. What is “fake news”? : Deciphering the new-fangled “pseudo-news”**

**III. Global scenario in the “post-truth” era : “Disinformation war” in the COVID-crisis**

**IV. India’s wrestle with the COVID-19 pandemic, fake news “info demic” and the legal battleground**

**V. Conclusion and suggestions**

**I. Introduction**

DEMOCRACY DEMANDS an “uninhibited, robust, and wide-open”<sup>2</sup> discourse. The press organizes this public dialogue, imperative for democratic sustenance. Democratic-wellness is contingent on the magnitude of freedom endowed with the press. Eminent American columnist and political commentator, Walter Lippmann<sup>3</sup> has enunciated: “A free press is not

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<sup>1</sup> David Lazer, Matthew Baum *et.al.*, “The Science of Fake News” 359 *Science* 1094 (2018).

<sup>2</sup> *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

<sup>3</sup> [1889-1974].

a privilege but an organic necessity in a great society”.<sup>4</sup> The press’s liberty is thus, an imperative safeguard in a polity with a popular governance-regime.<sup>5</sup>

The media, in a liberalist setting, performs multifaceted functions. It has been recognized as a “watchdog”, “neutral observer” of the governance scenario, an “informer”, “agenda-setter” and secondarily, an entertainer. It is however, also a truism that a “healthy press system” is epitomized by the most basal journalistic principles of objectivity and integrity in reporting.

The “digitalization of the mediascape”<sup>6</sup> engendering an uncontrolled information-cascade together with, the media’s colossal powers and the quest for profit maximization, has nevertheless, brought in ambiguity in its role. Where, on one hand, its significance cannot be undermined, the media, at the other end of the spectrum, is mistrusted for publicizing “disorienting episodes of disinformation”.<sup>7</sup> In the crusade of mesmerizing audiences, it is producing an “endless stream of meaningless and mindless” content, “in quantities previously unimagined”.<sup>8</sup> Moreover, acknowledging its capacity of being a potent influencer of public opinion, the media shapes it, “by framing events and issues in particular ways”.<sup>9</sup> As political scientist Bernard Cohen has articulated, “the press may not be successful in much of the time in telling people what to think, but it is stunningly successful in telling its readers what to think about”.<sup>10</sup>

The rising inaccuracy, misrepresentation and falsehood in reportage has adulterated the content of news. It jeopardizes the quintessential media function to inform the populace and apprise them of the political reality, by disseminating truthful information. Former Prime Minister of Australia, Malcolm Turnbull, had stated, “It’s not a 24-hour news cycle, it’s a 60-second news cycle now, it’s instantaneous. It has never been easier to get away with telling

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<sup>4</sup> Speaking of a Free Press: 200 Years of Notable Quotations About Press Freedoms 16 (The Newspaper Association of America Foundation, 2005), available at: [https://nieonline.com/thelearningforum/downloads/napi/speaking\\_of\\_a\\_free\\_press.pdf](https://nieonline.com/thelearningforum/downloads/napi/speaking_of_a_free_press.pdf) (last visited on April 2, 2020).

<sup>5</sup> See Judith Lichtenberg (ed.), *Democracy and the Mass Media: A Collection of Essays* 1 (Cambridge University Press, United States of America, 1990).

<sup>6</sup> Michael Hameleers, Thomas E. Powell *et al.*, “A Picture Paints a Thousand Lies? The Effects and Mechanisms of Multimodal Disinformation and Rebuttals Disseminated via Social Media” 37 (2) *Pol. Comm.* 281 (2020) at 284.

<sup>7</sup> W. Lance Bennett and Steven Livingston, “The Disinformation Order: Disruptive Communication and the Decline of Democratic Institutions” 33 *Eur. J. Comm.* 122 (2018) at 124.

<sup>8</sup> Cue taken from: Mark Dice, *The True Story of Fake News: How Mainstream Media Manipulates Millions* 6 (The Resistance Manifesto, San Diego, CA, 2017).

<sup>9</sup> Claes H. Vreese, “News Framing: Theory and Typology” 13 (1) *Inform. Des. J.* 51 (2005).

<sup>10</sup> Judith Lichtenberg (ed.), *supra* note 5 at 9-10.

lies”.<sup>11</sup> As a corollary of the increasing scepticism in the veracity of news, the citizens are incapacitated to make wise political decisions. Denominated as a “hybrid threat”,<sup>12</sup> “fake” or “false news” hence, prejudices the information credibility, engenders “slanted journalism”<sup>13</sup> thereby, posing a threat to democracy.

## II. What is “fake news”? Deciphering the new-fangled “pseudo-news”

A free press typically envisages, autonomous reporting and liberated debates, to be balanced with, the quintessential of perfection and neutrality in news presentation. Herbert Gans, explicates “news” as, “information which is transmitted from the source to recipients by journalists who are both – employees of bureaucratic, commercial organizations and also members of a professional group. They process, summarize and change what was made available to them into information appropriate to their recipients”.<sup>14</sup> It is therefore, ideally, the outcome of thoughtful journalistic processing. News, in the present times is nevertheless, defined by diverse commercial and political determinants. Swayed by the popular public tastes, news organisations produce content in conformity with these propelling forces.

Walter Gieber, in this regard, has captioned, “News is What Newspapermen Make It”.<sup>15</sup> A journalist shoulders an onerous responsibility to observe, research, inquire and report news, accurately and objectively. “Accuracy” manifests “fact-checked” news stories. It preconditions, precision and fairness in reporting. The news sources must be veracious and verifiable. Accuracy requisites the news editor to circumspectly vet the reportage, prior to its dissemination. “Objective reporting”, on the other hand, stipulates, impartiality or, an unbiased coverage. It has “five components”, as prescribed by David T.Z. Mindich in his book:<sup>16</sup>

<sup>11</sup> “Lying too easy now with lazy media, Turnbull tells Woodford”; *available at*:

<https://www.thechronicle.com.au/news/lying-too-easy-now-lazy-media-turnbull-tells-woodf/1699392/#/0> (last visited on June 20, 2020).

<sup>12</sup> The European Council (Council of the European Union) – “Fighting Disinformation”

*available at*: <https://www.consilium.europa.eu/en/policies/coronavirus/fighting-disinformation/> (last visited on June 28, 2020).

<sup>13</sup> Emma M. Savino, “Fake News: No One Is Liable, and That Is a Problem” 65 *Buff. L. Rev.* 1101 (2017) at 1102.

<sup>14</sup> Herbert J. Gans, *Deciding What’s News: A study of CBS Evening News, NBC Nightly News, Newsweek and Time* 80 (Northwestern University Press, Illinois, United States of America, 2004).

<sup>15</sup> In L.A. Dexter and D.M. White (eds.), *People, Society and Mass Communications* (Free Press, New York, 1964).

<sup>16</sup> David T.Z. Mindich, *Just the Facts: How “Objectivity” Came to Define American Journalism* 8 (New York University Press, United States of America, 1998).

- i. *Detachment*: It stresses on, publication of facts alone, as ‘news’. Reporter’s preconceived notions cannot, “do the talking”.
- ii. *Non-partisanship*: ‘News’ must be a reportage of, “both sides of a story”.
- iii. *Inverted Pyramid*: “Inverted Pyramid”, in Mindich’s description, is a writing style, necessitating that, significant facts be mentioned in the lead paragraph of the reportage. Doing so, will ensure that the news reader/viewer, receives primarily, an account of the priority information.
- iv. *Naive Empiricism*: It focuses on an unequivocal accurate reporting, based on “truth or reality” of an occurrence.
- v. *Balance*: Balance is the conclusive, or an “all-important goal” of objective reporting.

The notion of “existential” or “ethical journalism” therefore, strives at, an uninhibited transmission of unerring and faithful information by the news media. The press and its personnel, is expected to evince the virtues of honesty and trustworthiness in reporting. Nonetheless, the advent of the “digitalized information space” has dramatically reformed and in fact, eclipsed the topography of the traditional media and procreated “new journalism”.<sup>17</sup> Increased traffic on the world wide web, has given precedence to speed over precision in information transmission. The “complexity and messiness”<sup>18</sup> of the digital age together with, the glimmer of the flamboyant “right to know”,<sup>19</sup> has prompted inaccuracies and prejudices in the content of news, begetting the “fake news” culture. What has emerged is a culture of “truthiness” *i.e.*, “falsehoods with the ring of truth”<sup>20</sup> or, “the quality of seeming to be true, without actually being true”.<sup>21</sup>

The most straightforward description of “fake news” is, “a published news report that doesn’t correspond with reality”<sup>22</sup> *i.e.*, it does not have any factual underpinning yet, is conveyed as a fact. When an intentional falsehood is disseminated as a “news story”, it is ordinarily described as “fake” or “hoax” news. “Fake news” basically, mutates “fact” into “fiction” and

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<sup>17</sup>An expression used in Jonathan S. Adams, *Internet Journalism and Fake News* 6 (Cavendish Square Publishing, New York, United States of America, 2019), to basically connote, journalism in the digital age.

<sup>18</sup> Melissa Zimdars and Kembrew McLeod (ed.), *Fake News: Understanding Media and Misinformation in the Digital Age* 3 (The MIT Press, Cambridge, Massachusetts, London, England, 2020).

<sup>19</sup> Michael C. Dorf & Sidney G. Tarrow, “Stings and Scams: Fake News, the First Amendment, and the New Activist Journalism” 20 *U. Pa. J. Const. L.* 1 (2017).

<sup>20</sup> *Ibid.*

<sup>21</sup> *Supra* note 19 at 10.

<sup>22</sup> The New York Times Editorial Staff (ed.), *Fake News: Read All About It* 7 (New York Times Educational Publishing, New York, 2019).

presents it as “news”. It is purposefully designed to beget sensationalism and emotionally-enticing the receiver, deceiving him to believe a premeditated perspective.

Commonly designated as a “weapon against democracy”, “fake news” undermines truth and debases public trust in the news media. It could be injurious to an individual, the community “in toto” and also, the state. Fabricated news is not a novel phenomenon and has been pervasive since the inception of the press<sup>23</sup> nevertheless, the conception and implication of “fake news” has undergone a renaissance with the radical advancements in communication technology and journalism becoming more sensationalist. Its ambit, in the contemporary news typology is extensively broad to embrace, partisan, distorted, dubious or simply, unfiltered information, perplexing to the masses or calculated at manipulating public opinion. “Foreign interference in domestic politics”,<sup>24</sup> has also been classified in the “fake news” category. Its comprehension may therefore, evince some variance, based on the motivation behind its propagation.

Accused of producing “garbage journalism”,<sup>25</sup> the “fake news” propaganda is to stimulate adverse campaigns and advance malicious political vendettas. It is essentially, deliberately designed to mislead the news reader/viewer<sup>26</sup> and, may also be circulated for mere “infotainment” purposes *i.e.*, entertainment, designed to show up as information. In this context, “fake news” has been defined as “a deliberate, viral spreading of misinformation for commercial or political ends”<sup>27</sup> and has rather, become a “clash of narratives”.<sup>28</sup> Legitimate news, in this process, is compromised.

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<sup>23</sup> Michael Miller in his book, *Fake News: Separating Truth from Fiction*, traces the usage of the term “fake news”, back to the 1890 wherein, a headline in *Cincinnati Commercial Tribune* read, “Secretary Brunnell Declares Fake News about His People Is Being Telegraphed over the Country”. He further elucidates that though, the expression has been ubiquitous ever since, it came in the spotlight in January 2017 in a news conference with president elect-Donald Trump (The United Kingdom’s *Collins English Dictionary* also named it the “Word of the Year”). Thereafter, it has become vivid, and is dominating worldwide public discourse. See Michael Miller, *Fake News: Separating Truth from Fiction* (Lerner Publishing Group, Inc., Minneapolis, US, 2019).

<sup>24</sup> Chloe Francis, “Trial of Truth: Law and Fake News” 3 *Edinburgh Student L. Rev.* 100 (2018), at 102.

<sup>25</sup> A term used by Donald Trump and his former aides like Steve Bannon and Sean Spicer referring to CNN, BBC and New York Times as “fake news organizations”. See Ahmed Al-Rawi, *News 2.0: Journalists, Audiences and News on Social Media* 48 (John Wiley & Sons, Inc., US, 2020).

<sup>26</sup> See Michael Miller, *supra* note 23.

<sup>27</sup> Quoting Martinson (2017) in Ahmed Al-Rawi, *supra* note 25.

<sup>28</sup> Vidushi Marda and Stefania Milan, “Wisdom of the Crowd: Multistakeholder perspectives on the fake news debate” – A Report by the Internet Policy Observatory at the Annenberg School, University of Pennsylvania (May 21, 2018) at 3, available at: [http://globalnetpolicy.org/wp-content/uploads/2018/05/Fake-News-Report\\_Final.pdf](http://globalnetpolicy.org/wp-content/uploads/2018/05/Fake-News-Report_Final.pdf) (last visited on May 27, 2020).

In essence, “fake news” is exciting and accordingly, more captivating to the “news-consumers”. Consequently, it is relatively, a superior source of revenue generation for the “news-manufacturers”. It is however, noteworthy that, with the evolvement and recent augmentation of the vigorous social media,<sup>29</sup> the conventionally validated news media comprising newspapers and news channels cannot, exclusively be blamed for the unprecedented proliferation in the incidences of fake news. The world of the internet is infinite and largely, unregulated. It has an innate peril of tangled implications.

Besides the *bona-fide* online news portals, it is extensively dominated by “non-media actors”, who are not mainstream journalists howbeit, engaged particularly in the production and distribution of false news. News, today, reaches its patrons through blogs, Instagram, Facebook or Twitter accounts, YouTube channels, and the like. Social media has made everyone a pundit, permitting each user to share, analyse and expertise on, alleged news.<sup>30</sup> Melissa Zimdars’ and Kembrew McLeod’s explanation of “fake news” in their edited book, may hereby be borrowed, to define it from this standpoint as, “primarily introduced by individuals who are concerned *not* with gathering and reporting information to the world, but rather with generating profit through the social media circulation of false information mimicking the style of contemporary news”.<sup>31</sup>

“Fake News” encompasses, a combination of assorted modus-operandi to spread illusive-information. Labelled as “information disorder”, it may embrace, “dis-information”, “mis-information”, and “mal-information”.<sup>32</sup> The commonality between these “information disorder” genres is that they all pose a serious danger to dispassionate decision-making by the electorate.<sup>33</sup> The end-result of each is therefore, deformity in news content.

Conceptually however, these are distinct species of “information disorder”. “Dis-information” is, false, erroneous or manipulated information, calculatedly concocted to cause harm to a person, community, institution, or the country at-large. Equated with a propaganda, its objective, is to achieve a definite political or business gain.

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<sup>29</sup> Examples include Facebook, Twitter, Instagram, YouTube, Snapchat, *etc.*

<sup>30</sup> Mark Verstraete and Derek E. Bambauer, “Ecosystem of Distrust” 16 *First Amend. L. Rev.* 129 (2017).

<sup>31</sup> Melissa Zimdars and Kembrew McLeod (ed.), *supra* note 18, at ix-x.

<sup>32</sup> “Understanding and Addressing the Disinformation Ecosystem” (Annenberg School for Communication, University of Pennsylvania, December 15-16, 2017), at 8. Available at: <https://firstdraftnews.org/wp-content/uploads/2018/03/The-Disinformation-Ecosystem-20180207-v3.pdf?x17007> (last visited on May 19, 2020).

<sup>33</sup> Shawn Walker, Dan Mercea (et. al.), “The disinformation landscape and the lockdown of social platforms”, 22 (11) *Inform., Comm., and Society* 1531 (2019) at 1532.

“Dis-information” may not, alone be necessarily distributed by the news media. There may be “non-media actors” such as, politicians and common citizens, propagating a certain stream of spiteful content.<sup>34</sup> When nasty news is circulated by “dis-information agents”, there are no operative standards or ethical codes applicable, sources are anonymous and the content is unverifiable. Legitimacy of journalism is, in consequence, adversely injured thereby, making an “invisible government”<sup>35</sup> parallelly functional, to facilitate a ballyhoo, leading to, “polarized divides in society”.<sup>36</sup> “Dis-information” is consequentially, most hazardous. It unpreventably, discredits the press.

“Mis-information” also comprises dissemination of untrue or inaccurate information but contrastingly, it is accidental or unintentional, devoid of any vicious purpose.<sup>37</sup> “Mal-information” howbeit, is reality-based but, is exploited to injure another.

Besides these broad classifications, Derakhshan and Wardle<sup>38</sup> have recognized seven categories of “information disorder”. These are:

- i. Satire or Parody: There is no intention to do damage. The purpose is merely, to fool.
- ii. Misleading Content: Deceptive use of information, aimed at framing an issue or individual.
- iii. Imposter Content: Impersonating the genuine sources.
- iv. Fabricated Content: News content is false in its entirety. It is wilfully designed to misguide and cause harm.
- v. False Connection: When “headlines, visuals or captions”, do not substantiate the content.
- vi. False Context: When authentic content is “shared with false contextual information”.
- vii. Manipulated Content: When factual information is manipulated to misguide.

Dallas Flick, in his article,<sup>39</sup> has observed that, the construction of the term “fake news”, “shifts colloquially on a rapid basis”.<sup>40</sup> The underlying essence of such reportage is its vivid

<sup>34</sup> Michael Hameleers, Thomas E. Powell (*et. al.*), *supra* note 6.

<sup>35</sup> Expression used by Mark Dice, *supra* note 9.

<sup>36</sup> Michael Hameleers, Thomas E. Powell (*et. al.*), *supra* note 6, at 283.

<sup>37</sup> W. Lance Bennett and Steven Livingston, *supra* note 7, at 134.

<sup>38</sup> See Hossein Derakhshan and Claire Wardle, “Information Disorder: Definitions” in, “Understanding and Addressing the Disinformation Ecosystem” [Annenberg School for Communication, University of Pennsylvania, at 8].

<sup>39</sup> Dallas Flick, “Combatting Fake News: Alternatives to Limiting Social Media Misinformation and Rehabilitating Quality Journalism” 20 *SMU Sci. & Tech. L. Rev.* 375 (2017).

<sup>40</sup> *Id.* at 405.

“dissent from subjective truth”.<sup>41</sup> The “information-age”, in his opinion, has yielded a “fifth estate”, ostensibly similar to the conventional “fourth estate” however, divergent in its appeal, vigour, connectivity, information fluidity and institutional accountability.

The COVID-19 pandemic, has left the world worrying, perturbed and clueless. Making things worse, since its dawn emerged a concurrent global trend, of an unprecedented spurt of disinformation relating to the novel virus, its cure, theories suspecting the conspiracies circumscribing it, health advice from fictitious sources, *etc.* Alongside the confusion, fear and uncertainty it created, “fake news” became a catalyst of spreading the disease at a faster pace, hindering positive responses from public authorities. The social media miscreants were, in particular, responsible for exploiting the crisis to create a parallel demon, producing an even more dangerous, communication-disaster. Prior to an articulation of India’s response to the contingency, the ensuing segment, briefly discusses, the “anti-inflammatory” measures adopted at the global-level, to contest “fake news”, during the precarious present-times.

### III. Global scenario in the “post-truth” era<sup>42</sup>: “Disinformation war” in the COVID-crisis

Broadly, across the globe, there has been witnessed, a two-fold approach to resist the proliferation of fake news. The first campaigns for a collective effort by multi-stakeholders including, the government, social media companies, news media, fact-checkers, *etc.* aimed at augmenting media literacy and deterring the agents responsible, with a befitting action, prescribed in the existing legal framework.<sup>43</sup> The alternative strategy is to clamp it down with a domestic legislative enactment. National laws, promulgated to criminalise fake news,<sup>44</sup> are generally mistrusted for being susceptible to governmental abuse through whimsical interpretation and autocratic enforcement, to muffle an independent media,<sup>45</sup> thereby creating a “chilling effect” on free speech.

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<sup>41</sup> *Ibid.*

<sup>42</sup> Signifies the one we are currently living in.

<sup>43</sup> Canada, Australia, Denmark, are examples of this approach.

<sup>44</sup> UNESCO, in 2018, much before the virus broke out, cautioned regarding the probable misuse of the newly-drafted, anti-fake legislations. It introduced a “Journalism, Fake News and Disinformation Handbook” as a model curriculum for journalism education and training. The Manual suggests the news media to devotedly adhere to the professional standards and ethics, self-restraining itself from publishing unchecked information. It also advised it to maintain distance from “information which may interest some of the public but which is not in the public interest”. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000265552> (last visited on June 27, 2020).

<sup>45</sup> Tarlach McGonagle, “Fake news: False fears or real concerns?” 35 (4) *Neth. Quart. of Hum. Rts.* 203 (2017), at 204.



Few months before the world was jolted by the unprecedented pandemic of COVID-19, and a massive wave of fake news swept in, Singapore had promulgated the “Protection from Online Falsehoods and Manipulation Act, 2019” (“POFMA”).<sup>46</sup> The Act declares, “communication of false statements of facts”, a punishable offence.<sup>47</sup> It empowers the government to dictate social media companies, news organisation and individuals, to “take down” manipulated content. Having its share of criticism, the legislation has however, not made the country immune from the intimidation of fake news but allegedly, it has been justified to have conserved it by being less impacted from the rampant “overabundance of information” on the virus.<sup>48</sup>

Likewise, Germany is deploying its much criticised enactment,<sup>49</sup> *NetzDG* or, “The Act to Improve Enforcement of the Law in Social Networks” (also known as, “The Network Enforcement Act, 2017”) to deal with fake news on the virus. Enforced in its full force from January 1, 2018, the Act regulates content of social media platforms, having more than two million users in Germany. When deemed unlawful, the content is mandated to be removed by the concerned platform within a stipulated period of twenty-four hours. A decision in this regard is taken by the “competent public administrative body, supervised by the federal government”.<sup>50</sup> Social media giants have been instructed to maintain an effective, transparent and user-friendly complaint-redressal mechanism wherein users can flag any suspicious information.<sup>51</sup> The German law, has been the precedent for countries like, Russia<sup>52</sup> and Singapore,<sup>53</sup> to frame their indigenous legislations regulating fake news.<sup>54</sup>

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<sup>46</sup> The Act’s Date of Commencement is October 2, 2019. It is *available at*: <https://sso.agc.gov.sg/Acts-Supp/18-2019/Published/20190625?DocDate=20190625> (last visited on April 19, 2020).

<sup>47</sup> *Id.*, s. 7.

<sup>48</sup> “We are not the only place where fake information is circulating, but I would say there is far less here”. – As claimed by K. Shanmugam, Singapore’s Law Minister. Also, the country’s health ministry is, on an everyday basis, updating and circulating coronavirus-related information to its populace, in a bid to keep them away from false claims.

*available at*:

<https://www.cnn.com/2020/04/08/singapore-law-minister-on-tackling-fake-news-during-coronavirus-pandemic.html> (last visited on June 12, 2020).

<sup>49</sup> Human Rights Watch, condemning the statute had stated, “It is vague, overbroad, and turns private companies into overzealous censors to avoid steep fines, leaving users with no judicial oversight or right to appeal.”

*available at*:

<https://www.hrw.org/news/2018/02/14/germany-flawed-social-media-law> (last visited on June 14, 2020).

<sup>50</sup> The law does not provide for an adequate appeal procedure against an adverse decision. There is further, no clear yardstick for determining if the blocked content is inappropriate thereby giving a wide discretionary powers to authorities. *Available at*: [https://www.europarl.europa.eu/doceo/document/P-8-2018-000206\\_EN.html](https://www.europarl.europa.eu/doceo/document/P-8-2018-000206_EN.html) (last visited on June 26, 2020).

<sup>51</sup> Vidushi Marda and Stefania Milan, *supra* note 29 at 7.

The European Union (EU), in recent days, has expressed concern over the phenomenal overflow of disinformation on social media, during the COVID-19 exigency. EU's foreign policy chief, Josep Borrell, remarked at a press conference in Brussels, "Disinformation in times of the coronavirus can kill". Acknowledging its duty to protect the citizens from false information by spreading awareness and exposing actors responsible for engaging in such dubious practices, the EU accentuated on strengthening and intensifying the social media response to fake news. Ascribing China and Russia as the genesis of disinformation dissemination,<sup>55</sup> it accused tech giants including, Google, Facebook and Twitter,<sup>56</sup> for allowing coronavirus-related, deceptive and made-up news, to be shared and propagated on their respective platforms. As a counter measure to the ongoing information-chaos, it

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<sup>52</sup> In March 2019, the Russian President Vladimir Putin, signed two laws to counter the creation and circulation of fake news, as passed by the Russian Parliament. The laws impose fine for intentionally spreading such information and sets in motion, procedures for internet service providers to block access to websites engaged in doing so. Details *available at*: <https://www.loc.gov/law/foreign-news/article/russia-russian-president-signs-anti-fake-news-laws/>. Also, in March, 2020, when the virus erupted, "Roskomnadzor", the Russian internet and media regulator, intimidated media services with grave consequences if disinformation on COVID-19 is disseminated. Another legislation was enacted enhancing fines and punishments (extendable to five years in jail), including for the users, for their indulgence in doing so. Its Supreme Court in April, 2020, declared fake news and public discussions on coronavirus illegal, *available at*: <https://www.themoscowtimes.com/2020/03/31/russians-face-up-to-5-years-in-jail-for-spreading-false-coronavirus-news-a69808>; *available at*: <https://www.themoscowtimes.com/2020/03/20/russian-news-outlets-ordered-to-take-down-fake-coronavirus-news-a69699>; *available at*: <https://www.themoscowtimes.com/2020/04/23/russia-bans-discussions-of-fake-coronavirus-news-a70083> (last visited on June 23, 2020).

<sup>53</sup> As herein-above mentioned.

<sup>54</sup> Malaysia, had also enacted the Anti-Fake News Act, 2018, in April, 2018. The allegedly draconian legislation awarded an imprisonment of upto six years for disseminating fake news. Following a prolonged opposition, it was scrapped in October, 2019, just months before the virus struck. *Available at*: <https://www.aljazeera.com/news/2019/10/malaysia-parliament-scraps-law-criminalising-fake-news-191010024414267.html> (last visited on June 9, 2020). China (Cybersecurity Law, 2016) and France are amongst the list of nations relying on laws to combat fake news. Brazil, void of a law in this regard until recently, has lately, amidst the COVID-19 pandemic, initiated the process of finalizing a fake news legislation, *available at*: <https://cpj.org/2020/06/brazilian-senate-to-vote-on-fake-news-bill/> (last visited on June 18, 2020). Nigeria is also working on overhauling its social media space *vide*, "The Protection from Internet Falsehood and Manipulation Bill, 2019", *available at*: [https://www.washingtonpost.com/world/africa/nigerias-fake-news-bill-could-jail-people-for-lying-on-social-media-critics-call-it-censorship/2019/11/25/ccf33c54-0f81-11ea-a533-90a7becf7713\\_story.html](https://www.washingtonpost.com/world/africa/nigerias-fake-news-bill-could-jail-people-for-lying-on-social-media-critics-call-it-censorship/2019/11/25/ccf33c54-0f81-11ea-a533-90a7becf7713_story.html) (last visited on June 19, 2020).

<sup>55</sup> World Coronavirus Dispatch: EU slams China over fake COVID-19 info, *available at*: [https://www.business-standard.com/article/international/world-coronavirus-dispatch-eu-slams-china-over-fake-covid-19-info-120061100676\\_1.html](https://www.business-standard.com/article/international/world-coronavirus-dispatch-eu-slams-china-over-fake-covid-19-info-120061100676_1.html) (last visited on June 12, 2020).

<sup>56</sup> They are also signatories to the industry, self-regulatory, "EU Code of Practice on Disinformation", introduced in, October, 2018), *available at*: <https://ec.europa.eu/digital-single-market/en/news/code-practice-disinformation> (last visited on June 14, 2020). TikTok is the latest signatory to the Code (as reported on June 22, 2020), *available at*: [https://techcrunch.com/2020/06/22/tiktok-joins-the-eus-code-of-practice-on-disinformation/?guccounter=1&guce\\_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce\\_referrer\\_sig=AQAAAMka045v5r7ZpQrSFPOP0\\_7B9Ar8I2Qyyzky2jCczM9icW\\_Ivzsp3gAaG6\\_SerYa8CUL1HwgvqEAlmGh4ByE86cr1u4gQggabY0Xgyu5hw1bY4zsrYQQlGHQ6CRAzSdQFH8C02vikHLZmQK5T97ZLTxzBovaciNVLrD6qX2-EL](https://techcrunch.com/2020/06/22/tiktok-joins-the-eus-code-of-practice-on-disinformation/?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAAMka045v5r7ZpQrSFPOP0_7B9Ar8I2Qyyzky2jCczM9icW_Ivzsp3gAaG6_SerYa8CUL1HwgvqEAlmGh4ByE86cr1u4gQggabY0Xgyu5hw1bY4zsrYQQlGHQ6CRAzSdQFH8C02vikHLZmQK5T97ZLTxzBovaciNVLrD6qX2-EL) (last visited on June 28, 2020).

recommended mobilisation of all stakeholders encompassing the online sites, public authorities, independent fact-checkers and the media.<sup>57</sup>

Moreover, the European Commission, the executive wing of the EU, has instructed the tech-majors to submit to it a monthly report specifying, the actions undertaken in this regard.<sup>58</sup> It has further initiated, “The European Digital Media Observatory” or, “EDMO”.<sup>59</sup> Commencing its activities from June 1, 2020, the EDMO envisions to support the creation and work of an independent, “multidisciplinary community composed of fact-checkers, academic researchers”, and other relevant players, to collaborate with media entities and literacy experts, for an enhanced understanding of “disinformation”, restraining it, and invigorating the society’s resilience to it.<sup>60</sup>

Also, according to the United Nations’ Department of Global Communication (“DGC”),<sup>61</sup> a team of the World Health Organisation’s (“WHO”) “mythbusters” is working in association with social media enterprises like, Facebook, Google, TikTok, YouTube, Twitter, and the like, to segregate misconceptions making rounds on the virus from verified facts,<sup>62</sup> and transmit authoritative information. On May 21, 2020, the DGC, launched an initiative “Verified”, to ensure dissemination of “trusted information”. It invites public to become “information volunteers” and assist in spreading “UN-verified” COVID-19 information.<sup>63</sup>

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<sup>57</sup> Coronavirus disinformation: EU warning over wave of fake COVID-19 claims on social media, *available at*: <https://www.euronews.com/2020/06/10/coronavirus-disinformation-eu-warning-over-wave-of-fake-covid-19-claims-on-social-media>. Also *see*, *available at*: <https://in.reuters.com/article/health-health-coronavirus-eu-disinformat/facebook-twitter-google-to-report-monthly-on-fake-news-fight-eu-says-idINKBN23H1O3> (last visited on June 14, 2020).

<sup>58</sup> The report must contain a detailed account of the initiatives taken by Google, Facebook, Twitter, *etc.*, “to promote authoritative content, improve users’ awareness, and limit coronavirus disinformation and advertising related to it”, *available at*: <https://www.indiatvnews.com/technology/news-facebook-google-prepare-reports-on-coronavirus-fake-news-know-what-it-means-625307> (last visited on June 12, 2020).

<sup>59</sup> The creation of the Observatory was one of the key elements of the Commission’s “Action Plan against disinformation”, published on Dec. 5, 2018, *available at*: <https://ec.europa.eu/digital-single-market/en/news/action-plan-against-disinformation> (last visited on June 12, 2020).

<sup>60</sup> The European Digital Media Observatory project kicks off, *available at*: <https://ec.europa.eu/digital-single-market/en/news/european-digital-media-observatory-project-kicks> Details of EDMO, *available at*: <https://edmo.eu/> (last visited on June 12, 2020).

<sup>61</sup> It “promotes global awareness and understanding of the work of the United Nations”.

<sup>62</sup> For instance, WHO busted the news that the virus does not survive in hot weather, it spreads through mobile networks and radio waves, *etc.*, *available at*: <https://www.un.org/en/un-coronavirus-communications-team/un-tackling-%E2%80%98infodemic%E2%80%99-misinformation-and-cybercrime-covid-19> (last visited on June 27, 2020).

<sup>63</sup> ‘Verified’ initiative aims to flood digital space with facts amid COVID-19 crisis, *available at*: <https://www.un.org/en/coronavirus/%E2%80%98verified%E2%80%99-initiative-aims-flood-digital-space-facts-amid-covid-19-crisis> (last visited on June 27, 2020).

Taking cue from the UN's notion,<sup>64</sup> we are in a "post-truth" era, fighting in a "digital battlefield" and hence, the armoury used, must promote new "compelling and sophisticated methods" including, empowering people to support governments in their endeavours to bust fake news.

#### **IV. India's wrestle with the COVID-19 pandemic, fake news "infodemic"<sup>65</sup> and the legal battleground**

India is no exception to the global pandemic of fake news. It has been battling an "avalanche"<sup>66</sup> of phony news. The "virus", though permeating news invariably, was at its peak in 2019 ever since the Pulwama attacks in February, succeeded by a series of consequential events like, the general elections (April-May), abrogation of article 370 (August), Citizenship (Amendment) Act, 2019 and the protests circumscribing it (December), *etc.* The fake news "tsunami" did not end here and continued to engulf the information landscape with the Delhi riots of February, 2020, and lately, the COVID-19 outbreak,<sup>67</sup> causing a massive devastation.

#### **The regulatory regime**

Presently, the country is devoid of a specific legislation, dealing exclusively with the "fake news" plague nevertheless, it is striving to counter it by having recourse to the existing laws.<sup>68</sup> First and foremost, it is pertinent to mention article 19 (1)(a) of the Constitution of India, the guarantor of the fundamental right to freedom of speech and expression,<sup>69</sup> that

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<sup>64</sup> *Ibid.*

<sup>65</sup> "Infodemic" is an expression used by the World Health Organisation, in the wake of the COVID-19 crisis. It defines it as, "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".

*available at:* <https://m.economictimes.com/news/politics-and-nation/view-disinformation-in-times-of-a-pandemic-and-the-laws-around-it/articleshow/74960629.cms>(last visited on April 20, 2020).

<sup>66</sup> Usage of the expression is inspired from *Ibid*; "Disinformation in times of a pandemic, and the laws around it".

<sup>67</sup>The Prime Minister of India, Shri Narendra Modi, whilst addressing the Non-Aligned Movement ("NAM") Summit in May, 2020, *via* video conferencing, expressed his concern on the fake news menace and remarked that, "Even as the world fights Covid-19, some people are busy spreading some other deadly viruses such as terrorism, fake news and doctored videos to divide communities and countries", *available at:* <https://www.hindustantimes.com/india-news/as-world-fights-covid-19-some-spreading-other-viruses-pm-modi-at-nam/story-q5ET0Omqb4wtUcjFSd9PJL.html> (last visited on May 4, 2020).

<sup>68</sup> The term "fake news" is undefined by any statute. For the print and electronic media therefore, the onus to determine if the content of news is "fake" or merely "inaccurate", is on the Press Council of India and the News Broadcasters Association, respectively. An action against a newspaper or news channel, as the case may be, is accordingly taken.

<sup>69</sup> Constitution of India 1950, art. 19 (1)(a): "All citizens shall have the right to freedom of speech and expression".

embraces the press' liberty,<sup>70</sup> howbeit, its exercise is contingent on the reasonable restrictions prescribed under article 19 (2).<sup>71</sup> Against this backdrop, dissemination of news, ostensibly “fake”, against the interests of India's sovereignty and integrity, state security, its friendly relations with foreign states, public order, decency or morality, *etc.* is, as the foundational rule, proscribed.

Fallacious content in newspapers is dealt with by an autonomous, statutory body namely, the Press Council of India.<sup>72</sup> The PCI, in a Release<sup>73</sup> dated, April, 3, 2018, has ascribed a meaning to “fake news” as, “news, story, information, date and reports which is or are wholly or partly false”.<sup>74</sup> A complaint, in this regard, may be made to the Council by any individual, the aggrieved person, or the government.<sup>75</sup> It is also empowered to take a *suo-motu* cognizance of a fake reportage and initiate appropriate proceedings<sup>76</sup> against the impugned newspaper. The Council's adjudication is guided by, the “Norms of Journalistic Conduct”,<sup>77</sup> a code, designed to ensure high professional standards in newspaper reporting.<sup>78</sup> An extreme measure such as, suspension or cancellation of the journalist's accreditation, is however, not commonly resorted to except, in grave or recurring indulgence.<sup>79</sup>

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<sup>70</sup> An implied fundamental right in art. 19 (1)(a). As validated in a plethora of Supreme Court of India judgements including, *Romesh Thappar v. State of Madras*, AIR 1950 SC 124; *Brij Bhushan v. State of Delhi*, AIR 1950 SC 129; *Sakal Papers (P.) Ltd. v. Union of India* (1962) 3 SCR 842; *Bennett Coleman v. UOI*, AIR 1973 SC 106; *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers Bombay Pvt. Ltd.*, AIR 1989 SC 190; *etc.*

<sup>71</sup> Art. 19 (2): “Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.”

<sup>72</sup> Hereinafter referred to as, “PCI”. Instituted under the Press Council of India Act, 1978, with the broad, two-fold objective of safeguarding the freedom of press, and preserving the standards of newspapers in India. Details available at: <http://www.pci.nic.in/> (last visited on June 2, 2020).

<sup>73</sup> “Response of Chairman on Fake News”.

<sup>74</sup> The release is available at: <https://www.republicworld.com/india-news/general-news/press-council-of-india-defines-fake-news-says-its-an-appropriate-body-to-tackle-it.html> (last visited on Apr. 24, 2020).

<sup>75</sup> Complaints Procedure, available at: [http://presscouncil.nic.in/Content/59\\_1\\_ComplaintsProcedure.aspx](http://presscouncil.nic.in/Content/59_1_ComplaintsProcedure.aspx) (last visited on June 10, 2020).

<sup>76</sup> In accordance with the provisions of the Press Council Act, 1978 and the Press Council (Procedure for Inquiry) Regulations, 1979.

<sup>77</sup> Norms of Journalistic Conduct (Edition 2019), available at: <http://presscouncil.nic.in/WriteReadData/Pdf/NORMSTWOZEROONEININE.pdf> (last visited on April 18, 2020).

<sup>78</sup> Its first principle pertains to “Accuracy and Fairness” in reporting.

<sup>79</sup> The Information and Broadcasting Ministry, Government of India, in Aug. 2018, attacking “fake news”, made modifications in the “Guidelines for Accreditation of Journalists”, empowering the Press Council of India (in case of the news being circulated in the print media) and the News Broadcasters Association (for electronic media), to adjudicate on matters related therewith. The Amendment further jeopardized, the accreditation of the journalist, responsible for creating or propagating such news. The notification, was however, immediately withdrawn after a massive hue and cry by the journalistic fraternity alleging that the same was an extreme measure for policing the media.

In an endeavour to avert the spread of “fake news” during the coronavirus outburst, the Council, has been proactively taking suitable measures. On April 1, 2020, the Council, in an advisory to the media,<sup>80</sup> has directed it to act responsibly and ensure that, verified news alone, is disseminated in relation to COVID-19.<sup>81</sup> Concerned with the hazard posed by the novel, unfathomable virus, in a press release dated, April 3, 2020,<sup>82</sup> intending to prevent the circulation of “misleading information” in relation to “AYUSH drugs and services”, the Council has advised the print media to cease publicizing and advertising “AYUSH-related claims for COVID-19 treatment”.<sup>83</sup>

The council’s jurisdiction, is however, restricted to the print media *i.e.*, newspapers. Its decisions, advisories, *etc.* accordingly, have no pertinence, beyond the PCI’s delineated periphery. Also, in case of a breach, the Council is authorised to act but, is not empowered to respond drastically.<sup>84</sup>

Owing to the PCI’s deficient dominion together with, a void of an akin statutory authority,<sup>85</sup> the content broadcasted *via* news television channels, is watched by an industry self-regulator, having voluntary membership namely, the News Broadcasters Association (NBA).<sup>86</sup> The NBA has designed, a “Code of Ethics and Broadcasting Standards”.<sup>87</sup> The primary “Fundamental Principle” enshrined in the Code, nominates “electronic journalists” as “trustees of public”, having a “mission to seek the truth” and report it fairly. It vouches for journalistic integrity and accountability in telecasting news. The “principles of self-regulation” envisaged in the Code, pledge against “malicious, biased, regressive, knowingly inaccurate, hurtful, misleading” reportage. Impartiality, objectivity and neutrality, constitute

<sup>80</sup> Following the Supreme Court of India’s recent order in *Alok Alakh Srivastava v. Union of India* [W.P. (Civil) No. 468/2020] 2020 SCCOnLine SC 345 – discussed ahead in the article.

<sup>81</sup> Press Release PR/7/2020-PCI, available at: <http://presscouncil.nic.in/WriteReadData/Pdf/PressReleaseseevanapril.pdf> (last visited on Apr. 2, 2020).

<sup>82</sup> Based on the Order no. Z 25023 /09/2018-2020-DCC (AYUSH) of Ministry of AYUSH, Government of India dated, 01/03/2020.

<sup>83</sup> Press Release no. PR-8-2020, available at: <http://presscouncil.nic.in/WriteReadData/Pdf/PREightaprilPCI.pdf> (last visited on May 26, 2020).

<sup>84</sup> It may simply issue a warning, admonish or censure a newspaper, news agency, editor or journalist or, disapprove of the editor’s or journalist’s conduct. – See the Press Council of India Act, 1978, s.14.

<sup>85</sup> The content of news television channels is regulated by the “Programme Code” as envisaged in the Cable Television Networks (Regulation) Act, 1995 [see s. 5 of the Act and rule 6 of the Cable Television Networks Rules, 1994, explicating the Code – clause (d) prohibits broadcast of false and half-truths] however, the Act does not establish a statutory regulator. The Central Government, through the Ministry of Information and Broadcasting continues to exert its dominion in the arena.

<sup>86</sup> Hereinafter referred to as, “NBA”.

<sup>87</sup> Code of Ethics and Broadcasting Standards, available at: [http://www.nbanewdelhi.com/assets/uploads/pdf/code\\_of\\_ethics\\_english.pdf](http://www.nbanewdelhi.com/assets/uploads/pdf/code_of_ethics_english.pdf) (last visited on April 24, 2020).

the core postulates of the Code. Any inaccuracy in news reporting must be acknowledged and immediately corrected. A complaint wailing “fake news” or otherwise, may be made to the “News Broadcasters Standards Authority” or, “NBSA”, established by the NBA for this purpose, under the “News Broadcasting Standards Regulations”.<sup>88</sup>

On the coronavirus crisis, the NBA, *vide* a press release dated, April 1, 2020,<sup>89</sup> in the same spirit as the PCI, has avowed for responsible reporting. It has advised news channels, to eliminate from its content, any “fake news” doing the rounds on social media thereby filtering it, preceding broadcast.<sup>90</sup> An Advisory in this regard, has also been issued by the NBSA to all “members and editors” of NBA, to contribute positively by warranting that unverified news, capable of creating hysteria in the audiences, is not broadcasted.<sup>91</sup>

In the NBA’s pursuit of ensuring utmost accuracy in news presentation during the COVID-19 contagion, the NBSA, on May 21, 2020, has put forth in the public domain, ancillary “Specific Guidelines Covering Reportage”, insisting on, amongst other things, to not sensationalize the news, creating panic, distress or undue fear, amongst viewers. Reporting must be, “in public interest” and within the context in which, it is being broadcasted. Objectivity in news content, must be the priority and any superstition or occultism should not be promoted. Moreover, to ensure that viewers are not misinformed or in any manner confused, by reason of the facts/ground situations on COVID-19 varying daily, archival footage/material must clearly be labelled “File”.<sup>92</sup>

The NBA, may alone command, private television news broadcasters, being members of the association. It is incapacitated to act against a non-member broadcaster unless, it is instructed

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<sup>88</sup> News Broadcasting Standards Regulation, *available at*: [http://www.nbanewdelhi.com/assets/uploads/pdf/2\\_News\\_Broadcasting\\_Standards\\_Regulations\\_1\\_4\\_081.pdf](http://www.nbanewdelhi.com/assets/uploads/pdf/2_News_Broadcasting_Standards_Regulations_1_4_081.pdf) (last visited on Apr. 24, 2020). The complaint procedure has also been described in the Regulations.

<sup>89</sup> As an aftermath of the Supreme Court order in *Alakh Alok Srivastava*, *supra* note 80.

<sup>90</sup> News Broadcasters Association (NBA) welcomes the Supreme Court Order dated Mar. 31, 2020, *available at*: [http://www.nbanewdelhi.com/assets/uploads/pdf/77\\_PRESS\\_RELEASE\\_1\\_4\\_20.pdf](http://www.nbanewdelhi.com/assets/uploads/pdf/77_PRESS_RELEASE_1_4_20.pdf) (last visited on Apr. 2, 2020).

<sup>91</sup> “News media plays a critical role during public health emergencies by providing reassurance, bringing calm, motivating people to overcome the crisis and in bringing their lives back to normal. Inaccurate information can lead to rumours and misinformation, resulting in panic and chaos...In these circumstances member broadcasters could also consider telecasting the positives steps being taken by various individuals/ persons/ entities / governments and all medical personnel in order that objective, balanced, accurate and impartial news gets telecast”, *available at*: [http://www.nbanewdelhi.com/assets/uploads/pdf/18\\_Advisory\\_dt\\_1\\_4\\_20.pdf](http://www.nbanewdelhi.com/assets/uploads/pdf/18_Advisory_dt_1_4_20.pdf) (last visited on May 5, 2020).

<sup>92</sup> The “Advisory regarding Archival footage/Material to be clearly labelled “FILE” while covering the COVID 2019 Pandemic” and the “News Broadcasters Association: Specific Guidelines Covering Reportage”, *available at*: [http://www.nbanewdelhi.com/assets/uploads/pdf/35\\_Advisory\\_Dt\\_21\\_5\\_20.pdf](http://www.nbanewdelhi.com/assets/uploads/pdf/35_Advisory_Dt_21_5_20.pdf) (last visited on June 1, 2020).

to do so by the Ministry of Information and Broadcasting, Government of India. Nonetheless, cracking down “fake news” in the print and electronic media, is reasonably streamlined, as compared with social media. Social media, is a boundless, complex universe, with uncertainties reigning it. Essentially regulated by the central government, *vide* the Information Technology Act, 2002, it is the most vulnerable forum, for the dissemination of deceitful information.<sup>93</sup>

Alongside, the Information Technology (Intermediaries Guidelines) Rules, 2011,<sup>94</sup> as devised by the central government,<sup>95</sup> have ramifications on the digital media content. Rule 3 sub-rule (2) enumerates the genre of information, forbidden from being hosted, published, transmitted, *etc.* by an intermediary.<sup>96</sup> Clause (f) in particular, relates to deceptive or misleading information. It is incumbent on the intermediary to disable, or if deemed necessary, report such fake content to the designated authority.<sup>97</sup>

As the coronavirus contagion intensifies and fear globally mounts, social media giants like Facebook, Twitter and YouTube, have been claiming to be aggressively surveilling

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<sup>93</sup> The pertinent provisions of the IT Act include, s. 67 C [mandating the intermediaries to preserve and retain information, as may be directed by the central government, for the duration specified by it]; s. 69 A [blocking of public access to information. Also *see* Information Technology (Procedure and Safeguards for Blocking of Access of Information by Public) Rules, 2009]; s. 79 [exemption from liability of intermediary in certain cases]. Earlier, s. 66-A was extensively used to crack down social media content. It was however, struck down by the Supreme Court in *Shreya Singhal v. Union of India* (2015) 5 SCC 1.

The very recent decision of the Government of India banning fifty-nine Chinese mobile apps “prejudicial to sovereignty and integrity of India, defence of India, security of state and public order”, was taken on its behalf by the Ministry of Information and Broadcasting, exercising its powers under s. 69 A of the IT Act read with the relevant provisions of the 2009 Rules herein-above stated, *available at*: <https://pib.gov.in/PressReleaseDetailm.aspx?PRID=1635206> (last visited on July 1, 2020).

<sup>94</sup> Rules are, *available at*: <https://www.prsindia.org/uploads/media/IT%20Rules/IT%20Rules%202011.pdf> (last visited on Apr. 10, 2020).

<sup>95</sup> In exercise of the powers conferred by clause (zg) of sub-s. (2) of s. 87 read with sub-section (2) of s. 79 of the Information Technology Act, 2000.

<sup>96</sup> The Draft Information Technology [Intermediary Guidelines (Amendment) Rules], 2018 prohibit a “new category of information”, *i.e.*, content which threatens ‘public health or safety’. It will also have implications on “fake news”. The draft rules mandate intermediaries to provide assistance to any government agency in this regard, within a period of 72 hours. Further, they must enable tracing of the originator of the information on their platform, *available at*: <https://www.prsindia.org/billtrack/draft-information-technology-intermediaries-guidelines-amendment-rules-2018> (last visited on Apr. 10, 2020).

<sup>97</sup> It is furthermore, notable that, in February, 2020, it was rife that the world’s largest social media companies including, Facebook, Google, Twitter, *etc.*, have announced a collaborative fight against fake news, hate speech and equivalently damaging content in India, thereby proposing an industry-led “Information Trust Alliance” (“ITA”). The alliance would bring together, digital platforms, publishers, fact-checkers, civil society and academia, with a common aim of controlling the proliferation of fake news in the country. It intends to conduct public awareness campaigns in educational institutions and workshops with content creators to find innovative solutions to the problem. Formulating a “Code of Practice”, is also amongst the Alliance’s agenda. The Internet and Mobile Association of India or “IAMAI” (a non-profit, industry body, representing the digital fraternity, with Facebook, Google, TikTok, ShareChat, *etc.* as members), is leading the partnership, currently, in its nascent stage, *available at*: <https://economictimes.indiatimes.com/tech/internet/social-media-to-join-hands-to-fight-fake-news-hate-speech/articleshow/74200542.cms> (last visited on Feb. 19, 2020).



misinformation on their respective platforms. Twitter, for instance, professes to have flagging information for removal, from unreliable news outlets or conspiracy websites.<sup>98</sup> Facebook also has purported to have deployed algorithms, designed to hunt and notify sensationalist and sceptical content.<sup>99</sup> Likewise, Instagram, now owned by Facebook, identifies and tracks hashtags, repeatedly used in dubious posts. Upon a search made on coronavirus, it automatically directs the user to official or genuine sources.<sup>100</sup>

The Ministry of Information and Technology, Government of India expects the social media companies to maximize their endeavours in curbing fake news. Nevertheless, the limitation remains that, these intermediaries are not the content-creators. The exceptional rise in subscribers has made it largely unrealistic for them to trace and subvert mischievous content. A recent BBC reportage<sup>101</sup> has blamed the social media organisations for being lax and considerably unresponsive to substantial spurious posts relating to coronavirus.<sup>102</sup>

Besides the concerned regulators at warfare with fake news, there are, a plethora of legal provisions, dispersed across statutes, that may be germane to confront the issue. Predominantly, section 505 (1) (b) and (c) and (2) of the Indian Penal Code, 1860 is notable in this regard. It essentially criminalizes, making, publishing, circulating any statement or report, containing rumour or alarming news, with intent or the likelihood of, causing harm to the public or any section thereof, inducing to commit an offence against the state or public tranquillity; or inciting the commission of an offence against any other class or community; or promoting on the grounds of religion, race, place of birth, *etc.* feelings of enmity, hatred or ill-will, between different religious, racial, language or regional groups, castes or communities. Furthermore, sections 124-A,<sup>103</sup> 153-A,<sup>104</sup> 153-B,<sup>105</sup> 171-G,<sup>106</sup> 295-A,<sup>107</sup>

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<sup>98</sup> Twitter alleged that users searching for information on the virus were directed to credible and authoritative sources such as, the World Health Organisation or national health agencies. *Available at:* <https://www.forbes.com/sites/bernardmarr/2020/03/27/finding-the-truth-about-covid-19-how-facebook-twitter-and-instagram-are-tackling-fake-news/#49d829f31977> (last visited on June 26, 2020).

<sup>99</sup> *Ibid.*

<sup>100</sup> *Ibid.*

<sup>101</sup> Dated June 4, 2020.

<sup>102</sup> Social media firms fail to act on COVID-19 fake news, *available at:* <https://www.bbc.com/news/technology-52903680> (last visited on June 27, 2020).

<sup>103</sup> Sedition.

<sup>104</sup> Promoting enmity between different groups on ground of religion, race, place of birth, residence, language, *etc.*, and doing acts prejudicial to maintenance of harmony.

<sup>105</sup> Imputations, assertions prejudicial to national integration.

<sup>106</sup> False statement in connection with an election.

<sup>107</sup> Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs.

499,<sup>108</sup> of the Code may be invoked in certain peculiar instances of fake news. There are, in addition, supplementary enactments, with specific provisions that may be weaponized against fake news for instance, Representation of the People Act, 1951,<sup>109</sup> Civil Defence Act, 1968,<sup>110</sup> National Security Act, 1980,<sup>111</sup> *etc.*

Particularly pertinent, during a pandemic in nature of COVID-19, section 54 of the Disaster Management Act, 2005 declares punishable, making or circulating “a false alarm or warning as to disaster or its severity or magnitude, leading to panic”.<sup>112</sup> Aside, the Epidemic Diseases Act, 1897, authorizing the government to “take special measures and prescribe regulations as to dangerous epidemic disease”, is relied on.<sup>113</sup> Ensuingly, section 188 of the Indian Penal Code, 1860, making punishable, “disobedience to order duly promulgated by public servant”, is enforced.<sup>114</sup>

#### *Incidental measures*

Besides the guardians of righteous news incessantly at work, the government of India, through its diverse ministries, has been initiating consequential measures, to curb the “fake news” surge, more particularly, during the present delicate and distressed times of the coronavirus plague. These have been herein-below iterated.

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<sup>108</sup> Defamation.

<sup>109</sup> Read with, the “Model Code of Conduct for the Guidance of Political Parties and Candidates”, formulated by the Election Commission of India.

<sup>110</sup> S. 3 (w)(i) and (ii) that empowers the central government to make rules, “for securing civil defence”, “prohibiting the printing and publication of any newspaper, news-sheet”, *etc.*, “containing matters prejudicial to civil defence”.

<sup>111</sup> S. 3(1)(a) and 3(2) empower the Central or State Government, to make an order, directing the detention of a person, on being satisfied that it is necessary to do so, “with a view to preventing him from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, or the security of India,” or security of the state or the maintenance of public order, *etc.*

<sup>112</sup> Conviction under the section is “punishable with imprisonment which may extend to one year or with fine”. The Disaster Management Act, 2005, *available at:*

<https://ndma.gov.in/en/disaster.html> (last visited on Apr. 20, 2020).

The provision was invoked by the National Disaster Management Authority (NDMA), instituted under the Act, chaired by the Prime Minister, for constraining the circulation of “fake news” during the lockdown period announced by the central government, in the wake of the COVID-19 pandemic. If one’s action leads to a loss of lives, the sentence prescribed, is extendable to two years and a fine [s. 51], *available at:* <https://theprint.in/india/spreading-fake-news-rumours-on-covid-19-can-land-you-in-jail-for-ayear/387611/> (last visited on Apr. 1, 2020).

<sup>113</sup> *See* ss. 2 and 2A. The Act was amended on April 22, 2020 *vide*, the Epidemic Diseases (Amendment) Ordinance, 2020, to provide enhanced protection for “healthcare personnel combatting epidemic diseases”. It also “expands the powers of the central government to prevent the spread of such diseases”, *available at:* <https://www.prsindia.org/billtrack/epidemic-diseases-amendment-ordinance-2020> (last visited on Apr.24, 2020).

<sup>114</sup> S. 505 (1)(b) of IPC is also relevant in this regard and has been herein-above dealt with.

In November, 2019, the Press Information Bureau (“PIB”),<sup>115</sup> in a bid to combat the fake news menace, had set up a dedicated fact-check unit, to verify news and “bust rumours”,<sup>116</sup> relating to the government, its functionaries and officials, on social media.<sup>117</sup> It initiated the “PIB Fact Check”, a verified Twitter handle, to continually monitor the “trending” social media content, review it and notify any dubious information. People have been encouraged to report any message (text, audio, or video), suspicious of being a sham, for authentication.<sup>118</sup> Lately, the Ministry of Information and Broadcasting, Government of India,<sup>119</sup> troubled with the flood of fake news during the coronavirus endemic has, through the PIB, set up a “Fact Check Unit” whereby, all official communication on COVID-19 may be obtained, ensuring thus, that “unverified news capable of causing panic” is not disseminated.<sup>120</sup> Any fake/incorrect news, in circulation, in print, electronic or social media, may be intimated to the “Fact Check Unit”. A clarification on its authenticity or otherwise, may be sought therefrom.<sup>121</sup>

The move was an aftermath of a Ministry of Home Affairs prior letter dated, April 1, 2020, written in this regard through the Home Secretary, addressed to the state governments and Union Territory Administrations, to notify and request them to create an akin web-portal, as designed subsequently by the Central Government, to deal with instances of fake news at the state or Union Territory level, concerning issues related to them wherein, people could verify facts and unauthentic news promptly.<sup>122</sup> Alongside, to wipe out “fake news” to the greatest extent possible, the PIB has launched a “daily bulletin on covid-19” wherefrom, every information pertaining to the pandemic may be retrieved on an everyday basis. As a corollary, people’s reliance on news, consumed from spurious sources, may be curtailed.

<sup>115</sup> Acting under the Ministry of Information and Broadcasting, Government of India.

<sup>116</sup> Read “Background”, available at: <https://pib.gov.in/PressReleaseDetail.aspx?PRID=1616896> (last visited on May 19, 2020).

<sup>117</sup> Read Press Information Bureau sets up fact-checking unit to combat fake news related to government, available at: <https://theprint.in/india/press-information-bureau-sets-up-fact-checking-unit-to-combat-fake-news-related-to-govt/328248/> (last visited on May 19, 2020).

<sup>118</sup> See the Fact Check Portal, available at: <https://factcheck.pib.gov.in/> (last visited on June 20, 2020).

<sup>119</sup> On Apr. 2, 2020.

<sup>120</sup> Available at: <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1610283> (last visited on June 12, 2020).

<sup>121</sup> Information, Communication and Public Awareness regarding COVID-19, available at: <https://mib.gov.in/sites/default/files/Information%20Communication%20and%20Public%20Awareness%20regarding%20COVID-103042020171645.pdf> (last visited on June 12, 2020).

<sup>122</sup> The letter is, available at: <http://164.100.117.97/WriteReadData/userfiles/MHA%20writes%20to%20States%20and%20UTs%20to%20take%20measures%20to%20fight%20Fake%20News.jpg> (last visited on June 12, 2020).

An illustration may be cited of the “Fake News Monitoring Unit”, a web-portal created by the Government of Himachal Pradesh for the identification and reporting of misinformation/rumours, etc, available at: <http://fakenews.hp.gov.in/> (last visited on June 24, 2020).

In a previous directive,<sup>123</sup> addressed to all states and Union Territories, the Ministry of Information and Broadcasting, whilst ensuring the “operational continuity” of the print and electronic media, during the coronavirus pandemic, spotlighting the inevitability of “robust and essential information dissemination”, has correspondingly cautioned against “false and fake news” and instead, favoured circulation of authentic reportage, creating awareness and promoting “good practices”.<sup>124</sup>

The Ministry of Electronics and Information Technology, on March 20, 2020, alarmed with the massive circulation of fabricated news concerning the COVID-19 pandemic, issued an advisory, directed to all social media platforms,<sup>125</sup> “to curb false news/misinformation on coronavirus”.<sup>126</sup> The advisory, requires the intermediaries, to “inform their users not to host, display, upload, modify, publish, transmit, update or share any information that may affect public order” or is in any manner, unlawful. It further directs them to, on priority, “take immediate action to disable/remove such content”.<sup>127</sup> All intermediaries have been mandated to “follow due diligence, as prescribed in the Information Technology (Intermediary Guidelines) Rules, 2011”,<sup>128</sup> regulating the content disseminated *via* social media forums.<sup>129</sup>

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<sup>123</sup> Dated Mar. 23, 2020.

<sup>124</sup> Ensure operational continuity of Print and Electronic Media in view of threat of COVID-19 outbreak – regarding, *available at*: <https://mib.gov.in/sites/default/files/Electronic%20and%20Print%20Media.pdf> (last visited on June 12, 2020).

<sup>125</sup> “Social Media Platforms” are “intermediaries” as defined under s. 2 (1)(w) of the Information Technology Act, 2000.

<sup>126</sup> Advisory to Curb False News/Misinformation on Coronavirus, *available at*: [https://meity.gov.in/writereaddata/files/advisory\\_to\\_curb\\_false\\_news-misinformation\\_on\\_corona\\_virus.pdf](https://meity.gov.in/writereaddata/files/advisory_to_curb_false_news-misinformation_on_corona_virus.pdf) (last visited on June 22, 2020).

<sup>127</sup> The Advisory, in its essence, stresses on three mandates namely, 1. Social media platforms to initiate awareness campaigns for users not to circulate false information which can create panic 2. Take immediate action against such content 3. Promote dissemination of accurate information.

<sup>128</sup> The Rules have implications on content disseminated over the internet. They have been notified under section 79 of the IT Act. The Information Technology (Intermediary Guidelines) Rules, 2011 are, *available at*: <https://www.prsindia.org/billtrack/the-information-technology-rules-2011-1908> (last visited on June 10, 2020).

<sup>129</sup> Also to note, the Bureau of Police Research and Development (BPRD: a “think-tank” of the Union Home Ministry) published a guide, “Fake News & Disinformation: A Guide for LEAs – How to Spot and Investigate”, for law enforcement agencies, to identify and investigate fake news. It was however, removed from its website the very consecutive day citing “technical errors”. The Manual said in the context of “fake news” or “yellow journalism” that, it is generally, “published with the intent to damage an agency, entity or a person and gain financially or politically often using sensationalist, dishonest or outright fabricated headlines to increase readership”. It further mentioned that, “when headlines, visuals or captions do not support the content, or genuine content/sources are impersonated with false or made-up sources, or content is fabricated to deceive and harm”, the news may be categorized as “fake”. The BPRD has assured to re-release a corrected version of the Manual, *available at*: <https://www.thehindu.com/news/national/coronavirus-police-get-a-guide-to-detect-fake-news/article31544474.ece> (last visited on May 9, 2020) and; <https://www.thehindu.com/news/national/bprd-scraps-online-manual-on-identifying-fake-news/article31552093.ece> (last visited on May 10, 2020).

### The judicial stance

Fake news, considerably, is attributable to the emergence of “new journalism”. It has although, relatively lately, caught the attention of the Indian jurisprudence, the Supreme Court of India, in its erstwhile decisions, without categorically making use of the expression, has adjudicated against falsity in news presentation, pioneering for accuracy in its publication/broadcast. In a 1995 decision,<sup>130</sup> the court had stated, “one-sided information, disinformation, misinformation and non-information, all equally create an uninformed citizenry”. It is an anti-thesis of, “the principle of plurality and diversity of views, news, ideas, and opinions”. Further ahead, in *Harijai Singh, Re*,<sup>131</sup> it clarified its standpoint asserting that the protection of article 19 (1)(a) is not available to journalists for publicizing “mischievously false, baseless, or distorted” news. They must exercise extra vigilance and not doing so, shall have serious repercussions in law.<sup>132</sup>

“Fake news” was briefly touched upon in *Tehseen S. Poonawalla v. Union of India*,<sup>133</sup> dealing essentially with increasing incidents of lynching and mob violence and, the deleterious influence of fake news and false stories in instigating an intolerance culture. Amongst the guidelines issued on the core concern raised, the court, as a preventive measure, directed a senior police officer, least the Superintendent of Police, designated by the respective state government as the Nodal Officer in each district, as assisted by any one of the DSP rank officer, to together, constitute a special task force, entrusted with the duty of procuring intelligence reports pertaining to people, involved in spreading fake news on the contended issue.<sup>134</sup>

The predominant adjudication on the fake news menace during the ongoing coronavirus catastrophe is the Supreme Court’s order in *Alakh Alok Srivastava v. Union of India*.<sup>135</sup> The writ petition, raised concern over, and sought redressal of, the grievances of migrant labourers in the country, a gush whereof, anxious of its survival, was frantically moving

<sup>130</sup> *Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal* (1995) 2 SCC 161: Holding against monopolizing a medium of communication, in this case, “broadcasting”, the court declared airwaves, as a public property.

<sup>131</sup> AIR 1997 SC 73. It concerned publication of a news item in the Tribune and Punjab Kesari newspapers, scandalising a Judge of the Supreme Court.

<sup>132</sup> The court also cited its previous observations in *Indian Express Newspapers v. Union of India* (1985) 1 SCC 641 and *Express Newspapers Pvt. Ltd. v. Union of India* (1986) 1 SCC 183, avowing that, an editor’s responsibility is onerous “to guard against untruthful news”.

<sup>133</sup> (2018) 9 SCC 501.

<sup>134</sup> Akin observation was made in *Kodungallur Film Society v. Union Of India* (2018) 10 SCC 713, pertaining to mob violence and protests against artistic expression, provoked by the release of the film “Padmaavat”.

<sup>135</sup> *Supra* note 80.

towards their native place, panicked by the false information in circulation on social media, pertaining to the nationwide lockdown imposed, in the wake of the hazards posed by the virus.

Quoting Tedros Adhanom Ghebreyesus, Director General of the World Health Organisation (WHO), the court reiterated, “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.” Duly acknowledging the freedom of press, the court, refraining to interfere with the free discussion and reportage on the pandemic, clarified its expectation from all recognized media forums, “to maintain a strong sense of responsibility” in the communication of news, and eschew publicizing unverified information, at risk of causing needless alarm. “Fake news”, in the court’s opinion, could not be overlooked yet, it did not suggest a substantive remedy thereto.<sup>136</sup>

On May 11, 2020, the Supreme Court pronounced on a petition filed against the Union Territory of Jammu and Kashmir,<sup>137</sup> alleging that, in the present-day crucial coronavirus times, when the nation is under lockdown and receiving news is indispensable, the respondent has restricted internet services in the region,<sup>138</sup> injuring the myriad prerogatives constitutionally vested in the petitioners including, speech and expression, education, health, business, *etc.* The petitioners’ claims stressed upon the inevitability of the internet during the agonizing time of COVID-19. Disposing the petitions, taking into consideration the perpetuating insurgency in the territory of Jammu and Kashmir, the court *prima facie* agreed with the contentions of the respondents that fake news incites violence and hence, in national security must proportionately be balanced with the claimed countervailing claims. It however, desisted from adjudicating on the dispute and ordered the constitution of a “special committee”, to determine at the earliest, the necessity of continuation of internet restrictions in the UT.<sup>139</sup>

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<sup>136</sup> A similar opinion on fake news was subsequently expressed by the Bombay High Court in *Registrar (Judicial), High Court of Bombay v. State of Maharashtra* [2020 SCC OnLine Bom 530], referring to its panic-causing tendency, taking suo-moto cognizance of news reports published by certain newspapers, alleging detention of few migrant labourers, heading towards their respective hometowns, owing to the lockdown.

<sup>137</sup> *Foundation for Media Professionals v. Union Territory of Jammu and Kashmir* 2020 SCC OnLine 453.

<sup>138</sup> The mobile internet speed in the Union Territory of Jammu and Kashmir was, in the interest of national security, restricted to 2G whereas, the petitioners demanded a 4G connectivity.

<sup>139</sup> The court’s decision was in conformity with its predecessor in *Anuradha Bhasin v. Union of India* 2020 SCC OnLine SC 25, contemplating the viability of a complete internet shutdown and issuing appropriate directions thereon. It advocated for a “timely review” and “non-permanence” of such order.

Recently, a public interest litigation *viz.*, *Vinit Goenka v. Union of India*,<sup>140</sup> was instituted before the Supreme Court of India, requesting it to issue an appropriate direction to the respondents, “to make a mechanism to check contents and advertisements which are spreading hatred amongst the communities, seditious, instigative, separatist, hate filled, divisive against the society at large and against the spirit of the Union of India”. It specifically targeted *Twitter* for allowing the spread of fake news on its platform, in defiance of the government’s rules. The petitioner, a BJP leader, has recommended that, “KYC of all social media handles in India must be conducted for making social media safe and accountable and traceable”. The petition, is presently, pending before the court.<sup>141</sup>

## V. Conclusion and suggestions

Media’s dubious conduct, has brought its integrity under serious suspicion, debasing and destabilizing its credibility. Democratization of the contemporary media has engendered, an “emotionalized”, as opposed to, a “rationalized” entity. Mistakes, are although, inevitable, evincing accountability for the same, is an uncompromising virtue of existential journalism. The errs of “breaking news” must be self-superintended and rectified by news organisations. An internal ombudsman may exclusively be designated for this purpose. Nevertheless, with media being politicized and limitless forums craving for viewer’s attention, the news media alone, is not blameworthy for the fake news jeopardy.

Social media is divergent from the traditional news media in three critical aspects, making it arduous and obstructive to identify and regulate spam news thereon. The first variant is the user’s mindset. Social media is more accessorized and hence, audience approach the platform for a “hedonic pleasure”<sup>142</sup> *i.e.*, for a leisure purpose instead of, the “utilitarian mindset” of a newspaper, news television channel or news portal patron, adopting a critical outlook. The perspectives are hence, diametrically opposed. Secondly, news media, ordinarily reports the

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<sup>140</sup> Petition available at: [https://www.livelaw.in/pdf\\_upload/pdf\\_upload-375104.pdf](https://www.livelaw.in/pdf_upload/pdf_upload-375104.pdf) (last visited on June 27, 2020).

<sup>141</sup> Another petition titled, *Jamiat Ulama I Hind v. Union of India*, is *sub-judice* before the Apex Court, relating to communalizing the Nizamuddin Markaz event by propagation of bigoted news, accusing the Tablighi Jamaat members, for escalating the COVID-19 spread in the country. It has been contended that publicizing such “fake news” promotes ill-will, enmity and hatred towards the Muslim community and hence, appropriate directions must be issued against the news media, available at: [https://www.barandbench.com/news/we-cannot-curb-freedom-of-press-make-press-council-of-india-a-party-sc-on-jamiat-ulema-e-hind-plea-against-communalization-of-markaz-issue?utm\\_source=one-signal&utm\\_medium=push-notification](https://www.barandbench.com/news/we-cannot-curb-freedom-of-press-make-press-council-of-india-a-party-sc-on-jamiat-ulema-e-hind-plea-against-communalization-of-markaz-issue?utm_source=one-signal&utm_medium=push-notification) (last visited on Apr. 28, 2020).

<sup>142</sup> Antino Kim, Patricia L. Moravec (et. al.), “Combating Fake News on Social Media with Source Ratings: The Effects of User and Expert Reputation Ratings” 36 (3) *J. of Manag. Inf. Sys.* 931 at 932, 933, 935.

news, sometimes, with an added flavour of sensationalism, exaggerations, gossips and minor manipulations. It is, by the day's end, wary of its goodwill and endeavours to behave accordingly. News, on social media, is "created" or "manufactured" and has more mobility. It therefore, mushrooms at a faster pace, with no verification and accomplishes its objective, much before it is mellowed. Lastly, users sometimes, do not choose the source of the content they read. Social media sites like Facebook, itself make a choice and recommend articles to the user based on his previous read, advertisers interests, information inputs from unidentified sources, *etc.*

On account of the complexities of social media, immense responsibility vests on the users' shoulders. "News-consumers", must positively participate and contribute in the country's political development by sharing a concomitant duty of "responsible reader/viewership". News must be consumed critically. Ordinarily, a citizen must place reliance on the customarily-recognized channels for seeking news. Newspapers and news television broadcasters, in contradistinction with, social media portals, are deemed relatively more authentic and reliable, predominantly because, the content disseminated by them, is under surveillance by the PCI and NBA,<sup>143</sup> respectively. There is thus, a functional systemized grievance redressal forum. Also, extravagant indulgence in "fake news" propagation may, be intimidating to the credibility of the concerned news media organisation. Growing audience mistrust would mean, declining revenue, leading to, gradual weakening and eventual extinction of the institution from the news trade. Shouldering a certain degree of accountability is hence, incumbent for their survival.

This, however, does not imply that the social media must be ousted from the "marketplace of ideas". The contention instead, advocates for a wary consumer.<sup>144</sup> Succumbing to the curiosity of "fake news" on social media is eventually, the user's choice. One must exercise due diligence and utmost caution in his interaction with the social media. Certain measures may, hereby be suggested for the social media subscribers. First and foremost, a person must identify bogus news and discern it from a genuine reportage. In doing so, he should be vigilant of specific indicators. These may include,

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<sup>143</sup> The Ministry of Information and Broadcasting too, keeps a vigil on news circulated via private television channels.

<sup>144</sup> Quoting here, a recent statement by K. Shanmugam, Singapore's Minister for Home Affairs: "Our point is, for those who believe in free speech, well this is more speech. You read the fake stuff, you read the true stuff, or what we say is the true stuff, and you make up your mind" *supra* note 48.



- i. The jargon used *i.e.*, fabricated content, particularly circulated by non-media actors, may not, grammatically be very sound, the writing style may be informal, there might be a higher usage of slangs, *etc.* Moreover, if the content makes use of strong language, or incites outrageous emotions, it must be submitted for verification or the least, estopped from further transmission.
- ii. Secondly, on numerous occasions, the tampering done with a message, picture, audio or visual, can clearly be made out on a closer examination. The receiver must therefore, be watchful of editing, seemingly fishy.
- iii. The source of information must be verified by the user, when unsure of the genuineness of the news received. He may reconfirm its veracity with other, more reliable online portals. The assumption is, that an authentic news story is reported at multiple websites and hence, the likelihood of it being true, invariably increases.
- iv. Whilst reading or viewing a news report on a social media platform,<sup>145</sup> one must, as a practice, check the content-creator's details. There are diverse bloggers who propagate their sentiments as "news". These may not necessarily be validated but, campaigned to mislead the public or a section thereof, stirring a temperament of hostility and disgust. It must be borne in mind that the process of gathering, processing, editing, reporting and disseminating news, is a task, entrusted principally to newsmen. None other, is authorised to deceive the citizenry, in the guise of "news". Bloggers, vloggers, authors, intellectuals and akin, alleged social media "activists" may simplicitor, voice and convey their stance on an occurrence but cannot, publicize it as "news".
- v. Lastly, a "news-consumer", when in doubt, must make use of the government's fact-checking services as herein-above prescribed.<sup>146</sup> Doing so, would assist the administration in tracking the perpetrators of fake news and may prevent the potential damage caused from its imprudent and unperturbed circulation.

Also noteworthy is a bizarre fact about truth. Unadulterated truth, or unmistakable informational accuracy, is a myth. It is substantially, the untruth with a shade of truth that has

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<sup>145</sup> Para 4.1 of the "Policy Guidelines for Empanelment of Social Media Platforms with Bureau of Outreach and Communication", for government advertisement, categorically defines a "social media platform" as, "web based and mobile based Internet Application that allows the creation, access and exchange of user generated content. The content on the Social Media platform may be in the form of text, audio visual, graphics, animation or any other form prescribed by BOC from time to time", *available at*: [https://mib.gov.in/sites/default/files/Draft%20Social%20Media%20Policy%20Guidelines\\_01\\_05-converted.pdf](https://mib.gov.in/sites/default/files/Draft%20Social%20Media%20Policy%20Guidelines_01_05-converted.pdf) (last visited on June 26, 2020).

<sup>146</sup> There are also, private fact-checkers like Voyage Inc., BOOM, *etc.*

been ubiquitous. An overly expectation of paramount veracity in news, in the contemporary times, countering an “information war”,<sup>147</sup> is too idealistic a stance.<sup>148</sup> Truth is often a casualty and not, the romanticized purpose of news reporting. News will always be diluted with a certain measure of inescapable subjectivity. Its elimination in the digital age, without smothering the freedom of expression and of the press, is an illusion, its mitigation being the only realism. Alan Barth, a 20<sup>th</sup> century American journalist and a pioneer of civil liberties, has made few remarkable observations in this light:<sup>149</sup>

If you want a watchdog to warn you of intruders, you must put up with a certain amount of mistaken barking. Now and then he will sound off because a stray dog seems to be invading his territory ... or because he is outraged by a postman, and that kind of barking can, of course, be a nuisance ... But if you muzzle him and leash him and teach him decorum, you will find that he doesn't do the job for which you got him in the first place. Some extraneous barking is the price you must pay for his service as a watchdog ... A free press is the watchdog of a free society. And only a press free enough to be somewhat irresponsible can possibly fulfil this vital function.

This, by no means indicate, that “fake news” be abandoned unperturbed. It must be sedated with the least invasive remedy to be administered only in cases of “legally recognizable injuries”.<sup>150</sup> A robust information eco-system preconditions, minimal governmental regulation.<sup>151</sup> Pushing the administration to limits, has an ingrained peril of “over-regulation”, noxious for free expression. British newspaper tycoon Lord Northcliffe, founder of the *Daily Mail* and *Daily Mirror*, had remarked, “news is what somebody somewhere wants to suppress. All the rest is advertising”.<sup>152</sup> Regulation by law-making may thus, propagandize the news, paralyzing its quintessence of encouraging a pluralistic discourse.

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<sup>147</sup> Denoting the threats from unwanted political messages – See Mark Dice, *supra* note 8.

<sup>148</sup> See Ming-Li Wang, “The Fourth Estate under Siege: The Making of a Democratic Institution and Its Pressing Challenges” 7 *NTU L. Rev.* 385 (2012).

<sup>149</sup> William A. Babcock (ed.), *Media Accountability: Who Will Watch the Watchdog in the Twitter Age?* 61, 62 (Routledge, Oxon, UK, 2012).

<sup>150</sup> Phrase borrowed from, Ryan Kraski, “Combating Fake News in Social Media: U.S. and German Legal Approaches” 91 *St. John's L. Rev.* 923 (2017).

<sup>151</sup> The F.S. Nariman Committee, appointed in, *In Re: Destruction of Public and Private Properties v. State of A.P.* (2009) 5 SCC 212, also dissuaded regulation of media content, particularly the news media.

<sup>152</sup> Marek Palczewski, “The term news – its concept and definition in Anglo-Saxon tradition. A review and classification attempt” at 2, available at: [https://www.researchgate.net/publication/326211686\\_MAREK\\_PALCZEWSKI\\_The\\_term\\_newsits\\_concept\\_and\\_definition\\_in\\_Anglo-Saxon\\_tradition\\_A\\_review\\_and\\_classification\\_attempt](https://www.researchgate.net/publication/326211686_MAREK_PALCZEWSKI_The_term_newsits_concept_and_definition_in_Anglo-Saxon_tradition_A_review_and_classification_attempt) (last visited on Apr. 28, 2020).

Self-regulation by the news media and social media subscribers as gatekeepers is hence, the most viable mechanism to “break the chain of rumours”.<sup>153</sup> Moreover, any ensuing liability must primarily discern if the purported news is a “mis-information” simpliciter or, corresponds to the description of “dis-information”. “Mis-information”, is capable of being remedied by an apology, corrigendum or a mere rectification whereas, “dis-information” may, contrastingly be criminalised, under the prevailing legal provisions.

To savour the interminable gains from a liberal media, one has to surrender, at least in part, to certain inevitable perversities it begets. It is truism that, a free society necessitates a democratic media fraternity nevertheless, its power must be balanced with an unfluctuating spirit of responsibility, manifested by both, the media and the citizens, to conserve its autonomy from the state. Media itself, is the antidote of state intrusion.

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<sup>153</sup> See Maharashtra Police Advisory on fake news, *available at*: <https://zeenews.india.com/india/maharashtra-police-registers-196-cases-for-spreading-fake-news-rumours-and-hate-speech-on-social-media-2276460.html> (last visited on June 27, 2020).