

**FREEDOM OF SPEECH VERSUS FAKE NEWS: A COMPARATIVE  
BETWEEN INDIA AND UNITED KINGDOM**

**RADHIKA DWIVEDI**

**GEETIKA VYAS**

TERI SCHOOL OF ADVANCED STUDIES, DELHI

**ABSTRACT**

*Nowadays, the circulation of fake news is at a peak. Many countries have adopted legislation to regulate fake news circulation. This article is a comparative study between the Fake news and Free speech in context of India and UK. This article is divided into 4 parts. The first part of the article is the introduction to the topic which helps us in understanding words like fake news, hate speech and the difference between them. The second part of the article explains the laws relating to freedom of speech in India and U.K. The third part of the article deals with the countermeasures that have been adopted by both the countries to deal with the issue. The last portion is the author's opinion on the topic and what measure should India take in the light of the increasing fake news circulation. In light of this discussion, authors believe that with respect to India drafting of a new legislation would be a limitation the freedom of speech and expression and some other measure must be adopted to curb the circulation of the fake news.*

**Keywords:** *Fake news, Free speech, Freedom of speech and expression, democracy, countermeasures.*

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## INTRODUCTION

India is a country of belief. The networking created by Indian people on Social media can reach fathoms. Most of the people forward the messages to another person without even verifying its truthfulness. Some commentators have even described this issue in India as a “*public health crisis*”.<sup>1</sup> As per the report of Microsoft’s Third Digital Civility Index, Indian have encountered the most fake news among survey of 22 countries.<sup>2</sup> Although several unfaithful incidents have taken place due to spreading of fake news, for instance, in 2019 after the suicide bomber incident took place in Kashmir, a fake news was circulated that Congress and BJP are using this incident to gain vote banks.<sup>3</sup> It was verified as fake news by one of Facebook Inc’s fact-checking partners in India, within 24 hrs. During lockdown in March 2020, circulation of fake news regarding the cure of corona led a man drink sanitizer leading to his death.<sup>4</sup> In one of the BBC report it declared Whatsapp, “*a vehicle for misinformation and propaganda.*”<sup>5</sup> It is extremely saddening that around two dozen people in India were victims of mob lynching because of rumours sent over WhatsApp.<sup>6</sup> Even globally, this plague of fake news has not spared a single country.<sup>7</sup> It meddled with the elections in US, accusing Hilary Clinton murderer<sup>8</sup> Different countries are coming up with measures to cope up with this issue. However, defining the term ‘Fake News’ still remains a task. Even after so many incidents have taken place, it is still a challenge to find the creator of the content and to determine the liability of the creator or distributor.<sup>9</sup>

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<sup>1</sup> Samir Patil, *Op-Ed., India Has a Public Health Crisis. It’s Called Fake News*, N.Y. TIMES (Apr. 29, 2019), <https://www.nytimes.com/2019/04/29/opinion/india-elections-disinformation.html>.

<sup>2</sup> Microsoft Releases Digital Civility Index on Safer Internet Day, Microsoft News Center India (Feb. 5, 2019)

<sup>3</sup> Anjana Pasricha, *Fake News Inundates India Social Media Ahead of Election*, Voice of America (Apr. 3, 2019).

<sup>4</sup> S. Murali, *14 die after consuming hand sanitiser in Andhra Pradesh’s Prakasam district*, THE HINDU (July. 31, 2020), <https://www.thehindu.com/news/national/andhra-pradesh/14-die-after-consuming-hand-sanitiser-in-prakasam/article32237988.ece>.

<sup>5</sup> Kevin Ponniah, *WhatsApp: The ‘Black Hole’ of Fake News in India’s Election*, BBC NEWS (Apr. 6, 2019), <https://www.bbc.com/news/world-asia-india-47797151>.

<sup>6</sup> Snigdha Poonam & Samarth Bansal, *Misinformation Is Endangering India’s Election*, THE ATLANTIC (Apr. 1, 2019), <https://www.theatlantic.com/international/archive/2019/04/india-misinformation-election-fake-news/586123>

<sup>7</sup> Emma M. Savino, *Fake News: No One Is Liable, and That Is a Problem*, 65 BUFF. L. REV. 1101 (2017).

<sup>8</sup> Siva Vaidhyanathan, *Facebook Wins, Democracy Loses*, N.Y. TIMES (Sept. 8, 2017), <https://www.nytimes.com/2017/09/08/opinion/facebook-winsdemocracy-loses.html>.

<sup>9</sup> *Id.*

Freedom of speech is an essential feature of democracy.<sup>10</sup> Every person living in a democracy have right to express his thoughts, share information.<sup>11</sup> Dissemination of fake news has become part of sharing information in the name of exercising free speech. <sup>12</sup>It is “*an internet-based assault of democracy*”.<sup>13</sup>

Therefore, the question arises, whether the legislation to regulate fake news will curb the freedom of expression. Is there a possibility of it being misused in the garb of fake news?

The concept of fake news is not new to the United Kingdom as well. (Hereinafter referred as U.K). We are comparing India with the U.K because both the countries currently dealing with this issue and have no particular law on the subject. It is important to note that both the countries are democratic, it would be only fair to compare both them to understand how can there be fair balance of freedom of speech vis a vis ban on circulation of fake news. Let us start with defining term fake news.

### **Fake news or Hate speech**

It is a topic of debate for everyone on what is meant by fake news? According to the European Union fake news is defined as disinformation “*verifiably false or misleading information which cumulatively is created, presented and disseminated for economic gain or to intentionally deceive the public and may cause public harm intended as threats to democratic, political and policy making process as well as public goods*”<sup>14</sup>. Often people confuse fake news with hate speech. Hate speech or dangerous speech, can be defined as a statement so full of hatred that it may result in inciting people to cause harm to themselves and others.<sup>15</sup> It is prohibited under Article 20 of ICCPR while there is no such proviso for fake news. Hate speech is an opinion or a sentiment of individual while fake news is intentionally manipulated facts. It is also described as a term solely based on intent <sup>16</sup>, that it is made wilfully false and the person creating it knows it is untrue. Sometimes it is even a combination of facts exaggerated with false information and

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<sup>10</sup> Alvin I. Goldman & Daniel Baker, *Free Speech, Fake News, and Democracy*, 18 *First AMEND. L. REV.* 66 (2019).

<sup>11</sup> Russell L. Weaver, *Free Speech in an Internet Era*, 58 *U. Louisville L. REV.* 325 (2020).

<sup>12</sup> Pielemeier, J. (2020). *Disentangling disinformation: What makes regulating disinformation so difficult?*. *Utah Law Review*, 2020(4), 917-940.

<sup>13</sup> *Supra* note 11.

<sup>14</sup> Joseph Blocher, *Free Speech and Justified True Belief*, 133 *HARV. L. REV.* 439 (2019).

<sup>15</sup> Godmad, *Supra* note 10.

<sup>16</sup> Clea Simon, *Fake news is giving reality a run for its money*, *The Harvard Gazette*, (Mar. 27. 2017.), <https://news.harvard.edu/gazette/story/2017/03/harvard-panelists-discuss-future-of-journalism-in-fake-news-world/>.

fabricated with misleading data. It is a heterogeneous platter having propaganda, biased reporting, satire, fabricated stories, incorrect analysis and unacceptable truth.<sup>17</sup> Not every fake news can be a hate speech. Researchers at Stanford University have reinforced that fake news does not include, “*unintentional reporting mistakes; rumours that do not originate from a particular news article; conspiracy theories; satire that is unlikely to be misconstrued as factual; false statements by politicians; and reports that are slanted or misleading but not outright false.*”<sup>18</sup>

## **FREEDOM OF SPEECH AND EXPRESSION IN INDIA AND UK**

*“Freedom of speech involves trade-offs to weigh its value against harms that speech can cause, and no country resolves these trade-offs entirely in favour of protecting speech.”*<sup>19</sup>

It is important to note here, that right to any form of speech originates under the Constitution of a democratic country and therefore it is essential to understand the same along with the restrictions imposed on it. Free speech has three aspects - cognitive, ethical and political. It is also guaranteed under ICCPR and also considered as a human right. All the democracies of the world have incorporated it. In India Freedom of speech and expression is guaranteed under Article 19(1) (a) of the Constitution. It states that, “*all citizens shall have the right to freedom of speech and expression*”.<sup>20</sup> This philosophy is enshrined in the Preamble of the Constitution which, enunciates to secure liberty of thought and expression of all its citizens. It is not an absolute right but subject to reasonable restrictions. As per the Article 19(2), the government can make laws in the interest of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency and morality and contempt of court, defamation and incitement to an offence. Judiciary has also interpreted this provision time and again. This had lead to widening the scope of Article 19 and including various rights such as such as Freedom of press,<sup>21</sup> Freedom of commercial speech<sup>22</sup>, Right to broadcast<sup>23</sup>, Right to remain silent<sup>24</sup>, Right to

<sup>17</sup> Jack M. Balkin, *Free Speech Is a Triangle*, 118 COLUM. L. REV. 2011 (2018).

<sup>18</sup> Hunt Allcott and Matthew Gentzkow, *Social Media and Fake News in the 2016 Election*, 31(2) JOURNAL OF ECONOMIC PERSPECTIVES (Spring 2017).

<sup>19</sup> Simon, *supra* note 15.

<sup>20</sup> INDIA CONST. art. 19 (1) (a).

<sup>21</sup> *Romesh Thappar v. State of Madras* A.I.R. 1950 S.C. , *Indian Express v. Union of India* (1985) 1 S.C.C. 641, *Sakal Papers Ltd. v. Union of India* A.I.R. 1962 S.C. 305.

<sup>22</sup> *Tata Press Ttd. v. Mahanagar Telephone Nigam Ltd*, A.I.R. 1995 S.C. 2438.

<sup>23</sup> *Odyssey Communications (P) Ltd. v. Lokvidayan Sanghatana*, (1988) 1 S.C.C. 178.

criticize<sup>25</sup> etc. There are various laws that protect freedom of the expression across the UK. The expression in the UK is a qualified right and is not absolute. Article 10 of The Human Rights Act, 1988 incorporated the European Convention on Human Rights which provides-freedom of expression-and also grants an individual the right to-hold different opinions. Further, it restricts the state from interfering in receiving and sharing of ideas.<sup>26</sup> It also includes rights to express your views aloud and with everyone, for instance, public protest, published books, television, radio, work of art and internet and social media.<sup>27</sup> It is interesting to note that it includes politics and matter of public interest too, unlike India.<sup>28</sup> As already mentioned that it is a qualified right, Article 10(2) specifies the restriction that can be adopted. All the freedom that is provided under Article 10 can be curbed by the law when the-interest of the national security, territorial integrity\_or public\_safety would be at risk. Further, it can also be curbed for the prevention-of the\_disorder\_or crime,\_protection of\_health\_or morals,\_protects reputation\_or rights of\_others, saves information shared\_in confidence\_and lastly\_in maintaining the\_authority and\_impartiality of the\_judiciary.<sup>29</sup> They believe that in a true democracy no more than reasonable and proportionate restrictions should be put.<sup>30</sup> Apart from the Human Rights Act, some other criminal laws are used to prevent the disruptive behaviour that meets other additional criteria. For instance, in the Public Meeting Act 1908, if any person disrupts the public meeting from the purpose for which the meeting was called together it would be an offence.<sup>31</sup> They had their law of defamation removed by a campaign in the year 2013 the parliament believes that the word ‘insulting’ should not be a criminal offence in a democratic society.<sup>32</sup>

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<sup>24</sup> *Bijoe Emmanuel v State of Kerala* (1986) 3 S.C. 615.

<sup>25</sup> *S. Rangarajan v. P Jagjivan Ram*, (1989) 2 S.C.C. 574.

<sup>26</sup> *Human Rights Act, 1988 c. 42*, archived at <https://www.legislation.gov.uk/ukpga/1998/42>, archived at <https://perma.cc/ZKN8-XVNC>.

<sup>27</sup> *Human Rights Act art. 10* archived at <https://www.legislation.gov.uk/ukpga/1998/42/schedule/1/part/I/chapter/9>.

<sup>28</sup> *Library of Congress Law, Limits on Freedom of Expression:United Kingdom* archived at [https://www.loc.gov/law/help/freedom-expression/uk.php#\\_ftn2](https://www.loc.gov/law/help/freedom-expression/uk.php#_ftn2).

<sup>29</sup> *Human Rights Act*, *supra* note 25.

<sup>30</sup> *Ursula Smartt, Media & Entertainment Law* 64 (3d ed. 2017).

<sup>31</sup> *Public Meeting Act 1908*, Edw. 7 & 8 c. 66 § 1(1), <http://www.legislation.gov.uk/ukpga/Edw7/8/66/enacted/data.pdf>, archived at <https://perma.cc/XY5P-UZWR>.

<sup>32</sup> *Congress*, *supra* note 28.

### COUNTERMEASURES FOR FAKE NEWS CIRCULATION IN INDIA AND UK

The first multilateral undertaking to regulate peacetime propaganda was the "Convention Concerning the Use of Broadcasting in the Cause of Peace" of 1936.<sup>33</sup> The Convention also establishes a duty to fact-check information before broadcasting. UK and British India both were part of this convention. This evidently shows how both the countries were aware about the issue even before the internet and technological advancement.

Indian countermeasures for fake news

*Indian Penal Code, 1860.*

There is no direct provision for the encounter of fake news in IPC but some provisions state speech related offences which may be applicable on fake news in social media and the internet. Sedition under Sec 124A<sup>34</sup> deals with speech spreading hatred and discontent towards the government. Sec 153A<sup>35</sup> prohibits speech inciting enmity between any two differentiated groups. Defaming an individual is also an offence under Indian Penal Code.<sup>36</sup> Section 505(1) states that "*Whoever by making, publishing or circulating any statement, rumour or report which may cause fear for an alarm to the public, or to any section of the public shall be punished with imprisonment which may extend to three years, or with fine or with both*". Although Law Commission of India recommended adding provisions related to the prohibition of speech alarming, creating fear and provoking violence.<sup>37</sup>

*IT Act, 2000.*

The Information Technology Act deals with cyber crimes, which are now very prevalent. Acts of publishing obscene material and sexually explicit content are punishable under this statute.<sup>38</sup> Government can also issue directions to block certain contents to prevent incitement.<sup>39</sup> Earlier

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<sup>33</sup> *International Convention Concerning the Use of Broadcasting in the Cause of Peace, Sept. 23, 1936, 186 L.N.T.S. 301 [hereinafter International Convention].*

<sup>34</sup> *Indian Penal Code, No. 45 of 1860, § 153A.*

<sup>35</sup> *Indian Penal Code, No. 45 of 1860, § 499.*

<sup>36</sup> *Law Commission of India, Report No. 267, Hate Speech 50 (Mar. 2017).*

<sup>37</sup> *Indian Penal Code, No. 45 of 1860, § 124A.*

<sup>38</sup> *Information Technology Act, No. 21 of 2000, § 67A-67B.*

<sup>39</sup> *Information Technology Act, No. 21 of 2000, § 69A ; Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009,*



Sec 66A served the purpose of fake news regulation but was struck down by the Supreme Court as unconstitutional.<sup>40</sup>

IT Act also lays down the duties of intermediaries<sup>41</sup> under Rule 3 (4) of its Intermediaries Guidelines, 2011. It states that “*if an intermediary obtains knowledge by itself, through a writing or an electronically signed email from the affected person, or upon notification by the government of any illegal content posted on its site, it is obligated to remove such content within 36 hours and failing to do so will cause it to lose its immunity from being sued.*”<sup>42</sup> In 2018, Rajya Sabha called a motion<sup>43</sup> on the misuse of social media for dissemination of fake news. After that the Ministry of Electronics and Information Technology drafted rules in which “*intermediaries would be required to proactively monitor and filter unlawful content and provide for the traceability of users.*”<sup>44</sup> Intermediaries were directed to install tools to proactively identify and remove public access to unlawful content and misinformation.<sup>45</sup>

### *Disaster Management Act*

The Disaster Management Act under Sec 54 makes the act of circulating a false alarm or warning as to disaster or its severity or magnitude, leading to panic punishable.

### *Internet Shut down*

In India under Sec 144 of the Code of Criminal Procedure, 1973 internet shutdowns can be pursued to enforce curfew and prevent riots.<sup>46</sup> This is done to maintain the law and order of the country. India is declared the world leader in Internet shutdown by 100 shutdowns in 2018 only.<sup>47</sup> As per the Soft Freedom Law Centre India has 11 instances of internet shutdowns in June 2019 alone. It has doubled each year from 2015 to 2018 in Jammu and Kashmir.<sup>48</sup> In 2021

WORDS SPEAK

<sup>40</sup> *Shreya Singhal v. Union of India, Writ Petition (Crim.) No. 167 of 2012 (Mar. 24, 2015).*

<sup>41</sup> *Information Technology Act, No. 21 of 2000, § 79.*

<sup>42</sup> *Information Technology (Intermediaries Guidelines) Rules, 2011, § 3(4).*

<sup>43</sup> *Calling Attention, Rajya Sabha (Feb. 2005).*

<sup>44</sup> *Information Technology [Intermediaries Guidelines (Amendment) Rules 2018.*

<sup>45</sup> *Id. at Rule 3(9).*

<sup>46</sup> *Code of Criminal Procedure, 1973, § 144.*

<sup>47</sup> *Megha Bahree, India Leads the World in the Number of Internet Shutdowns: Report, Forbes (Nov. 2, 2018).*

<sup>48</sup> *C.K. Hickey, India Is the World's Leader in Internet Shutdowns, Foreign Policy (Aug. 5, 2019).*

during farmer's bill protest at Delhi a big internet shutdown happened for 50 million subscribers.<sup>49</sup>

Under the Telegraph Act, 1885 government can prevent transmission of any telegraph in the interest of the public.<sup>50</sup> There has been use of this provision for the temporary internet shutdowns, hence in 2017 the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules were issued.

### *Election Law and Code*

There is provision for 48 hrs of silent period<sup>51</sup> before the voting starts so that the contestant cannot disseminate any kind of information through TV and other media that may affect the outcomes of election. In 2019 a report was submitted to extend the scope to intermediaries, print media and internet.<sup>52</sup> The Model Code of Conduct by ECI also aids with respect to use of Social Media in Election Campaigning.<sup>53</sup> There is also provision for pre-certification of social media content used by the political party for the advertisements so that the propagandas can be avoided.<sup>54</sup>

### *Social media platforms*

WhatsApp has launched a fact-checking helpline, to encourage users to verify messages using flag method. This initiative is named "*share joy, not rumors.*"<sup>55</sup> Twitter has also launched a tool that let users to mark tweets that attempt to mislead voters.<sup>56</sup> In 2019, Facebook announced that

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<sup>49</sup> India protests: Internet cut to hunger-striking farmers in Delhi, BBC NEWS, (Jan. 30, 2021), <https://www.bbc.com/news/world-asia-india-55872480>.

<sup>50</sup> Indian Telegraph Act, 1973, No. 13 of 1885, § 5(2).

<sup>51</sup> Representation of the People Act, No. 43 of 1951, § 126.

<sup>52</sup> Press Release, Election Commission, Report of the Committee on Section 126 of the Representation of the People Act, 1951 Submitted to the Commission (Jan. 10, 2019).

<sup>53</sup> Election Commission of India, Model Code for the Guidance of Political Parties and Candidates.

<sup>54</sup> Letter from Election Commission of India to Chief Secretaries et al., Supreme Court Order Dated 13th April, 2004 for Pre-certification of Political Advertisement on Electronic Media, -Letter No. 491/MCMC/2018/Communication (Sept. 13, 2018).

<sup>55</sup> Rishabh R. Jain, In India's Election, Voters Feed on 'Fake News' from Social Media, but Take It Seriously, USA Today (Apr. 9, 2019), <https://www.usatoday.com/story/news/world/2019/04/09/india-national-election-may-influenced-fake-news-social-media-narendra-modi/3409832002/>.

<sup>56</sup> Pranav Dixit, Twitter Will Let Users Report Tweets that Mislead Voters, BuzzFeed News (Apr. 24, 2019), <https://www.buzzfeednews.com/article/pranavdixit/twitter-tool-report-tweets-mislead-voters-elections>.



it will be “offering details about those responsible for running the ad as the social media giant looks to bring transparency into political ads ahead of elections in India.”<sup>57</sup>

### *Other measures*

Fake news-telecasted in news channels can be reported to the News\_Broadcasters Association which represents the private channels and current affairs broadcasters. The Broadcasting\_Content Complaint Council\_(BCCC) also deals with complaints pertaining to the TV\_content amounting to fake news. The Press Council of India deals with the code of ethics of media person and to prohibit propagandas.<sup>58</sup>

### *Judicial approach*

Indian judiciary was always there for the rescue whenever the lightning of misuse struck law. In the 2015 case of *Shreya Singhal v. Union of India*<sup>59</sup>, the Supreme Court of India struck down section 66A of the Information Technology Act, 2000. The section was testing the scope of term “reasonable restrictions” in the “the prohibition against the dissemination of information by means of a computer resource or a communication device intended to cause annoyance, inconvenience or insult did not fall within any reasonable exceptions to the exercise of the right to freedom of expression.”<sup>60</sup> This section led to the arrest of two girls for merely sharing their opinion on social media platform.<sup>61</sup> Court stated, “that Section 66A arbitrarily, excessively and disproportionately invades the right of free speech and upsets the balance between such right and the reasonable restrictions that may be imposed on such right.”<sup>62</sup>

Five years later, in 2020, when wave of pandemic drowned India, tremors of fake news came along. In the name of “untold suffering” of migrant workers and the loss they faced, series of

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<sup>57</sup> *Political Ads on Facebook to Carry Labels Offering Information on Advertiser, The Hindu* (Feb. 7, 2019), <https://www.thehindu.com/sci-tech/technology/internet/political-ads-on-facebook-to-carry-labels-offering-information-on-advertiser/article26203967.ece>.

<sup>58</sup> *Press Release, Ministry of Information & Broadcasting, Guidelines for Accreditation of Journalists Amended to Regulate Fake News* (Apr. 2, 2018).

<sup>59</sup> *Shreya Singhal v. Union of India, Writ Petition (Crim.) No. 167 of 2012* (Mar. 24, 2015).

<sup>60</sup> *Information Technology Act, No. 21 of 2000, §66A (repealed)*.

<sup>61</sup> *Facebook trouble: 10 cases of arrests under Sec 66A of IT Act, THE HINDUSTAN TIMES*, (Mar.24.2015), <https://www.hindustantimes.com/india/facebook-trouble-10-cases-of-arrests-under-sec-66a-of-it-act/story-4xKp9EJjR6YoyrC2rUUMDN.html>.

<sup>62</sup> *Shreya Singhal v. Union of India, Writ Petition (Crim.) No. 167 of 2012* (Mar. 24, 2015).

fake information was sailing around. Supreme Court in case of *Alok Srivastava v UOI*<sup>63</sup> pointed out Section 54 of the Disaster Management Act, under which dissemination of false information with a view to spread panic was penalized. The Court further said that, “*advisories issued by the Government constituted ‘orders’ under Section 188 of the Indian Penal Code, and hence compliance by all relevant parties was expected in the interest of Public Safety. The sections of the media would act responsibly and not publish unverified news capable of spreading panic.*”<sup>64</sup> Yet Court did not consider the need to delineate the scope of these provisions or how ‘false information’ will be determined.

## UK countermeasures for fake news

### *Legislative History*

It was the first time in the year 1688, a proclamation regarding the prohibition of spreading of fake news was passed.<sup>65</sup> As we see today, due to the internet connectivity and various social media platforms the problem of spreading of fake news has become far worse. According to the government of the UK, one should use terms ‘misinformation and disinformation’ instead of the term ‘fake news’.<sup>66</sup>

### *Current Approach*

UK does not have any legislation as of now to combat or prohibit the online publication of fake news, however the matters are being carefully investigated by the government in this regard.<sup>67</sup> Traditional channels are not given importance now and are discarded in the favour of various social media platforms, resulting in dissemination of fake news.

The government believes that misinformation and disinformation are “fourth generation espionage” and they trying to take steps on multilevel to help counter this threat.<sup>68</sup> Different government departments like Office of Communications (Ofcom) and Culture, Digital, Media,

<sup>63</sup> *Alakh Alok Srivastava v Union of India, Writ Petition No. 468 of 2020.*

<sup>64</sup> *Alakh Alok Srivastava v Union of India, Writ Petition No. 468 of 2020.*

<sup>65</sup> “*By the King, a Proclamation to Restrain the Spreading of False News*” (1685–1688), available at <https://quod.lib.umich.edu/e/ebo/A87488.0001.001/1:1?rgn=div1;view=fulltext>, archived at <https://perma.cc/T5YD-78EG>.

<sup>66</sup> *The Digital, Culture, Media and Sport Committee, Disinformation and ‘Fake News’: Interim Report, HC 363 (2018)¶14*, available at <https://publications.parliament.uk/pa/cm201719/cmselect/cmcmds/363/363.pdf>, archived at <https://perma.cc/DF8J-4PDG>.

<sup>67</sup> *Congress, supra note 13*

<sup>68</sup> *MI6 ‘C’ Speech on Fourth Generation Espionage, Foreign & Commonwealth Office, Secret Intelligence Service, and Alex Younger (Dec. 3, 2018)*, <https://www.gov.uk/government/speeches/mi6-c-speech-on-fourth-generation-espionage>, archived at <https://perma.cc/9GUH-C2VC>.

Sports committee, Electoral Commission along with independent reviews are assigned the task to investigate the impact of fake news. Not only that, they also provide recommendations on how this problem can be solved by ensuring that the citizens has access to only fair information.<sup>69</sup>

The only body that can be termed regulatory in this issue is of com. The body was established under the Communication Act 2003. The purpose of this regulatory authority is to ensure that content standard across television and radio broadcasters are maintained. According to the regulatory authority, it is the lack of regulation of online content which has led to the lowering of standards, and showing and broadcasting content they might think is right. However, this is not the case with television and radio broadcasters as they have are regulated under tough guidelines. In light of above, regulatory authority has asked that more regulations be made over online platforms such as facebook, twitter, youtube and these regulations should authorize the platforms to quickly remove inappropriate content and then they may be fined for the violation.<sup>70</sup> They also believe that with more regulations, more transparency is needed in telling people why they are being targeted by any specific news or material over the internet.<sup>71</sup>

Apart from regulatory authority recommendation, a few government reports have also been issued to consider the question of whether the UK should introduce the laws to regulate the news on various online platforms. For the brevity of this article two most recent reports are being discussed herein.

### *Cairncross Review –*

This was an independent investigation conducted by Dame Frances Cairncross on the request of Prime Minister in 2018. The investigation was into “the sustainability of the production and distribution of high quality journalism, significant changes to technology and consumer behaviour are posing problems for high quality journalism both in UK and globally.”<sup>72</sup> The

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<sup>69</sup> Congress, *supra* note 13

<sup>70</sup> Aliya Ram & Nic Fildes, Ofcom Outlines Case for Regulating Social Media Networks, *FINANCIAL TIMES* (London) (Sept. 18, 2018.), <https://www.ft.com/content/a16935a4-bb39-11e8-94b2-17176bf93f5>.

<sup>71</sup> *Id.*

<sup>72</sup> Press Release, *Cairncross Report Recommends Levelling of the Playing Field for UK Journalism*, Department for Digital, Culture, Media & Sport and The Rt Hon Jeremy Wright MP (Feb. 12, 2019), <https://www.gov.uk/government/news/cairncross-report-recommends-levelling-of-the-playing-field-for-uk-journalism>, archived at <https://perma.cc/WNK8-659G>.

report suggested that all the online platforms should have an obligation for the quality of news that is being shared and regulatory authority should also have the power of investigation to understand how effective is the regulation. There were a few other key recommendations, following are some of them

- “Introducing “codes of conduct to rebalance the relationship between publishers and online platforms”
- Placing online platforms under regulatory supervision
- Creating a new, independent, Institute to help continue the future provision of public-interest news
- Launching an Innovation Fund to improve the supply of public interest news
- Introducing tax relief to encourage the payment for online news content
- Developing a media literacy strategy”<sup>73</sup>

*Digital, Culture, Media and Sport Committee: Fake news and Misinformation -*

This report was released in late February 2019. It recommended that there should be legal duty of the companies to provide correct information and any violations of the same should lead to penalties. Further, a code of ethics should be constituted and should specifically define harmful content. Furthermore, any new regulator should be funded by tech companies operating in UK. Interestingly, it suggests that any new company that is established and are not necessarily a ‘platform or publisher’ their liabilities should be increased.

The report also pointed out the influence of the dissemination of fake news on electoral process and how the electoral law is incompetent to address these issues. It recommended updating electoral law regarding fast updating and changing technology. Terms like digital campaign, micro targeted campaigning, funding online campaign should all be defined and address in the new legislation.<sup>74</sup>

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<sup>73</sup> Press Release, *supra* note 70.

<sup>74</sup> Electoral Commission, *Digital Campaigning Increasing Transparency for Voters 1* (June 2018), [https://www.electoralcommission.org.uk/\\_\\_data/assets/pdf\\_file/0010/244594/Digital-campaigning-improving-transparency-for-voters.pdf](https://www.electoralcommission.org.uk/__data/assets/pdf_file/0010/244594/Digital-campaigning-improving-transparency-for-voters.pdf), archived at <https://perma.cc/ED2T-WXLA>.

## *National Approach to Counter Fake News*

Government has been mainly able to identify 3 challenges while dealing with the issue of fake news. The first one is to identify what constitutes misinformation and disinformation. After identification, the second step would be how to respond to this information. The third one is to make available government information to the public so that citizens are aware of the correct facts instead of wrong.

A rapid response team is set up the Cabinet Office in April 2018 to help the government its policy of “reclaiming a fact-based public debate”.<sup>75</sup> This team is comprised of various experts like digital experts, media, data scientists, and analyst editors.<sup>76</sup> The purpose of the team is to monitor the material that is being shared online and identify issues relating to the speed, accuracy and integrity; this helps them in understanding accessing their communication with the public.<sup>77</sup> According to the government this unit is not a fake news unit. The purpose is to check trends in the new sources and bias. If more biased opinions appear its work is to optimize the search and place government sources appear higher in the search. Further, it will also balance the narrative for people who have been more engaged in the topic.<sup>78</sup> The Unit also works with National Security Communications Teams, more in the difficult times only to provide highly visible public information.<sup>79</sup>

The government is responding to the issues posed by fake news and is currently in the process of considering different approaches to regulating such information. Reports from committees and an independent reviewer has recommended that legislation be introduced to place liability on technology companies in the UK to remove content that contains misinformation or disinformation, or face considerable fines.

Apart from these a detailed report from the ‘International Grand Committee’ formulated house of commons analysed the right to privacy and the individual choices that may be affected by the

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<sup>75</sup> Alex Aiken Introduces the Rapid Response Unit, Government Communication Service (July 19, 2018), <https://gcs.civilservice.gov.uk/news/alex-aiken-introduces-the-rapid-response-unit/>, archived at <https://perma.cc/837J-UF2U>.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> Government Communication Service, 9Trends in Leading-Edge Communications 7 (Oct. 2018), available at <https://gcs.civilservice.gov.uk/wp-content/uploads/2018/10/5-Trends.pdf>, archived at <https://perma.cc/4BDP-JTRN>.

online available political information. They agreed that now a days it has become easy to polarize the people given everyone accept the information no matter how accurate or inaccurate it may be. The report suggests that there should be guidelines and code of ethics by the technical experts to set the rules what is acceptable on social media and then independent regulators should go through these rules. Further, the rules should also include harmful and illegal content that needs to be removed by the company itself or if the same has been identified by the user. This entire process should be clear and legal liability should be set up. In case there is a violation of the code by the companies the independent regulator should be in a position to take the steps to proceed with legal proceeding against them, along with that large fines should be administered as penalty for non-compliance.<sup>80</sup>

*Judicial approach:* As of now, the matter has not reached the apex court of the country and the court has neither expressed their views on the subject.

### CONCLUSION

India and U.K. both are facing menace of fake news yet do not have requisite machinery to curb it. U.K has not come up with any law on the fake news till now however, the matter is being seriously considered by the house of commons. The reports (as discussed above) published by them has discussed about having a strict penalty and fine in case there are violation of the rules prescribed. The parliament believes that legislation will be of help as it has shown positive results in countries like Germany and France. In Germany the tech companies had mandatory obligation of removing the hate speech within 24 hours but it was hardly followed to achieve the desired results a Network Enforcement Act was passed and became law in January 2018. This new law came as rescue because now if the companies don't remove the content that violates the law there would be fine of €20 million and this move resulted in shifting of one out of the 6 moderators of Facebook to Germany. Therefore, U.K believes that making a legislation in this regard may give desired results.

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<sup>80</sup> House of Commons, Digital, Culture, Media and Sport Committee, Disinformation and 'fake news': Final Report, HC 1791 Eighth Report of Session 2017-19, (Feb. 18, 2019).



In India, no specific dedicated legislation or regulatory authority is set up till now to observe the rise of fake news in the country. India is relying on various sectoral laws that are already in place to tackle the problem of the fake news. Creating a new law can be challenging because it may lead to curbing of the freedom of speech and expression a right guaranteed by the Constitution of India. Democracy of India has witnessed many instances where the internet was shut down to curb the flow of fake news and hate messages.

Apart from law, there are several countries using measures which are beyond law, such as awareness programmes, institutional mechanisms etc. For instance, Kenya launched a media literacy campaign in 2018, with the specific goal of stopping the dissemination of fake news. In Sweden, awareness about this issue starts at a young age by using a famous cartoon character to teach children about the dangers of fake news through a cartoon strip that illustrates what happens to the bear's super-strength when false rumours are circulated about him. Above measures are evident that the path of spreading awareness regarding fake news will work as life guard for drowning democracy as well as its right holders. Making a legislation for regulation would be nothing but putting a one more nail in the coffin of democracy.