



FAKE NEWS AND CRIMINAL LIABILITY: A GROWING LEGAL CHALLENGE IN THE DIGITAL AGE

Prakriti Tyagi*

The rapid expansion of digital platforms and social media has transformed Communication across the world. On one hand, these platforms serve as an instant source of information, but on the other hand, they give rise to problems of fake news. Fake news refers to the false or misleading information presented as news with the Intention to deceive the public. Its widespread circulation threatens democratic institutions and national security. As a result, the question of criminal liability for spreading fake news has become a major legal challenge in the modern era. Fake news includes fabricated stories, AI-generated or manipulated images or videos, misleading headlines or misinformation circulated deliberately or negligently, which may be created to stimulate hatred and panic. Unlike ordinary rumours, fake news is often strategically designed to appear authentic. During emergencies such as pandemics or natural disasters, fake news can cause panic and result in harmful behaviour. As we talk about criminal liability, it arises when the act of spreading fake news violates existing legal provisions. The spread of misinformation via social media and messaging apps has become a danger in India, with over 200 million WhatsApp users, and viral news and chats have caused real-world harm, as found in a BBC research. It was found that dozens of lynchings occurred after villagers circulated rumours of child kidnappers. Similarly, a fabricated video in 2013 sparked the Muzaffarnagar riots, killing many. Other than that, during the COVID-19 crisis, we saw a "pandemic of false, fake and fabricated" news on social media. India's vast Internet user base and low media literacy amplify this problem. These trends have promoted strong legal responses by the governments and courts.

STATUTORY OFFENCES FOR FAKE NEWS

In India, there are several laws which address fake news indirectly. The Bhartiya Nyaya Sahitha, 2023, have provisions related to public mischief, which is false

*BA LLB (HONS.), THIRD YEAR, UTTRANCHAL UNIVERSITY, DEHRADUN.

information causing public harm, defamation, which is harming reputation by making false statements, promoting enmity, creating communal hatred, etc. Meanwhile, under the IT Act 2000, some provisions play a crucial role in dealing with online fake news.

Section 66A: Includes the punishment of offensive online messages. This was struck down in the case of *Shreya Singhal v. Union of India* (2015), but the Act still applies.

Section 66D: Punishment for cheating by impersonation using computer resources.

Section 67: Punishment for publishing obscenities or harmful content online.

Section 69: The government's power to intercept. Intermediary Guidelines 2021 says social media platforms are required to remove unlawful content and prevent misuse of social media.

Under the Disaster Management Act 2005, Section 54 makes it an offence to circulate a false alarm or warning about a disaster if it causes panic. The Supreme Court repeatedly warned during the COVID-19 crisis that spreading unverified pandemic rumours invites this penalty.

In the other statutes. False statements during elections are punishable; the Representation of the People's Act bans knowingly false statements about a candidate, and civil laws like the Press and Registration of Books Act may regulate media content. Notably, the Indian Laws Commission report has recommended enacting a special provision against online fake news and hate speech.

GOVERNMENT MEASURES AND ADVISORY ACTIONS

Both central and state authorities have issued guidelines and set up mechanisms to combat fake news. For example, in 2019, WhatsApp launched a user "tip line" in India to allow fact-checking of forwarded messages during elections. By late 2024, the government highlighted that the IT (Intermediary) rules, 2021, required online platforms to exercise due diligence and remove illegal content promptly; failure means losing immunity under Section 79 of the IT Act. The Ministry of Information and Broadcasting regularly issues advisories to the media. For instance, in March 2024, it cautioned newspapers and social platforms against misleading political advertising.

On the enforcement side, the Home Ministry established the Indian Cyber Crime Coordination Centre and the national cybercrime portal for citizens to report online offences, including

misinformation, dozens of state and central agencies like the Police, Cyber Cell, NIC, etc. Actively monitor viral content during crises like COVID-19, the government disseminated daily updates to counter false rumours, as argued by the court. The Election Commission has also warned political parties against spreading fake news during the campaigns.

The PIB Fact Check Unit (FCU) is a specialised wing of the Press Information Bureau under the Ministry of Information and Broadcasting, established in November 2019 to identify and counter misinformation related to the Government of India. It acts as a deterrent against fake news and verifies claims about government policies, schemes, and announcements, publishing findings on social media. The unit uses a two-step process: researching against official, authorised sources (websites, press releases) and cross-checking with the concerned Ministry. It specifically focuses on identifying information as 'Fake', 'Misleading', or 'True' regarding government actions, policies, and departments. The unit operates under the IT Rules, 2021, aiming to curb harmful, fake content, and has identified thousands of such instances. It is important to note that the unit focuses exclusively on government-related information and does not generally fact-check personal opinions or non-governmental news.

At the same time, the government uses non-legal means to combat misinformation: public awareness campaigns, “MythBuster” sections on PIB, and press conferences to give timely official information. The Election Commission runs an “IT Cell” to monitor online falsehoods during polls. Under the Consumer Protection Act (2019), the Central Consumer Protection Authority has issued advisories against fake advertisements (e.g. for medical cures). All these reflect a multi-pronged strategy: legislation (IT Rules), law enforcement (cyber cells using IPC/IT Act), and public advisories.

Rights against digital disinformation focus on protecting individuals' rights to accurate information, privacy, and free expression, while combating harmful, fabricated content. Key measures include strengthening digital literacy, enacting data protection laws, ensuring transparent content moderation by platforms, and holding platforms accountable for spreading dangerous misinformation, especially with AI-driven, non-consensual content.

Right to Information & Truth: Users have a right to access reliable, accurate information to form opinions without being misled by coordinated, malicious disinformation campaigns.

Freedom of Expression vs. Misinformation: Anti-disinformation measures must not restrict legitimate speech, satire, or critical opinion. However, the right to free speech does not protect

malicious misinformation that causes real-world harm, such as endangering health or threatening national security.

Digital Privacy and Safety: Individuals have the right to control their personal data and to be protected against deepfakes, unauthorised data collection, and AI-generated misinformation that targets them.

Right to Remedy: Users need mechanisms to report and remove harmful, defamatory, or false content and to seek redress.

RELATED CASE LAWS

The most significant recent landmark judgment regarding "fake news" and online content regulation in India is the Bombay High Court's ruling on 26th September 2024 in *Kunal Kamra v. Union of India*. In this judgment, a Division Bench of the Bombay High Court struck down the 2023 amendment to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, which empowered a government-appointed "Fact Check Unit" (FCU) to identify and force the removal of "fake, false, or misleading" information concerning the "business of the Central Government" from social media platforms.

Unconstitutional Amendment: The Court declared the amendment unconstitutional, noting it violated Articles 14 (Equality), 19(1)(a) (Freedom of Speech), and 19(1)(g) (Freedom of Profession) of the Indian Constitution.

Government as Arbiter: The Court held that the amendment made the Central Government the sole judge in its own cause, as the FCU—an executive body—would unilaterally decide what is true or false regarding its own business.

Chilling Effect: The ruling highlighted that forcing social media platforms to remove content under threat of losing their "safe harbour" immunity created a "chilling effect" on free speech, leading to voluntary censorship.

Vague Terms: The terms "fake, false, or misleading" were deemed too vague and overbroad.

Split Verdict to Final Decision: Following a split verdict, the third judge (Justice A.S. Chandurkar) sided with Justice G.S. Patel, affirming that the rule was unconstitutional, ultra vires the IT Act, and violated natural justice.

OTHER SIGNIFICANT LEGAL PRECEDENTS

Shreya Singhal v. Union of India (2015): This remains the foundational Supreme Court judgment for online free speech. It struck down Section 66A of the Information Technology Act, which allowed for the arrest of individuals for posting "offensive" content online. The court ruled that vague, undefined terms cannot be used to restrict speech.

Tehseen S. Poonawalla v. Union of India (2018): In the context of mob lynching triggered by fake news on social media, the Supreme Court issued mandatory guidelines for preventing, curbing, and punishing acts of mob violence, including directives to curb the spread of misinformation.

Ajay Gautam v. Union of India (2024): The Supreme Court emphasised that social media influencers must act responsibly and are accountable for spreading misinformation or hate speech, reminding that freedom of speech is not absolute.

ROLE OF INTERMEDIARIES AND SOCIAL MEDIA PLATFORMS

Social media companies act as intermediaries between users and content. While they enjoy limited liability protection, they must comply with government regulations. Failure to remove fake or harmful content after receiving notice may result in legal consequences. Platforms are also required to implement fact-checking mechanisms and grievance redressal systems.

JUDICIAL APPROACH

Indian courts have recognised the dangers of fake news. The judiciary has emphasised balancing freedom of speech with public interest. While free expression is protected under Article 19(1)(a) of the Constitution, reasonable restrictions under Article 19(2) allow the State to regulate speech that threatens public order, security, or morality.

Courts have repeatedly stressed that freedom of speech does not include the right to spread false and harmful information.

CHALLENGES IN REGULATING FAKE NEWS

Despite legal measures, regulating fake news remains difficult due to:

- Difficulty in identifying the source

- Rapid spread through encrypted platforms
- Cross-border jurisdiction issues
- Risk of misuse of laws to suppress dissent

These challenges require careful legal reforms and technological cooperation.

NEED FOR LEGAL REFORMS AND AWARENESS

There is a growing demand for specific legislation targeting fake news. However, such laws must be drafted carefully to avoid censorship. In addition to legal action, public awareness, digital literacy, and responsible journalism are essential tools to combat misinformation. Educational institutions, media organisations, and government agencies must work together to promote fact-checking culture and ethical online behaviour.

PUNISHMENTS FOR FAKE NEWS OFFENCES

If convicted under these provisions, offenders face significant penalties. For example:

Section 54 DMA: Up to 1 year imprisonment (and fine) for spreading false disaster alarms.

Section 188 IPC: Up to 6 months jail (first offence) or 1 year (repeated offence) for disobeying lawful orders.

Section 505 IPC: Up to 3 years imprisonment per charge. (Media reports have warned of 3-year terms for fake news.)

Section 153A IPC: Up to 3 years (extendable to 5 in places of worship) for promoting hate between groups.

Section 295A IPC: Up to 3 years for maliciously outraging religious feelings.

Section 124A IPC (sedition): Life imprisonment or up to 3 years if the act was not violent, though courts have imposed sedition only sparingly on media speech.

Section 269/270 IPC: Up to 6 months (or more) for acts negligently or malignantly endangering public health.

IT Act offences: e.g., Section 66D prescribes up to 3 years for fraudulent use of electronic communication.

Even if no specific IT offence fits, violators can be charged under general laws via online messages. The courts have also approved supplementary remedies. For instance, Justice PV Sanjay Kumar (Andhra Pradesh HC) granted compensation to a man falsely implicated by viral claims, noting the “physical, mental and emotional torment” suffered. In many cases, victims of fake accusations have obtained quash orders or damages under Section 482 CrPC or tort law.

CONCLUSION

Fake news is a serious threat to democracy, social stability, and public trust. Criminal liability acts as a deterrent against the misuse of digital platforms. While existing laws provide a framework to address this issue, stronger enforcement, technological solutions, and public awareness are equally important. A balanced approach that protects free speech while preventing misuse is the key to effectively tackling the menace of fake news in the digital age.