I am pleased to bring to you our next guest post by Akshat Agrawal. Akshat is currently pursuing his law from OP Jindal Global University, Jindal Global law school with specialization in Intellectual Property and Entertainment laws and is in his 4th year BA LLB. Akshat holds keen interest in IP, Media & Entertainment laws and is also an affiliate researcher for the Jindal Initiative for research in IP and Competition law. He has been an active participant in several moot courts including the Oxford IP moot team 2017-18 which made it to the world final rounds held in Oxford. Akshat has interned with some of the esteemed IP law firms in India and has also attended the Summer Program on the interaction of media law with Journalism at the University of California, Berkeley, which is where he wrote this article on fake news.

THE DICHOTOMY OF PROPAGATION OF FAKE NEWS AND FREE SPEECH

Akshat Agrawal

FAKE NEWS AND PERSPECTIVISM
Fake news as a concept has been around the corner and of core importance in the Global Media landscape. There have been enormous allegations of propagation of this emerging concept misleading the public in various domains. From US Presidential elections to Karnataka elections in India, Fake news has been a major talking point recently. It has been alleged on various occasions that false fact propagation has led to baneful measures and propagation of false reports which are tough to refute on the spot. A lot of focus is being directed towards fact checking and filtering of news with Facebook leading the implementation of the initiative on its various social media platforms like WhatsApp and itself. It’s the absolute freedom of the press to show and publish whatever information it seeks to, which is being challenged by this concept. It is argued by most of the Fake News Propagandists, who have been excessively protesting against the dissemination of fake news and transmission of so-called false information, that a lot of unchecked incorrect information circulated, turns the freedom of the press into an absolute liberty of “affronting, calumniating and defaming one another”. This is based on the premise of the statement made by Benjamin Franklin, one of the founding fathers of the press who had once argued that, for the enormous power of influence which is held by the media, especially in the United States, the bar for entry into Journalism is very low which can translate this liberty into a bane by according credibility to any lay man’s voice, which may factually be an absolute sham.

What is being failed to be realised by these protestors and proponents arguing against the concept of Fake news is that the presence of intentionally misleading news and opinions has been in existence since the beginning of the concept of the press and dissemination of news. It is not an emerging phenomenon. News has always had perspectivism as one of its key features since its inception, which gives rise to the concept of debates and arguments flowing in. It is this perspectivism which lays down the foundation for opinionated articles where various points of views and arguments on issues are realised and raised. The truth which is being sought to be shown here is nothing but an abstract reality, the absolute existence of which cannot be sufficiently ascertained. It is the reporting mechanism and the side which is sought to be shown which is considered to be the truth then, and any information contrary to that particular truth has been termed fake, which is totally against this foundational principle of perspectivism.

Censoring the press and inculcating mechanisms like Fact Checking can never eliminate the possibility of presence of reasonable bias in the mind of the censoring body who seek
to get rid of the existence of certain information which is considered false and fake. In the domain of politics, philosophy and human relations, it is impossible and certainly not recommended to give authority to a so-called “impartial” arbiter to determine absolute fact. This is because of the existence of a certain lack in capability to discern all possible information related to the news propagated and the perspectives it is coming from and then evaluating it. It is beyond the capacity of an earthly human. Absolute Fact in the news domain is a myth and what is shown to be any close to absolute fact, needs to cross the test of perspective analysis to be transparent enough. While it is extremely tempting to bring in a censor upon stories which are considered fake, attempts to weed out such reports can quickly turn into manipulation of differences in opinion and avoidance of display of a certain perspective which may be on the path of truth. There is a high possibility of abuse of the actual truth by exercising such censor. The mechanism of popular debate and interpretative freedom is imperative.

**PERSPECTIVISM AND OBJECTIVITY**

Friedrich Nietzsche, the French Philosopher has in his works asserted his observation regarding facts being merely interpretation of situations resulting in perspectives and no absolute reality. He has continually emphasized on the principle of “needs and ambitions defining perspective as a quest for power.” Opinions and perspectives don’t really capture the absolute truth but rather merely how they appear in accordance with certain assumptions and beliefs.[i] Nietzsche in his works, concludes that alternate views are incommensurable and embraces pluralism, questioning the uniqueness of a single objective claim of truth.[ii] Any single overarching claim of truth is ruled out by Nietzsche, which brings along the importance of exposition to various perspectives to get close to the seemingly objective absolute truth. He emphasizes on the presence of many kinds of eyes, and different ways and bases which individuals use to look at it. What objectively is true out of these in an indecipherable premise, but an increase in the number of perspectives certainly brings in proximity to objectivity. The idea behind this, as Anderson states in his work, is that distinct perspectives have the capability of revealing different aspects and nuances of things, which contribute towards broadening perspectives and considering accounts of different individuals to finally inculcate in one’s own account. Nietzsche asserts that “the more affects we allow to speak about one thing, the more eyes, different eyes, we can use to observe one thing, the more complete will our ‘concept’ of the thing, our ‘objectivity’ will be”[iii] Anderson emphasizes on importance of multiplicity and variety of knowledge to reach towards the quest for
He follows from the dominant German philosophy of “maximal variety” by Leibniz concluding that more perspectives will result in a better apprehension and information of the world.

**CENTRALISING CREDIBILITY OF NEWS**

The first amendment to the Constitution of the United States advocated absolute free speech and freedom to publish. While a majorly discussed evil of this is the possibility of scandalous writing and Fake news propagation, the long-term advantages of this policy undertaken in the United States is pertinently visible in the American institutional setup, in the form of a strong resistance to authoritarian impulses. If due to the possibility of propagation of false information and Fake News, a censor is levied, and authority is centralised upon the Central Govt. to censor such information, it won’t be long till this mechanism is used to manipulate the information available to the public, which will be a huge backlash on Accountability and transparency of the ruling party’s workings. This is a questionable amount of authority given, which will be denied the right to be questioned, once such a step is undertaken. Press freedom in the United States is an integral element of American which fosters the concept of constructive criticism and accepts it with arms wide open. Now, just because a few of these criticisms coming in may not be constructive, rather false or objectionable, a contention of censoring these claims and criticisms cannot be brought in as it will object the fundamental premise and principal of free speech. This has been experienced in the American Political domain when President John Adams had attempted to censor words against the Government. Immense backlash and an immediate exit of the government in the forthcoming elections was the sole result. Even in a case, where critical remarks are not against the government but are general in nature and are advocated to be fake, the censoring body which is entrusted with this centralised power to do so, will have a perspective or an opinion of its own on the issue resulting in a definite possibility of presence of a reasonable bias in the act of censoring to further their own interests. How can absolute truth or abstract truth in fact be ascertained then? This has also been observed in one of the earlier cases involving The New York Times, where taking undue advantage of its credibility and trust in the market, certain false and fake news was propagated by the organisation. This could easily have been avoided by the presence of legitimacy test provided by virtue of presence of options and alternate storytellers who could have put some other perspective forward.
The assertion of “propagation of Fake News by liberal media” may *prima facie* seem a

care-for-facts approach by Trump, but it is imperative to be realised that curbing

perspectives and criticisms is another way of reducing transparency and gaining ultimate
centralised power. Hence the role of criticism and perspectivism cannot be submerged
merely on allegations of propagation of news which is apparently false.

This shows that curbing free speech and censoring news is not the way forward in the
agenda of avoiding the presence and propagation of Fake news. Rather the first
amendment is a mighty weapon to avoid such proliferation, using the tool of
perspectivism to reach somewhere close to an objective reality. Subjectivity, not

censorship, is the best tool to obtain proximity to an objective solution and this needs to
be realised by News proponents, academics and Government organisations. Hence any
attempts of political suppression of speech is not an effective mechanism to curb the
menace of false information. Rather in the words of Justice Louis Brandeis, it is more
speech and discussion[v] which is an effective mechanism to promote subjective opinion
and filter of information.

In the Indian context, the government has tried to indulge in constructive conversations
with intermediary organisations like WhatsApp, which contribute to a large extent, in
disseminating information and news to the Public. The government has been stated to
have asked the WhatsApp CEO to use optimal technology to filter out fallacious news
elements to maintain claims of accountability and responsibility. The government has
not put it upon themselves to decide what is fake and what is not, which is a boon and
an extremely sensible step, as it avoids claims of “ruling party rendering unfavourable
news as fake”. Although, regulation on part of social media organisations like WhatsApp
is also a far-fetched target due to vast number of users in India, specially from
backgrounds all across the nation. Further, it is practically extremely difficult to examine
all claims on WhatsApp for fake content due to its sheer number. Hence, a viable solution
for the government can be to strengthen its investigation mechanism and allow for a
more informed perspective to be spread out in the public domain, provided for various
perspectives.. This is a mechanism which may lead one closer to the abstract truth, but
cannot be certainly said so due to the nature and size of the population. Further, it is
imperative for the government to rather focus on the consequences of the content and
work upon strengthening the mechanism to deal with it, rather than curb speech in the
first place. The focus ought to be on prevention of mob- actions and attacks, and
effectively regulating the conduct of the enraged mob rather than regulating the content
which goes around as, practically, that is a more viable and efficient step for better governance.

**Viable Restriction on Exercise of Free Speech**

In the American jurisprudential scenario, the only condition in which Free Speech has been allowed to be restricted by the courts is on the occasion of presence of “Clear and present danger” proximate to a result which is categorised as a substantive evil aimed to be prevented[v]. Immediate serious violence ought to be a proximate result and merely a fear of serious injury cannot be considered sufficient for such restriction.[vii] This position has further been clarified by usage of the phrase “clear and imminent danger”[viii] and has subsequently been applied by the US Supreme Court in various situations.

Even in the Indian dominion, where there is no absolute bar on restriction on freedom of speech, the Courts have taken a fairly liberal and similar view as the United States of establishing pertinent proximity to public tranquillity as the sole ground for restriction of speech.[ix] In a principled opinion in one of the early interpretations of Article 19 1(a) and (b), the Supreme Court had held that the censor can only be provided to be legally applicable and in accordance with the intention of the restriction if it had the immediate proximate tendency to excite acts of violence.[x] Mere creation of disaffection and enmity cannot be considered as a suitable ground for levying or providing for such restriction on speech and expression.[xi] This has been followed by the constitution bench of the Supreme Court recently[xii] and hence affirms the highest value jurisprudentially showing the liberal approach towards interpretation of free speech by Courts in India.

**Conclusion**

It is pertinently essential to note that the first amendment is a key to America’s freedom from any objective pressure and it is this freedom to exercise thought and represent so through the press, to freely represent and be wrong in certain situations as well which make America a success story and lets it exploit its true potential exceptionally. It acts as an adaptive tool as well to the highly decentralised digital media and is an effective tool in producing critical popular opinion.
It needs to be realised that this freedom of expressing popular opinion and more and more increase in subjective interpretations of news, is the most effective tool to counter the act of propagation of fake news. It is the most rationale solution to eliminate the concept of fraudulent journalism. It is the reputation of proponents of such fake information which is directly affected by subjective interpretations and subsequently and consequently will definitely lead to elimination of this theory of existence of fake news.

REFERENCES:


[ii] ibid


[iv] Supra n 1


[vi] Ibid, 373

[vii] Ibid, 376


Shreya Singhal v Union of India (2015) AIR 2015 SC 1523 [87-90]