Analysis of the Challenge in Fake News and Misinformation
Regulation Comparative in Global Media Landscape

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Abstract. In the age of online social platforms, increasing interactions beyond the wildest imagination, dealing with fake news has been the most challenging. Perhaps the most visible victims of fake news today are political individuals and institutions. The delicate balance between regulation and respect of individual rights and maintenance of constitutionalism in various countries today creates a unique regulatory dilemma that allows for fake news and the use of it to continue thriving. At the same time, politicians and other institutions occupy a critical role in creating legislation towards combatting fake news. Such moves could significantly undermine the ability to observe some of the fundamental rights of individuals and the overall rule of democracy [1]. Misinformation and other cases of fake news have a relatively significant impact on societies. However, resolving fake news has proved not to be easy because of numerous issues, among them, being the need to preserve fundamental rights [2]. Desktop-based research has been conducted to achieve the objectives of this research. Critical to note that most of the information vital in completing this research is electronically availed. Hence, secondary sources of information have been utilized to reach conclusions on the existence of regulations and its effectiveness toward combating fake news in the three jurisdictions.

1. Introduction

Falsified information has always existed, and it is unlikely that one can point out where and when false information. However, in the advent of the 2016 United States presidential election, the term ‘Fake News’ received enormous attention. The presidential candidates at that juncture, the media, and the public went frenzy over the existence of fake news in the United States and the potential damage that it could cause in the country’s social and political fabric. Later into the presidency of the 45th president of the United States, a probe began into the ways that foreign agents might have sought to interfere in the United States’ most sanctified democratic process [5]. Despite the inconclusive ending of the report on the probe, it became apparent that fake news was more than anyone could imagine. Since then, it has also dawned on other democracies and societies that fake news is indeed existent, and it can bear detrimental effects on societies, groups, individuals, and even organizations (Park & Youm, 2019) [11].

The practice of publishing fake news has been around for so long. As early as the 18th century, the United States Congress had addressed the issue of fake news, placing a legal narrative on it. The Alien and Sedition Act of 1978 was one of the earliest formal legal measures to combat fake news. The Act aimed at deterring the individual from publishing fake news by punishing those guilty of malicious and falsehood that aimed at the government. Since then, numerous developments have been made to resolve the spread of false information that may be targeted at individuals.

2. Significant Problems

2.1. Theoretical framework

This study adopts a conceptual framework from Wardle & Derakhshan (2017) that has been used to explore the problem of fake news from a social point of view [14]. This conceptual framework has been adopted because it serves as a common denominator in exploring fake news in different legal jurisdictions and societies that differ in values but yet share the most aspect of constitutionalism and the rule of law.
2.2. Defining “Fake News”

As the term fake news becomes more and more popular, it has become challenging to define. In the development of any set rules or regulations to combat a particular vice in society, it is in the interest of the law and the law enforcers to determine the definition of the vice and other underlying concepts; similarly, the significance of adopting a standard definition of fake news is vital to understanding the role of the law and what the current legislatures on global, national and local levels toward combating its existence in society today [3].

In the United States, where the term has recently gained attention and shined a light on it in the global stage, there lacks a standard definition to describe the word and the phenomenon of fake news. For instance, one of the Journalists in The Washington Post defines fake news as ‘deliberately constructed lies that bear the intention of deceiving the public’ (Engesser et al. 2017) [7]. However, many of the legal scholars warn that defining fake news does not only overlap with the existing and communication laws but also interfere with the First Amendment’s legal protection of the freedom of speech. Numerous other societies have found themselves in this kind of legal ambiguity due to the precise definition and description of the term fake news.

In efforts to offer a working definition for the term fake news, Egelhofer and Lecheler (2019) show that there are two dimensions to the usage and perceived importance of the word ‘fake news.’ They include; fake news as a genre and fake news as a label. There are three main characteristics of fake news as a genre; low in is facticity, journalistic, and bears the intention to deceive [6]. Researchers and authors agree that fake news is made up of false information. For instance, in line with the adopted conceptual framework, Butler (2018) lists a variety of fake news; misinformation, disinformation, and manipulated content [4]. Finkel et al. (2017), on the other hand, describes fake news to be either false in its totality or intentionally contains deliberately misleading aspects from the information provided [9]. Hence, the use or presence of facts does not mean that a message cannot be fake news.

As a genre, it has also been observed that fake news is often seeking to appeal to potential consumers, hence mimics real news or media content. From this approach, fake news is not only false but also tends to imitate real news. Hence, articles of fake news can have a structure that includes a heading, body, and even media for illustrations. Mimicking real news is a creation or production antique aimed at achieving the pretence of being real. Waldman (2014) notes that, in such cases, fake news can be better described as pseudo-journalistic [15].

2.3. Research Methodology

Desktop-based research has been conducted to achieve the objectives of this research. Critical to note that most of the information vital in completing this research is electronically availed. Hence, secondary sources of information have been utilized to reach conclusions on the existence of regulations and its effectiveness toward combating fake news in the three jurisdictions. The desktop research approach has also been utilized in completing the literature review section of this research. The scope of this research is guided through the use of a theoretical framework.

3 Evidence on The Fight Against Fake News

The law against defamation is perhaps one of the pre-existing legal frameworks that have been used by some countries to protect individuals and the general public from the malicious intents of fake news. A good example is South Korea. The constitution of South Korea protects individuals against defamation and tarnishing of reputation in the exercise of one’s free speech. However, this is in contrast with other countries like the United States whose constitutional weight is behind the exercise of free speech. However, this is in contrast with other countries like the United States whose constitutional weight is behind the exercise of free speech. In South Korea, fake news is perceived to be both a crime and civil wrong. In November 2017, under the Public Official Election Act, an individual that posted false information on the election was convicted of conducting an election crime (Park and Youm, 2019) [11]. The ruling court ordered that the defendant pay a fine for posting misleading information that had potential effects on the general public. In France, the 1881 Law on Freedom of the Press and Article L.97 of the Legal code is still enforced (Rampersad 2020) [12].

The existing legislature dictates that causing disturbance to public peace through the production, reproduction, or dissemination of fake news in bad faith is punishable by a fine. Numerous other state legislatures have been enforced.

Despite the apparent challenges of the current state of flooded information, numerous measures have been put in place by state regulators and other players to combat
information disorders and the raging wave of fake news. Legislative measures appear to be the most consequential in some of the countries that have waged war against fake news [4]. There are broadly two categories of approaches that have indicated success in such country’s enforcement of the existing legislature and creation of new legislature to overcome legal loopholes.

3.1. New Legislation

On the other hand, nations throughout the world have realized the need to exert more control by the creation of a new legislature. Some of the legislatures are general in manner while others target specific activities and platforms within the process of informational disorders [8]. In Germany, the ‘Act to Improve the Enforcement of Law in Social Network’ began to take full effect in 2018. The Act is specific to social media platforms (Malda and Milan, 2018). The Act requires that malicious information shall be removed from the internet within a specified period in which it has been determined by a law of court to be malicious [10].

Japan has been struggling with the fake news issue and has established several laws in an attempt to curb the spread of fake news. Among the laws is the broadcasting act that regulates broadcasters by establishing a system that prohibits them from distorting facts. The penal code focuses on news aimed at defamation. The penal code provides the punishment for fake news mongers who defame an individual or obstruct a business which is three years and above or not less than 500,000 Yen in fines. The election law prohibits individuals from spreading defamatory news during election campaigns, and lastly, the internet provider law that exempts internet providers from liabilities for preventing the distribution of defamatory information about other individuals. Out of all the given laws, Japan does not have one designed to curb the spread of fake and defamatory news through social media [10].

3.2 Service Providers’ action

With over 160 million Indian citizens using WhatsApp, the Indian government has moved swiftly to protect its citizens and the general public from the potential effects of fake news. Platform regulation and collaboration with service providers to enforce jurisdictional laws are some of the measures that countries have taken against the spread of the threat of fake news.

Facebook and other social media websites are the primary points of targets for regulations in Germany focused on curbing the problem of fake news. As noted in the literature review, Germany developed ‘The Act to Improve the Enforcement of Law in Social Networks.’ The new regulation aims at reducing the spread of misinformation and other forms of information among millions of Germans users of such social medial platforms. The federal government, under this law, provides that all any forms of information that may undermine the wellbeing of the public or individuals are pulled down with 24 hours of the court’s determination of their illegality. The Act did provoke concerns about the infringement of personal freedoms of expression and speech. Nevertheless, Germany authorities hold the stand that such rights are only exercised within the provision of the country’s law to protect the rights of other members of the society that have spelled out in the country’s criminal law [14].

3.3 State exercises over the dissemination of information

Unlike other countries, China’s fake news problems tend to be countered on issues of healthcare, food safety, and other social issues. Interestingly, China has managed to curb issues centered around politics. This has been made possible with the use of old and new regulations surrounding the increased use of social media among members of its society.

The case of citizens of China being subject to anyone involved in the spread of fake news that holds the potential of disturbing public peace in an information network or media is culpable of punishment by imprisonment. For instance, the Manufacturing and Spread of Fake News Law prohibits most of the procedures that are associated with the manufacturing and distribution of misinformation and disinformation in the country (The Law Library of Congress, Global Legal Research Directorate, 2019) [13].

Some of the laws include the Ninth Amendment to the Criminal Law of the People’s Republic of China. The law provides that anyone involved in the spread of fake news that holds the potential of disturbing public peace in an information network or media is culpable of punishment by imprisonment. There also exists the Real-Name Registration legal provision. Under this law, members of the public are legally required to use their official names on social or official websites that may be used to disseminate information that may have a potential impact on the broader population.

3.4 Finding

The individual case studies from above highlight some of the legislative measures that countries across the globe have sought to put in place in order to deal with fake news. The study establishes that there is a minimal reflection of the term ‘fake news’ in new and old legislation. However, as outlined from the theoretical framework, fake news has a genre that has been tackled through the identities of misinformation, disinformation, and mal-information. Hence, the issue of fake news has label largely remains unresolved with the existing legislature. The essence of addressing fake news in the form of propaganda and opinionated expression appears to be alienated. The probable victims in this scenario include journalists that stand the threat of a poor reputation.

Curbing the problem of fake news presents new challenges to individual countries. Some of the challenges are unique to the country’s political and
social background. Most of the countries are still in the process of developing legislative measures that reflect the new problem of fake news. Enforcement issues are even more troubling. For instance, Germany and Kenya face resistance to how some of the legislative measures are exercise. Lastly, collaboration with service providers like Facebook and Twitter are primary issues that may require more than legislative measures to deal with them [13].

4 Conclusion

Fake news is an issue many countries are struggling with and have been unable to put in control. The spread of fake news has evolved with technological developments and is now easy, with almost everyone having smartphones and the internet. The manufacturing and dissemination of false information have become easier. Spreading fake information impacts communication, one of the essential aspects of society negatively. Proper communication is vital in informing society on essential issues occurring, for example, with the current coronavirus pandemic. Misinformation and fake news impact society negatively, but most jurisdictions have been unable to effectively curb the spread of fake news, especially through venues such as social media without infringing the rights of its citizens of free speech and their privacy and confidentiality. This research aimed at determining how regulation contributes to the stopping of the adversity of fake news. The different measures different nations have taken in the attempt to curb the spread of fake news depend on the political, social, and regulative uniqueness of the different societies.

References