MOOT PROPOSITION

Council for Civil Liberty v. State of Mayoorsthan*

1.   Mayoorsthan is a State in the Indian Union having a population of 5,48,57,600 with Unicameral Legislative Assembly. Literacy in Mayoorsthan is 99%. A recent study undertaken by the Social Welfare Department of the Government of Mayoorsthan revealed that 60% of the population is active in social media. In the election to the Mayoorsthan Legislative Assembly, which was held in May 2016, Mayoorsthan Republic Party secured 121 seats out of 232. The main political party in the opposition was the Mayoorsthan Socialist Party.

2.   The year 2020 saw the spread of new Corona virus, known as Severe Acute Respiratory Syndrome Corona virus 2 (SARS-COV-2) causing disease called Corona virus disease 2019 (Covid-19). In March 2020, the World Health Organization (WHO) declared Covid-19 outbreak as a pandemic. From March 2020, the normal life in the state was affected by the spread of the pandemic Covid-19. According to the report published by the Government of Mayoorsthan on 1st September 2020, the total number of persons, who died due to Covid-19 was 38,000.

3.   From June 2020, the leading newspapers in Mayoorsthan published several allegations of corruption against the state government in relation to the actions taken to prevent the spread of Covid 19. The electronic media and social media published several stories connected to these allegations.

4.   From 2016 onwards, there were several newspaper reports in India highlighting the misuse of social media by the members of public and organized groups, especially the spreading of fake news prejudicially affecting the Society.

5.   The BBC News on 06.11.2016 under the title "The rise and rise of fake news", published the following observations:

The deliberate making up of news stories to fool or entertain is nothing new. But the arrival of social media has meant real and fictional stories are now presented in such a similar way that it can sometimes be difficult to tell the two apart.

6.   In March 2017, a social media user uploaded a video of a woman being dragged and murdered in broad daylight. The up loader claimed that the victim was murdered by a particular religious group as she was a believer of another religion with different political views. In reality the clip was that of a street play depicting the murder of a journalist in the country.

7.   On 14.02.2018 the leading news paper of the state, Mayoorsthan Times published the following news:

Anti-Religion Messages are shared by the social media users often through WhatsApp and Facebook without even reading them. At times, even National News Channels have shared these views without checking their authenticity…Random videos are circulated with contradictory messages. Sometimes the videos are not even political. Random videos of celebrations in a different country can lead to trouble. Few months ago a video was widely circulated of a large crowd of supporters celebrating Pakistan's win in a cricket match in India. The message claimed that the Muslims in India were celebrating Pakistan's win and were traitors for supporting their arch-rivals. In reality the video was shot in Pakistan and the people were from Pakistan itself. The video was posted and shared multiple times on Facebook and Youtube and garnered views in millions and it propagated the idea that Indian Muslims are anti-national"

8.   The BBC News in India on 05.04.2019, under the caption "WhatsApp: The 'Blackhole' of Fake News in India's Election", reported as follows:

WhatsApp, India's most popular messaging platform, has become a vehicle for misinformation and propaganda ahead of the upcoming election. The Facebook-owned app has announced new measures to fight this but experts say the scale of the problem is overwhelming.

India was in the grip of patriotic fervour in early March when WhatsApp groups were flooded with photographs claiming to show proof that unprecedented Indian air strikes in Pakistani territory had been successful. But BBC fact-checkers found that the photos - purportedly of dead militants and a destroyed training camp - were old images that were being shared with false captions. One photo showed a crowd of Muslim women and men gathered around three bodies but those pictured were actually victims of a suicide attack in Pakistan in 2014. A series of photos - of crumbling buildings, piles of debris and

bodies in shrouds lying on the ground - were traced to a devastating earthquake in Pakistan-administered Kashmir in 2005.

WhatsApp and Facebook have been struggling to curb the impact of "fake news" - messages, photos and videos peddling misleading or outright false information - in elections around the world. But India's upcoming election - the world's largest democratic exercise - is seen as a significant test. Internet usage in rural areas has exploded since the last election in 2014, fuelled by the world's lowest mobile data prices.

India poses a particularly complex problem for Facebook. It is WhatsApp's largest market - more than 200 million Indians use the app - and a place where users forward more content than anywhere else in the world.

BBC research last year found that a rising tide of nationalism was driving Indians to share fake news. Participants tended to assume that WhatsApp messages from family and friends could be trusted and sent on without any checks.

Many Indians were first introduced to the internet through their smart phones. A recent Reuters Institute survey of English-language Indian internet users found that 52% of respondents got news via WhatsApp. The same proportion said they got their news from Facebook. But content shared via WhatsApp has led to murder. At least 31 people were killed in 2017 and 2018 as a result of mob attacks fuelled by rumours on WhatsApp and social media, a BBC analysis found.

9.   In May 2019, the School of Media Studies of Mayoorsthan University published a report of a survey based study on "Influence of Fake News in the Indian Electoral Process". In the last part of the report, it is observed:

The study showed that a whopping 88 percent of the first-time voters agreed that fake news was a real problem. But disinformation is not a new phenomenon in the Indian political realm. What is worrisome is the multitude of platforms including print, television and social media whereby unverified information can reach even the most critical thinkers. To make matters worse, multiple surveys and studies in recent years found that an overwhelming majority of people in the country access news primarily through social media where information rarely gets checked for validity and authenticity. And being the largest market for WhatsApp with more than 300 million users, India is also the place where users forward content more than anywhere else in the world. Unfortunately, studies reveal that most Indians tend to trust messages from family and friends. This means that content gets forwarded without any checks, further driving and spreading misinformation in the social sphere.

Even though fact checking initiatives are popping up on several media fronts in the country, nearly 45 percent of respondents in the survey stated that they were not aware of any fact checking organization. Moreover, on the question, "who should be held accountable for the menace of fake news" the responses are still unclear. Is it the government? Is it the people who create and

forward false messages? Is it the social media technology platforms like Facebook, WhatsApp, Twitter etc. that allow populist posts to go viral for profits? or Is it the fourth estate news media that fails to conduct basic fact-checks to remain the fourth pillar of democracy? In retrospect, the responsibility probably lies with everyone. Finland has set up measures to educate its citizens from all age groups on how not to fall victim to fake news. Perhaps, it is time that other governments also followed suit.

The report cited several reports regarding the social impact of fake news.

10.   An article under the title "Social Media in India fans Fake News" published in Interpreter on 02.06.2019 by Australian Lowy Institute, reported as follows:

> India's election campaigning is in full swing and everything about the Indian general election is gigantic. This time, about 900 million people above the age of 18 will be eligible to cast their ballots spread over seven phases at a million polling stations, culminating on 19 May. The country's Election Commission says nearly 8000 candidates representing over a thousand political parties are contesting this year, nearly a seven-fold increase from the first election in 1951, making it the largest election the world has seen. What's more it costs a lot of money – likely to cross a humungous US$7 billion by various estimates.

> And, of course, like elsewhere in the world where information is crucial, the millions of tapping fingers on the glowing screens of social media play a major role in influencing the electorate. This near ubiquitous habit of Indian voters has also raised the spectre of fake news.

> Doctored videos, malicious memes, fake news and unverified adverts are already doing the rounds in various social media platforms. Given the high stakes in the volatile election season – a time that has in the past degenerated into social unrest and outbreaks of violence – the potential malignant influence of social media is disturbing. Late last year, for instance, rumours on social media of strangers abducting children from villages were enough to trigger mob attacks where at least 20 people were killed.

> Yet despite efforts by India's Election Commission to work with social media giants, urging them to tackle the spread of misinformation and evolve a code of ethics so as not to allow their platforms to be misused, fake news continues to be disseminated.

11.   The Indian Express under the heading "Fake News shared over two million times on Social Media during Lok Sabha polls" reported on 21.10.2019 as follows :

> About 50,000 fake news stories were published during the recent Lok Sabha elections and shared 2 million times, according to a study conducted by fact-checking startup Logically. The firm, which has bases in Mysuru in Karnataka and also in the UK, was even able to track down some fake stories all the way to

Chinese and Pakistani IP addresses.

"Hateful articles were shared more than three lakh times and 15 lakh shares were connected to extremely biased stories, likely to be reflecting the sharer's personal opinions on topics. As a result, readers could be entering filter bubbles and echo chambers on their own. This further highlights the unique traits of mis/disinformation in India. The most significant platforms for problematic content have been closed networks such as WhatsApp and private Facebook groups," the case study titled 'Misinformation and the Indian Election', revealed. "Of the 9,44,486 articles analysed, 14.1% were found to be unreliable and 25% were fake," it added.

Logically found that there were 1,33,167 unreliable stories during the elections out of which 33,000 stories reported in the Indian media were fake.

The study stresses that the effects of misinformation in India should not be underestimated. "One needs to simply look at the widely-reported spate of vigilante mob killings that occurred over an 18-month period between mid-2018 and the start of 2019 to see the real effects of rumour and falsehood. Nicknamed the 'WhatsApp lynchings', often the killings were a direct result of rumours about child abductions which spread over the messaging platform to rural communities. The victims were mostly strangers, passing through communities and not known to the locals who – spurred on by false rumours – carried out the attacks," the study says.

Other instances of mob violence were related to cow vigilantism directed towards Muslims and Dalits, an excerpt of the study stated. During the elections, Logically could identify when a story is being spread by bots rather than humans. For example, a social media account that engages with and shares a story almost instantaneously is likely to be run by a bot, since human reaction would be far slower. If a story is being spread by bots, then there is a high probability that its content is inaccurate and being maliciously propagated.

"There is ample evidence that during the election, all sides (political parties) were using WhatsApp to spread highly divisive, manipulated, or completely false information," the study found.

12.   The BBC News on 03.06.2020 under the caption "Social Media Firms Fail to act on Covid-19 fake news" published the following:

Hundreds of posts spreading misinformation about Covid-19 are being left online, according to a report from the Center for Countering Digital Hate. Some 649 posts were reported to Facebook and Twitter, including false cures, anti-vaccination propaganda and conspiracy theories around 5G. 90% remained visible online afterwards without any warnings attached, the report suggests.

Imran Ahmed, chief executive of the Center for Countering Digital Hate, said the firms were "shirking their responsibilities". "Their systems for reporting

misinformation and dealing with it are simply not fit for purpose. Social media giants have claimed many times that they are taking Covid-related misinformation seriously, but this new research shows that even when they are handed the posts promoting misinformation, they fail to take action."

13.   The BBC Reality Check published in BBC News in India on 30.06.2020 under the title "Corona virus: The Human Cost of Fake News in India" the following:

India's religious fault lines are an important theme across false stories spreading online, something that has been further highlighted by the corona virus outbreak.

We've looked back at claims debunked by five Indian fact-checking websites between January and June this year.

They fall under four broad headings:

- Corona virus outbreak

- February's Delhi riots

- Citizenship Amendment Act

- Claims about the Muslim minority

Of the 1,447 fact-checks on five Indian websites, claims around corona virus dominated, making up 58% of them.

This was largely related to false cures, lockdown rumours and conspiracy theories about the origins of the virus".

14.   On 07.08.2020, the state government appointed a Committee to study the social impact of fake news and to suggest the remedial measures. On 02.10.2020, the Committee submitted its report. The last paragraph of the report read as follows:

> Inaccurate beliefs poses serious threat to the fabric of democracy and fake news represents a particularly egregious and direct avenue by which inaccurate beliefs have been propagated via social media. The emergence of fake news causes the erosion of long-standing institutional bulwarks against misinformation in the internet age. Though concern over the problem is global it is essential to take some preventive measures at the government level. A new system of safeguards is needed. It is better to enact penal provisions to control this social evil.

15.   In the meantime, from the month of August 2020 onwards, new allegations of illegalities, irregularities, corruption and nepotism started appearing against the Government, Chief Minister and certain cabinet ministers in the print and visual medias as well as social medias in large scale.

The opposition political parties, certain non-political organizations, certain Non Governmental Organizations (NGOs) and some public spirited persons raising these issues, started demanding investigations by Central Agencies from the last week of August 2020 into the aforesaid allegations and resignation of the Chief Minister and Cabinet Ministers against whom the allegations have raised. The State Government readily agreed to the demands for investigations and officially wrote to the Central Government seeking investigations into the allegations by the Central Agencies, but turned down the demands for resignation of Chief Minister and ministers. The Central Government is formed by the political front, led by the political party Indian Socialist Party, which is a close ally of Mayoorsthan Socialist Party, the principal opposition in Mayoorsthan. In this context, continuous open violent and non-violent agitations with mobs of political parties and other organizations demanding the resignation of Chief Minister and some ministers, most of which agitations were in violation of Central Government's COVID-19 protocol, have been taking place in the State, since September 2020. There were innumerable instances of members of the public including non-political persons openly defying the COVID-19 protocols and restrictions. This was mainly fueled by social media messages, many of which were fake, propagated by automated sources.

16.   Meanwhile, based on the report dated 02.10.2020 of the Committee appointed by the State Government, the State Government piloted the Mayoorsthan Protection from Online Falsehoods and Manipulation Bill 2020 in the State Legislative Assembly on 20.10.2020. The opposition parties strongly opposed the Bill and questioned the timing of presenting the Bill and demanded that it be referred to a Select Committee of the Legislative Assembly, which was not agreed to by the Government. So the opposition political parties staged a walk out and the Bill was passed by the Legislative Assembly on 20.10.2020 without any opposition.

17.   On 02.11.2020, the Governor of the State gave assent to *"Mayoorsthan Protection from Online Falsehoods and Manipulation Act 2020",* which is as follows:

MAYOORSTHAN PROTECTION FROM ONLINE FALSEHOODS AND MANIPULATION ACT 2020

An Act to provide Protection from Online Falsehoods and Manipulation.

Short title, extent and commencement-

(1). *(i) This Act may be called the Mayoorsthan Online Falsehoods and Manipulation Act 2020.*

(ii) It extends to the whole of the State of Mayoorsthan.

(iii) It shall come into force on such date as the Government may by notification in the Gazette, appoint:-

(2). *In this Act, unless the context otherwise requires —*

    (a) "bot" means a computer program made or altered for the purpose of running automated tasks;

    (b) "false statement" includes statement which is misleading, whether wholly or in part, and whether on its own or in the context in which it appears

    (c) "Government" means the Government of Mayoorsthan

    (d) "statement" means any word (including abbreviation and initial), number, image (moving or otherwise), sound, symbol or other representation, or a combination of any of these

(3). *A person must not do any act in or outside Mayoorsthan in order to communicate in Mayoorsthan a statement knowing or having reason to believe that —*

    (a) it is a false statement of fact; and the communication of the statement in Mayoorsthan is likely to

    (i) tbe prejudicial to public health, public safety, public tranquility or public finances;

    (ii) incite feelings of enmity, hatred or ill-will between different groups of persons; or

    (iii) influence the outcome of an election conducted by the Election Commission of India or State Election Commission of Mayoorsthan

    (iv) diminish public confidence in the performance of any duty or function of, or in the exercise of any power by, the Government, an Organ of State, a statutory board, or a part of the Government, an Organ of State or a statutory board.

(4). *A person must not, whether in or outside Mayoorsthan, make or alter a bot with the intention of —*

    (a) communicating, by means of the bot, a false statement of fact in Mayoorsthan; or

    (b) enabling any other person to communicate, by means of the bot, a false statement of fact in Mayoorsthan.

(5). *A person who contravenes Section (3) or Section (4) shall be guilty of an offence and shall be liable on conviction —*

    (a) in the case of an individual, to a fine not exceeding Rupees 30,000 or to rigorous imprisonment for a term not exceeding 3 years or with both;

    (b) in any other case, to a fine not exceeding Rs 500,000.

(6). *(1)   A person who, whether in or outside Mayoorsthan, solicits, receives or agrees to receive any financial or other material benefit as an inducement or reward for providing any service, knowing that the service is or will be used in the communication of one or more false statements of fact in Mayoorsthan, shall be guilty of an offence if the service is in fact used in such communication.*

(2)   A person who is guilty of an offence under subsection (1) shall be liable on conviction —

    (a) in the case of any individual, to a fine not exceeding Rupees 30,000 or to imprisonment for a term not exceeding 3 years or with both;

    (b) in any other case, to a fine not exceeding Rs 500,000.

(7). *(1) The state Government may designate any officer of the state as Communication Officer for the implementation of the Act*

The Communication officer is competent to issue the Correction direction under Section 8 if following conditions are satisfied

    (a)   a false statement of fact has been or is being communicated in Mayoorsthan;

    (b)   the Communication Officer is of the opinion that it is in the public interest to issue the Direction.

(8). *(1)   A Correction Direction is one issued to a person who communicated the subject statement in, Mayoorsthan requiring the person to communicate in Mayoorsthan in the specified form and manner, to a specified person or description of persons (if any), and by the specified time, a notice that contains one or both of the following:*

    (a)   a statement, in such terms as may be specified, that the subject statement is false, or that the specified material contains a false statement of fact;

    (b)   a specified statement of fact, or a reference to a specified location where the specified statement of fact may be found, or both.

(2)   A Correction Direction may require the person to whom it is issued to communicate in Mayoorsthan a correction notice in a specified online location.

(3)   A Correction Direction may also require the person to whom it is issued to do one or both of the following:

    (a)   to communicate in Mayoorsthan the correction notice by placing it in the specified proximity to every copy of the following that is communicated by the person in Mayoorsthan:

        (i)   the false statement of fact;

        (ii)   a substantially similar statement;

> *(b) to publish the correction notice in the specified manner in a specified newspaper or other printed publication of Mayoorsthan.*

(4) A person who communicated a false statement of fact in Mayoorsthan may be issued a Correction Direction even if the person does not know or has no reason to believe that the statement is false

(9). *The Communication officer is competent to issue the Stop Communication Direction under Section 10*

(10). *(1) A Stop Communication Direction is one issued to a person who communicated the subject statement in Mayoorsthan, requiring the person to stop communicating in Mayoorsthan the subject statement by the specified time.*

(2) A Stop Communication Direction may also require the person to whom it is issued to stop communicating any statement that is substantially similar to the subject statement.

(3) A Stop Communication Direction may also require the person to whom it is issued to do one or both of the following:

> *(a) To communicate in Mayoorsthan a correction notice in the specified form and manner, to a specified person or description of persons (if any), and by the specified time;*

> *(b) to publish a correction notice in the specified manner in a specified newspaper or other printed publication of Mayoorsthan.*

(4) Any person who communicated a false statement of fact in Mayoorsthan may be issued a Stop Communication Direction even if the person does not know or has no reason to believe that the statement is false.

(5) Once a Stop Communication Direction has been issued, the Competent Authority must publish a notice of that fact in the Gazette as soon as possible.

(6) However, a failure to publish the notice of the issue of the Stop Communication Direction in the Gazette does not invalidate the Direction.

(11). *(1) A person to whom a Correctional Direction or stop communication direction is issued and served and who, without reasonable excuse, fails to comply with the Direction whether in or outside Mayoorsthan, shall be guilty of an offence and shall be liable on conviction —*

(a) in the case of an individual, to a fine not exceeding Rupees 30,000 or to rigorous imprisonment for a term not exceeding 3 years or with both; or

(b) in any other case, to a fine not exceeding Rs 500,000.

(12).   *Power to make rules.- The Government may, by notification in the Gazette, make rules to carry out the provisions of this Act.*

On 16.11.2020 Council for Civil Liberty, a charitable society registered in Mayoorsthan for the protection and promotion of human rights filed a writ petition before the High Court of Mayoorsthan challenging the constitutional validity of *"Mayoorsthan Protection from Online Falsehoods and Manipulation Act 2020".* It is contended that the Act is unconstitutional on the grounds of lack of legislative competency and violation of fundamental rights under Articles 14, 19(1)(a) and 21 of the Constitution.

(***The hypothetical problem is drafted by Prof. Dr. K C Sunny, Vice Chancellor, National University of Advanced Legal Studies, Kochi***)