

Sri Lankan Perspectives on “Fighting the Lie”; Criminalizing Online Falsehoods

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Abstract: *In ancient times, war was wholly militaristic and physical in nature, where troops protected borders. However, at present war has changed from physical space to virtual space. Social media is the biggest platform utilized by extremists, terrorists, profit and politically motivated individuals to attain illegal motives. Disinformation, misinformation, falsehoods, online manipulations and hate speech have become apex threats to Sri Lanka’s national security. The research problem is the need to criminalize online falsehoods. The research methodology utilized is a non-doctrinal research, which is also known as socio-legal research. The rationale behind non-doctrinal research is, to seek answers from a multi-disciplinary approach. The paper goes beyond legal analysis and also looks from a national and strategic security perspective. The research will shed light on what are online falsehoods, Sri Lanka’s experiences as a victim of online falsehoods, laws relating to online falsehoods, freedom of expression and the gaps, lacunae and weaknesses prevalent in the laws curbing online falsehoods. Further, the research will evaluate the Singapore’s Protection from Online Falsehoods and Manipulation Act 2019, for purposes of comparative analysis. The Paper has identified the necessity to introduce legislation to criminalize online falsehoods. Consequentially, the paper has provided a plethora of recommendations on preventing and mitigating online falsehoods.*

Keywords: *Freedom of expression, Laws, Online falsehoods, Social media, Sri Lanka, Singapore*

1. Introduction

At present, determining what a fact is and what is fake has become an arduous task. The reason is, that social media is the biggest information-sharing platform. In past, information/communication was penned or inked, heard or watched, but now, the readers and spectators are able to interact and interpret. Therefore, it is crystal clear that war has changed from a physical aspect to an online space. As a result of wide availability, cost efficiency, productivity and technical capability, social media has become eye candy, yet deceiving for users. Social media has become the lifeblood of information-sharing platforms. As much as it caters for the day to day’s needs, on the other hand, social media intrudes on personal space and results in privacy violations at certain points. Content created, generated, modified and disseminated online does not end the way it started. There might be additions, omissions, alterations or fabrications to a part or whole of the content. Disinformation, misinformation, false information, manipulations and hate speech are challenges that any country face. Due to these reasons, determining what to believe and what not to believe is strenuous.

Sri Lanka is a victim of online falsehoods and this was witnessed in many situations. For example, during the Covid- 19 pandemic, the

death toll was fabricated¹², boycotting of Muslim businesses aftermath of the Easter Sunday Attack in 2019, fake intelligence alerts as to the recovery of bombs as well as misinformation, disinformation and hate speech campaigns were conducted by LTTE and its international networks are such examples. Even though online falsehoods are a national security menace to Sri Lanka, Sri Lanka does not have separate legislation to criminalize online falsehoods. Nonetheless, there is legislation such as the 1978 Constitution, Penal Code, Prevention of Terrorism Act (PTA), Police Ordinance and there regulations. Further, Computer Crimes Act 24 of 2007 to curb terror content, yet they are inadequate in the digitalized world.

In light of these circumstances, it is high time to criminalize online falsehoods, which are committed in numerous ways. Many countries including Singapore have already introduced legislation to criminalize online falsehoods. Therefore, a separate Act has become a key requisite in criminalising online falsehoods. Nonetheless, it is crucial to ensure freedom of expression of individuals will not be unjustly and arbitrarily threatened.

2. Methodology

The research problem is to identify online falsehoods as a threat to Sri Lanka's national security and the need to criminalize it. To explore answers, researcher has perused domestic laws related to fake news and interpretations of it. Further, researcher has debated the sufficiency of laws and whether the said laws are strong enough to curb fake news. In the end, researcher has concluded that it is imperative to have a legislation

criminalizing falsehoods and manipulations, however, enabling room for freedom of expression through healthy dialogue. To sustain the argument, the researcher has looked into Singapore's jurisdiction. Therefore, to adduce answers, reach objectives and provide recommendations, researcher has utilized a non-doctrinal approach. The methodology is also known as socio-legal research. As mentioned by (*Dahiya, 2021*), "Non-doctrinal research takes a multi-disciplinary approach towards legal research. It employs methods and information available from other disciplines to make a comprehensive approach towards law." The rationale behind embracing a non-doctrinal research methodology is to look beyond the law. The research not only looks into the letter of law but also its practical implementation from a multidisciplinary approach. This research is aided and supplemented by legislation, which is a primary source. In addition, research has used secondary sources such as books, journal articles and proceedings to enhance credibility and analysis.

3. Analysis

A. Online falsehoods

Online falsehoods have become threats to Sri Lanka's national security. As per, (*Pal, 2019*), "Online falsehood encompasses the phenomenon whereby unfounded and unverified online messages leave behind their digital footprint in the form of texts, pictures or videos on the Internet... such dubious messages are often mistaken as facts, and in turn cause people to take actions that they would not have taken otherwise." The "false" content takes many facets. Falsehood is

12 Gunawardene, N. (n.d.). Sri Lanka: Media and factcheckers tackle Covid-19 'infodemic'. [online] International Media Support. Available at: <https://www.mediasupport.org/covid19->

2/sri-lanka-media-and-fact-checkers-tackle-covid-19-infodemic/ [Accessed 31 Aug. 2022].

sometimes synonymously defined as disinformation or misinformation. However, when analyzing falsehoods, disinformation as well as misinformation, cannot be separated. Disinformation is the deliberate dissemination of false or misleading content. On the other hand, Misinformation refers to false or misleading content disseminated without knowing the information to be false. In addition, Online Rumors are any unsubstantiated content circulating online.

B. Lessons learnt

According to, (the Ministry of Communications, Information, and the Ministry of Law, 2018) Green paper, “the Euromaidan protests were characterized as an unlawful seizing of power by forces supported by the West. Second, they sought to characterize the regime in Ukraine as “fascist”. The supposed ultimate goal of these dual narratives was to “destabilize Ukraine psychologically and to advance a conviction that the country is a failed state” In contrast, in the Czech Republic and Slovakia, it has been suggested that misinformation campaigns were conducted to create the impression that the US seeks to dominate the world, and that the future holds only conflict.” Same as in the West, Sri Lanka too has its fair share in the game of falsehoods. Soon after the Easter Sunday Attack in 2019, Muslims were seen as suspects and were subjected to communal violence by hateful, degrading and insulting comments on social media, which resulted in boycotting Muslim businesses. The covid-19 death toll is another fine example, in which authorities had to reiterate the truth to the public and prevent unnecessary controversies. Another example is LTTE and its international

networks. The Sri Lankan government successfully defeated the militaristic aspect of LTTE and ensured the rights of all Sri Lankans, irrespective of ethnicity, religion or language. However, LTTE, its international networks and front, cover and sympathetic organizations of LTTE are accusing Sri Lanka of committing genocide, human rights violations, humanitarian law violations, causing intergenerational trauma and snatching away the Tamil Homeland¹³. LTTE especially uses Twitter and Facebook pose all these allegations via social media. These fictitious allegations are hazardous to the country as repeating a lie makes the lie believable. As a result of these repeated allegations Italy, Canada and the European Union have passed laws, resolutions and memorandum of associations against Sri Lanka such as Canada’s Genocide Education Week Act, 117th US Congress Resolution 413 and 46/1 Resolution.

C. Laws

Sri Lanka does not have separate legislation, unlike Singapore, to combat and mitigate online falsehoods. However, there are other statutes, which address the issues, nonetheless, realistically; these laws are inadequate when looking at the digital environment.

i. Sri Lankan Constitution 1978

According to the Sri Lankan Constitution, the supreme law of the country “national security” takes precedence. As per 15(7), “The exercise and operation of all the fundamental rights declared and recognized by Articles 12, 13(1), 13(2) and 14 shall be subject to such restrictions as may be prescribed by law in the interests of national security, public order and

¹³ Hellmann-Rajanayagam D, ‘The Concept of a “Tamil Homeland” in Sri Lanka — Its Meaning and Development’ (1990) 13 South Asia: Journal

of South Asian Studies 79
<<https://doi.org/10.1080/00856409008723142>>

the protection of public health or morality, or to secure due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society. For this paragraph, “law” includes regulations made under the law for the time being relating to public security. 14(1) a, b, c, g and h are subjected to restrictions. Article 14. (1) states that “Every citizen is entitled to – (a) the freedom of speech and expression including publication; 14(1)(a) shall be subject to such restrictions as may be prescribed by law in the interests of racial and religious harmony or concerning parliamentary privilege, contempt of court, defamation or incitement to an offence.

Freedom of speech, expression and publication are essential rights in any state. Sri Lanka being a country, which is democratic, government, is duty bound to respect public opinion and allow healthy dialogue and constructive criticism. Nonetheless, engaging in misinformation, false information and falsehoods to deceive the public, manipulate, enrage and incite unrest and violence should not be tolerated. The rights enshrined in the Constitution are focused on the betterment of people, and the rationale behind limiting freedom of speech, expression and publication is in light of public interest, and racial and religious harmony.

ii. International Covenant on Civil and Political Rights (ICCPR) Act and Act No. 14 of 1995

Section 3 of the Act states that, 3(1) No person shall propagate war or advocate national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, further, 3(2) states that, Every person who— (a) attempts to commit; (b) aids or abets in the commission of; or (c) threatens to commit, an offence referred to in subsection (1), shall be guilty of an offence under this Act. (3) A person found guilty of committing an

offence under subsection (1) or subsection (2) of this section shall on conviction by the High Court, be punished with rigorous imprisonment for a term not exceeding ten years. (4) An offence under this section shall be cognizable and non-bailable, and no person suspected or accused of such an offence shall be enlarged on bail, except by the High Court in exceptional circumstances.

The section is vast in scope. Yet, it is insufficient when relating to digital platforms. For instance, “propagating war or advocating national, racial or religious hatred that constitutes incitement to discrimination” on social media is an easy task. This was finely depicted in the aftermath of the Easter Sunday Bombings in 2019, where Muslims were viewed as terrorists and faced hatred from social media. As a result, (The New Indian Express, 2019.) reported, “The blockade of Facebook and WhatsApp has been imposed from midnight following violent incidents between the minority Muslim and majority Sinhalese communities, officials said. The resultant effect of anti-Muslim campaigns on social media resulted in ethnic unrest leading to boycotting of Muslim businesses. This showcases the gravity of online falsehoods which have endangered the national security of Sri Lanka.

iii. Police Ordinance

According to section 98, “Any person who shall spread false reports with the view to alarm the inhabitants of any place within Sri Lanka and create a panic shall be guilty of an offence, and be liable to a fine not exceeding two hundred rupees, or to imprisonment, with or without hard labour, for any period not exceeding twelve months; and if he shall be convicted a second time, or shall persist in the offence after warning to desist, he shall be liable to corporal punishment not exceeding twenty lashes.” However, this Ordinance is also inadequate to

curb online violence. Falsehoods happen in various ways such as, through posts, videos, pictures, vlogs, blogs or stories. Therefore, it does not always professional at the outset. Irrespective of nature, the predicament is disastrous. Therefore, it is high time to involve stringent laws to criminalize online falsehoods.

iv. Penal Code

According to, Section 120 of the Penal Code “Whoever by words, either spoken or intended to be read, or by signs, or by visible representations, or otherwise, excites or attempts to excite feelings of disaffection to the State, or excites or attempts to excite hatred to or contempt of the administration of justice, or excites or attempts to excite the People of Sri Lanka to procure, otherwise than by lawful means, the alteration of any matter by law established, or attempts to raise discontent or disaffection amongst the People of Sri Lanka, or to promote feelings of ill-will and hostility between different classes of such People, shall be punished with simple imprisonment for a term which may extend to two years, or to excite the People of Sri Lanka to attempt to procure by lawful means, the alteration of any matter by law established, or to point out to their removal matters which are producing or have the tendency to produce feelings of hatred or ill-will between different classes of the People of Sri Lanka.

Explanation one of this section is noteworthy. Accordingly, “It is not an offence under this section by intending to show that the State has been misled or mistaken in measures or to point out errors or defects in the Government or any part of it, or in the administration of justice or to excite the People of Sri Lanka to attempt to procure by lawful means, the alteration of any matter by law established, or to point out to their removal matters which are producing or have tendency to produce feelings of hatred or ill-will between different

classes of the People of Sri Lanka.”. therefore, constructive criticism and error-free expression are not curbed by Penal Code. Even though this section criminalized falsehoods to an extent, it is still insufficient to prevent and mitigate online falsehoods.

v. Computer Crimes Act

As per, section 6 (1), “ Any person who intentionally causes a computer to perform any function, knowing or having reason to believe that such function will result in danger or imminent danger to— (a) national security; (b) the national economy; or (c) public order, shall be guilty of an offence and shall on conviction be punishable with imprisonment of either description for a term not exceeding five years. This section deals with the online aspect, however, it is still limited in scope, it does not criminalize institutes and cooperations.

vi. Other jurisdictions

As stated by, (Silverman,2018) Belarus and Kenya enacted laws that enable the government to prosecute people who spread false information, German hate-speech legislation, known as NetzDG, includes the requirement that platforms must remove “unlawful” material within 24 hours after been notified.

vii. Singapore’s Protection from Online Falsehoods and Manipulation Act 2019 (POFMA)

This Act seeks to prevent the electronic communication of falsehoods, in addition to safeguarding against the use of online platforms for the communication of such falsehoods. According to POFMA, it focuses on statements of fact, defined as statements, that a reasonable person seeing, hearing or otherwise perceiving would consider as

representations of fact. However, the Act is not intended to cover opinions, criticisms, satire or parody. This means, Act only penalizes deliberate harmful content. As per communicating a statement which that person knows or has reason to believe that it is a falsehood, and the communication of that falsehood in Singapore is likely to be prejudicial to Singapore's security, be prejudicial to public health, public safety, public tranquillity or public finances, prejudicial to the friendly relations of Singapore with other countries, Influence the outcome of a presidential election, general election, by-election or referendum, incite feelings of enmity, hatred or ill-will between different groups of persons; or diminish public confidence in the government. As per POFMA if the content is recognized as a falsehood, Correction Direction, Stop Communication Direction, Targeted Correction Direction, Account Restriction Direction, Disabling Direction and a General Correction Direction is issued as deemed fit. More importantly, POFMA's constitutionality was questioned as to whether it breaches freedom of expression. Court of Appeal of Singapore in 2021 held that the Act is constitutional, and it does not breach the right to freedom of speech under Article 14(1) (a) of the Singapore Constitution.

4. Conclusion and Recommendations

It is clear that online falsehoods have become a threat to Sri Lanka's national security. Due to that reason, to fight the online war, to prevent and counter the misuse of online accounts it is prudent to introduce a separate legislation to criminalize online falsehoods. The legislation should not criminalize satire, parody or constructive criticism. Act should have specific appeal procedures and calibrated remedies. This will ensure transparency of the sources generated and disseminated online as they will be error-free. The Act will also safeguard the

privacy of users by preventing fabrication and falsification of information. It is important to instil media as well as information literacy in the public including journalists to spot fake news and debunk them.

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