

TREND OF “FAKE NEWS” LEGISLATIONS – HOW CAN INDIA BENEFIT FROM THEM?

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Abstract

“Fake News” or Misinformation can be categorized as one of the deadly plagues of this digital global world, as it poses a threat to democracies. It can impede reforms, generate misleading narratives, and potentially cause social unrest in the society. As a result, countries have taken measures to counteract the spread of digital misinformation- ranging from task force bodies to legislations. The Coronavirus Pandemic has accelerated this trend, prompting governments to become more vigilant of the dissemination of fake news. However, this has also sparked a trend for governments to stifle freedom of expression and suppress opposition.

India has a susceptibility for the rapid propagation of fake news and rumours, with a large number of social media users on all platforms. Therefore, India will need to adopt measures to tackle it. In this paper, we have focused solely on the legislations introduced by various countries and have discussed their implications. We have also emphasised the positive and negative aspects, outlining what measures India should take to prevent fake news. India should attempt to strike a balance between the government's interests and the interests of the people by allowing considerable freedom of expression.

Keywords: Misinformation, Fake News Legislations, Governments, Freedom of Expression, Social Media Platforms

I. Introduction

“False or misleading content”, which includes hoaxes, conspiracy theories, falsified news, click-bait headlines, and even satire, is classed as misinformation³. It is not the intention of misinformation to deceive. Instead, it seeks to influence or

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³ S. Chengcheng, G.L. Ciampaglia, O. Varol, A. Flammini and F. Menczer, *The spread of misinformation by social bots*, Indiana University Review (2017).

modify public opinion on a particular issue. The effects of misinformation are also severe. It wouldn't take long for it to devolve into disinformation- information to deceive and threaten democratic principles.

For many countries globally, “Fake News” or Misinformation has been a severe headache. The impact of misinformation on anything from electoral instability to protests is a concern for governments. With this, Countries have enacted legislations or regulations to help mitigate the impact of fake news. As per the International Press Institute, there are 17 countries that have approved new laws aimed at combating misinformation about the virus⁴.

While governments may be pleased, human rights activists and internet intermediaries have other concerns. Human rights activists are worried about the stifling effects on freedom of speech and expression, while internet platforms are concerned about their independence.

In this article, our analysis is three-fold. [II] Firstly, we will highlight the main features of the “fake news” legislations across the world. [III] Then, we would discuss what features would suit the Indian circumstances and [IV] lastly, we would summarize our arguments and point out the key concerns.

II. Key features of the legislations

In the last several years, states all over the world have been implementing new laws that allow authorities to regulate what they believe to be hazardous and false online content. This trend has been exacerbated by the Coronavirus Pandemic, which began last year and is expected to extend through this year as well. The countries that have introduced legislations are:

2.1. Singapore

Singapore enacted a legislation termed as the Protection from Online Falsehoods and Manipulation Act⁵ (hereinafter referred to as POFMA) in 2019. The main objective of the legislation is to protect against the electronic dissemination of misinformation (*i.e.*, false claims of fact or misleading information) as well as the use of online platforms for such dissemination⁶. It also implements a number of measures to

⁴ *Rush to pass 'fake news' laws during Covid-19 intensifying global media freedom* (International Press Institute, 22 Oct 2020), <https://ipi.media/rush-to-pass-fake-news-laws-during-covid-19-intensifying-global-media-freedom-challenges>.

⁵ The Protection from Online Falsehoods and Manipulation Act, 2019 (Singapore).

⁶ See more at <https://singaporelegaladvice.com/law-articles/singapore-fake-news-protection-online-falsehoods-manipulation>.

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mitigate the negative impacts of such communication and to prevent the abuse of online accounts and bots⁷.

There are many powerful elements to be taken from this legislation. First of all, it seeks to include any statements made available to one or more Singapore end-users via the internet, SMS, or MMS. It is also applicable to all social media platforms. Secondly, it allows the authorities or the government in place to respond to fake news through different mechanisms- like censorship, penalization (sections 7, 8 & 9), and issuing fact-checking of particular statements (section 21). Third of all, it includes a mandate to issue an “Account Restriction Direction” to deal specifically with fake news and bots⁸.

However, there have been negative implications of the same. The Act has been criticized for having blatant repercussions on freedom of speech. The Human Rights Watch has reported that POFMA had been used by the government more than 50 times as of mid-2020, mostly against people or publications who challenged the government or its policies⁹. Therefore, it is giving aristocratic power to the authoritarian government. This is mainly because, the act allows a single government minister to declare information on the internet to be “false” and compel its “correction” or removal if it is deemed necessary in the public interest.

Masato Kajimoto, an instructor at University of Hong Kong has discussed the legislation’s appeal to other countries and remarked that “*POFMA is especially appealing to other authoritarian governments that are looking for less-draconian ways to control the narratives, stifle dissenting voices and legitimize their actions*”¹⁰. It has already inspired countries to debate on such a legislation – like Nigeria¹¹.

2.2. China

China has enacted three “fake news” regulations namely, Administration of Internet News Information Services¹², Administrative Regulations on Microblog Information Services and the new rules by Cyberspace Administration of China¹³. The first legislation mandates that social media platforms only repost and link to news pieces from licenced news organisations¹⁴.

⁷ *Ibid.*

⁸ S. 40, The Protection from Online Falsehoods and Manipulation Act 2019. Also, Bot defined as “computer program made or altered for the purpose of running automated tasks” under S. 2(1).

⁹ Singapore: ‘Fake News’ Law Curtails Speech Human Rights Watch (13 January 2021), <https://www.hrw.org/news/2021/01/13/singapore-fake-news-law-curtails-speech>.

¹⁰ S. Mahtani, *Singapore introduced tough laws against fake news. Coronavirus has put them to the test*, The Washington Post (2021), https://www.washingtonpost.com/world/asia_pacific/exploiting-fake-news-laws-singapore-targets-tech-firms-over-coronavirus-falsehoods/2020/03/16/a49d6aa0-5f8f-11ea-ac50-18701e14e06d_story.html.

¹¹ *Ibid.*

¹² Administration of Internet News Information Services, 2017 (China).

¹³ Administrative Regulations on Microblog Information Services, 2018 (China).

¹⁴ See more at <https://wilmap.stanford.edu/entries/provisions-administration-internet-news-information-service-2017>.

The second legislation mandates that microblogging service providers create an “anti-rumor mechanism”, which includes publicizing and debunking rumors as they develop. The last rules were enacted in 2020, and they prohibit the publication and distribution of “fake news” made using artificial intelligence and virtual reality technologies.

Through these anti-rumor measures and special rectification efforts against COVID-19-related rumors, and punishment under the Security Administration Punishment Law, these guidelines have effectively limited the transmission of fake news/rumors during the COVID-19 epidemic¹⁵. However, the downside is that such an authoritarian regime puts aside freedom of expression all together.

2.3. Vietnam

In 2019, Vietnam passed a law¹⁶ prohibiting the transmission of fake news, although it does not specify precise sanctions for sharing fake news on social media. Going one step further in 2020, the country passed some guidelines known as Decree 15/2020/ND-CP. Through these guidelines, users are encouraged to register accounts using their true names, exchange information from official sources, and refrain from sharing stuff that is illegal in Vietnam or contains offensive language.

In these guidelines, the definition of “fake news” is very wide. As per Article 101, fake news encompasses not just posts that contain erroneous or misrepresented information, but also slandering the reputation of businesses and organisations, as well as degrading people’s “honour and dignity”¹⁷. These guidelines are punitive in nature, and impose a fine of VND 10 – 20 million for distributing false information. However, having a very wide definition of “fake news” leads to excessive arrests and fines, as in the case of Vietnam.

2.4. Malaysia

Malaysia has recently introduced the Emergency (essential powers) Ordinance¹⁸ in 2021. It is a reimposition of the Country’s Fake News Act, 2018 which was repealed in 2019. The underlying objective of this ordinance is that it attempts to criminalize the dissemination of fake news related to COVID-19. The main distinction from other laws is that it makes it illegal to create, offer, publish, print, distribute, circulate, or distribute any fake news or publication containing fake news if it is done “with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of

¹⁵ U.M. Rodrigues, J. Xu, *Regulation of COVID-19 fake news infodemic in China and India*, Media International Australia 2020, Vol. 177(1) 130.

¹⁶ Law on Cyber Security, 2019 (Vietnam).

¹⁷ Decree 15/2020/ND-CP, Art. 101.

¹⁸ Emergency (Essential Powers) (No. 2) Ordinance 2021.

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the public”¹⁹. This further gives the right to policemen to arrest suspects²⁰, access computer data²¹, preserve and access traffic data²² without any court order. Therefore, it is satisfied with intent or the mere likelihood of fear or alarm.

Additionally, section 27 renders the government and any officer harmless “in respect of any act, neglect, or default done or omitted by it or him in good faith in carrying out the provisions of this Ordinance”²³. This is dangerous, as it fails to define rules for identifying what is false, raising the possibility that it will be used to muzzle criticism or other forms of expression that the government dislikes²⁴.

In a nutshell, this regulation mandates individuals, corporations, and social media platforms to provide police with traffic data and “computerised data” upon request, makes corporate directors and other executives criminally accountable for company acts, and overrides evidentiary norms intended to ensure a fair trial. A strong feature could be that it purports to apply to anyone violating its terms anywhere in the world.

2.5. Germany

In 2018, Germany had enacted The Network Enforcement Law (commonly known as NETZ-DG globally). It is regarded as one of the most advanced legislations in the Western world, and lays the burden of proof on the internet's intermediaries. It requires intermediaries to provide a means for users to report illicit information found on the internet.

It also requires intermediaries to remove content that is “manifestly unlawful” within 24 hours²⁵. A seven-day deadline is offered to remove or prohibit access to any other form of illegal content. Failure to comply with these rules is a civil offence punishable by a penalty of up to fifty million euros. Therefore, the Netz-DG sparked a debate over platform accountability. It was one of the first initiatives to impose transparency rules, requiring [platforms] to remove anything considered illegal by the government.

However, like every other “fake news” legislation, it has a chilling impact on freedom of speech since it requires intermediaries to decide on the legality of content and to remove illegal content²⁶. Another factor to consider is that this regulation is

¹⁹ Emergency (Essential Powers) (No. 2) Ordinance 2021, S. 4.

²⁰ Emergency (Essential Powers) (No. 2) Ordinance 2021, S. 17.

²¹ Emergency (Essential Powers) (No. 2) Ordinance 2021, S.19.

²² Emergency (Essential Powers) (No. 2) Ordinance 2021, S. 20 & S.21.

²³ Emergency (Essential Powers) (No. 2) Ordinance 2021, S. 27.

²⁴ *Malaysia revokes fake news ordinance*, Human Rights Watch, (2021), <https://www.hrw.org/news/2021/03/13/malaysia-revoke-fake-news-ordinance>.

²⁵ Network Enforcement Act, 2017, Art. 1 § 3(2).

²⁶ *Germany: Flawed Social Media Law*, Human Rights Watch, (February 14, 2018, 12:01 AM), <https://www.hrw.org/news/2018/02/14/germany-flawed-social-media-law>.

primarily aimed at combating hate speech, which leads to too much content being restricted or banned²⁷.

While the proposed amendment would also oblige social media companies to give some information about accounts uploading allegedly criminal content to a federal police database for investigation²⁸, it also raises privacy concerns²⁹. This is because, if a platform believes a particular post breaches the law, it must communicate the content as well as specific identifying information [about its users] to the government.

2.6. Russia

There has been a wave of recent amendments to Russian legislations in order to tackle the rising menace of misinformation. The new amendment³⁰ imposes fines of up to 10% of a company's yearly turnover if it fails to prohibit “illegal” content on its website.

Large social media networks are required by law (enacted in February 2021) to remove anything that is deemed criminal under Russian law³¹. There have been amendments to Article 207 of the Criminal Code, which imposes fines on those who are found guilty of spreading “false information” about significant public safety issues such as COVID-19³².

Human Rights Defenders, Media and ordinary citizens have criticized these amendments. The main reason is that the Russian authorities are increasing their pressure on social media businesses, compelling them to restrict online content that the government deems illegal, resulting in social media censorship³³. Also, these amendments are hostile to criticism and stifles independent media³⁴.

2.7. France

In 2018, the French government introduced the law against the manipulation of information³⁵. This law is intended to combat the relatively quick spreading of fake

²⁷ E. Thomasson, *Germany looks to revise social media law as Europe watches*, Reuters (March 8, 2018), <https://www.reuters.com/article/us-germany-hatespeech/germany-looks-to-revise-social-media-law-as-europe-watches-idUSKCN1GK1BN>.

²⁸ N. Thomas, *Germany tightens online fake speech rules to make platforms*, Tech Crunch (2020), <https://techcrunch.com/2020/06/19/germany-tightens-online-hate-speech-rules-to-make-platforms-send-reports-straight-to-the-feds>.

²⁹ M. Earp, *Germany revisits influential internet law as amendment raises privacy concerns*, Committee to protect journalists (2020), <https://cpj.org/2020/10/germany-revisits-influential-internet-law-as-amendment-raises-privacy-implications>.

³⁰ Code of Administrative Offences, 2021 (Russia).

³¹ Federal Law on Information, Information Technologies, and Protection of Information 2021 (Russia).

³² The Russian Criminal Code, Art. 207.

³³ See more at <https://www.hrw.org/news/2021/02/05/russia-social-media-pressured-censor-posts>.

³⁴ *New ‘fake news’ law stifles independent reporting in Russia on COVID-19*, IPI, (2020), <https://ipi.media/new-fake-news-law-stifles-independent-reporting-in-russia-on-covid-19>.

³⁵ *The law against the Manipulation of Information 2018 (France)*, accessible at <https://www.gouvernement.fr/en/against-information-manipulation>.

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news using digital tools, particularly through the distribution channels provided by social media and media sources influenced by foreign governments.

The aim is to oppose anonymous political messages by revealing who pays for advertisements. It ostensibly imposes a transparency requirement on digital platforms, requiring them to give “fair, clear, and transparent” information about the person or company, as well as the amount paid, in an open and searchable database format³⁶.

Like other legislations, this has been criticized by other member-states, human rights defenders and opposition parties for its sole focus on political dissemination of information.

2.8. Thailand

In Thailand, there was an amendment of the Computer Crime Act³⁷. Using a computer system in a way that is likely to “cause damage to the maintenance of national security, public safety, national economic security, or infrastructure for the common welfare of the Nation, or to induce panic” is illegal under the Act.

A unique feature is that it mandates the creation of a computer data screening panel to keep a watch on the internet for “false news”. Thailand has also taken a step-further and formed an Anti-Fake News Center to track the spread of disinformation online and serve as a repository for people accused of distributing fake news.

The Definition of Fake News in the act has been chastised for its ostensibly troublesome flexibility, as well as the fact that it has been viewed as serving the wrong interests, having been mostly utilized to prosecute unauthorized online content. It is reported that the Thai authorities have adjusted this law to inflict severe penalties on anyone discovered to have used a computer system to upload or transmit false or incorrect material³⁸.

2.9. Other countries

Other Countries that have introduced “Fake news” legislations include Belarus and African Countries. Belarus’s new amendment on the law of “extremism”. It punishes the dissemination of “false” information about Belarus, particularly on the Internet. In practice, it had led to journalists being targeted for prosecution and repression.

Benin, Burkina Faso, Côte d’Ivoire, Ethiopia, Kenya, Malawi, Niger, Nigeria, Senegal, South Africa and Uganda have all attempted to introduce laws and regulations relating to fake information between the years 2016-2020. The Press Code in Senegal was amended in 2021, and it mandates that all news organisations adhere to a code

³⁶ See more at <https://www.bbc.com/news/world-europe-47800418>.

³⁷ The Computer Crime Act, 2007 (Amended in 2017).

³⁸ *Four Thais Arrested for Allegedly Posting ‘Fake News’ About the Coronavirus*, Thai Law Blog (February 19, 2020), <http://www.thailawforum.com/blog/four-thais-arrested-for-allegedly-posting-fake-news-about-the-coronavirus>.

of professional ethics³⁹. A focus on verification is part of this, with work reviewed by an independent regulatory authority. This authority then proposes other ways to deal with misinformation. Majority of these countries have resorted to punitive measures – such as Nigeria⁴⁰ and Benin⁴¹. These laws do not need proof that the allegedly incorrect information caused or threatened to cause harm in order for its dissemination to be considered illegal⁴².

2.10. Voluntary Regulations – Australia and European Union

Some Countries have gone ahead with establishing a voluntary code on targeting fake news. Voluntary codes do not impose sanctions on offenders and focus on regulating the internet intermediaries. Taking the example of Australia, the country has recently introduced the Code of Practice on Disinformation and Misinformation⁴³. It is a voluntary code which focuses on misinformation and disinformation that affects democracy and policy-making processes, as well as public goods like public health, safety, and security, or the environment.

Interestingly, the Code provides a clear, unifying goal for the industry while preserving the flexibility that digital platforms have in how they choose to control content⁴⁴. By focusing on their response to harms created by disinformation, it pushes them to be more accountable in their role as facilitators of free speech and open exchange of opinion, information debate, and dialogue. With this, it goes beyond the self-assessment of intermediaries without actually pushing for any sanctions or punishments.

Another example could be of the European Union and its Code of Practice on disinformation⁴⁵. It primarily focuses on placement of advertisement placements and how they must be scrutinized. It also stipulates that these online platforms must remove or suspend impostor websites that profit from incorrect information⁴⁶. Furthermore, it recognizes that platforms should take steps to combat manipulative tactics, such as employing artificial intelligence to detect and block fake accounts. The main criticism of this code is that it is too self-regulatory in nature.

These voluntary codes have attracted signatories like major social media platforms- Facebook, Google, TikTok and are a unique tool to fight against misinformation. The

³⁹ The Press Code, 2021 (Senegal).

⁴⁰ Broadcasting Code of Conduct, 2016 (Nigeria).

⁴¹ Code du Numérique, 2018 (Benin).

⁴² P. Cunliffe-Jones, A. Finlay and A. Schiffrin, *In Africa, Punitive laws to curb misinformation aren't working*, The Wire (2021), <https://thewire.in/media/in-africa-punitive-laws-to-curb-misinformation-arent-working>.

⁴³ Code of Practice on Disinformation and Misinformation 2021 (Australia).

⁴⁴ Gilbert & Tobin, *Fake News: A look into the Australian Code of Practice on Disinformation and Misinformation* (Lexology, June 22 2021), <https://www.lexology.com/library/detail.aspx?q=ec0372e3-c144-42c3-b815-c13ad34b00c2>.

⁴⁵ See more at <https://www.gtlaw.com.au/insights/code-practice-disinformation-stemming-tide-fake-news>.

⁴⁶ *Ibid*.

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European Union Code has motivated platforms to take serious steps and make policy adjustments to combat disinformation⁴⁷.

III. What can India take forward?

It has been reiterated again and again that WhatsApp forwards have become the constant technique in India for deceiving people with fake news, ranging from instances involving farmers' protests to the Bengal Elections⁴⁸. Other platforms like Twitter, Facebook, Instagram are also contributors in this market of misinformation.

India must take the positive aspects of all these “fake news” legislations across the world, such as:

1. First of all, the definition of “fake news” or misinformation should be in a clear and precise manner. It should not be too wide like Malaysia’s legislation – which satisfies itself with even the intent of spreading fake news. It should not be vague, and must be according to definitions included in Singapore or Australia’s regulations.
2. Second of all, there should be a set of diverse stakeholders ranging from the online advertising sector and instant messaging platforms. The French Legislation also imposes fines on foreign governments, whereas the Malaysian Legislation purports to apply to anyone violating its terms anywhere in the world.
3. Thirdly, in order to make these platforms more accountable and liable, India can follow Germany in its path. Germany requires platforms to remove content which is “manifestly unlawful”. For India, this might work however there must be more stringent regulations to ensure privacy of users and that their data is not being compromised by these internet intermediaries.
4. Fourthly, in order to identify bots and fake news, India could follow Singapore to formulate an “Account Restriction Direction” to deal specifically with bots. Also, it can follow article 21 of Singapore’s Legislation⁴⁹ with respect to correction mechanisms.
5. Another way to regulate the intermediaries can also be borrowing elements from the voluntary codes (Australia and European Union) like scrutiny of advertisement placements, suspension of imposter accounts, usage of artificial intelligence to gather fake news. Also, a report has included measures

⁴⁷ *Ibid.*

⁴⁸ K. Ponniah, *WhatsApp: The 'black hole' of fake news in India's election* (BBC News, 6 April 2019), accessed at <https://www.bbc.com/news/world-asia-india-47797151>, see also M. Krishnan, *WhatsApp in India: Scourge of violence-inciting fake news tough to tackle* (Deutsche Welle, 11 March 2020), accessed at <https://www.dw.com/en/whatsapp-in-india-scourge-of-violence-inciting-fake-news-tough-to-tackle/a-52709823>.

⁴⁹ The Protection from Online Falsehoods and Manipulation Act 2019, s. 21.

to introduce “service-level indicators and structural indicators” to assess online platform’s effectiveness in countering fake news⁵⁰.

6. Sixthly, India should also follow Thailand and mandate the creation of a computer data screening panel to keep a watch on the internet for “false news”. It should also take inspiration to form an anti-fake news center which serves as a repository for people accused of distributing fake news. Senegal has also established an independent regulatory authority to account for the government's least intrusive measures, so India can borrow from them as well.

The Country should also look at the authoritarian nature of these regulations as seen in China, Russia and Myanmar. The Government have taken the lead, and ultimately use these legislations as their way to suppress dissent and opposition. There should be a balance from serving the interests of the government in power, and the population. There should be space for freedom of speech and expression, as well as accommodating constructive criticism.

IV. Conclusion

Nowadays, “fake news” legislations are a key element to curb the spread of digital misinformation. Germany, China, Singapore, Russia and France are some examples of countries that have put in stringent laws and have introduced punitive measures. These legislations have been effective in regulating misinformation, but have received criticism because of their implications on freedom of expression. They are frequently used to crack down on any reporting that the government may dislike, in addition to stifling those covering issues relating to Covid-19, which is critical public interest information.

Therefore, India must remember to take the positive elements of these legislations and leave out the authoritarian, suppressive features that attack the very core of civil and political rights. As the trend of passing “fake news” legislation increases, so does the responsibility to safeguard freedom of speech and expression.

⁵⁰ (n41).