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

Sonal RAWAT<sup>1</sup> and Prabhpreet SINGH<sup>2</sup>

## 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 misinformation<sup>3</sup>. It is not the intention of misinformation to deceive. Instead, it seeks to influence or

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<sup>1</sup> BA.LLB (hons.) student at National Law University, Delhi.

<sup>2</sup> Assistant Professor at Manipal University, Jaipur.

<sup>3</sup> 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 virus<sup>4</sup>.

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 Act<sup>5</sup> (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 dissemination<sup>6</sup>. It also implements a number of measures to

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<sup>4</sup> *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>.

<sup>5</sup> The Protection from Online Falsehoods and Manipulation Act, 2019 (Singapore).

<sup>6</sup> 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 bots<sup>7</sup>.

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 bots<sup>8</sup>.

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 policies<sup>9</sup>. 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*”<sup>10</sup>. It has already inspired countries to debate on such a legislation – like Nigeria<sup>11</sup>.

### **2.2. China**

China has enacted three “fake news” regulations namely, Administration of Internet News Information Services<sup>12</sup>, Administrative Regulations on Microblog Information Services and the new rules by Cyberspace Administration of China<sup>13</sup>. The first legislation mandates that social media platforms only repost and link to news pieces from licenced news organisations<sup>14</sup>.

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<sup>7</sup> *Ibid.*

<sup>8</sup> 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).

<sup>9</sup> 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>.

<sup>10</sup> 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](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).

<sup>11</sup> *Ibid.*

<sup>12</sup> Administration of Internet News Information Services, 2017 (China).

<sup>13</sup> Administrative Regulations on Microblog Information Services, 2018 (China).

<sup>14</sup> 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 epidemic<sup>15</sup>. However, the downside is that such an authoritarian regime puts aside freedom of expression all together.

### **2.3. Vietnam**

In 2019, Vietnam passed a law<sup>16</sup> 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”<sup>17</sup>. 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) Ordinance<sup>18</sup> 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

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

<sup>16</sup> Law on Cyber Security, 2019 (Vietnam).

<sup>17</sup> Decree 15/2020/ND-CP, Art. 101.

<sup>18</sup> Emergency (Essential Powers) (No. 2) Ordinance 2021.