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FROM REGULATION TO OVERREACH? A CRITICAL ANALYSIS OF INDIA'S LAWS ADDRESSING FAKE NEWS AND DIGITAL MISINFORMATION

AUTHORED BY - SANT KUMAR¹ & DR. KRISHNA AGGARWAL²



¹ Pursuing Ph.D. from Institute of Law, Kurukshetra University, Kurukshetra

² Associate Professor at Institute of Law, Kurukshetra University, Kurukshetra

Abstract

The rise of digital communication platforms has fundamentally altered the nature of public discourse, political participation, and democratic engagement. While digital media has expanded access to information and amplified diverse voices, it has simultaneously enabled the rapid spread of fake news and digital misinformation. In India, incidents of communal violence, electoral manipulation, and erosion of public trust linked to online disinformation have prompted extensive legal and regulatory intervention by the State. This paper critically examines whether India's legal response to fake news represents a constitutionally legitimate form of regulation or has gradually transformed into regulatory overreach. Through doctrinal and analytical methods, the study evaluates statutory provisions, executive mechanisms, and judicial responses governing digital misinformation. It argues that although State intervention is justified to protect democratic order, the existing framework suffers from vagueness, excessive executive discretion, and weak institutional safeguards, raising serious concerns for freedom of speech and democratic accountability. The paper concludes by proposing a rights-based, transparent, and proportionate regulatory model grounded in constitutional principles.

Keywords: *Fake News, Digital Misinformation, Freedom of Speech, Democratic Governance, Overreach, India*

Introduction

Democratic governance is sustained by the availability of accurate information and the capacity of citizens to engage in free, informed, and reasoned public debate. The legitimacy of a constitutional democracy does not rest solely on electoral procedures, but on the continuous interaction between the State and an informed citizenry capable of scrutinising power, questioning authority, and participating meaningfully in public life. Freedom of speech and expression, therefore, functions not merely as an individual liberty but as a collective democratic guarantee that enables accountability, dissent, transparency, and participatory governance. Without the free flow of information and ideas, democratic institutions risk becoming hollow structures, formally intact but substantively unresponsive.³

In constitutional democracies, the public sphere is envisioned as a space where competing ideas

³ Constitution of India, art 19(1)(a) & art 19(2).

can be articulated, contested, and evaluated. This marketplace of ideas is essential for democratic decision-making, as it allows citizens to assess governmental performance, debate public policy, and make informed political choices. Freedom of speech thus performs an instrumental role in sustaining democratic legitimacy, while also possessing intrinsic value as an expression of individual autonomy and human dignity. Any restriction on speech, particularly political speech, therefore carries profound constitutional implications and must be subjected to rigorous democratic scrutiny.⁴

The digital revolution has dramatically reshaped this democratic landscape. Advances in communication technology have transformed how information is produced, disseminated, and consumed. Social media platforms, instant messaging services, and algorithm-driven news dissemination have emerged as primary sources of political information, gradually displacing traditional media gatekeepers such as newspapers, editors, and public broadcasters. This transformation has lowered entry barriers to the public sphere, enabling ordinary citizens to participate in political discourse on an unprecedented scale. Marginalised groups, previously excluded from mainstream narratives, have found new avenues for expression and mobilisation through digital platforms.⁵

In India, the impact of digital media on democratic participation has been particularly significant. With one of the world's largest internet user bases, India has witnessed the rapid integration of digital platforms into everyday political life. Social media has played a transformative role in mobilising political participation, expanding access to information, and amplifying marginalised voices across caste, gender, regional, and linguistic lines. Digital tools have enabled grassroots movements, facilitated political organisation, and enhanced engagement between elected representatives and citizens. From electoral campaigns to public interest advocacy, digital platforms have become central to contemporary democratic practice.⁶

However, this expansion of digital participation has not been without consequence. The same technological infrastructure that facilitates democratic engagement has also enabled the rapid

⁴ *Shreya Singhal v Union of India* (2015) 5 SCC 1 (holding that vague restrictions on online speech violate freedom of expression and create a chilling effect).

⁵ *Anuradha Bhasin v Union of India* (2020) 3 SCC 637 (recognising access to the internet as integral to democratic participation and free speech).

⁶ *S Rangarajan v P Jagjivan Ram* (1989) 2 SCC 574 (free speech cannot be suppressed unless there is a clear and present danger).

and large-scale dissemination of fake news, misinformation, deepfakes, and coordinated influence campaigns. Unlike traditional media, where editorial oversight and professional norms provide some measure of verification, digital platforms operate on algorithmic systems designed to maximise engagement rather than accuracy. Sensational, emotionally charged, or polarising content is often amplified, regardless of its veracity. As a result, false information frequently spreads faster and wider than verified news.

In the Indian context, digital misinformation has manifested in particularly harmful forms. Communal rumours circulated through messaging platforms have been linked to incidents of mob violence and lynching, revealing the lethal potential of unchecked falsehoods. Manipulated images and videos have been used to inflame social tensions, while coordinated political misinformation campaigns have sought to influence electoral behaviour by distorting facts and discrediting opponents. Deepfake technologies have further complicated the information ecosystem, making it increasingly difficult for citizens to distinguish between authentic and fabricated content. These developments have exposed structural vulnerabilities within India's democratic ecosystem, particularly in a society marked by deep social diversity and historical fault lines.⁷

The electoral process, which lies at the heart of democratic legitimacy, has been especially affected by digital misinformation. False narratives, targeted propaganda, and algorithmically amplified content have raised concerns about the integrity of democratic choice. When voters are systematically exposed to misleading or fabricated information, their ability to make rational political decisions is compromised. Over time, persistent exposure to misinformation erodes public trust not only in political actors but also in democratic institutions themselves, including the media, election authorities, and the judiciary. A democracy characterised by widespread distrust risks descending into cynicism, polarisation, and democratic fatigue.

These challenges have compelled the State to intervene through legal and regulatory mechanisms aimed at controlling digital misinformation. Governments, including that of India, have justified regulatory action on grounds of public order, national security, electoral integrity, and social harmony. From content takedown orders to intermediary regulation and emergency measures, the State has sought to curb the harmful effects of fake news. Such intervention is

⁷ Information Technology Act, 2000, ss 69A, 79.

not inherently incompatible with democratic principles; constitutional democracies recognise that freedom of speech is not absolute and may be subject to reasonable restrictions in the interests of public order and collective welfare.⁸

Yet, the regulation of fake news occupies a constitutionally sensitive space. While the State bears a legitimate responsibility to protect citizens from harm and preserve democratic integrity, excessive or poorly designed regulation risks undermining the very freedoms that sustain democracy. Freedom of speech, particularly political speech, occupies a preferred position in constitutional jurisprudence because of its central role in democratic governance. Any restriction on speech must therefore satisfy stringent constitutional standards of legality, necessity, proportionality, and procedural fairness.

One of the central constitutional dilemmas in regulating fake news lies in the difficulty of defining the phenomenon itself. Unlike incitement to violence or obscenity, fake news does not always involve clearly identifiable harm. Political speech often includes opinion, exaggeration, satire, and contestation of facts. Attempts to regulate falsehood risk collapsing these distinctions, enabling the State to label dissenting or inconvenient speech as misinformation. In the absence of precise statutory definitions, regulatory discretion becomes expansive, increasing the risk of arbitrary or selective enforcement.⁹

In India, the legal response to fake news has largely evolved through indirect regulation rather than a dedicated legislative framework. Existing laws, originally enacted for different purposes, have been repurposed to address digital misinformation. This fragmented approach has resulted in significant constitutional tension. Executive authorities wield considerable power to regulate online content, often through delegated legislation or administrative orders, with limited parliamentary oversight. Such concentration of power raises concerns about democratic accountability and separation of powers, core principles of constitutional governance.

Judicial intervention has played a crucial role in mediating these tensions. The Supreme Court of India has repeatedly affirmed that freedom of speech and expression constitutes the foundation of democracy and that restrictions must meet the tests of reasonableness and

⁸ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

⁹ Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech under the Indian Constitution* (Oxford University Press 2016).

proportionality. Courts have recognised that vague and overbroad restrictions create a chilling effect, discouraging legitimate expression and democratic participation. At the same time, judicial responses have not always been uniform. In matters involving national security or public order, courts have sometimes exhibited deference to executive assessments, limiting rigorous constitutional scrutiny.¹⁰

The democratic implications of this regulatory landscape are profound. Over-regulation of fake news risks creating a climate of fear and self-censorship, particularly among journalists, researchers, and political critics. Investigative journalism, which often challenges official narratives and exposes wrongdoing, becomes especially vulnerable in such an environment. When journalists face legal uncertainty or the threat of prosecution for disseminating contested information, the watchdog function of the press is weakened. This erosion of media freedom diminishes democratic accountability and deprives citizens of reliable information.

Conversely, under-regulation of fake news allows disinformation to distort public discourse and undermine democratic trust. A regulatory vacuum enables powerful actors to manipulate information ecosystems with impunity, exploiting algorithmic amplification and social divisions. Democracy cannot thrive in an environment where falsehood consistently outcompetes truth, and where citizens lose confidence in the possibility of objective knowledge. The challenge, therefore, is not whether to regulate fake news, but how to do so without compromising democratic freedoms.¹¹

This paper examines whether India's current legal framework strikes a constitutionally permissible balance between regulation and overreach in addressing fake news and digital misinformation. It argues that the existing approach, characterised by fragmentation, executive dominance, and reactive intervention, struggles to reconcile competing democratic imperatives. While the State's concern over disinformation is legitimate, regulatory measures that prioritise control over accountability risk weakening constitutional democracy.

A sustainable democratic response to digital misinformation must move beyond censorship-centric models and embrace a rights-based, transparent, and participatory framework.

¹⁰Law Commission of India, *267th Report on Hate Speech* (2017).

¹¹ Cass R Sunstein, *#Republic: Divided Democracy in the Age of Social Media* (Princeton University Press 2017).

Regulation must be grounded in constitutional principles, recognising freedom of speech not as an obstacle but as a safeguard against authoritarian excess. Legal measures should be narrowly tailored, supported by procedural safeguards, and subject to meaningful judicial oversight. Importantly, the responsibility for addressing misinformation must be shared among the State, digital platforms, and citizens themselves.¹²

Digital platforms, as central actors in the modern information ecosystem, must be held accountable for the structural incentives that amplify misinformation. Algorithmic transparency, ethical content moderation, and due process for users are essential components of democratic regulation. At the same time, citizens must be empowered through media literacy and civic education to critically evaluate information and resist manipulation. Democracy is most resilient not when speech is tightly controlled, but when citizens are capable of discerning truth from falsehood.

In conclusion, the regulation of fake news represents one of the most complex constitutional challenges of the digital age. India's experience illustrates the difficulty of balancing democratic protection with democratic freedom in an environment shaped by rapid technological change. Preserving democracy in the digital era demands not only effective legal regulation of misinformation but also a reaffirmation of free speech as the cornerstone of constitutional governance. The true test of democratic regulation lies not in the suppression of falsehood, but in the creation of conditions under which truth, dissent, and informed participation can meaningfully flourish.¹³

Objectives of the Study

The primary objective of this research is to critically analyse India's legal framework governing fake news and digital misinformation. The study seeks to assess whether existing laws effectively address the harms posed by disinformation or whether they result in disproportionate restrictions on free speech. It further aims to evaluate the constitutional compatibility of executive-driven regulation and to identify structural and institutional deficiencies within the current regime.

¹² UNESCO, *Journalism, Fake News and Disinformation: Handbook for Journalism Education and Training* (2018).

¹³ *Secretary, Ministry of Information & Broadcasting v Cricket Association of Bengal* (1995) 2 SCC 161 (recognising the public's right to receive information).

Research Questions

- 1. Whether India's laws addressing fake news constitute legitimate regulation or regulatory overreach;*
- 2. Whether existing legal mechanisms comply with constitutional standards of reasonableness, proportionality, and necessity;*
- 3. How judicial intervention has shaped the balance between free speech and misinformation control;*
- 4. What reforms are necessary to ensure democratic accountability in digital speech regulation.*

Hypothesis

The study proceeds on the hypothesis that India's legal response to fake news, though motivated by legitimate democratic concerns, increasingly exhibits characteristics of regulatory overreach. It hypothesises that vague statutory standards, excessive executive discretion, and weak oversight mechanisms have resulted in a framework that prioritises control over constitutional accountability.

Research Methodology

This research adopts a doctrinal and analytical methodology. Primary sources include constitutional provisions, statutory laws, delegated legislation, and judicial decisions, particularly those of the Supreme Court of India. Secondary sources include academic literature, law commission reports, policy documents, and international materials on digital speech regulation. The study emphasises normative constitutional analysis rather than empirical assessment.

Literature Review

Scholarly literature on fake news regulation highlights the inherent tension between combating misinformation and protecting democratic freedoms. Indian scholars have criticised the reliance on criminal law and intermediary regulation to address digital misinformation, arguing that such approaches risk chilling political speech. Comparative scholarship underscores that democratic jurisdictions globally struggle to regulate fake news without infringing free

expression, particularly in the absence of precise legal definitions.¹⁴

Judicial commentary emphasises that vague and overbroad speech restrictions are incompatible with constitutional democracy. However, existing literature reveals a gap in examining how executive-centric regulation and platform deputisation cumulatively contribute to democratic erosion. This paper seeks to address that gap by analysing the shift from regulation to overreach in India's legal framework.¹⁵

Legal Framework Governing Fake News in India

India does not have a dedicated statute that explicitly defines or regulates fake news or digital disinformation. Instead, the governance of online misinformation has evolved through a fragmented and indirect legal framework comprising the Information Technology Act, 2000, subordinate intermediary rules, select provisions of criminal law, and a range of executive orders and advisories. This patchwork approach reflects the State's incremental response to the rapidly evolving digital environment, but it also exposes serious normative, constitutional, and institutional deficiencies. Rather than offering a coherent legislative vision, India's regulatory response has relied on repurposing existing laws, many of which were neither designed nor conceptually equipped to address the complexities of digital misinformation.¹⁶

At the core of this framework lies the Information Technology Act, 2000, which was originally enacted to facilitate electronic commerce, recognise electronic records, and promote digital governance. Over time, however, the Act has been transformed into the principal instrument for regulating online speech. Through provisions relating to content blocking, intermediary liability, and government oversight, the Act empowers the executive to monitor, restrict, and remove online content in the name of public order, national security, and legality. While these powers are formally justified as necessary to address harmful digital content, their expansive scope and limited procedural safeguards raise significant concerns for freedom of speech and democratic accountability.

The absence of a clear statutory definition of fake news or disinformation is one of the most

¹⁴ Internet Freedom Foundation, *Internet Shutdowns in India: A Constitutional Crisis* (2022).

¹⁵ Mark Tushnet, 'Free Speech in the Digital Age' (2018) 42 *Harvard Civil Rights–Civil Liberties Law Review* 1.

¹⁶ United Nations Special Rapporteur on Freedom of Opinion and Expression, *Report on Disinformation and Freedom of Expression* (2021).

striking weaknesses of India's legal approach. Legal certainty is a foundational requirement of constitutional governance. Citizens must be able to reasonably foresee the legal consequences of their actions, particularly when fundamental rights such as freedom of expression are at stake. In the context of fake news regulation, however, individuals, journalists, and platforms operate under conditions of ambiguity. Terms such as "false information," "misleading content," or "unlawful material" are often invoked without precise legislative meaning, leaving their interpretation largely to executive discretion.

This indeterminacy has significant constitutional implications. Vague speech restrictions are inherently problematic because they facilitate arbitrary enforcement and create a chilling effect on expression. When individuals cannot clearly distinguish between lawful speech and prohibited misinformation, they may self-censor to avoid legal risk. Such self-censorship is particularly damaging in a democracy, where open debate, dissent, and criticism of authority are essential to accountability. The lack of definitional clarity thus weakens the legitimacy of regulatory intervention and undermines the rule of law.¹⁷

Intermediary liability provisions represent one of the most consequential aspects of India's approach to digital misinformation. Under the existing framework, digital platforms are required to comply with takedown directions and due diligence obligations in order to retain statutory immunity from liability for third-party content. In theory, this regime seeks to balance platform responsibility with protection against excessive liability. In practice, however, it has transformed private intermediaries into de facto gatekeepers of speech. Platforms are compelled to monitor, evaluate, and remove content based on broadly framed legal obligations and government directives.¹⁸

The deputisation of private platforms as speech regulators raises serious democratic concerns. Digital platforms are commercial entities whose primary incentives are driven by risk management and profit maximisation, not by constitutional values or democratic accountability. Faced with the possibility of losing legal immunity or facing prosecution, platforms often adopt risk-averse moderation practices. This leads to over-censorship, where lawful but controversial or critical speech is removed pre-emptively to avoid potential liability.

¹⁷ *Kedar Nath Singh v State of Bihar* AIR 1962 SC 955 (laying down constitutional limits on restrictions relating to public order).

¹⁸ *Supra* note at 2

Such over-removal disproportionately affects political speech, minority viewpoints, and investigative journalism, thereby narrowing the democratic public sphere.

The problem is exacerbated by the absence of transparent and uniform standards for content moderation. Decisions regarding takedowns are frequently opaque, with limited reasoning provided to affected users and inadequate avenues for appeal. This lack of procedural fairness undermines trust in both platforms and regulatory institutions. From a constitutional perspective, the indirect regulation of speech through private intermediaries allows the State to achieve regulatory objectives without being directly accountable for the resulting restrictions on fundamental rights.

In addition to digital regulation, criminal law provisions have been increasingly invoked to address fake news and online misinformation. Sections dealing with public mischief, promoting enmity between groups, outraging religious feelings, and criminal defamation are frequently applied to online speech. These provisions were drafted in a pre-digital era, when communication was slower, geographically limited, and mediated through identifiable publishers. Their application to digital speech, characterised by algorithmic amplification, virality, and decentralised dissemination, presents serious doctrinal challenges.

Criminal law is inherently coercive and carries severe consequences, including arrest, prosecution, and social stigma. Its use to regulate speech must therefore be narrowly confined to cases involving clear and imminent harm. In the context of fake news, however, criminal provisions are often invoked even where harm is speculative or indirect. This raises questions of proportionality, a core constitutional requirement for restricting fundamental rights. When criminal sanctions are used to address speech that is misleading or controversial rather than demonstrably dangerous, the balance tilts decisively toward overreach.¹⁹

Selective enforcement further compounds these concerns. Patterns of prosecution suggest that journalists, activists, and political critics are more likely to face criminal action for alleged misinformation than powerful actors or organised disinformation networks. Such asymmetry undermines the principle of equality before the law and fuels perceptions of political misuse. In democratic terms, the use of criminal law to discipline dissenting voices weakens public

¹⁹ Supra note at 12

confidence in legal institutions and chills robust political debate.

The structural mismatch between criminal law and digital misinformation is also evident in enforcement outcomes. While individual speakers may be targeted, large-scale disinformation campaigns enabled by coordinated networks and algorithmic amplification often escape effective regulation. This misalignment reveals the limitations of relying on traditional legal tools to address technologically mediated phenomena. Criminal law addresses individual culpability, whereas digital misinformation is frequently systemic, driven by platform design, economic incentives, and political strategy.

Executive orders and administrative advisories form another critical component of India's fragmented regulatory framework. Content blocking orders, emergency directions, and internet shutdowns are often justified on grounds of public order and national security. While the State undoubtedly has a constitutional obligation to prevent violence and protect citizens, such measures frequently operate with minimal transparency and limited oversight. Broad executive powers, exercised without robust procedural safeguards, heighten the risk of arbitrary restriction on access to information and communication.²⁰

Judicial oversight has played an important role in mediating these tensions, particularly through constitutional jurisprudence emphasising proportionality and reasonableness. The Supreme Court of India has repeatedly affirmed that freedom of speech and expression lies at the heart of democratic governance and that restrictions must satisfy stringent constitutional tests. Courts have recognised the chilling effect of vague and overbroad regulations and have underscored the importance of procedural safeguards in content regulation.

Nevertheless, judicial intervention has not fully resolved the structural deficiencies of the current framework. In matters involving national security or public order, courts have sometimes shown deference to executive assessments, limiting the depth of constitutional scrutiny. While such deference may be warranted in exceptional circumstances, its routine application risks normalising executive dominance over digital speech. In the absence of a comprehensive legislative framework and independent regulatory oversight, judicial review alone cannot ensure democratic accountability.

²⁰ *ibid*

The cumulative effect of this fragmented regulatory architecture is a system that grants the State extensive power over online expression without corresponding safeguards for constitutional rights. The reliance on indirect regulation, criminal sanctions, and executive discretion reflects a reactive approach to digital misinformation, prioritising immediate control over long-term democratic resilience. Such an approach addresses the symptoms of disinformation while leaving its structural causes largely unexamined.

A constitutionally coherent response to fake news requires a fundamental reorientation of regulatory strategy. Rather than relying on vague standards and punitive enforcement, India must move toward a transparent, rights-based framework grounded in democratic deliberation. Clear statutory definitions, narrowly tailored restrictions, independent oversight mechanisms, and meaningful procedural protections are essential to restore constitutional balance. Importantly, regulation must recognise that digital misinformation is not merely a speech problem but a systemic challenge shaped by platform architecture, economic incentives, and political behaviour.

In conclusion, India's current legal approach to fake news reveals the limitations of fragmented, indirect regulation in a digital democracy. While the State's concern over misinformation is legitimate, existing laws often prioritise control over constitutional accountability. The transformation of intermediaries into speech gatekeepers, the overuse of criminal law, and the concentration of executive power collectively weaken democratic discourse and fundamental freedoms. Addressing fake news effectively requires not only legal authority but constitutional restraint, institutional reform, and a renewed commitment to free and open democratic debate.

From Regulation to Overreach: Constitutional Concerns

The central constitutional concern with India's approach to regulating fake news and digital misinformation lies in the gradual but unmistakable expansion of executive discretion over digital speech. In a constitutional democracy founded on the rule of law, restrictions on fundamental rights must be grounded in clear legislative authority, guided by objective standards, and constrained by procedural safeguards. However, India's contemporary regulatory framework governing online speech increasingly relies on executive-driven mechanisms such as content takedown orders, blocking powers, and emergency measures. These powers are often exercised with limited transparency, minimal reasoning, and inadequate

opportunities for affected parties to be heard. Such practices strike at the core of constitutional guarantees relating to free speech and democratic accountability.²¹

Executive control over digital speech has expanded primarily through delegated legislation and administrative orders rather than through comprehensive parliamentary enactment. This mode of governance raises serious concerns regarding separation of powers, as it allows the executive branch to shape the contours of permissible speech with limited legislative oversight. While delegated legislation is a constitutionally recognised tool, its use becomes problematic when it effectively determines the scope of a fundamental right. In the absence of robust parliamentary debate and democratic deliberation, executive-driven regulation risks prioritising administrative convenience and political expediency over constitutional fidelity.

Content takedown orders exemplify this problem. Such orders are frequently issued to digital platforms directing the removal or disabling of access to online content deemed unlawful, misleading, or harmful. Although these orders are justified on grounds such as public order or national security, they are often accompanied by scant reasoning and are not consistently disclosed to the public. Affected users may remain unaware of the precise grounds for restriction or may lack effective mechanisms to challenge the decision. From a constitutional perspective, the absence of reasoned orders and procedural transparency undermines the principle that restrictions on speech must be subject to meaningful scrutiny.

Blocking powers and emergency measures further intensify executive dominance over digital expression. Internet shutdowns, platform bans, and wide-ranging content restrictions are often imposed pre-emptively, based on speculative assessments of potential harm rather than demonstrable necessity. While the State has a legitimate obligation to prevent violence and protect public order, such measures frequently operate as blunt instruments, restricting access to information and communication for large segments of the population. In a digital democracy, where political participation, journalism, and civic engagement increasingly depend on online connectivity, such restrictions have far-reaching democratic consequences.

These practices undermine the constitutional requirement that restrictions on speech must be reasonable, proportionate, and narrowly tailored. Reasonableness demands that restrictions

²¹ *ibid*

pursue a legitimate aim and are supported by rational justification. Proportionality requires that the least restrictive means be employed to achieve the stated objective. Narrow tailoring ensures that restrictions do not unnecessarily encroach upon lawful speech. Executive measures that operate broadly, opaquely, and without individualized assessment fail to satisfy these constitutional standards. Instead of targeting specific instances of harmful disinformation, they often suppress large volumes of legitimate expression.

Vagueness represents another persistent and deeply troubling constitutional flaw in India's approach to fake news regulation. Legal provisions and executive directions frequently rely on indeterminate terms such as "false information," "misleading content," or "content affecting public order," without providing clear statutory definitions. In constitutional jurisprudence, vagueness in laws regulating speech is particularly problematic because it fails to provide citizens with adequate notice of prohibited conduct. When individuals cannot reasonably predict whether their speech may attract legal sanction, the rule of law is compromised.²²

The absence of definitional clarity blurs the distinction between harmful disinformation and legitimate political speech. Political discourse in a democracy is inherently contentious and often involves competing interpretations of facts, policy disagreements, and normative judgments. Without clear legal boundaries, dissenting opinions, investigative reporting, and critical commentary risk being categorised as misinformation. This ambiguity enables discretionary enforcement, allowing authorities to target speech selectively based on subjective assessments or political considerations.

The chilling effect produced by vagueness is one of its most pernicious consequences. Faced with uncertain legal standards and the possibility of punitive action, individuals may choose to remain silent rather than engage in public debate. Journalists may avoid publishing controversial stories, activists may refrain from organising digital campaigns, and ordinary citizens may hesitate to express political opinions online. Such self-censorship, while invisible, has profound implications for democratic participation. Over time, it narrows the spectrum of public discourse, weakens accountability mechanisms, and erodes the culture of dissent that is essential to a vibrant democracy.

²² Supra note at 8

Democratic participation depends not merely on the formal right to vote, but on the continuous ability of citizens to exchange ideas, criticise authority, and mobilise collectively. When speech regulation creates an environment of fear or uncertainty, participation becomes superficial and constrained. The erosion of dissent is particularly dangerous in pluralistic societies like India, where democracy relies on accommodating diverse and often conflicting viewpoints. Suppressing disagreement in the name of order risks replacing democratic contestation with enforced conformity.

Judicial intervention has played a crucial role in mitigating some of the excesses of executive-driven regulation. The Supreme Court of India has consistently reiterated that freedom of speech and expression is a cornerstone of democratic governance and that restrictions must meet rigorous constitutional standards. Through its jurisprudence, the Court has emphasised that vague and overbroad restrictions create chilling effects and that procedural safeguards are integral to the legitimacy of speech regulation. Judicial insistence on proportionality and reasoned decision-making has provided an important check on executive overreach.

However, judicial oversight has not always been uniformly robust. In cases involving claims of national security, sovereignty, or public order, courts have sometimes exhibited deference to executive assessments. While judicial restraint may be justified in exceptional circumstances involving imminent threats, its frequent invocation risks diluting constitutional scrutiny. National security and public order, if treated as talismanic justifications, can become vehicles for legitimising disproportionate restrictions on speech. The challenge lies in ensuring that deference does not translate into abdication of the judiciary's role as the guardian of fundamental rights.

The limitations of judicial intervention are further compounded by structural factors. Courts typically operate in a reactive mode, intervening only after rights have been restricted. In the fast-moving digital environment, where content can be removed or suppressed instantaneously, judicial remedies may come too late to prevent democratic harm. Moreover, litigation is often resource-intensive and inaccessible to ordinary citizens, journalists, or small digital publishers. As a result, many instances of speech restriction remain unchallenged, allowing executive practices to solidify into regulatory norms.

The absence of an independent regulatory authority dedicated to digital speech governance exacerbates these constitutional concerns. In sectors such as telecommunications or broadcasting, independent regulators provide a buffer between political authority and regulatory decision-making. In contrast, decisions regarding online content regulation in India are largely concentrated within the executive branch. This concentration of power raises serious concerns about conflict of interest, as the executive is both a subject of public criticism and the authority empowered to regulate speech.²³

An independent regulatory body, if designed with appropriate safeguards for autonomy, expertise, and transparency, could provide a more balanced institutional framework. Such a body could develop clear standards, ensure procedural fairness, and offer specialised oversight over complex digital issues. However, the absence of such an institution leaves a regulatory vacuum that is filled by executive discretion and private platform governance. This institutional imbalance increases the risk of misuse and weakens democratic legitimacy.

The delegation of regulatory responsibility to private digital platforms further complicates the constitutional landscape. Platforms are required to comply with executive directions while enforcing their own content moderation policies. These policies are often opaque and driven by commercial incentives rather than democratic values. When platforms remove content to avoid liability or regulatory sanction, the resulting restrictions on speech occur without constitutional accountability. This indirect form of regulation allows the State to achieve control over speech while distancing itself from responsibility for rights violations.

The cumulative effect of executive dominance, vagueness, limited judicial scrutiny, and institutional gaps is a regulatory framework that prioritises control over constitutional accountability. While the objective of combating disinformation is legitimate, the means employed often undermine democratic principles. A democracy cannot be strengthened by suppressing speech through opaque and discretionary mechanisms. On the contrary, such practices risk fostering distrust in institutions and legitimising narratives of censorship and authoritarianism.

Addressing these concerns requires a fundamental reorientation of regulatory strategy. Clear

²³ id

statutory definitions, narrowly tailored restrictions, and robust procedural safeguards are essential to restore constitutional balance. Executive powers must be circumscribed by transparent standards and subject to meaningful oversight. Judicial review should be complemented by institutional reforms that reduce reliance on ex post remedies and strengthen ex ante accountability.

In conclusion, the central constitutional challenge in India's approach to fake news regulation lies not merely in the existence of regulatory power, but in the manner of its exercise. The gradual expansion of executive discretion over digital speech, combined with vagueness and limited oversight, poses a serious threat to democratic participation and free expression. Judicial intervention has provided important correctives, but structural deficiencies remain unresolved. Preserving democracy in the digital age requires reaffirming constitutional limits on power and ensuring that the fight against disinformation does not itself become a source of democratic erosion.

Democratic Implications of Overreach

Regulatory overreach in the name of combating fake news carries profound and often underappreciated democratic costs. While the objective of countering disinformation is legitimate and necessary, the methods employed to achieve this objective can themselves undermine the foundational principles of constitutional democracy. Excessive control over information flows weakens the institutional and cultural safeguards that enable democracy to function, particularly media freedom, investigative journalism, and the public's right to receive information. When regulation crosses the line from protection to control, it risks transforming the fight against fake news into a threat to democratic legitimacy itself.

Media freedom is among the first casualties of regulatory overreach. A free and independent press serves as a cornerstone of democratic accountability by scrutinising state action, exposing corruption, and providing citizens with reliable information. Overbroad or vaguely framed regulations targeting misinformation create an environment of legal uncertainty for journalists and media organisations. When the boundaries of permissible speech are unclear or subject to discretionary enforcement, journalists may self-censor to avoid legal consequences. This chilling effect is particularly acute in politically sensitive contexts, where investigative reporting often challenges official narratives or exposes institutional failures.

Investigative journalism is especially vulnerable because it frequently involves publishing contested facts, leaked information, or preliminary findings that may later evolve. In a regulatory climate focused on controlling “false” or “misleading” information, such reporting risks being mischaracterised as misinformation. The threat of takedown orders, criminal prosecution, or loss of platform access can discourage journalists from pursuing stories that are in the public interest. Over time, this weakens the watchdog function of the media and deprives citizens of the information necessary to make informed political choices.

Beyond its impact on journalists, regulatory overreach also undermines the public’s right to receive information. Democratic theory recognises that freedom of speech includes not only the right to speak, but also the right to hear and access diverse viewpoints. When information is excessively restricted or curated by state authority, citizens are denied the opportunity to evaluate competing narratives and arrive at independent judgments. This paternalistic approach to information governance treats citizens as passive recipients rather than active participants in democratic deliberation, eroding the normative foundations of popular sovereignty.

The erosion of trust is one of the most damaging consequences of perceived regulatory overreach. Trust in democratic institutions depends on the belief that rules are applied impartially, transparently, and in good faith. When citizens perceive speech regulation as politically motivated or selectively enforced, confidence in the neutrality of legal and regulatory institutions diminishes. This perception is particularly harmful in pluralistic societies, where diverse political opinions and social identities coexist. If regulatory mechanisms are seen as tools to silence dissent or favour dominant narratives, they lose democratic legitimacy.

Loss of trust has cascading effects on democratic governance. Citizens who distrust institutions may disengage from formal political processes, withdraw from public debate, or seek alternative sources of information that lie outside institutional oversight. In such environments, conspiracy theories and alternative “truth” narratives often flourish. Ironically, excessive regulation intended to curb fake news may thus create conditions that are more conducive to its spread, as institutional credibility—the most effective antidote to misinformation—is undermined.

Regulatory overreach also risks delegitimising the fight against misinformation itself. When measures aimed at combating fake news are perceived as censorship, public resistance increases. Instead of viewing regulation as a protective mechanism, citizens may interpret it as an attempt to control narratives or suppress inconvenient truths. In such contexts, disinformation narratives often gain credibility by positioning themselves as counter-hegemonic or anti-establishment truths. False information becomes attractive precisely because it appears to challenge perceived authority and censorship.

This dynamic is particularly evident in digital environments, where distrust of institutions and elites is often exploited by purveyors of misinformation. When regulatory action lacks transparency or procedural fairness, it feeds into narratives of suppression and manipulation. Content that is removed or restricted may acquire symbolic significance as “forbidden truth,” amplifying its appeal and reach. Thus, coercive regulation can inadvertently strengthen the very forces it seeks to neutralise.

A democracy cannot effectively combat fake news through coercion alone. While legal sanctions may be necessary in cases involving clear and imminent harm, such as incitement to violence, they are insufficient as a primary strategy for addressing systemic disinformation. Disinformation is not merely a legal problem; it is a socio-political phenomenon shaped by distrust, polarisation, and structural incentives within the digital economy. Addressing it requires legitimacy, credibility, and public trust—qualities that cannot be commanded through force or censorship.

Legitimacy in regulation derives from adherence to constitutional principles, transparency in decision-making, and respect for fundamental rights. When regulatory measures are clearly grounded in law, narrowly tailored, and subject to independent oversight, they are more likely to be perceived as fair and justified. Conversely, opaque and discretionary regulation invites suspicion and resistance. Democratic societies depend on voluntary compliance with norms and laws; coercive enforcement without legitimacy risks undermining that compliance.

Trust is equally essential to successful regulation. Citizens are more likely to accept restrictions on speech when they trust that institutions act in good faith and with democratic accountability. Trust is built through consistent application of rules, openness to scrutiny, and willingness to

tolerate criticism. A regulatory framework that suppresses dissent or shields authority from critique undermines its own credibility and weakens democratic resilience against misinformation.

The judiciary has an important role to play in preventing regulatory overreach and preserving democratic legitimacy. Courts function as guardians of constitutional values, ensuring that restrictions on speech meet standards of reasonableness and proportionality. The Supreme Court of India has repeatedly emphasised that freedom of expression is foundational to democracy and that vague or overbroad restrictions create chilling effects. However, judicial intervention alone cannot compensate for systemic flaws in regulatory design. Courts operate retrospectively and are limited by the cases brought before them.

Ultimately, a democratic response to fake news must be grounded in a broader understanding of how trust, legitimacy, and participation interact. Rather than treating citizens as objects of regulation, democratic governance should empower them as agents capable of critical judgment. Media literacy, access to credible public information, and support for independent journalism strengthen society's capacity to resist misinformation without resorting to coercion. Such measures enhance democratic resilience by addressing the root causes of disinformation rather than merely its symptoms.

In conclusion, regulatory overreach in the name of combating fake news poses a serious threat to democratic values. Excessive control over information flows undermines media freedom, weakens investigative journalism, and erodes the public's right to receive information. When regulation is perceived as politically motivated, trust in democratic institutions declines, creating fertile ground for misinformation to thrive. Overreach not only harms democratic participation but also delegitimises the fight against fake news itself by framing regulation as censorship.

A democracy cannot defeat disinformation through coercion alone. Legitimacy, trust, and constitutional restraint are indispensable to any effective regulatory strategy. By prioritising transparency, proportionality, and respect for free expression, democratic societies can address the harms of misinformation without sacrificing the freedoms that sustain constitutional governance.

Towards a Rights-Based Regulatory Framework

A constitutionally sound response to fake news must move beyond reactive and punitive measures. India requires a comprehensive, transparent, and rights-based framework grounded in democratic deliberation. Clear statutory definitions, proportional safeguards, and independent oversight mechanisms are essential to prevent overreach.

Regulation must recognise shared responsibility. The State, digital platforms, and citizens all play roles in sustaining the information ecosystem. Platform accountability should focus on transparency and algorithmic responsibility rather than blanket censorship. Media literacy and civic education should complement legal regulation by empowering citizens to critically evaluate information.

Conclusion

This research demonstrates that India's legal response to fake news and digital misinformation has gradually shifted from a framework of legitimate regulation toward one that increasingly reflects regulatory overreach. The State's concern over the destabilising effects of disinformation on public order, electoral integrity, and social harmony is neither unfounded nor illegitimate. In an era marked by algorithmic amplification, rapid virality, and coordinated influence campaigns, the harms caused by false information are real and capable of undermining democratic institutions. However, the manner in which regulation has evolved in India reveals a growing imbalance between the objective of controlling misinformation and the constitutional imperative of protecting democratic freedoms.

A central weakness of the current framework lies in its fragmented character. Rather than being guided by a coherent legislative vision, the regulation of fake news in India is dispersed across multiple statutes, subordinate rules, criminal provisions, and executive measures. This fragmentation creates legal uncertainty and undermines predictability—both essential components of the rule of law. Citizens, journalists, and digital platforms operate in a regulatory environment where the boundaries of permissible speech are unclear and subject to shifting executive interpretation. Such uncertainty is especially problematic when it concerns freedom of expression, a right that occupies a preferred position in constitutional democracy.

Vagueness further compounds this problem. The absence of clear statutory definitions of “fake

news” or “disinformation” allows broad discretion in identifying and restricting speech. Political expression, by its nature, often involves disagreement, exaggeration, critique, and contested interpretations of fact. When legal standards fail to distinguish between harmful disinformation and legitimate dissent, regulatory power becomes susceptible to misuse. The resulting chilling effect discourages citizens from engaging in robust debate, weakens investigative journalism, and narrows the democratic public sphere. Over time, such self-censorship erodes the culture of dissent that is essential to constitutional governance.

Executive dominance has emerged as a defining feature of India’s approach to digital misinformation. Content takedown orders, blocking powers, and emergency measures are frequently exercised through administrative processes with limited transparency and procedural safeguards. While executive action may be necessary in exceptional circumstances involving imminent harm, its routine use as a primary regulatory tool raises serious concerns regarding separation of powers and democratic accountability. Concentration of authority within the executive branch increases the risk that speech regulation will be shaped by political considerations rather than constitutional principles.

Judicial oversight has played an important, though incomplete, corrective role in this context. Courts have reiterated that restrictions on speech must satisfy the tests of reasonableness, proportionality, and necessity, and have recognised the chilling effects of vague and overbroad regulation. Nevertheless, judicial intervention often occurs after the fact and cannot fully compensate for structural deficiencies in regulatory design. Moreover, deference to executive claims of national security or public order, when applied expansively, risks diluting constitutional scrutiny. The absence of independent institutional oversight further limits the capacity of the legal system to restrain overreach on a sustained basis.

These features—fragmentation, vagueness, executive dominance, and limited oversight—collectively weaken the democratic legitimacy of India’s current framework. Regulation that lacks transparency, clarity, and accountability not only threatens individual rights but also undermines public trust in democratic institutions. Trust is a critical resource in the fight against misinformation. When citizens perceive regulation as politically motivated or selectively enforced, they are less likely to accept official narratives and more likely to seek alternative sources of information, including those that propagate falsehoods. In this sense, overreach can

be counterproductive, amplifying the very dynamics that enable disinformation to thrive.

Preserving democracy in the digital age therefore requires more than suppressing falsehood. It demands a reaffirmation of free speech as the foundation of constitutional governance. Freedom of expression is not merely an obstacle to effective regulation; it is a safeguard against authoritarian excess and a precondition for democratic resilience. A regulatory strategy that weakens free speech in the name of combating misinformation risks hollowing out the democratic values it seeks to protect.

A principled response to digital misinformation must be grounded in constitutional morality and democratic deliberation. Regulation should be anchored in clear legislative mandates developed through parliamentary processes, ensuring transparency and public accountability. Precise statutory definitions and narrowly tailored restrictions are essential to prevent arbitrariness and chilling effects. Procedural safeguards—such as reasoned orders, notice to affected parties, and effective remedies—must be integral to any regulatory mechanism that restricts speech.

Equally important is the recognition that responsibility for addressing misinformation cannot rest with the State alone. Digital platforms play a central role in shaping contemporary information ecosystems through algorithmic design, content moderation practices, and economic incentives that reward engagement over accuracy. A democratic framework must therefore incorporate platform accountability, focusing on transparency, due process, and structural reforms rather than outsourcing censorship. At the same time, citizens must be empowered through media literacy, civic education, and access to credible public information. An informed and critically engaged citizenry is the strongest defence against disinformation.

Participation is a key element of democratic legitimacy. Regulatory approaches developed without meaningful engagement from civil society, journalists, technologists, and academic experts risk being disconnected from social realities and public expectations. A participatory model of governance—one that includes diverse stakeholders in policy formulation and oversight—enhances legitimacy and reduces the likelihood of misuse. Democracy is not strengthened by unilateral control, but by shared responsibility and inclusive deliberation.

Ultimately, the challenge posed by fake news is not solely legal or technological; it is fundamentally democratic. Disinformation flourishes in environments characterised by distrust, polarisation, and weakened institutions. Addressing it requires rebuilding confidence in democratic processes, protecting spaces for dissent, and ensuring that regulation itself adheres to constitutional values. Law must function not as an instrument of domination, but as a framework that enables democratic dialogue while responding proportionately to genuine harm.

In conclusion, India stands at a critical juncture in its regulation of digital misinformation. The trajectory from regulation toward overreach is neither inevitable nor irreversible. By reaffirming free speech as the cornerstone of constitutional governance and adopting a transparent, rights-based, and participatory approach to regulation, India can address the challenges of fake news without compromising its democratic identity. The strength of a constitutional democracy lies not in its capacity to silence falsehood through coercion, but in its ability to uphold truth, dissent, and accountability through freedom.

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