

Political Dimensions Of Intersection Of Fake News And Digital Technology: With Special Reference To India



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We must address concerns related to cyber security, disinformation and deepfakes"

-Hon'ble PM Shri Narendra Modi

ABSTRACT

Artificial Intelligence has been a driving force propelling the mass proliferation of fake news. And fake news is the new peril daunting Indian democracy. Even though, fake news has always been present but the advancement in Information and Communication Technology coupled with sophistication of Artificial Intelligence has overwhelmed the political sphere with deplorable fake news adversely jeopardising the electoral landscape of the nation. The quintessence of democracy lies in a fair and legit electoral process accompanied by maximum citizen participation. It further demands trust of citizenry over their democratic institutions. But with the vile of fake news this trust in democratic institutions such as Election Commission, Press, Legislature, Executive is shaking. The sanctified process of free and fair elections and pious values of democracy are becoming increasingly dubious acquiring tainted hues of political manipulation and lack of transparency. At the same time, this fake news is employed to wheedle voters' opinion by fabricating lies that look alike true news and therefore, it undermines democracy by eroding trust in democratic institutions, desecrates free and fair elections, deepens the gap between government and governed and enables the divisive forces to alter the political landscape of the nation with just a click of the mouse. The authors aim to examine the nexus of digital technology and fake news. Further, they aim to map the terrain of political dimensions of fake news— how and to what extent it is used to garner political mileage, its impact over the principles of free and fair elections and whether it has the potency to undermine Indian democracy. Moreover, vice of fake news is not confined to one region but has become a widespread global phenomenon affecting democracies. The nation states have taken countermeasures accordingly to curtail its spread and mitigate its impact with some countries having demonstrated exceptional foresight while implementing measures that reflect both wisdom and resolve. The authors, thus, endeavour to study what steps have been taken by Brazil, France and Germany in countering political disinformation and securing their electoral landscape.

KEYWORDS: Artificial Intelligence, Digital Technology, Free and Fair elections, Fake News, Political Dimensions

1. INTRODUCTION

Digital Technology has been revolutionised by Artificial Intelligence that has ubiquitous effects. Artificial Intelligence in words of mathematician Alan Turing refers to "a thinking machine that can process information like human". Artificial Intelligence relies on learning algorithms that are generated through a process where neural networks establish a connection between cause and effect or between correct and incorrect and these connections help to anticipate sequence of events by processing large amount of data to train them think like human (Foreign Policy at Brookings, 2020). With the advent of Artificial Intelligence, a technological revolution was expected that will escalate human development to an unprecedented level. However, AI is continuously exploited not for benefit of mankind but to foment a technological wreck. Deplorably, 'fake news' is one aspect of this technological wreck that is pranging every realm be it social, political or

economic and capsizing the democracy and its ethos. The present paper highlights the nexus between Artificial Intelligence and Fake News and its impact on political realm of a country. The first part of paper is an introduction. Second part deals with concatenation between artificial intelligence and fake news where the propulsion artificial intelligence has given to fake news is highlighted. Third part examines the reasons for soaring of fake news, while fourth part take the discourse further by examining the political dimensions of fake news and its ramifications over Indian society. Fifth part sheds light on the steps taken by foreign jurisdictions— Brazil, France and Germany in regulating political disinformation and an analysis of the approaches adopted by them. Finally, the paper culminates with conclusion.

2. INTERSECTION OF ARTIFICIAL TECHNOLOGY AND FAKE NEWS

In this technological era political disinformation (the author here mentions political disinformation to highlight the political contour of fake news) has mushroomed to a prodigious level and much credit goes to Artificial Intelligence that has proved to be an enabler of political disinformation. AI can act as godfather of Fake news in two ways—first, by curating realistic sounding stories portrayed as ‘news’ and second by controlling what stories are being reported (UNESCO, 2018). This is more amplified with shift in preference of sources for reading and listening news— from mainstream media to social media. As per the report of European Parliament, 42% of people who visited fake news sites was through medium of social media and 22% of people reached through search engines (European Parliament, 2018). Mauktik Kulkarni, a noted neuroscientist, quoted that AI generated fake news has witnessed an enormous increase of 1000 percent and the fake news so generated is so sophisticated that even the select articles of legitimate news websites has errors in them (Kulkarni, 2024). Apart from sophisticated articles of fake news that AI creates, other AI tools such as deepfakes, bots, text prediction tools enable purveyors of fake news to create fog of political news and thereby confuse, polarise and entrench them (Foreign Policy at Brookings, 2020). This is done by luring the reader to fake news website, or YouTube channel and then bots are designed in such a way that similar type of stories or videos will continue to appear before the reader and through these fake news his ideologies are enforced and then reinforced and a political echo chamber is created. This political echo chamber will not allow reader to encounter any contrasting story, thereby swaying them in believing the particularly fed fake news. Artificial Intelligence has enabled purveyors of fake news to create more sophisticated political bubbles and echo chambers who are mavens of manipulation and have deep seated impact over minds and opinion of individuals.

Therefore, AI boosts the creation of fake news in two ways—first, by creating new opportunities that enables creation and manipulation of images, audios, videos and even text. Second, the development and deployment of AI systems by the online platforms for the purpose of enhancement of user’s experience and engagement with the platform contributes significantly to the supersonic dissemination of fake news. When AI is employed to create fake content, the product is referred to as deepfake. It is not that fake news was not existing before but with AI tools such as Photoshop etc., the creation and curation has become more sophisticated deepening its impact. Generational Adversarial Network is used for the creation of Deepfakes wherein the network can

algorithmically generate new types of data from existing database. Thus, the new picture/audio/video/text created by network will be similar to the analysed content but not an exact copy of them. This deepfake technology is mainly used for creation of audio and video content (Bontridder & Pouillet, 2021).

Furthermore, when we say that AI is playing an instrumental role in augmenting the spreading of fake news, it is due to algorithms used by most of the online platforms designated for enhancing user experience. These algorithms record every action we take online whether actively or passively. Then they propose content that would optimise the time user will spend on using the platform and thereafter recommends the information which user is most likely to read. The design of these algorithms can be misused for micro-targeting users and thus, decide what human user will watch or read or listen. Moreover, social bots can also be deployed by malicious stakeholders that contributes decisively in dissemination of fake news and information (Bontridder & Pouillet, 2021).

Therefore, it can be seen that Artificial Intelligence is pivotally used both in curation and dissemination of fake news and is laying catastrophic impacts over the lives of individuals.

3. FAKE NEWS— A REAL PERIL?

The term fake news draws its inception from 2016 US presidential elections but it is undeniable that its presence was already established prior to this event. It has always been present but its scale and impact has been unprecedented given the advancement in digital technology (Fox, 2020). Secondly, due to its linkages with this political event many scholars argue that the term is misplaced and have political contour attached to it. However, whether it has political connotation or not, it is definitely striking hard at political realm. Fake news is a real peril which is pasturing the roots of every democracy.

On the definitional aspect, there is no common position either among the scholars or among the countries and international organisations regarding the definition of fake news. There is still no middle ground struck among scholars regarding the definition of fake news and they have given their own set of definitions. To quote few scholars who have done exemplary work on this discourse, firstly Allcott and Gentzkow defines fake news as “a false statement that is intentional and verifiably false” that could mislead people. On the other hand, Jaster and Lanius opines that falsity is not sine qua non for fake news and has the tendency to mislead people even while putting true information (Al-Zaman, 2021). European Union however, refrains itself from using the term ‘fake news’ and employs the term ‘disinformation’ instead (European Parliament,

2021). In India, there is no statutory definition of fake news as of now. However, former PCI Chairman Chandramauli Kumar Prasad, J. defined fake news as “any news, story, information, data and reports which is or are wholly or partially false” (Banerjee & Nessa, 2018).

International organisations and a few countries with anti-fake news law have defined the term. As per the Government of New South Wales fake news is defined as false stories that are created to resemble trustworthy news reports (NSW Government, 2024). Singapore Parliament, on the other hand, defines fake news as any news or story that is made with an intention to misinform or deceive readers and viewers (Singapore Government, 2024). Malaysian legislation on curbing fake news defines it as any news, information, data and reports, which is or are wholly or partly false, whether in the form of features, visuals or audio recordings (Law Library of Congress, 2019). European Union as specified earlier refrains from using term fake news and uses the term disinformation. It defines it as ‘verifiably false or misleading information creation, presented and disseminated with an intent to have economic gain or deceive public that may cause public harm’ (Directorate-General For External Policies, 2021). ASEAN’s definition of fake news stipulates that it is purposely crafted and is misleading or is totally fabricated information that mimics the mainstream or alternative news source. It is created without facts with an objective to influence public views or opinions or with political motives or to degrade someone’s reputation (Ministry of Communications And Informatics, 2024).

If we analyse whether fake news is a real peril for Indian democracy, we have statistics that reveal the scenario. As per the World Economic Forum Report, India is ranked first in facing the highest risk of disinformation and misinformation (World Economic Forum, 2024). Further, as per data released by National Crime Record Bureau there was 214% rise in cases pertaining to fake news in 2020 which happened to be peak time of pandemic (The Quint, 2021). Furthermore, report released by Microsoft on Civility, Safety and Interaction Online states that Indians are likely to encounter fake news seven points higher than the global average (Microsoft, 2019). Recently, at 14th VM Tarkunde Memorial Lecture, CJI DY Chandrachud remarked that “*disinformation contains the power of impeding the democratic discourse forever, pushing a marketplace of free ideas to the point of collapse under the immense weight of fake stories*”. Earlier also Supreme Court had expressed its concern over the mass proliferation of fake news over social media platforms. Former CJI NV Ramana with his fellow judges Justices Surya Kant and A S Bopanna has observed that over social media platforms such as

YouTube, etc. fake news is openly and widely circulated in absence of any proper regulatory mechanism. Justice Ramana remarked that these portals write anything against judiciary, judges and other institutions and have no accountability and only listen to powerful voices. Therefore, it is conspicuous that fake news is a real danger which is preying upon Indian society.

Now having realised the potency of disruption fake news can stir in India, it is pertinent to underscore the factors contributing towards its escalation. The following factors can be held responsible for fuelling the upswing of fake news —

1. Internet Penetration in India and Mushrooming of Social Media platforms: As per Digital News Report 2024 India has around 60% internet penetration (Reuters Institute For Study Of Journalism, 2024) and it has over 600 million active internet users. Furthermore, there are around 398.0 million social media users in India and in general around 67.5% of all internet users are using minimum one social media platform (Jain & Wong, 2024). Amongst the social media platforms WhatsApp is the leading social media network with 487.5 million users, followed by YouTube with 462 Million (Ceci, 2024) users, then Facebook with 314.6 million users, followed by Instagram with 229.55 million users (Basuraoy, 2023). Furthermore, as per a study people in India spend at least 194 minutes daily on social media platforms (Aggarwal, 2023). The statistics, therefore, clearly reveal the extent of internet penetration in India and engagement of people with social media platforms.

2. Deepening Trust Deficit between Public and Mainstream media: The prodigious rise of fake news can also be attributed to the deepened trust deficit between mainstream media and public (Reuters Institute For Study Of Journalism, 2024). Earlier the only source of news used to be either print or news media. But now with the advent of new media specifically social media platforms, people have switched their source of news. Furthermore, social media platforms are perceived by public as presenting a diverse point of view and find it more liberal space to express their opinion (UNESCO, 2018). And thus, equal reliance is placed on social media platforms when it comes to reading or listening news. This belief factor and trust deficit is however, exploited by purveyors of fake news while brimming the platforms with disinformation and misinformation camouflaged as ‘true news’ (Jain & Wong, 2024).

3. Absence of Media Literacy: Media literacy essentially means the ability of people to differentiate authentic information from misinformation and specifically the awareness that not every information they encounter over any platform is true. It demands that people before

believing information must verify it from authentic sources and then only should consume that information. Lack of media literacy in India has led to uninvited ramifications where people are consuming whatever is being served to them on plate without realising that it could disturb their brain gut (Raj & Goswami, 2020). And more appalling is the unthoughtful sharing of fake news which further snowballs its effect.

4. Lack of Proper Regulatory Mechanism: Even though we have multiple regulations spread over various statutes that deal with various components of fake news but we still do not have a comprehensive legislation that is able to combat fake news. To shed some more light on this aspect, we have Bhartiya Nyaya Sanhita, 2023, Press Council Act, 1978, The Cable Television Networks (Regulation) Act, 1995, Disaster Management Act, 2005, Epidemic Diseases Act, 1897, Representation of People's Act, 1951, Information and Technology Act, 2000 with Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023. Having so many different statutes dealing with individual components of fake news, make it chaotic and less effective while dealing with menace of fake news. The Standing Committee on Communications and Information Technology has also recommended Government of India to study anti-fake news laws of other jurisdictions like Australia, Malaysia etc. to develop some legal provisions that can aid in alleviating the menace of fake news. Furthermore, the Committee has also suggested to consider using of latest technologies such as Artificial Intelligence to crack down upon fake news (Ministry Of Information And Broadcasting, 2023).

Therefore, it is manifest that fake news is a real peril which is waxing with time and may assume colossus form.

4. IMPACT OF FAKE NEWS OVER INDIAN SOCIETY

Disinformation campaigns are being run by both state and non-state actors. The objectives might be different but the social cost of it is paid by the society as whole.

4.1 Undermines democracy and its institutions: The quintessence of democracy lies in a fair and legit electoral process accompanied by maximum citizen participation. It further demands trust of citizenry over their democratic institutions. But with the vile of fake news this trust in democratic institutions such as Election Commission, Press, Legislature, Executive is shaking. The sanctified process of free and fair elections and pious values of democracy are becoming increasingly suspicious by acquiring tainted hues of political manipulation and lack of transparency. The spirit of people in electing their representatives is withering and the connect

between the govern and governed is becoming more fragile.

4.2 Defile free and fair elections: Free and Fair elections form the cornerstone of democracy and is held to be part of basic structure of Constitution. However, the shadow of fake news is eclipsing this essential principle of Indian democracy. Chief Election Commissioner in an article issued by Election Commission of India has iterated that scale and speed with which fake news spreads over social media can overwhelm election management and thus, a threat to elections. Further, at International Conference held by India on 'Use of Technology & Elections Integrity' as a follow on to the Summit for Democracy, CEC has expressed his worry on the employment of deep fake narratives for wheedling voters' opinion (Election Commission of India, 2023). Earlier also CEC while addressing a German delegation has observed that fake social media narratives potentially affecting free and fair polls is fast emerging as a common challenge for most election management bodies (The Hindu Business Line, 2022).

Supreme Court in *People's Union for Civil Liberties v. Union of India* (2013) held that an election is considered to be free and fair if it is not rigged with malpractices and manipulation. But the question is when political realm is flooded with political disinformation and fake news disseminated with the intent to wheedle voters, can elections be said to be free and fair? Dissemination of political disinformation profanes both 'right to vote' and 'right to know' of citizens while jeopardising free and fair elections. Both these rights form the bedrock of free and fair elections that has been held to be a necessary concomitant of democracy (Union of India v. Association for Democratic Reforms, 2002). While underscoring the importance of 'right to know' Justice PN Bhagwati remarked that democratic governance necessitates 'right to know' which is guaranteed by Constitution of India under Article 19(1)(a) and is not restricted to voting once in every five years but it is a continuous process through which voters held their representatives accountable (SP Gupta v. Union of India, 1981). It was further observed by Supreme Court in *Secretary, Ministry of Information and Broadcasting, Government of India v. Cricket Association of Bengal* (1995) that information enables individual to form opinions on social, cultural and political issues and also enables to discover truth in marketplace of ideas. On 'right to vote' it was observed in *PUCI* case by Justice Venkatarama Reddi that this right postulate two things: first, opinion formulation and second, expressing the so formulated opinion in form of casting of votes (PUCI v. Union of India, 2003). Therefore, it is essential that voter have access to relevant and accurate information that will enable

him to formulate his opinion. However, when fake news is employed to coax voters, it desecrates both their right to know and right to vote. This is so because both these rights are grounded on the principles of transparency and accurate information about the electoral candidates and political fake news violates both. Supreme Court in its recent judgment have struck down the validity of electoral bonds essentially because it breaches right to information of voter which is pertinent to right to vote that forms a quintessential element for functioning of vibrant democracy (Association For Democratic Reforms v. Union of India, 2017). In similar vein Law Commission in its report on "Electoral Reforms" has recommended that paid news be made an electoral offence as it desecrates right to information and right to vote of citizens and also exercise undue influence over them (Law Commission of India, 2015). If thrust is placed on making paid news an electoral offence, then why not fake news? Petition has been filed in Supreme Court regarding this concern, however it is still pending (Ashwini Kumar Upadhyay v. Union of India, 2020). Even though judiciary has been vocal on catastrophic effects of fake news over democracy and its institutions, it remains to be seen when it will come out in form of judgment. It will definitely be a watershed moment for Indian democracy.

4.3 Disrupts Societal Cohesion through polarisation and hate speech: Fake news is a potent weapon that can strike hard over the social cohesion of the nation by fiddling fault communal and regional lines. Chief Justice of India has also emphasised that fake news has the capability to jeopardise communal harmony by stirring tensions between the communities and thus, imperil democratic values (Business Standard, 2023). Delhi riots 2020 that devoured 53 lives with more than 400 people injured (Malviya, 2024), Muzaffarnagar riots that was stimulated by a fake video (The Economic Times, 2013), mob lynching that became the new normal and on basis of any fake video or 'fake news' people will be ready to rip each other apart speak volumes about how much treacherous fake news can be (State Law Commission, 2019). In similar vein, it cannot be denied that fake news is also disseminated with intention to polarise masses and gain electoral gains (Lokniti, 2019). Even though political disinformation has always been present but now it has escalated to an unprecedented level and has become an arsenal of information warfare to wheedle and polarise people. This should be prevented and gravity of it must be understood in light of diverse social-cultural environment India has.

4.4 Deepens Regional Disparities: One of the political impacts of fake news, that has been downplayed, is that it can induce regional disparities within country. It can be inferred from the instances where migrant

workers were specifically targeted by fake news. Disinformation campaigns were launched spreading fake news alleging that migrant workers of one state are being battered in other state by the locals. This led to mass exodus of migrant workers returning their home state. Even though, the authorities intervened timely and busted the fake news but the impact it created was grave (The Hindu, 2023). Similarly, during Covid-19 migrant workers fell prey to fake news and were compelled out of fear to leave their workplace state immediately and reach their home state. This causes distrust in minds of residents of one state towards the other state government or residents and stiffens the inter-regional relations. This may also ramify in two state governments becoming loggerheads and issue acquiring political colour and promoting the feeling of otherness.

Therefore, fake news has deep seating ramifications over Indian society where more people are shifting towards digital technology with less awareness and are becoming victims of purveyors of fake news.

5. POLITICAL DISINFORMATION ACROSS BORDERS: LESSONS AND SOLUTIONS

The employment of artificial intelligence specially in electoral advertising campaigns has given rise to global concerns. The prime reason being that artificial intelligence is used for manipulation of information and automated creation of misleading content. Taking into consideration the havoc stirred by political disinformation and its maleficent impact on electoral process, countries have devised their ways to combat political disinformation to preserve the ethos of free and fair elections.

In light of various approaches adopted by democracies across the globe, for the purpose of present study three countries have been selected which have countered dissemination of political disinformation through legislative action. These countries are: Brazil, France and Germany.

5.1 BRAZIL

Brazil is the country with fifth largest number of internet users in the world. As per Digital News Report of Reuters Institute (2022), 83% of Brazilians use social media platforms for accessing news. The statistics, therefore, makes it evident the potential of disinformation over digital media platforms in wheedling voters and their electoral preferences. Further, as per 2022 elections' data of Superior Electoral Court of Brazil, there has been around 1,671% increase in the disinformation complaints sent to digital platforms as compared to 2020 municipal elections. There was further augmentation of around 436% in political violence through social networks (Rubio & Monteiro, 2023).

The 2022 Presidential Elections of Brazil saw extensive use of Artificial Intelligence in electoral advertising campaigns. Bots were used to create a falsify sense of support for various candidates. Within initial days of campaigning around 50% of retweets were generated through automation in support of a candidate. Thus, taking cognizance of the gravity of situation, Electoral Justice of Brazil launched 'Permanent Program to Combat Disinformation' (Wilson centre).

The Program to Combat Disinformation aims to bolster the credibility of the electoral process

and mitigate the detrimental effects of disinformation. It meticulously targets disinformation that pertains to Electoral Justice and its members, the electronic voting system, the electronic process in its various stages, and the involved actors. However, the Program does not target any disinformation unless it jeopardises the integrity, credibility and legitimacy of the electoral process (Wilson Centre). The Program's strategy is grounded on three pillars (Rubio & Monteiro, 2023) as depicted in Figure 1-

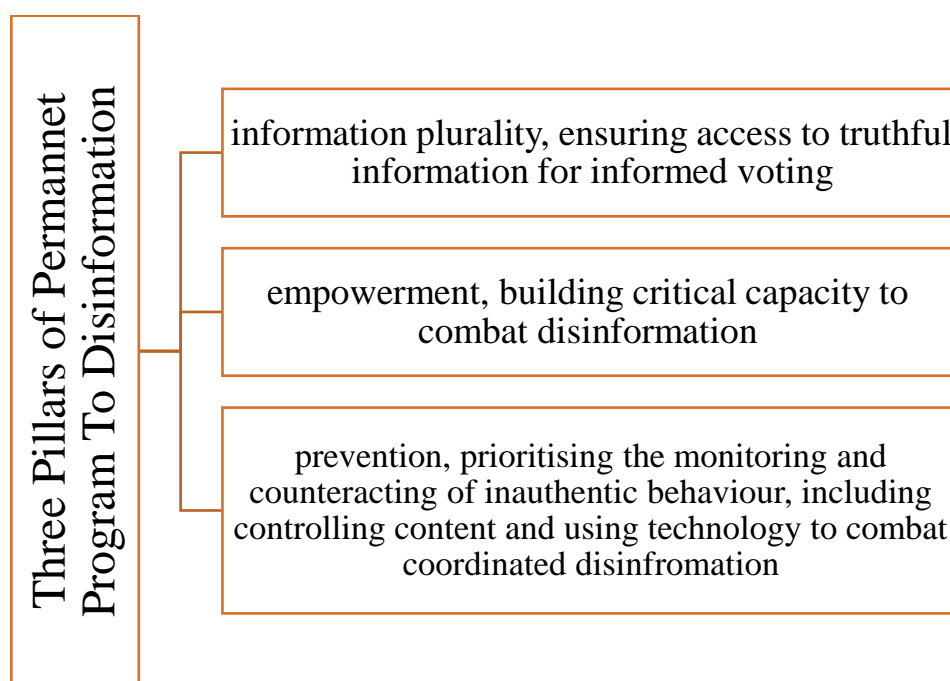


Fig 1: Three Pillars of Permanent Program to Disinformation

In addition to these efforts, the Superior Electoral Court of Brazil which is responsible to mitigate the impacts of political disinformation and ensure conduct of fair and transparent elections, has adopted '*resolution 23.732*' which introduced significant regulatory advancements for use of Artificial Intelligence in elections. This resolution imposes obligation upon candidate to disclose explicitly, prominently and accessibly about the use of artificial intelligence in political advertising (Wilson Centre). Under the provisions of resolution (Article 2) prohibition has been laid on the dissemination or exchange of facts which are known to be false or gravely decontextualises impacting the integrity of the electoral process. The electoral process here includes voting, counting and vote counting processes. In case of violation, the Superior Electoral Court has the power to order digital platforms to remove concerned URL, URI or URN with immediate effect. In absence of non-compliance with the order of Court a fine of 100,000 Brazilian Reais (USD 20,000) per hour will be imposed from

the second hour after receipt of the notification. The resolution further stipulates that in case where the Electoral Court has determined that the concerned disinformation content is to be removed, such decision shall be extended to identical republished content (Article 3). Thus, such disinformation content may be removed without the need for a new jurisdictional action and may also be subject to a fine (Rubio & Monteiro, 2023).

Furthermore, 'Electoral Disinformation Alert System' (SIADe) has been designed to detect and facilitate prompt response to false content that can jeopardise electoral process. This system operates in synergy between digital platforms, media companies, and fact-checking agencies. It keeps electoral code informed about the disinformation campaigns. Data in real time is captured by SIADe and enables authorities to issue public alerts and rectify the disinformation (Rubio & Monteiro, 2023).

Therefore, it is evident that Brazil is taking active steps in curbing political disinformation and

preserving the sanctity of free and fair elections. Remarkable role has been played by Superior Electoral Court of Brazil in fighting this information warfare and country displays an exemplary synergy between all stakeholders in safeguarding the ethos of fair electoral process.

5.2 GERMANY

German media landscape has found itself flooded with hate speech and political disinformation. It has brimmed with disinformation pertaining to anti-immigrants and anti-refugees and became a weapon in hands of purveyors for spreading hate speech. The government has pressured the social media companies to take adequate measures and dissipate the ill-effects. In 2015, a task force was also formulated with representatives from large platforms to devise solution to curtail the illegal hate speech dissemination over these platforms. But the efforts of the group could not put brakes over this rising tide of political disinformation and hate speech and shift in approach was necessary (LSE, 2018). Thus, legislative solution was adopted as a counter measure to water it down. Therefore, in order to fight against fake news and hate speech over social media platforms, 'Network Enforcement Act' (*Netzwerkdurchsetzungsgesetz*) or NetzDG Act (as it is commonly referred) was enacted in 2017 (Zipursky, 2019).

This Act applies to all social networks which are defined as telemedia service providers that operate internet platforms for profit making purposes and are such designed to enable users to share content with other users to make that content available for public. Further, the Act excludes platforms which offers journalistic or editorial content as the service providers assume responsibility for the content hosted over the platform. Similarly, small social media platforms with userbase less than two million registered users are excluded.

The Act requires removal or blocking of unlawful content once a complaint has been lodged. The term unlawful content here means the content that fulfils the requirement of offences stipulated in German Criminal Code. In a nutshell, these offences relate to violation of protection of democratic constitutional state, public order, personal honour and sexual self-determination. The Act states that on receiving a complaint that the content posted on social media platform is unlawful, the authorised representative of such social media platform shall check regarding the unlawfulness of the content. On finding the unlawfulness of the content, immediate action should be taken to either block the content or remove it from the platform (Piper, 2018).

Furthermore, the NetzDG Act warrants that content which is manifestly unlawful shall be removed within 24 hours of receiving complaint.

Here the term manifestly unlawful content implies that unlawfulness of the concerned content can be determined without any in-depth examination by trained personnel. Moreover, other unlawful content shall be removed within 7 days. The time limit may be exceeded depending upon the facts of the case. The Act states that in case of violation of the above stipulated requirements by the social media platforms, a fine up to 5 million euros shall be levied (Piper, 2018).

Therefore, strict provisions have been enacted by German Parliament in regulating the political disinformation and hate speech with special focus on placing responsibility on social media platforms to act as watchdog of the content shared over their platforms. Hefty fines imposed in case of breach of compliance provisions indicate the deterrent element the concerned legislation intends to invoke.

5.3 FRANCE

France experienced spectacular dissemination of political disinformation in its 2017 Presidential elections. Largely it is the political disinformation affecting the conduct of free and fair elections which prompted French government to come up with a new legislation regulating curation and spread of fake news over social media platforms.

The French Government has enacted 'Law on the fight against Manipulation of Information'. The law focuses on alleviating the breakneck dissemination of political disinformation through the use of digital tools and particularly through dissemination platforms offered by social media companies which are even influenced by foreign states. Primarily election campaigns are focused with period ranging from just preceding elections and during elections. Furthermore, in order to concentrate upon the real danger following provisions have been enacted under the Law (Fiorentino, 2018):

a) transparency obligation has been imposed on digital platforms which requires publication of the name of the author and amount paid in case the content hosted by platform is sponsored. Further, the platforms which exceeds a set number of hits per day are mandated to have a legal representative in France. It is also necessary for them to publish their algorithms.

b) provision for legal injunction is included to expeditiously halt the circulation of disinformation. An interim judge will qualify the alleged content as 'disinformation' in accordance with the provisions of freedom of press law of 1881. The determination of such qualification is based on three-fold criteria—first, alleged content qualified as disinformation must be manifest, second, it must be disseminated intentionally on massive scale and lastly, it causes disruption of peace or ends up compromising upon the outcome of an election. Further, duty of

cooperation is placed upon these platforms to impel them to introduce measures effective in eliminating disinformation and such measures are required to be made public. In order to ascertain that platforms have complied with their duty, CSA which is French Broadcasting Authority is being entrusted with the task of supervising the compliance. CSA has also been entrusted with the power to prevent, suspend and stop the broadcasts of television services which are in control of foreign states or are influenced by them and are detrimental to the fundamental interests of the country. The law targets upon the deliberate attempts of information manipulation and does not impact upon journalistic work which can reveal any information in public interests. Further, a more protective legal framework than the situation where platforms self-censor content without tendering any explanation for their actions.

c) through this law judges are enabled to order for expeditious removal of disinformation posted over any social media platform during conduction of elections. Appeal to judge for removal of disinformation can be made by both parties and candidates. Judges are also empowered to take proportionate measures against the internet service providers and hosts for prevention of disinformation dissemination. Further, French Audiovisual Council is entrusted with powers to keep a check on television broadcasting services (which are controlled by foreign agents) and prevent any flouting of rules or breach of fundamental rights of French citizens by these television services. Lastly, the internet hosts and service providers are obligated to bring to light any information which they found to be false and raise an alarm to public authorities.

Therefore, the law endeavours to ensure that there is transparency in relationship between the online platforms and operators and the advertisers for whom these providers act (Fiorentino, 2018).

5.4 ANALYSIS

On close perusal of the measures undertaken by Brazil, Germany and France it is imperative to acknowledge that they have focused on placing liability over social media platforms to not host unlawful content which may either be political disinformation or hate speech. Furthermore, social media platforms are not allowed to escape liability by pleading their third-party status and a comprehensive complaint mechanism has also been devised whereby individuals can complain against any disinformation they encounter. The exemplary features of the legislations and the judicial action (in case of Brazil) is the specified time limit given to these platforms in taking action which ensures that even if some disinformation is peddled, it does not stay on platforms for long thereby curbing its

dissemination. Here, the provision introduced by Brazil Electoral Court is remarkable which states that such disinformation is required to be taken down from other platforms as well where it is republished once an order has been passed without initiating any new proceedings. Thus, meticulous steps have been taken by these jurisdictions in watering down the political disinformation.

For India, even though, the recently introduced Intermediary Guidelines, 2023 (IT (intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023) ensured that Fact-Check unit flag disinformation on social media platforms which on notice is necessary to be taken down by the platforms. However, with Bombay high Court judgement striking down the said provision, Fact-check unit has not much power (Kunal Kamra v. Union of India, 2023). In addition, if it would have been in the power then also content pertaining to business affairs of Central Government was required to be flagged which is not a holistic provision and does not take into account other disinformation. There were lacunae related to definitional aspect of disinformation and thus, the provision could not stand strong in fighting the storm of political disinformation. Additionally, Election Commission of India has also not come up with certain concrete measures to deal with political disinformation although, it has recognised its perils on various platforms. Therefore, India needs to take active and comprehensive steps to curtail political disinformation which is spreading like wildfire over its land and uphold its tenets of free and fair elections that constitutes life and blood of Indian democracy.

6. CONCLUSION

The perilous impact which fake news is entailing in India especially in political realm is conspicuous. It is imperative that this menace be dealt with and curb down at earliest so as to ensure that democratic ethos of India can be safeguarded and they do not capsize in the sea of political disinformation. It is instructive to observe that there is no specific law at hand that directly regulates fake news but various laws that address the fake news dissemination requires recalibration to ensure that they align with the complexities of the current situation. For curbing political disinformation, use of fake news for wheedling voters should be categorised as corrupt practice.

It must be remembered that India is world's largest democracy and a vibrant pluralistic society. The free and fair elections for Indian democracy are no less than a celebration. A country with such entrenched belief on democratic institutions should not be allowed to be preyed by vices of fake news. Furthermore, with the advancement in Artificial

Intelligence the sophistication and penetration of fake news has augmented to an unprecedented level. If this unruly horse of fake news is not bridled soon, it may result into a political hazard. Nevertheless, it is germane that the discourse of free speech and regulation of fake news must be examined in light of freedom of speech as an enabler of information and not disinformation. In similar vein, social media intermediaries should be taken on board to ensure that these platforms act as 'marketplace of ideas' and not as hotbeds of 'fake news'. As remarked by Hon'ble CJI DY Chandrachud that a fine equilibrium is necessitated to be struck between privacy, surveillance and free speech considering the vibrant tapestry of India. Therefore, it stands as a compelling obligation that certain quick and efficient measures are taken immediately to damper the storm of fake news.

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