

# Freedom of Speech in the Digital Age: Legal and Judicial Responses to Fake News in Indian Democracy

Deepak Sharma\* & Vidit \*\*

## ABSTRACT

*The advent of online Digital Platforms has significantly expanded the scope of freedom of speech and expression, offering new avenues for public discourse and democratic participation. However, this empowerment has been accompanied by the rapid proliferation of fake news, posing serious risks to public order, democratic integrity, and individual rights. This research paper critically examines the legal framework and judicial responses in India concerning the regulation of fake news. It highlights the inherent challenges in addressing Misinformation, including the regulatory gaps, inefficiencies, and limitations of the existing self-regulatory mechanisms. The study finds that current approaches are often reactive, fragmented, and inadequate to meet the scale and complexity of the problem. To address these shortcomings, the paper recommends transitioning towards a co-regulatory model, wherein Intermediaries and Digital Platforms are held accountable under a framework combining state oversight with industry participation. The paper also advocates for regulation of automated content moderation tools and democratized deployment of correction, debunking and fact-checking to ensure that regulatory interventions uphold fundamental rights while effectively countering the menace of fake news. Through this analysis, the paper aims to contribute to the evolving discourse on balancing free speech and information integrity in the digital age.*

**Keywords:** Fake news, Misinformation, Disinformation, Co-regulation, Algorithmic Accountability.

---

\* Assistant Professor & HoD, Law, Dr.Rajendra Prasad National Law University, Prayagraj, U.P.

\*\* Lecturer – IPL Programme @ IIM-Rohtak and pursuing Ph.D. from Faculty of Law, University of Delhi.

## 1. Introduction

In the digital age, multiple and often conflicting versions of the event rapidly circulate across the Internet once an incident occurs. This deluge of information—frequently unverified and emotionally charged—creates what the World Health Organization aptly terms an “infodemic”, making it increasingly difficult to discern what is actually true.<sup>1</sup> Postmodernism, with its inherent scepticism toward objective truth and its emphasis on subjectivity and pluralism, further complicates this scenario. It encourages the coexistence of diverse narratives, often blurring the lines between fact, opinion, and interpretation. As a result, truth becomes fragmented and obscured.<sup>2</sup>

The Human Rights defenders were not entirely wrong when they hailed the online digital media platforms, believing that these platforms would strengthen the democratic processes and would revitalize the freedom of speech and expression. These platforms conferred enormous powers in the hands of the Populace, wherein the individuals are self-publishers of content, and there is no obligation on them to check the veracity of the Information. The unchecked growth of these platforms, coupled with the safe harbour protection, transformed the fourth pillar of democracy, and these platforms became the source of proliferation and dissemination of fake news, which had ramifications on the social and democratic fabric of the countries.<sup>3</sup>

Artificial intelligence has further exacerbated the challenge as it has the potential to generate manipulative content, disseminate harmful Disinformation and perpetuate systematic biases on a massive scale without meaningful human oversight, transparency and statutory regulation. The online platforms have significantly contributed for the spread of fake news due to biased and selective sharing (fueled by algorithms designed to maximize the User Engagement) of both true and false news skews overall constructions of reality for users. Combined with a lack of trust in quality information and a lack of overall media and Information Literacy, this creates an information environment in which citizens are vulnerable to false and misleading content with potentially negative social consequences.<sup>4</sup>

---

<sup>1</sup> John Zarocostas, “How to Fight an Infodemic” 395 *The Lancet*, 676 (2020).

<sup>2</sup> Saul Newman, “Post-Trust, Postmodernism and the Public Sphere” in Maximilian Conrad, Guðmundur Hálfðanarson, et al. (eds.), *Europe in the Age of Post-Trust Politics: Populism, Disinformation and the Public Sphere* 13–30 (Palgrave Macmillan, 2023).

<sup>3</sup> Luís Roberto Barroso and Luna van Brussel Barroso, “Democracy, Social Media, and Freedom of Expression: Hate, Lies, and the Search for the Possible Truth” 24 *Chicago Journal of International Law* 51–70 (2023).

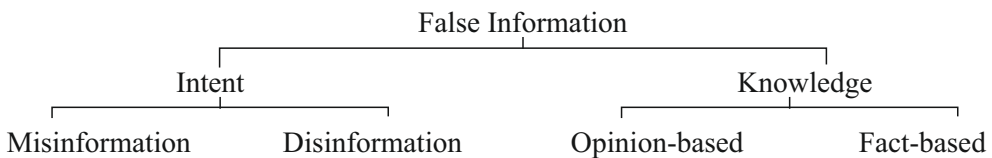
<sup>4</sup> *Ibid.*

## 2. Evolution, Causes and Impact of Fake News in India

### 2.1 Definition of Fake News

Different terms have been used interchangeably to describe fake news, such as Rumour, Hoaxes, Satire, Parody, Propaganda, Clickbait, Misinformation, Disinformation, Mal-information, False Information, Alternative Facts, Information Disorder, etc. Fake news is defined as fabricated information that mimics legitimate news in form but lacks the editorial norms of credible journalism. It is a subset of Misinformation and has become a significant concern in the digital age.<sup>5</sup> Fake news is a sub-category of misinformation. *Egelhofer* and *Lecheler* described fake news as a two-dimensional phenomenon. It has been regarded both as a *genre* and a *label*. The fake news genre is described as the deliberate creation of *pseudojournalistic* Disinformation, and the fake news label is described as the *political instrumentalization* of the term to delegitimize news media.<sup>6</sup> They identified three recurring definitional characteristics: an item can be considered fake news when it is low in facticity, was created with the *intention to deceive* and is presented in a *journalistic format*.<sup>7</sup>

False information was categorized by *Kumar and Shah* in the following manner<sup>8</sup>:



Misinformation is false or misleading content shared without harmful intent though the effects can still be harmful, e.g. when people share false information with friends and family in good faith. Disinformation is false or misleading content that is spread with the intention to deceive or secure economic or political gain and which may cause public harm. The nuances between the two terms lies in the intention for dissemination, which may be challenging to determine a priori.<sup>9</sup>

<sup>5</sup> David M. J. Lazer, Matthew A. Baum, *et.al.*, “The Science of Fake News” 359 *Science* 1094-1096 (2018).

<sup>6</sup> Jana Laura Egelhofer and Sophie Lecheler, “Fake News as a Two –Dimensional Phenomenon: A Framework and Research Agenda” 43 *Annals of the International Communication Association* 97-116 (2019).

<sup>7</sup> *Id.* at 99.

<sup>8</sup> Srijan Kumar and Neil Shah, “False Information on Web and Social Media: A Survey,” *arXiv* (2018), available at: <https://arxiv.org/pdf/1804.08559> (last visited on Apr. 27, 2025).

<sup>9</sup> *Ibid.*

## 2.2 Causes of Fake News

Users predominantly select and share content aligned with their existing beliefs, often ignoring opposing views. Social homogeneity drives content diffusion, leading to the formation of polarized, like-minded communities. This reinforces Confirmation Bias, segregation and the spread of Misinformation.<sup>10</sup> Acceptance of news often depends more on social norms and belief alignment than factual accuracy<sup>11</sup> Confirmation Bias is one of the most significant behavioural problem that motivates the spread of Misinformation.<sup>1</sup> Content selective exposure is the primary driver of content diffusion and generates the formation of homogenous clusters i.e. Echo Chambers. Filter Bubbles exploit Confirmation Bias and emotional content, invisibly tailoring information to users' beliefs, which boosts the spread of fake news while reinforcing ideological divisions and miseducation.<sup>13</sup> After examining the 1,26,000 cascades of news stories on Twitter from 2006 – 2017, *Soroush Vosoughi et. al.* found that that false news was 70% more likely to be retweeted than the truth. The Robots accelerate the spread of true and false news at the same rate. However, humans are more likely to share novel information.<sup>14</sup>

## 2.3 Impact of Fake News

The public opinion shaped by such Misinformation can distort democratic decision-making and push policies in directions that might not reflect the actual needs or values of a well-informed citizenry. Misinformation and disinformation have been reported as the top short-term risks for the Indian economy by the World Economic Forum in its Global Risks Report 2025 for the second consecutive year, threatening societal cohesion and undermining trust in governance. These risks can fuel instability, exacerbate divisions and complicate cooperation on shared crises.<sup>15</sup> The persistence and influence of fake news thus challenge the foundational democratic ideal that citizens make rational judgments based on accurate information, raising concerns about the health and functionality of modern democracies.<sup>16</sup> Overestimations of welfare dependency, immigration levels, and crime rates

<sup>10</sup> Michela Del Vicario, Alessandro Bessi, *et.al.*, “The Spreading of Misinformation Online” 113 *Proceedings of the National Academy of Sciences (PNAS)* 554 (2016).

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

<sup>12</sup> *Supra* note 7.

<sup>13</sup> Eli Pariser, *The Filter Bubble: What the Internet is Hiding from You* (Penguin Books Limited, United Kingdom, 2011).

<sup>14</sup> Soroush Vosoughi, Deb Roy, *et.al.*, “The Spread of True and False News Online” 359 *Science* 1146-1151 (2018).

<sup>15</sup> World Economic Forum, “Global Risk Report 2025” (2025) at 30, *available at*: [https://reports.weforum.org/docs/WEF\\_Global\\_Risks\\_Report\\_2025.pdf](https://reports.weforum.org/docs/WEF_Global_Risks_Report_2025.pdf) (last visited on Aug. 5, 2025).

<sup>16</sup> James H. Kuklinski, Paul J. Quirk, *et.al.*, “Misinformation and the Currency of Democratic Citizenship” 62 *The Journal of Politics* 790-816 (2000).



lead to anti-welfare, anti-immigration, and punitive policy attitudes respectively, while resistance to vaccine-related knowledge has caused a resurgence of preventable diseases like measles. These examples highlight how misperceptions and knowledge resistance fueled by fake news can distort public opinion and harm societal outcomes.<sup>17</sup>

False news can drive misallocation of resources during terror attacks and natural disasters, the misalignment of business investments and can misinform elections. In a review of social media research on Misinformation from the perspective of disaster, health and politics emerged as 3 domains where Misinformation can cause severe harm, often leading to casualties or even irreversible effects.<sup>18</sup> Ofcom has concluded that people consuming news via social media platforms are more likely to be polarised than those who use search engines and news aggregator apps. This shows that problematic outcomes in terms of polarisation is due to the way the recommender system chooses and prioritises the content in user's feed.<sup>19</sup>

## 2.4 Strategies to Combat Fake News

Corrective Algorithms, displaying corrective information as 'related stories' for Misinformation have been frequently applied strategies to deal with fake news. Though correction is a reactive solution but if applied properly, it would prove to be a great solution to deal with Misinformation. Debunking was suggested as a measure to deal with the issue of Misinformation. However, in order to make it effective, following factors need to be considered i.e. (i) which Misinformation to prioritize for correction, (ii) how to best correct Misinformation and (iii) what else can be done pre-emptively to protect the public from future misdirection.<sup>20</sup>

Fact Checking is another strategy which is frequently deployed but it is not scalable as it requires substantial time and effort in examining the veracity of an information and all

---

<sup>17</sup> Elena Broda and Jesper Stromback, "Misinformation, Disinformation and Fake News: Lessons from an Interdisciplinary, Systematic Literature Review" 48 *Annals of the International Communication Association* 139 (2024).

<sup>18</sup> Sadiq Muammed T and Saji K. Mathew, "The Disaster of Misinformation: A Review of Research in Social Media" 13 *International Journal of Data Science and Analytics* 271 (2022).

<sup>19</sup> OfCom, "Media Plurality and Online News: Discussion Document" (2022), available at: <https://www.ofcom.org.uk/siteassets/resources/documents/research-and-data/multi-sector/media-plurality/discussion-media-plurality.pdf?v=328775> (last visited on Apr. 17, 2025).

<sup>20</sup> The REACT model was suggested for debunking; it stands for repetition, empathy, alternative explanations, credible sources, and timeliness. Emily K. Vraga, Ullrich K.H. Ecker, *et al.*, "To Debunk or Not to Debunk? Correcting (Mis)Information," in Tina D. Purnat, Tim Nguyen, *et al.* (eds.), *Managing Infodemics in the 21st Century: Addressing New Public Health Challenges in the Information Ecosystem* 85–98 (Springer, Singapore, 2023).

the information cannot be fact-checked, it is done post-event and is usually not affecting while virality of content is at its peak, warning levels may not be effective with the passage of time.<sup>21</sup>

Fake news detection models have been developed on the basis of machine learning, natural language processing and network analysis. However, it has been found problematic since true and false character cannot be black and white. Since, Misinformation content develops rapidly, it would be difficult to keep the training data set updated to provide meaningful real-time assistance in tackling fake news.<sup>22</sup> Cyber security and forensics based AMITT, TTP and MITRE ATTk models have been developed. The Credibility Coalition Misinfosec Working Group developed AMITT framework to detect Misinformation is worth noting.<sup>23</sup> However, it has been found that most of the detection frameworks have been deployed in artificial settings and there is little known empirical evidence to establish efficacy real world with original data sets.<sup>24</sup> Moreover, as people interact with content, news aggregator algorithms update in real time, often amplifying fake or false information based on user engagement. This real-time responsiveness makes it increasingly difficult to detect fake or false news, as popular false articles may be ranked more prominently simply due to high user engagement.<sup>25</sup>

### **3. Freedom of Speech in the Digital Age**

Freedom of speech and expression is regarded as basic Human Rights and finds mention in the Article 19 of the Universal Declaration of Human Rights, 1948 as well as Article 19 of the International Covenant on the Civil and Political Rights, 1966. Article 10 of the European Convention on Human Rights protects freedom of speech and expression. Realizing the significance of freedom of speech, the United Nations 2030 Agenda for Sustainable Development (United Nations, 2015) recognizes that freedom of expression, access to information, and the safety of journalists are pivotal to building peaceful, just and inclusive societies. Sustainable Development Goal (SDG) 16, Target 10 calls for 'fundamental freedoms and public access to information'. This target is measured through

---

<sup>21</sup> Gordon Pennycook and David G. Rand, "The Psychology of Fake News" 25 *Trends in Cognitive Sciences* 388 – 402 (2021).

<sup>22</sup> *Ibid.*

<sup>23</sup> John F. Gray and Sara-Jayne Terp, "Misinformation: We're Four Steps Behind Its Creators," available at: <https://cyber.harvard.edu/sites/default/files/2019-11/Comparative%20Approaches%20to%20Disinformation%20-%20John%20Gray%20Abstract.pdf> (last visited on Mar. 30, 2025).

<sup>24</sup> *Supra* note 14.

<sup>25</sup> J.N. Matias, "Influencing Recommendation Algorithms to Reduce the Spread of Unreliable News by Encouraging Humans to Fact-Check Articles, in a Field Experiment" 13 *Scientific Reports* 1 (2023).



SDG indicator 16.10.1 on the safety of journalists and SDG indicator 16.10.2 on public access to information. Indicator 16.10.2 measures: (i) constitutional and/or statutory guarantees of public access to public-sector information; and (ii) effective implementation of statutory guarantees of public access to public sector information.

The right to information has been regarded as a "survival right" essential for people's lives, health, and safety by the Special Rapporteur particularly in armed conflicts.<sup>26</sup> The Windhoek+30 Declaration recognizes information as a public good and stresses incorporating Information Literacy into strategies to strengthen citizens' resilience to Misinformation and Disinformation. It urges technology companies to ensure transparency in their human and automated systems, provide fair notice, appeals, and complaint processes for users, and conduct transparent Human Rights risk assessments to safeguard freedom of expression, access to information, and privacy.<sup>27</sup> Similarly, the UNESCO Guidelines propose a co-regulation model where governments set Human Rights-based legal frameworks, and digital platforms are required to ensure transparency, accountability, and user empowerment. Platforms must integrate Human Rights standards into Content Moderation, risk assessments, and reporting processes. Users, civil society, and researchers play key watchdog roles to uphold freedom of expression and access to information. Regulation focuses on platform systems rather than individual content, ensuring a safe, open, and democratic Digital Space.<sup>28</sup>

### 3.1 United States

Freedom of speech and expression is regulated differently in several jurisdictions. For instance, expansive protection is afforded to freedom of speech and expression in the United States online and offline. Section 230 of the Communications Decency Act, 1996 (CDA) provides that platforms may not be treated as publishers or speakers of any content provided by users. This provision applies regardless of whether an intermediary is aware of objectionable content and/or whether such content is removed or disabled.

### 3.2 European Union

The Digital Services Act, 2024 and the Code of Conduct are pioneering piece of

---

<sup>26</sup> UN General Assembly, "Disinformation and Freedom of Opinion and Expression During Armed Conflicts," UN Doc A/77/288 (Aug. 12, 2022), *available at*: <https://docs.un.org/en/A/77/288> (last visited on Apr. 27, 2025).

<sup>27</sup> UNESCO, "Windhoek+30 Declaration: Information as a Public Good", May 3, 2021, *available at*: <https://unesdoc.unesco.org/ark:/48223/pf0000378158/PDF/378158eng.pdf.multi> (last visited on Feb. 24, 2025).

<sup>28</sup> UNESCO, "Guidelines for the Governance of Digital Platforms", 2023, *available at*: <https://unesdoc.unesco.org/ark:/48223/pf0000387339> (last visited on Apr. 26, 2025).

legislation which regulate online platforms and tech giants. The DSA regulates intermediary, hosting, and online platforms, particularly very large ones, aiming to safeguard user rights and promote operational transparency. It sets harmonized standards for tackling illegal content, introduces mechanisms for flagging unlawful material, challenging moderation decisions, and limiting abuses by major platforms. Platforms must increase transparency, curb ad revenue incentives for fake news, and grant researchers limited data access. The accompanying Code strengthens measures against manipulative behaviors like fake accounts and deepfakes, enhances user tools for identifying Disinformation, promotes media literacy, and requires transparent, safer recommender system designs to limit the spread of Disinformation.

### **3.3 United Kingdom**

The Online Safety Act, 2023, is enacted to protect UK citizens from online harm, describing fake news as one of the many concerns that harm citizens. This Act imposes statutory duties of care on online platforms to protect users, particularly children, from harmful content. Law requires platforms to assess and manage risks, with Ofcom as the regulator empowered to set codes of practice and impose penalties. Platforms can propose alternative measures, but they must be demonstrably effective and subject to Ofcom's oversight.

Another critical dimension is visible in the approach taken by Texas and Florida, which diverges from the above regulatory trends in the EU and the UK. Recent legislations in these states seek to prohibit online platforms from removing or restricting content based on viewpoint, particularly political speech. They are based on the premise that social media companies disproportionately censor conservative voices.<sup>29</sup>

Though the legislation is bulky and its effect on the freedom of speech and expression is yet to be seen. However, apprehensions have been expressed that the enforcement power has gradually shifted to non-state actors (private corporations).<sup>30</sup> Excessive regulation has also created the fear of censorship of content. It has been argued that the OSA does not reflect a Human Rights-based approach to regulation since the term harm is ambiguous.<sup>31</sup> The

---

<sup>29</sup> Pooja Salhotra, "Does The First Amendment Apply to Social Media Moderation? The U.S. Supreme Court Will Decide" *The Texas Tribune*, Feb. 26, 2024, available at: <https://www.texastribune.org/2024/02/26/texas-social-media-law-supreme-court/> (last visited on Apr. 26, 2025).

<sup>30</sup> Eliza Bechtold, "Regulating Online Harms: An Examination of Recent Developments in the UK and the US through a Free Speech Lens" 16 *Journal of Media Law* 358–389 (2024).

<sup>31</sup> *Ibid.*



government's focus is on Content Moderation and not on dealing with the problematic business model of these tech companies, which focus on ad revenue and monetizing the user's attention.<sup>32</sup>

#### 4. Legislative Response

Article 19(1)(a) guarantees freedom of speech and expression. It states: “All citizens shall have the right to freedom of speech and expression.”<sup>33</sup> This freedom is crucial in democratic setup as it empowers citizens to participate in democratic processes, hold authorities accountable and foster public discourse. It acts a check against authoritarianism by ensuring open dialogue. Though the Freedom of the Press is not mentioned directly in Article 19(1)(a), it is very much implied within the provision. However, the freedom is not absolute rather it is subject to reasonable restrictions mentioned in clause (2) of Article 19. The state can impose reasonable restrictions on this right in the interest of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation and incitement to an offense. Restrictions must be lawful, reasonable, and proportionate, and they must not arbitrarily curtail the right. Upholding broader democratic principles, the media has been primarily left to self-regulation, and the judiciary has frowned upon any attempt by the State. In the digital age, this provision extends to online expression but issues like internet shutdowns, content regulation and social media censorship pose challenge.

Statements/speech made by a person in certain circumstances, or those leading to specific consequences have been criminalized under the Bhartiya Nyaya Sanhita, 2023.<sup>34</sup> These include: act endangering sovereignty, unity and integrity of India (Section 152), promoting enmity between groups (Section 196), obscene publication (Section 294 – 296), deliberate acts to outrage religious feelings (Section 302), defamation (Section 356), statements creating or promoting enmity, hatred etc. (Section 353(2)). Here, it is likely that tangible harm or prejudice will be caused.

There are several other laws/legal provisions dealing with content regulation. For instance, Section 98 of the Bhartiya Nagarik Suraksha Sanhita, 2023,<sup>35</sup> the Cinematography

---

<sup>32</sup> ARTICLE 19, “UK: Online Safety Bill is a Serious Threat to Human Rights Online” (Apr. 25, 2022), *available at*: <https://www.article19.org/resources/uk-online-safety-bill-serious-threat-to-human-rights-online/> (last visited on Apr. 26, 2025).

<sup>33</sup> The Constitution of India, art. 19(1)(a).

<sup>34</sup> Act 45 of 2023.

<sup>35</sup> Act 46 of 2023.

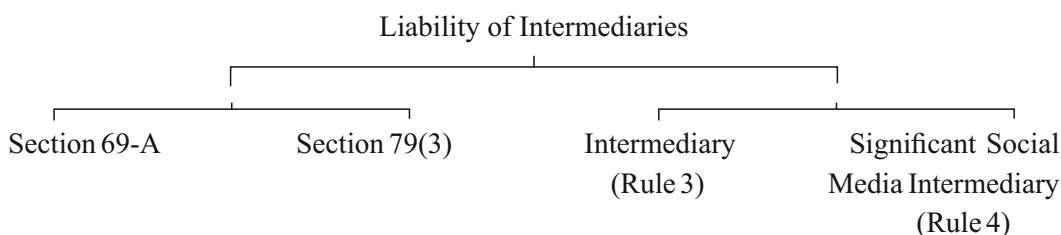
Act, 1952,<sup>36</sup> the Press Council Act, 1978,<sup>37</sup> the Cable Television Networks (Regulation) Act, 1995<sup>38</sup> and the rules made thereunder.

Fake news presents a complex, multi-sectoral legal challenge. Several sectoral laws have been enacted to deal with harmful or deceptive speeches. For instance, false/misleading advertising does not fall within the ambit of free speech and is regulated by the Consumer Protection Act, 2019. Beyond Consumer Law, multiple legal domains – including Securities Regulation, Anti-Trust, Labour and Employment Laws, Intellectual Property, Contracts and Torts – contain specific provisions to address Misinformation or misrepresentation within their respective scopes.<sup>39</sup>

Though the term fake news is not defined in any legal provision in India, glimpse of its regulation may be gathered from the following provisions: Section 353 of the *Bhartiya Nyaya Sanhita*, 2023 (statement conducing to public mischief), Section 54 of the Disaster Management Act, 2005 (punishment for false warning).

The content shared in digital environment is regulated by Sections 67A (Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form), 67B (Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form) etc. and by the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. Section 67C imposes regulatory burden on the intermediaries to preserve and retain the information required by the government.

The media is self-regulated to a great extent in India be it print media, electronic media or digital media. Digital media platforms are treated as intermediaries and enjoy safe harbour protection under the Information Technology Act, 2000. However, the immunity is conditional subject to the fulfilment of due diligence obligations under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.



<sup>36</sup> Act 37 of 1952.

<sup>37</sup> Act 37 of 1978.

<sup>38</sup> Act 7 of 1995.

<sup>39</sup> Leslie Gielow Jacobs, “Freedom of Speech and Regulation of Fake News” 70 *The American Journal of Comparative Law* 278-311 (2022).

The due diligence obligation requires intermediaries to make reasonable efforts by itself and to cause the users of its computer resource to not host, display, upload, modify, publish, transmit, store, update or share any information falling under several sub-clauses of Rule 3(1)(b). It is interesting to note that the term 'fake news' is not used even under the Information Technology Act and 2021 Rules, Rule 3(1)(b)(v) use the following terms '...any Misinformation or information which is patently false and untrue or misleading in nature...' <sup>40</sup> Also, the term harm is used specifically with respect to online games and child. <sup>41</sup> It is interesting to note that the term 'harm' is not used with respect to dissemination of false or misleading information.

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 imposes added obligation of due diligence on the significant social media intermediaries <sup>42</sup> under Rule 4. Rule 4 provides that the significant social media intermediaries are encouraged (but not strictly required) to deploy automated tools to proactively detect and block content related to rape, child sexual abuse, or previously removed unlawful material. Such efforts must be proportionate to users' rights, include human oversight, and undergo regular reviews to evaluate fairness, accuracy, and potential bias or privacy risks. It is further to be noted that the Grievance Redressal Mechanism is provided for users or victims so that they can redress their grievances regarding Content Moderation. Also, due diligence obligation requires the intermediaries to provide an effective and meaningful grievance redressal mechanism to their users. It is to be noted that the power of the Central government is limited under Section 69-B and 79(3) to issue directions for blocking public access to information on grounds similar to restrictions mentioned under Article 19(2) of the Constitution.

Two private members' bills were introduced in the Lok Sabha to curb the menace of fake news. These are: the Fake News (Prohibition) Bill, 2019 <sup>43</sup> and Prohibition of Fake News on Social Media Bill, 2023. <sup>44</sup> The Government has also launched SAHYOG portal. Almost 36 intermediaries have agreed to join the portal. However, Twitter has refused to be part of SAHYOG portal launched by the Central Government. <sup>45</sup>

---

<sup>40</sup> The Constitutional validity of the provision was challenged before the Bombay High Court which is discussed in the next Section below.

<sup>41</sup> Here the term 'harm' is defined in the explanation appended to Rule 3(1)(b) in the following manner: *'In this clause, "user harm" and "harm" mean any effect which is detrimental to a user or child, as the case may be.'*

<sup>42</sup> Ministry of Electronics and Information Technology (MeitY), Government of India, "Significant Social Media Intermediary: Threshold Notification," available at: <https://www.meity.gov.in/static/uploads/2024/05/Gazette-Significant-social-media-threshold.pdf> (last visited on Apr. 11, 2025).

<sup>43</sup> Lok Sabha Secretariat, *The Personal Data Protection Bill, 2019*, Bill No. 138 of 2019.

<sup>44</sup> Lok Sabha Secretariat, *The Digital Personal Data Protection Bill, 2023*, Bill No. 47 of 2023.

<sup>45</sup> *Shabana v. Govt. of NCT of Delhi and Others* W.P.(CRL) 1563/2024: 2025 SCC OnLine Del 1791.

## 5. Judicial Response

### 5.1 Judicial Standards in Free Speech Adjudication

The issue is canvassed from the perspective of the regulation of digital content. The restrictions under Article 19(2) can be imposed only by or under the authority of a law, no restriction can be imposed by executive action alone without there being a law to back it up. Each restriction must be reasonable. For adjudging the reasonableness of a restriction, the courts consider such factors as: the duration and the extent of the restriction, the circumstances under which, and the manner in which, that imposition has been authorized. The nature of the right infringed, the underlying purpose of the restriction imposed, the extent and the urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, all these considerations enter into the judicial verdict.<sup>46</sup> The burden of showing that the restriction is reasonable is on the state.

The Supreme Court has upheld pre-censorship of movies, considering global trends, and concluded that motion arts must be treated differently.<sup>47</sup> Prior restraint on publication has been held to be invalid in *R. Rajgopal*.<sup>48</sup> The post-censorship of free speech often manifests through arbitrary executive actions such as arrests or other forms of coercion.<sup>49</sup> Also, the Supreme Court has expansively interpreted the freedom of speech and expression and narrowly interpreted the restrictions in Article 19(2). The Court has examined the legal provision's purported effect and not the legislation's or governmental action's purpose or policy. Uncertainty, vagueness, overbreadth, chilling effect, etc., have also been considered<sup>50</sup> along with the proportionality principle while adjudicating claims of freedom of speech and expression violation.<sup>51</sup>

While dealing with the issue of fake news amid the COVID-19 Pandemic, the Supreme Court cautioned the media (print, electronic or social) to maintain a strong sense of responsibility and ensure that unverified news capable of causing panic is not disseminated.<sup>52</sup>

---

<sup>46</sup> *State of Madras v. V. G. Row* AIR 1952 SC 195; *Chintaman Rao v. State of Madhya Pradesh* AIR 1951 SC 118.

<sup>47</sup> *K. A. Abbas v. Union of India* (1970) 2 SCC 780; *Bobby Art International v. Om Pal Singh Hoon* (1996) 4 SCC 1.

<sup>48</sup> *R Rajgopal v. State of Tamil Nadu* (1994) 6 SCC 632.

<sup>49</sup> *Aveek Sarkar v. State of West Bengal* (2014) 4 SCC 257; *Devidas Ramachandra Tuljapurkar v. State of Maharashtra* (2015) 6 SCC 1; *N. Radhakrishnan v. Union of India* (2018) 9 SCC 725; *Imran Pratapgarhi v. State of Gujarat* 2025 INSC 410.

<sup>50</sup> *Shreya Singhal v. Union of India* (2015) 5 SCC 1.

<sup>51</sup> *Anuradha Bhasin v. Union of India* (2020) 3 SCC 637.

<sup>52</sup> *Alakh Alok Srivastava v. Union of India* (2021) 19 SCC 689.



Later, the issue concerning the Fact Check Unit (hereinafter referred to as “FCU”), constituted under Rule 3(1)(b)(v) of Digital Media Ethics Code, 2021 for the purpose of checking the fake news was considered by the Bombay High Court<sup>53</sup> in which Rule 3(1)(b)(v)<sup>54</sup> was under challenge and with respect to contours of the terms 'Fake', 'False' or 'Misleading', Justice G. S. Patel observed that the existence of a fact and its veracity is established not absolutely but on the basis of probabilities. Different judicial standards are applied in terms of evidence law, such as 'belief', 'probability', 'prudence', 'supposition'. Hence, absolute determination of truth may not be possible in all circumstances (i.e., whether a particular news/information presented as fact is fake, false, or misleading).<sup>55</sup>

At the other side lie statements that are neither true nor false: expressions of opinions, hopes, desires. But what the impugned Rule is concerned with is content and information that lies between these polarities: subjective assessments even on objective data, or questioning of the data. With respect to the functioning of the FCU and its validity, the Court opined that nobody knows the basis on which the FCU will make this determination, raising questions as to whether the process will rely on an objective standard and material, if that material is publicly accessible, and if the factual reference material itself is tested for 'truth' or 'accuracy'. This is crucial because if 'fake, false or misleading' does not lend itself to precision and accuracy, then there is the issue of vagueness and overbreadth.<sup>56</sup>

The validity of the impugned provision was also tested on the touchstone of Article 14 as only government data was included for fact-check and not all other data, which amounts to class legislation and not reasonable classification. Class legislation is prohibited by the equality principle enshrined under Article 14.<sup>57</sup>

Regarding the vagueness of "business of the Central Government", primacy has been accorded to the Union Government with respect to subjects falling under the Concurrent List. Articles 73, 77, and 248 further widen the scope of the term 'business of the central government' and virtually everything falls within the ambit of the business of the government.<sup>58</sup>

---

<sup>53</sup> *Kunal Kamra v. Union of India*, Writ Petition (L) No. 9792 OF 2023; 2024: BHC-OS:1575-DB. The matter was heard by Division Bench comprising of Justice G. S. Patel and Neela Gokhale. Majority view [3rd Opinion] rendered by Justice A.S. Chandurkar – 20th Sept, 2024. Justice A.S. Chandurkar concurred with the opinion of Justice G. S. Patel and the impugned portion of the 2021 Rules was declared unconstitutional.

<sup>54</sup> Digital Media Ethics Code, 2021, rule 3(1)(b)(v). The part of the rule challenged was - [or, in respect of any business of the Central Government, is identified as fake or false or misleading by such fact check unit of the Central Government as the Ministry may, by notification published in the Official Gazette, specify].

<sup>55</sup> *Supra* note 53 at para. 111 – 115.

<sup>56</sup> *Id.* at para.109.

<sup>57</sup> *Id.* at para. 184.

<sup>58</sup> *Id.* at para. 181.

## 5.2 Governing Digital Media Content

Compelling arguments were made by the Additional Solicitor General in *Shreya Singhal v. Union of India*,<sup>59</sup> wherein print and other media were distinguished from digital media. The Supreme Court accepted those arguments without qualification, and that there can be creation of offences applied to free speech over the internet alone as opposed to other mediums of communication. However, the Supreme Court also observed that while it may be possible to narrowly draw a section creating a new offence, such as Section 69-A, for instance, yet the validity of such a law will have to be tested on the touchstone of the tests already indicated above.

The argument made by Mr. Shadan Farasat is appealing, i.e., that the law requires two different sets of rules for the media. This is because all major newspapers published in print also have a presence on social media platforms. If the same news is published in a print newspaper, it will be immune from Rule 3(1)(b)(v) of the Digital Media Ethics Code, 2021. However, the above provision will apply if the same news is published on a website or social media handle.<sup>60</sup> While this argument seems to have prima facie merit, it overlooks the concerns raised by Solicitor General Tushar Mehta, which remain unresolved. He raised several illustrative circumstances, such as an old video from another country being shared with a caption claiming atrocities committed by defence personnel in the valley following the enforcement of the J&K Reorganization Act, 2019. He also provided many other examples.<sup>61</sup>

## 5.3 Opacity in the Use of the National Security Exception

While dealing with ban on news channel MediaOne, the Supreme Court held that a reasoned order is integral to the right to freedom of speech and expression under Article 19(1)(a) of the Constitution, as it ensures transparency, accountability, and the ability to seek judicial review. The national security exception, though valid, must not be used as a blanket justification to suppress dissent or evade procedural fairness.<sup>62</sup> Sealed cover procedure violates principles of natural justice and open justice. Such a procedure denies the affected party a fair hearing and deprives them of the opportunity to rebut or challenge the

---

<sup>59</sup> (2015)5 SCC 1, at para. 31.

<sup>60</sup> *Supra* note 44 at para. 168.

<sup>61</sup> Kindly refer to the submissions made by learned Solicitor General Tushar Mehta at p.no. 38 of the opinion of Justice Neela Gokhle.

<sup>62</sup> Following observation in *Manohar Lal Sharma v. Union of India* 2021 SCC OnLine SC 985 is pertinent: “Though the extent of judicial review in matters concerning national security is limited, it does not mean that the State gets a free pass every time the argument of national security is made. This Court held that the State must plead on affidavit and prove that disclosure of information would injure national security.”



evidence used against them, thus chilling free speech and undermining press independence.<sup>63</sup>

Recording of reasons was also emphasized by the Supreme Court while dealing with the internet ban in Jammu & Kashmir.<sup>64</sup> It was further observed that national security cannot be a talismanic incantation to bypass constitutional rights, and any restriction must adhere to the principle of proportionality and be subject to periodic review. The Court declared that the freedom of speech through the internet is protected under Article 19(1)(a) and can only be curtailed following Article 19(2).

From the above discussion, it can be argued that Rule 16<sup>65</sup> should be reconsidered by the Supreme Court on the grounds of the confidentiality clause and the national security perspective. It is submitted that though the proportionality principle may be invoked to examine the validity of the impugned provision, the national security exception permits the government to resort to exceptional measures in national security matters.

#### 5.4 Due Diligence Obligations of Intermediaries

The Supreme Court in *Google India Pvt. Ltd.* clarified that intermediaries are not completely immune from liability; their safe harbour is conditional upon compliance with due diligence obligations.<sup>66</sup> In *Shreya Singhal*, Section 79(3)(b) was read down to mean that intermediaries are liable only upon actual knowledge through a valid court order, ensuring they are not burdened with assessing millions of takedown requests. Such orders must strictly relate to grounds under Article 19(2).<sup>67</sup> The Delhi High Court observed that statutory mechanisms must be exhausted before seeking writ relief under Article 226 against Intermediaries; their obligations regarding Content Moderation remain grounded in statutory compliance.<sup>68</sup> However, with respect to contractual obligations, platforms like 'X' (formerly Twitter) are not amenable to such jurisdiction absent a public duty.<sup>69</sup>

---

<sup>63</sup> *Madhyamam Broadcasting Limited v. Union of India & Ors* (2023) 13 SCC 401; supplying of information in sealed cover was considered a well-established practice by the Supreme Court in service jurisprudence but not favoured with respect to matters affecting fundamental rights. For instance, in *P. Chidambaram v. Directorate of Enforcement* (2020) 13 SCC 791.

<sup>64</sup> *Supra* note 51.

<sup>65</sup> Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009, rule 16.

<sup>66</sup> *Google India Pvt. Ltd. v. Visaka Industries and Others* MANU/SC/1708/2019.

<sup>67</sup> *Supra* note 50.

<sup>68</sup> *Mohammed Hamim v. Facebook India Online Services Pvt. Ltd.* Writ Petition (Civil) 1227/2024; 2024:DHC:692.

<sup>69</sup> *Sanchit Gupta v. Union of India* W.P.(C) 10030/2024, 2024:DHC:5713.

## 6. Regulatory Challenges and Gaps in Tackling Fake News

Various forms of content shared on digital platforms are already subject to regulation under multiple existing laws addressing different aspects of mis/disinformation, including the IT Act and the 2021 Rules made thereunder. However, the modern notion of fake news as perceived has definitional ambiguity. There is no precise scope of the term. It is worth mentioning that due to definitional ambiguities, the term 'fake news' is avoided in legal discourse. The United Nations,<sup>70</sup> European Democracy Action Plan (EDAP) and the United Kingdom<sup>71</sup> have used Misinformation and Disinformation. In the 2021 Rules, false or misleading information is used.<sup>72</sup> Without a clear definition, it becomes difficult to decide which information amounts to fake news. A decision on a claim of Misinformation requires interpretation and agreement on what distinguishes legitimate information from Misinformation. Regulatory action needs to be informed by robust evidence. An opinion/value judgment cannot simply be dismissed merely because those views do not conform to the existing majority belief system.<sup>73</sup>

Secondly, due to the very nature of the content, it becomes viral the moment it appears online, and it spreads rapidly, and it becomes strenuous to identify the originator of the content. It may be difficult legally to impute any criminal intent simply by sharing the content without verifying the truthfulness of it. Moreover, the person charged with sharing fake news will always have an *alibi* that it was shared innocently unless the contrary is proved.

Excessive blocking of content and aggressively targeting people for sharing false/misleading information would amount to transgressing the State's limits by violating the freedom of speech and expression. Conferring excessive authority to law enforcement agencies to track and arrest the offender may result in a violation of privacy rights as well.<sup>74</sup>

---

<sup>70</sup> United Nations, "Countering Disinformation," available at: <https://www.un.org/en/countering-disinformation> (last visited on Mar. 30, 2025).

<sup>71</sup> UK Government, "Disinformation and 'Fake News': Government Response to the Committee's Fifth Report of Session 2017–19" (2019), available at: <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomeds/2184/2184.pdf> (last visited on Mar. 29, 2025).

<sup>72</sup> The impugned part of Rule 3(1)(b)(v) wherein the term 'fake news' was used, which was added by 2023 Amendment, has already been declared unconstitutional by the Bombay High Court.

<sup>73</sup> Zoe Adams, *et.al.*, "(Why) is Misinformation a Problem?" 18 *Perspective on Psychological Science* 1436 (2023).

<sup>74</sup> *WhatsApp LLC v. Union of India*, W.P.(C) No. 7284 of 2021 (Del HC); *Facebook Inc. v. Union of India*, W.P.(C) No. 7281 of 2021 (Del HC); "Explained: Why is WhatsApp Challenging Indian Govt's Order Over Privacy?", *LiveMint*, available at: <https://www.livemint.com/news/india/explained-why-is-whatsapp-challenging-indian-govts-order-over-privacy-11714101587758.html> (last visited on Apr. 13, 2025).



Moreover, there is little to no answer as to how it impacts individuals in the short or long term. There may be a political impact, increasing cynicism and apathy to encourage extremism.<sup>75</sup> However, in the case of fake news, such harm – often manifesting as Misinformation, manipulation or public confusion – may be diffuse or difficult to quantify in conventional legal terms. A crucial requirement of establishing a causal link between the speech and the harm it allegedly causes appears absent. Focusing on individual harm further weakens the argument to regulate fake news.

Global nature of the internet presents significant jurisdictional and enforcement challenges. Since Intermediaries frequently operate across multiple jurisdictions, disinformation often crosses national boundaries and complexities arise in enforcement of domestic laws. The regulation of online disinformation intersects directly with freedom of speech and expression. The technological complexity and scale further complicate regulation. The sheer volume, velocity, and variety of online information make manual oversight impractical.

The rise of encrypted and closed-platform communication channels, such as WhatsApp or Telegram, poses distinct regulatory issues. Though end-to-end encryption is essential for privacy and security but it impedes the ability to trace sources of disinformation and thereby limits law enforcement capabilities and regulatory oversight.<sup>76</sup> Moreover, any attempt to weaken encryption to facilitate regulatory monitoring inevitably raises significant privacy, cybersecurity, and human rights concerns.<sup>77</sup>

OTT platforms directly deliver content to the consumers via internet and fall in the category of the intermediary, and thereby bypass the traditional broadcasting laws like the Cable Television Networks (Regulation) Act, 1995. Moreover, OTT platforms increasingly feature user-generated or third-party content e.g., documentaries, podcasts, talk shows etc. with little editorial control. In the absence of licencing and editorial oversight, the inclusion of such diverse sources of information heightens the risk of unchecked disinformation or misinformation. Also, oversight and fact-checking mechanisms might be weaker compared to mainstream media, given the scale and diversity of content.

---

<sup>75</sup> *Supra* note 3.

<sup>76</sup> Anirudh Burman, “Considering India’s Encryption Policy Dilemma” *Carnegie Endowment for International Peace* (2023), available at: <https://carnegieendowment.org/research/2023/11/considering-indias-encryption-policy-dilemma?lang=en> (last visited on Aug. 4, 2025).

<sup>77</sup> BSR, *Human Rights Impact Assessment: Meta’s Expansion of End-to-End Encryption*, available at: <https://www.bsr.org/reports/bsr-meta-human-rights-impact-assessment-e2ee-report.pdf> (last visited on Aug. 4, 2025).

*Freedom of Speech in the Digital Age: Legal and Judicial  
Responses to Fake News in Indian Democracy*

It is well-established that digital platforms i.e. social media intermediaries and OTT platforms are driven by advertising revenue and thrive on maximizing user engagement. To this end, they employ algorithms and artificial intelligence to personalize and prioritize content in ways that often lack transparency. There is no transparency regarding how algorithms determine content virality, why certain posts appear on a user's timeline, or how content is prioritized and disseminated. This opacity makes it difficult to understand how and why fake news spreads rapidly, and raises serious concerns about the lack of accountability in Content Moderation practices.<sup>78</sup> Behavioural advertisements run on digital media platforms, particularly during elections sponsored by political parties, may be weaponized to manipulate democratic processes by targeting individuals.<sup>79</sup>

The lack of transparency in content amplification, mainly through paid promotions and algorithmic systems, makes it difficult to distinguish genuine narratives from sponsored ones. Amid evolving political narratives and social unrest, this opacity enables the spread of Misinformation, fosters polarization, and undermines the electorate's ability to make informed decisions.

The self-regulation approach has been incorporated in the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, and the Digital Personal Data Protection Act, 2023.<sup>80</sup> Automated tools are also recognized under both legal instruments.<sup>81</sup> However, the regulation of such tools remains largely unaddressed. Their deployment is left to the discretion of the intermediaries, with no defined benchmarks for their efficacy, transparency, or accountability. Indian law lacks formal requirements for algorithmic audits, systemic risk assessments, or independent data access for researchers. As a result, there is no structured mechanism to evaluate the effectiveness, fairness, or broader societal impact of automated moderation systems, highlighting a significant regulatory gap. In essence, while India's framework provides reactive mechanisms for content regulation, it does not mandate proactive risk mitigation, algorithmic transparency, or independent oversight.

---

<sup>78</sup> Digital Platforms Regulator Forum, Government of Australia, "Working Paper 1: Literature Summary – Harms and Risks of Algorithms", June, 2023, *available at*: <https://dp-reg.gov.au/sites/default/files/documents/2023-11/Working%20paper%201%20Literature%20Summary%20-%20Harms%20and%20risks%20of%20algorithms.pdf> (last visited on Apr. 20, 2025).

<sup>79</sup> Anthony Nadler, Matthew Crain, and Joan Donovan, "Weaponizing the Digital Influence Machine: The Political Perils of Online Ad Tech" *Data & Society*, *available at*: [https://datasociety.net/wp-content/uploads/2018/10/DS\\_Digital\\_Influence\\_Machine.pdf](https://datasociety.net/wp-content/uploads/2018/10/DS_Digital_Influence_Machine.pdf) (last visited on Apr. 20, 2025).

<sup>80</sup> The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, rule 4(4) and proviso 2 and 3.

<sup>81</sup> Digital Personal Data Protection Act, 2023 (Act 22 of 2023), s. 2(b), (h), (x).



## 7. Conclusion

The spread of fake news has been significant about various incidents, such as the Kumbh Mela, the Manipur violence, and the circulation of deepfake videos featuring celebrities and politicians during elections. However, no empirical research has yet been conducted to systematically assess the causes, motivations, impacts, attitudes, and behavioural changes of both the perpetrators and the public at large.

The absence of specific legal frameworks imposing a clear burden on intermediaries to address fake news has created significant regulatory gaps in the digital ecosystem. Despite their pervasive role in public discourse, social media platforms' automation and artificial intelligence (AI) tools remain largely unregulated. This opacity makes it difficult to understand how and why fake news spreads rapidly, and raises serious concerns about the lack of accountability in Content Moderation practices. Further, deliberate non-compliance resulting in complete ban of OTT platforms further establishes the weakness of the self-regulatory model.<sup>82</sup> This gap raises essential questions about the efficacy of the existing self-regulatory framework and accountability of the social media intermediaries.

Moreover, the absence of binding obligations to ensure fairness, consistency, transparency, accountability or procedural safeguards concerning Algorithmic Amplification of content, detecting fake news, and de-ranking misleading content undermines both user rights and the broader democratic ethos. There is an urgent need for legislation that regulates the technological architecture of content dissemination and enforces procedural fairness and user-centric accountability.

Based on the conclusions drawn above, the following suggestions are put forward: The quantitative and qualitative research, grounded in first-hand data, to evaluate public awareness, attitudes, and behavioural patterns in distinguishing fake news from authentic information must be undertaken. Longitudinal studies should supplement this to ensure the reliability and relevance of findings over time. A co-regulatory model that combines state oversight with industry participation should be adopted, given the weak compliance associated with the self-regulatory framework.<sup>83</sup> AI based automated tools deployed for

---

<sup>82</sup> Press Information Bureau, "Government Enforces Norms of Journalistic Conduct through PCI, Programme Code and IT Rules to Curb Fake and Defamatory Content across Print, TV & Digital Platforms," July 30, 2025, available at: <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2150335> (last visited on Aug. 5, 2025).

<sup>83</sup> Archit Lohani, "Countering Disinformation and Hate Speech Online: Regulation and User Behavioural Change" *Observer Research Foundation*, Jan. 25, 2021, available at: <https://www.orfonline.org/research/countering-disinformation-and-hate-speech-online> (last visited on Aug. 5, 2025).

*Freedom of Speech in the Digital Age: Legal and Judicial  
Responses to Fake News in Indian Democracy*

content moderation must be regulated through appropriate legislation to ensure fairness, transparency and accountability. Due to the black-box nature of AI tools used in content moderation and fact-checking, it is suggested that the State should continue its efforts in correction, debunking, and fact-checking, despite their limitations. However, to enhance effectiveness and public trust, these processes must be democratized by ensuring transparency, involving independent bodies, and preventing potential misuse for political ends. Horizontal application of fundamental rights against private entities must be encouraged to adjudicate public law issues involving platform liability, private censorship, and non-State restrictions on free speech, particularly relevant in cases involving significant social media intermediaries.<sup>84</sup> Apart from legal regulation, it is necessary that individuals adopt responsible online behaviour and develop critical thinking skills to counter fake news effectively. Digital Media Literacy should be introduced early in education and go beyond safety to include verifying information. It must be accessible to all age groups and integrated into teacher training and higher education to build an informed and resilient society.<sup>85</sup>

---

<sup>84</sup> *Kaushal Kishore v. State of U.P.* (2023) 4 SCC 1.

<sup>85</sup> Peter Coe, “Tackling Online False Information in the United Kingdom: The Online Safety Act 2023 and its Disconnection from Free Speech Law and Theory” 15 *Journal of Media Law* 213-242 (2023).