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ONLINE DISINFORMATION AND ELECTORAL DEMOCRACY: COMPARATIVE CONSTITUTIONAL RESPONSES, WITH SPECIAL REFERENCE TO INDIA

Mehakpreet Kaur¹

I. ABSTRACT

In the age of technology, online misinformation becomes a serious threat to free and fair elections. The rapid spread of misinformation on social media platforms is due to several factors, such as political advertising, fake social media accounts, and artificial intelligence. This type of information can affect voters, mislead them and fill public opinion with doubt in elections and democratic processes. The issue has been addressed in various legal ways in different countries, depending on the structure of the country's constitution, and the interpretation of freedom of speech and government control. This paper makes a comparative analysis of the legal strategies undertaken in the EU, the UK, the USA, Germany, and Singapore to address online electoral disinformation. It also discusses the provisions enshrined in the Indian Constitution, specifically Articles 19(1)(a), 19(2) and 324, legislations like the Representation of the People Act, 1951 and the Information Technology Act, 2000. It also examines the 2023 amendment to Rule 3(1)(b)(v) of the IT Rules concerning a government-notified Fact Check Unit. The Bombay High Court, following a split verdict and a third-judge opinion, struck down the amendment by its final order dated 26 September 2024. The Union's challenge to that judgment is presently pending before the Supreme Court. The paper states that the current strategy in India is mainly government-led and doesn't have any proper and well - defined election disinformation-related legislation. The paper suggests a mechanism that safeguards election processes against negative information and at the same time preserves freedom of expression. It emphasizes that India needs to have its own model, which should not be a replication of other countries.

KEYWORDS

¹ 1st-Semester LL.M. Student at Lovely Professional University, Punjab (India). Email: mehakmultani1604@gmail.com

Online disinformation, Electoral democracy, Comparative constitutional law, Freedom of speech, Election Commission of India.

II. INTRODUCTION

With the prevalence of the internet and social media platforms, there has been an increase in the manipulation of political information. It is acquired and disseminated in different ways. Social Media portals, different online news portals, and messaging apps have facilitated citizens' engagement in political debates and in the circulation of information about elections and political candidates. This is the advantage of these kinds of platforms, as it helps citizens to be aware of the election process and also of the candidates contesting the elections. On the other hand, these platforms have also created opportunities for the dissemination of false and misleading information.

Online disinformation refers to the voluntary creation or dissemination of false or manipulated information to mislead people. Election-related information includes misinformation, manipulated videos, inaccurate or fabricated information about candidates, fake opinion polls, fake voting information, and deepfakes created by AI.

In recent times, the development of Artificial Intelligence and digital technologies has worsened the issue of dissemination of online disinformation. With Generative AI, users can create realistic images, videos, audio, and text that may not always be identified as AI by the general public as a whole. The algorithms of social media push controversial and manipulated information to many of their viewers. Therefore, such kinds of activity can be used to shape public opinion and voting using digital platforms.

Electoral democracy refers to the political system wherein the citizens of the country choose their government leaders through free and fair elections. Nowadays, with the prevalence of manipulated information on various social media platforms, the preferences of citizens are affected merely on the basis of some false information available online. This adversely affects citizens' capacity to exercise their political preferences through unrestricted access to information. If a voter is exposed to a lot of false or manipulated information, they may not know how to differentiate between reliable and unreliable information. This can impact the trust of the people and the

essence behind the fairness of elections. This issue raises serious constitutional questions regarding political speech and freedom.

In the United States, political speech receives particularly strong protection under the First Amendment. The Supreme Court has held that false factual statements are not categorically excluded from constitutional protection merely because they are false, although established forms of legally actionable harm remain subject to regulation. In *United States v. Alvarez*, 567 U.S. 709 (2012), the Court rejected the proposition that falsity alone removes First Amendment protection, while *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), requires a public official alleging defamation to establish 'actual malice.' By contrast, European regulatory frameworks, including Germany's, accept more extensive statutory regulation of harmful or unlawful online content. The United Kingdom similarly regulates specified harmful communications, while Singapore adopts a more government-directed approach. These differing models illustrate distinct methods of reconciling freedom of expression with electoral integrity.

The situation in India due to huge electoral base of India include large populace and divergent sets, along with huge Internet use of social networking and messaging. The basic right of Freedom of speech is mentioned in Article 19(1)(a) of the Indian Constitution, restrictions are provided under Article 19(2) in certain cases.² The Election Commission of India is one of the big offices that is endowed with power in Article 324 relating to mode of conduct of elections.³ At present the following two laws were already in place which cover manipulation of information online, although they don't specifically target electoral information: Representation of the People Act, 1951 and the Information Technology Act, 2000.⁴ For now there's no specific legislation to tackle online electoral disinformation in India

A. Significance Of the Study

This study is significant for the following reasons:

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

³ The Constitution of India, art.324

⁴ The Information Technology Act, 2000, No. 21 of 2000

1. With the surge of social media and artificial intelligence, online disinformation is increasingly emerging as an election issue. The Digital regulatory framework in India is also underway. As such, this study has implications for the ongoing legal and policy debates.
2. The citizens of the country require accurate information so that they will be able to choose their representative wisely without being affected by any kind of misinformation. If any kind of false information is circulated through the internet, then it might cause confusion and undermine the confidence of the voters in democratic institutions. The study of this issue can help in developing better ways to protect the fairness and integrity of elections.
3. The study examines the strategies of the United States, European Union, Germany, United Kingdom and Singapore and then makes a comparison with India. This comparison helps to identify the advantages and disadvantages that are present in the Indian legal system regarding this issue and gives insights about developing new models to deal with this issue.
4. The other major issue is balancing the fight against harmful disinformation and freedom of speech under Article 19(1)(a) of the Indian Constitution. The study explores how to regulate elections to prevent electoral harm without giving the government too much power to control political speech.
5. The study seeks to give concrete solutions for the law system to be improved in India. It can serve as a resource for the lawmakers, courts, Election Commission of India, social media companies and others to create a mechanism that upholds electoral integrity while safeguarding constitutional rights. The study is important at an overall level as it deals with a problem which is becoming more salient in the fields of constitutional law, election law and technology law. It aims to help formulate a clear and balanced framework for addressing electoral disinformation in India within the Constitution.

B. Research Problem

Online disinformation is a major threat to electoral democracy because during election periods, misinformation can be circulated through various social media sites and messaging apps by fake accounts, manipulated videos, and AI-generated content.⁵ Such information can be used with the purpose of confusing the voters and effecting the reputation of candidates contesting the elections and lowers the public confidence in the electoral process.⁶

But when it comes to online disinformation regulation, there is another constitutional issue. The right to freedom of speech and expression could be limited by the government's tight grip on the internet. Granting such powers to the government can lead to censorship or silencing the right of political criticism that the citizens of the country have, specifically in situations when the information is not determinable as false and is subject to interpretation. So, a balance must be defined between safeguarding elections against harmful disinformation and ensuring freedom of speech. India warrants close examination because of the exceptional scale of its electoral process. In the 2024 General Election to the Lok Sabha, India had approximately 97.98 crore registered electors, of whom about 64.64 crore cast their votes.⁷

This is a more prominent issue in India as there is no comprehensive, standalone legislation addressing online electoral misinformation. Instead, various laws, rules and regulatory regimes focus on various aspects of online content and political elections. While the constitutional protection of freedom of speech in Article 19(1)(a), the reasonable restrictions in Article 19(2) ⁸and the Powers of the Election Commission under Article 324 represents an important legal framework, it is unclear whether it is

⁵ Daniel Funke & Daniela Flamini, "A Guide to Anti-Misinformation Actions Around the World," Poynter Institute (2021).

⁶ UN Human Rights Council, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, A/HRC/47/25 (2021).

⁷ Election Commission of India, *An Atlas: General Election to Lok Sabha 2024* (14 February 2025), "Lok Sabha Elections 2024 @ Glance" and "Voter Turnout % 2024 vs 2019".

⁸ The Constitution of India, art.19(1)(a), 19(2).

adequate to address the challenges posed by modern disinformation, such as deepfakes and AI-generated content.

It also demonstrates how hard it is to grant executive powers to check and manage what is considered fake information – the controversy over the government Fact Check Unit bears this out. In conclusion, the primary research problem is to find how India can effectively curb electoral disinformation in online platforms without compromising the freedom of speech and excessive government interference.

C. Research Questions

1. What are the different approaches that are adopted in the United States, European Union, Germany, United Kingdom, and Singapore to combat online disinformation in the context of elections
2. What are the positive and negative aspects of regulations specifically made for online disinformation during the period of elections?
3. What is the current system of governance regarding disinformation in electoral processes online in India?
4. Identify the gaps in the existing legal and constitutional framework in India. What to do with online electoral disinformation in the context of freedom of speech and to avoid executive overreach in India?

D. Research Objectives

1. To explore the legal and constitutional strategies taken by key jurisdictions in addressing online electoral disinformation.
2. To review the current constitutional, statutory and regulatory framework of India on online electoral disinformation.
3. To find out the key loopholes and dilemmas of the existing framework in India.
4. A comparison with the approach of selected jurisdictions and to find useful lessons for the Indian approach.

E. Research Methodology

In this paper, the doctrinal and comparative law research method is used. It draws its main inspiration from constitutional text, statutes, delegated legislation (including the IT Rules) and judicial decisions alongside secondary sources such as scholarly commentary, international soft-law documents and official advisory documents. The comparative analysis is limited to a purposive sample of five jurisdictions – the United States, the European Union, Germany, the United Kingdom and Singapore – that collectively map the regulatory spectrum from self-regulation to co-regulation to state-controlled regulation.

This is not an exhaustive list and is selected with the aim of providing an in-depth analysis, rather than a broad overview. The study does not attempt to measure the impact of disinformation on elections empirically, nor is this the task of legal research, but one still debated in the field of political science and communications scholarship. Analysis is limited to electoral disinformation, not disinformation on other topics that is not related to the election, such as public health.

III. CONCEPTUAL AND CONSTITUTIONAL FRAMEWORK

A. Meaning of Online Disinformation

Online disinformation is false or misleading information that is deliberately created or circulated with the purpose of deceiving people. It can be transmitted via various social media sites, messaging apps, websites, online ads, and more. In the context of elections, disinformation can involve false narratives about candidates contesting the elections, fake election results, misleading information about the voting process, manipulated photos or videos, fake opinion polls, and the creation of AI-generated deepfakes.

There is a difference between disinformation and misinformation. Misinformation refers to information that is incorrect and being circulated without any intent to deceive or manipulate, whereas disinformation is the intentional act of providing false information or manipulation. The digital environment has increased the problem since information can be spread to millions of people in a short period of time.

B. Meaning of Electoral Democracy

Electoral democracy refers to the form of democracy in which the citizens of the country have the right to their representatives elects its leaders through free and fair elections. A election process in the democratic nation must allow the voters to be informed, to discuss political issues and to consider the candidates before making their choice.

Thus, the electoral process is not the only factor that ensures electoral democracy, but the accuracy and the trustworthiness of the information provided to voters is also a key factor because on the basis of this information provided only people will choose their representatives. During an election if there is widespread dissemination of false information, voters may make decisions based on that false information. This may affect trust of the people in government or in political processes and the electoral process.

C. Reasons for Online Disinformation during Elections

Elections are susceptible to disinformation, in part because of the following reasons.

1. **First, a short time to correct:** There's a window of opportunity between an election that false information can get out there fast, and there's not enough time to get it right in the eyes of the authorities, the press, or the candidate.⁹
2. **Secondly, targeting emotions of general public are contagious:** Misinformation that evokes the feeling of fear, anger, or excitement in the general public attracts more attention and spreads faster on social media.¹⁰
3. **Third, political microtargeting:** Political messages can be targeted at particular groups of voters via digital platforms. This may render politics less transparent, as different groups may be sent different messages.¹¹

⁹ Venice Commission, "Report on Digital Technologies and Elections," CDL-AD (2019)016, para. 24

¹⁰ William J. Brady et al., "Emotion Shapes the Diffusion of Moralized Content in Social Networks," 114 Proc. Nat'l Acad. Sci. 7313 (2017).

¹¹ Frederik J. Zuiderveen Borgesius et al., "Online Political Microtargeting: Promises and Threats for Democracy," 14 Utrecht L. Rev. 82 (2018).

4. **Fourthly, fake accounts and bots:** Fake accounts can lead to the creation of large networks that appear to be more popular or accepted than they truly are.¹²
5. **Fifth, content generated through various AI tools:** Using AI to generate realistic images, audio and videos. Political content, with the help of deepfakes, can be hard for voters to distinguish.
6. **Sixth, foreign interference:** Disinformation campaigns can also be launched abroad, and aim to manipulate public opinion or the electoral system.

All these factors are relevant when thinking about electoral integrity in the context of online disinformation. Elections are susceptible to disinformation, in part because of the following reasons.

D. Regulation Of Information and Freedom of Speech

How to control disinformation poses a tricky legal dilemma. On the other hand, governments have an interest in safeguarding elections and voters from intentional manipulation. However, over-regulation could abridge freedom of speech, especially the freedom to engage in political speech.

There are three big ideas that can be employed to understand this debate:

1. **Marketplace of Ideas:** The marketplace argument is very US-centric. It indicates that ideas should compete freely, except where they are clearly harmful and there is no discussion or debate to uncover their truth.¹³ This approach ensures that there should be less intervention by government during political speech.
2. **Deliberative Democracy:** Deliberative democracy is an approach to improving the quality of public discussion. Citizens need and deserve credible and meaningful opportunities to engage in meaningful political

¹² Samuel C. Woolley & Philip N. Howard, *Computational Propaganda: Political Parties, Politicians, and Political Manipulation on Social Media* (Oxford Univ. Press, 2018).

¹³ *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting).

discussions.¹⁴ Thus, some regulation of online platforms might be warranted when misinformation poses a serious threat to the conditions for democratic discussion.

3. **Militant Democracy:** Militant democracy, as it is known in Germany, understands that a democracy has to take steps to make itself secure in relation to actions which attack its democratic system.¹⁵ In this way, greater weight is placed on protecting democratic institutions, even if this means some limitations in terms of free speech.

None of these approaches is completely followed in India. In India, the framework includes the constitutional protection of freedom of speech but also provides for “reasonable restrictions” under Article 19(2).¹⁶

IV. INTERNATIONAL LEGAL FRAMEWORK

There are certain important principles provided under international law that can be used to maintain balance between freedom of expression and regulation of harmful information.

The International Covenant on Civil and Political Rights (ICCPR) guarantees Freedom of expression through Article 19. It states that restrictions may only be allowed if they are lawful, necessary, and proportionate to an appropriate purpose.¹⁷

There have also been calls from international human rights institutions on the use of sweeping laws to combat ‘fake news’. These laws can be general, and they could be applied to limit the freedom of journalists, political opponents or government critics.

International standards thus imply that governments should not be allowed to wield unlimited powers in deciding what is true and what is false. Regulation must take the form of a law, legitimate aim, necessity and proportionality.

¹⁴ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services (Digital Services Act) [2022] OJ L277/1, art. 34-35 (systemic risk assessment and mitigation).

¹⁵ Karl Loewenstein, "Militant Democracy and Fundamental Rights, I," 31 Am. Pol. Sci. Rev. 417 (1937).

¹⁶ Shreya Singhal v. Union of India, (2015) 5 SCC 1.

¹⁷ International Covenant on Civil and Political Rights, art. 19, Dec. 16, 1966, 999 U.N.T.S. 171.

International approaches also increasingly focus on issues such as:

1. Transparency of political advertising;
2. Platform accountability;
3. Transparency of algorithms;
4. Protection against manipulation;
5. Independent oversight; and
6. Protections of freedom of expression.

These principles give useful guidelines for considering India's approach.

A. Indian Constitutional Framework

The strategy of countering online electoral disinformation in India can be understood primarily in the context of the Constitution, election laws and information technology laws.

1. **Article 19(1)(a) of Indian Constitution: Freedom of Speech and Expression:** Article 19(1)(a) provides citizens the right to freedom of speech and expression.¹⁸ This right includes political speech, as it is important to allow citizen discussion of political issues, criticism against governments and the expression of opinions about candidates and public policies.¹⁹ The right to information is also significant in the electoral context as voters require information to make informed choices in politics. As such, a law limiting online disinformation should take into account its impact on freedom of speech.
2. **Article 19(2): Reasonable Restrictions:** The freedom of speech and expression guaranteed under Article 19(1)(a) is subject only to reasonable restrictions imposed by law under Article 19(2) in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. In

¹⁸ The Constitution of India, art. 19(1)(a)

¹⁹ People's Union for Civil Liberties v. Union of India, (2003) 4 SCC 399; Union of India v. Association for Democratic Reforms, (2002) 5 SCC 294

Kaushal Kishor v. State of U.P., (2023) 4 SCC 1, the Constitution Bench affirmed that these grounds are exhaustive. ‘Disinformation’ is not an independent ground under Article 19(2). Accordingly, any law regulating electoral disinformation must connect the restricted speech to a constitutionally recognised harm—for example, defamation, a proximate threat to public order, security of the State in sufficiently grave cases, or incitement to an offence and must also satisfy the requirements of reasonableness and proportionality.

3. **Article 324: Election Commission of India:** The Election Commission of India (ECI) has the authority to supervise, direct and control elections as per Article 324.²⁰ The courts have read the power given under this article to fill the gaps of election laws.²¹ ECI is extremely significant in ensuring the fairness and integrity of the electoral process. In the digital age, its role grows in significance as online platforms are a source of political information. The application of Article 324 to tackle online misinformation should also be done in accordance with the Constitution and law. The ECI does not have the right to replace a legislation where the Parliament has not provided a legal framework.

B. Indian Legal Framework

There is no exclusive legislation at the present moment in India to deal with online electoral disinformation. Rather, a number of legal provisions might apply depending on the nature of the content.

The legal instruments that are important are:

1. **The Representation of the People Act, 1951:** It includes provisions on the subject of electoral offences and corrupt practices.²²
2. **The Information Technology Act, 2000:** It sets the foundation for some of the aspects of online activity and intermediary regulation.²³

²⁰ The Constitution of India, art. 324.

²¹ *Mohinder Singh Gill v. Chief Election Commissioner*, (1978) 1 SCC 405.

²² The Representation of the People Act, 1951, No. 43 of 1951, ss. 123, 125, 126

²³ The Information Technology Act, 2000, No. 21 of 2000

3. **Information Technology Rules:** It provides the obligations for online intermediaries and platforms.²⁴
4. **The guidelines and advisories of the Election Commission:** It cover multiple aspects of election-related digital content and political communication.
5. **Judicial rulings:** The courts have an important function in setting boundaries on government and platform regulation. These are India's existing laws, but they do not constitute a single standalone law dedicated to combating the new kind of disinformation –AI-generated content and deepfakes.

V. COMPARATIVE ANALYSIS

1. United States

Political speech is given very strong protection by the First Amendment.²⁵ Courts have struggled to apply punishment to speech if it is false, but not if it is actually harmful. Courts have been reluctant to punish false political speech unless it is truly harmful, like defamation. *Citizens United v. FEC*²⁶ further upheld that political spending is a form of speech. The U.S. federal law does not directly target election disinformation. Section 230 of the Communications Decency Act protects the platforms from liability for the content which is posted by the users.²⁷

Federal legislation has repeatedly been proposed to increase transparency in online political advertising. The Honest Ads Act has been reintroduced in successive Congresses, including as S. 486 in the 118th Congress, but that measure did not become law.

2. The European Union and Germany

²⁴ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023

²⁵ U.S. Const. amend. I.

²⁶ See U.S. Const. amend. I; *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).

²⁷ Communications Decency Act 1996, 47 U.S.C. § 230.

The EU Digital Services Act (DSA) requires very large online platforms and search engines to assess and mitigate systemic risks, including risks affecting electoral processes, and imposes transparency, auditing and data-access obligations. Since 1 July 2025, the former 2022 Code of Practice on Disinformation has operated as a Code of Conduct under Article 45 of the DSA. For adhering VLOPs and VLOSEs, its commitments are independently auditable and constitute a relevant benchmark in assessing compliance with the DSA's systemic-risk mitigation obligations.²⁸

The earlier law in Germany, called NetzDG, mandated platforms remove "clearly illegal" content within short time or face large fines. The lack of "over-removal" was criticized.²⁹ Since then, most of NetzDG has been integrated into the EU's DSA framework. Germany's strategy is influenced by its doctrine of "militant democracy," learned from the failure of its Weimar Republic.

3. United Kingdom

The Online Safety Act, 2023 aims to address "illegal content" on platforms and defines a limited criminal offence for knowingly sending false information that could cause actual harm.³⁰ The UK's independent Electoral Commission regulates campaign finance, but has less control over online political content than EU regulators do.³¹

4. Singapore

Singapore's Protection from Online Falsehoods and Manipulation Act (POFMA), 2019 authorises Ministers to issue directions concerning false statements of fact where the statutory conditions are satisfied. A recipient seeking to challenge a Part 3 Direction must first apply to the Minister who caused the direction to be issued for its variation or cancellation under section 19. If that application is refused wholly or partly, the recipient may appeal under section 17 to the General Division of the High Court. Under section 17(5), the Court may set the direction aside only where the recipient did

²⁸ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services (Digital Services Act) [2022] OJ L277/1, art.26, 34,40

²⁹ Heidi Tworek & Paddy Leerssen, "An Analysis of Germany's NetzDG Law," Transatlantic Working Group Paper, Apr. 2019.

³⁰ Online Safety Act 2023, c. 50 (UK), s. 179.

³¹ UK Electoral Commission, "Digital Campaigning: Increasing Transparency for Voters," Jun. 2018.

not communicate the statement in Singapore, the statement is not a statement of fact or is true, or compliance with the direction is technically impossible. Although judicial scrutiny is therefore available, the statutory grounds of appeal are specifically confined.³²

Country	Who Decides	Main Body	Key Risk
United States	Mostly platforms	Platforms / FEC (finance only)	Too little protection for voters
EU	Platforms, under government-set rules	European Commission	Too much power concentrated in one EU body
Germany	Platforms operate under the DSA/DDG supervisory framework	Bundesnetzagentur as Digital Services Coordinator; European Commission enhanced VLOP/VLOSE obligations	Safeguarding against unnecessary removal of lawful expression remains relevant
United Kingdom	Platforms, narrow criminal law	Ofcom / Electoral Commission	Few structural safeguards

³² Human Rights Watch, "Singapore: Reject Sweeping 'Fake News' Bill," Apr. 2019.

Singapore	Minister makes the initial statutory determination, subject to an application for ministerial reconsideration and a subsequent court appeal	Relevant Minister / General Division of the High Court	Judicial appeal is available, but the statutory grounds for setting aside a Part 3 Direction are limited by section 17(5)
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The obvious pattern is this: The more the government says is "false," the more likely it is that the government will be misused. The most secure systems ensure an independent body deciding.

VI. JUDICIAL AND LEGISLATIVE DEVELOPMENTS IN INDIA

A. Key Legislations

- 1. The Representation of the People Act, 1951:** Offences of making false statements on a candidate's character in an attempt to influence an election; restrictions on certain forms of speech in the 48-hour period prior to the election day.³³ These rules were put in place prior to the advent of social media and are difficult to adapt to rapid social media communications.
- 2. The Model Code of Conduct:** It is a set of guidelines enforced by the ECI, not legally binding, but in line with political parties' agreement, making it less effective in combating online disinformation.
- 3. The Information Technology Act, 2000:**
 - The Supreme Court in *Shreya Singhal v. Union of India* (2015) declared Section 66A that criminalized "offensive" online communication, to be

³³ The Representation of the People Act, 1951, No. 43 of 1951, ss. 123, 125, 126.

too vague and broad, and that it was chilling legitimate speech.³⁴ This case is the backbone of Indian free-speech law on the internet.

- Section 69A of the Act enables the government to block online content.³⁵
- Section 79 exempts platforms from liability when they adhere to rules set by the government broadly, but not as broadly as, the US's Section 230.³⁶

4. The 2023 IT Rules Amendment, 2023 – the Fact Check Unit: The 2023 amendment to Rule 3(1)(b)(v) linked intermediary due diligence to information concerning the business of the Central Government identified by a notified Fact Check Unit as ‘fake or false or misleading.’ After a split Division Bench decision on 31 January 2024, the Supreme Court stayed the notification designating the PIB Fact Check Unit on 21 March 2024. On 20 September 2024, the third Judge held that the amended Rule violated Articles 14, 19(1)(a) and 19(1)(g), was ultra vires the Information Technology Act, 2000, and was vague, overbroad and disproportionate. The final Bombay High Court order dated 26 September 2024 accordingly struck down the amendment. The Union’s appeal against that judgment remains pending before the Supreme Court.

5. Bharatiya Nyaya Sanhita, 2023: The provisions continue from older laws to promote spreading of statements likely to cause public alarm or promote enmity; some provisions, but not always used, apply to statements about the electoral process.³⁷

B. Key Judicial Developments

In *Anuradha Bhasin v Union of India* (2020), the Supreme Court emphasized that any restriction on internet access or speech should be necessary, suitable, and no more

³⁴ Shreya Singhal v. Union of India, (2015) 5 SCC 1.

³⁵ The Information Technology Act, 2000, No. 21 of 2000, s. 69A.

³⁶ Id., s. 79.

³⁷ The Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023.

restrictive than necessary, which could become a new principle for future laws on disinformation.³⁸

1. **Internet and fundamental rights:** The Supreme Court acknowledged that the internet isn't just a convenience; it's now a genuine medium through which people exercise their freedom of speech and expression under Article 19(1)(a).
2. **Necessity of restrictions:** Any restriction on internet-based speech needs to serve a real, legitimate purpose. It can't just be imposed because it makes things administratively easier for the government.
3. **Relevance to disinformation:** This becomes very relevant when there are efforts from the side of government to crack down on false or misleading information that is circulating online and affecting public opinion. In the way of dealing with disinformation, it must be ensured that it does not end up affecting legitimate political opinion, criticism, or healthy debate in the process.
4. **Narrowly tailored regulation:** Rather than casting a wide net over political content in general, regulation would do better to target specific harmful behaviour things like coordinated manipulation, fake or impersonated accounts, or deliberately misleading information about how and where to vote.
5. **Protection against excessive government power:** At its core, the judgment acts as a constitutional check, guarding against the risk of the State imposing sweeping, overly broad restrictions on online speech.
6. **Future significance:** Looking ahead, the principles of necessity and proportionality laid down here can serve as a guide for Indian courts when they're called on to examine future laws dealing with online electoral disinformation.

In *Kaushal Kishor v. State of U.P.*, (2023) 4 SCC 1, decided on 3 January 2023, the Constitution Bench reached two significant conclusions concerning freedom of

³⁸ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637

expression. First, it unanimously held that the grounds specified in Article 19(2) for restricting freedom of speech and expression are exhaustive and that additional restrictions cannot be imposed by invoking other fundamental rights.

Secondly, by a 4:1 majority, the Court held that fundamental rights under Articles 19 and 21 may be enforced against persons other than the State or its instrumentalities. This horizontal-rights holding is relevant to the role of private actors, including digital platforms, although its application to platform regulation requires careful constitutional analysis.

1. **Horizontal application of rights:** The judgment considered whether fundamental rights can have relevance in situations involving private individuals or entities, rather than only the State. Role of private actors: This is significant in the digital environment because social media platforms are privately operated but exercise substantial influence over public communication.
2. **Platform decisions:** Platforms make decisions regarding content removal, account suspension, political advertising, algorithmic amplification and content moderation.
3. **Constitutional concerns:** Where government regulation requires platforms to remove allegedly false political content, questions may arise regarding freedom of speech and the limits of State intervention.
4. **Platform accountability:** The judgment provides a basis for considering how private actors may be regulated when their conduct has significant consequences for constitutional rights.
5. **Important limitation:** *Kaushal Kishor* should not be understood as establishing that every private social media platform is directly bound by Article 19 in the same way as the State. Its relevance to platform regulation requires careful constitutional analysis.
6. **Relevance to electoral disinformation:** The more immediate significance of *Kaushal Kishor* is its holding that Article 19(2) contains an exhaustive set of grounds for restricting speech. Since 'disinformation' is not itself a

ground under Article 19(2), any restriction on electoral disinformation must be justified by reference to a constitutionally recognised ground and satisfy the applicable constitutional standards. This principle was subsequently relied upon in the Fact Check Unit litigation, where the Bombay High Court examined whether the impugned restriction on ‘fake, false or misleading’ information could be sustained within the limits of Article 19(2).

C. Institutional Gaps

1. There is no specific law in India devoted to the issue of election disinformation.
2. The Election Commission has a very broad constitutional power and has not had many legal means to directly enforce rules on social media platforms.
3. Excessive powers to block or flag content lie in the hands of the executive at no independent check.
4. There are no rules requiring transparency in political advertising, unlike the EU.
5. India no longer relies solely on voluntary advisories for AI-generated content. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2026 impose binding intermediary due-diligence obligations concerning synthetically generated information, including labelling, provenance metadata and, for significant social media intermediaries, user declarations and technical verification. The Election Commission has also issued election-specific directions requiring disclosure and labelling of AI-generated campaign material. However, these measures operate through subordinate legislation and ECI directions rather than a dedicated parliamentary statute on electoral disinformation.

VII. CRITICAL ANALYSIS

1. **Free Speech vs. Election Integrity:** Each country balances this differently, the US leans heavily toward free speech, the EU and Germany use structured, rule-based balancing, and Singapore leans heavily toward state control. India's constitutional framework permits restrictions on speech only within Article 19(2), while the 2023 Fact Check Unit amendment represented an attempted executive-centred mechanism for identifying specified government-related information as false or misleading. It should not, however, be characterised as an operational shift toward the Singapore model, because the Supreme Court stayed the notification designating the Fact Check Unit one day after it was issued, and the Bombay High Court subsequently struck down the enabling amendment. The Union's appeal remains pending.
2. **Platform Responsibility:** How much legal protection platforms get for user content shapes their behaviour. Too much protection (like the US model) means less accountability. Too little (like Germany's early NetzDG law) can lead to over-removal of legal content. India's current rules sit somewhere in between but lack the transparency requirements that balance the EU's stronger platform duties.
3. **The Danger of Government Overreach:** Singapore's POFMA and India's 2023 Fact Check Unit amendment both raise questions concerning executive involvement in determining whether statements relating to government affairs are false or misleading. The Indian mechanism, however, did not operate under the March 2024 notification because that notification was stayed by the Supreme Court, and the enabling amendment was subsequently struck down by the Bombay High Court on constitutional and statutory grounds. The validity of that judgment is presently under consideration by the Supreme Court.
4. **Gaps and Contradictions:** Most laws, including India's, do not clearly separate disinformation that comes from foreign actors, which is a national security concern, from ordinary domestic political speech which deserves the strongest protection. AI-generated deceptive videos, images and audio remain an

important regulatory concern. India has moved beyond non-binding advisories through the 2026 IT Rules, which impose mandatory labelling, provenance and platform due-diligence requirements for synthetically generated information. Election-specific ECI directions additionally regulate the use of AI-generated campaign material. The remaining issue is therefore not the complete absence of regulation, but whether these obligations, presently based substantially on delegated legislation and Article 324 directions, possess sufficient statutory foundation, procedural safeguards and constitutional proportionality.

VIII. FINDINGS AND SUGGESTIONS

A. Findings

This study concludes that:

1. The jurisdictions that grant a political executive the authority to resolve the issue of disinformation most prominently Singapore, and briefly India, via the Fact Check Unit – are the most vulnerable to abuse of the law in order to suppress legitimate criticism;
2. The system of regulation of platforms through transparency (EU model) is the most effective at tackling the structural challenges of disinformation without directly addressing truth;
3. Indian law remains fragmented, while judicial review has played a significant role in examining executive regulation of online speech, including in *Shreya Singhal* and the Bombay High Court's 2024 Fact Check Unit judgment. The latter judgment, however, is presently under appeal before the Supreme Court and should not yet be treated as the final appellate position; and
4. The primary channel of resistance to executive overreach in India remains the court reacting to and not preventing it, as a system of regulation does.

B. Suggestions

Any proposed law on electoral disinformation should define the prohibited conduct and its constituent elements with precision, such as knowledge of falsity, an intention to affect the electoral process, and a clearly identified subject matter such as false information concerning voting procedures. It should avoid open-ended or undefined standards of the kind that led the Supreme Court to invalidate Section 66A in *Shreya Singhal v. Union of India* as vague and overbroad.

Empower an independent body (other than the Government) to determine what is false, for instance, a specially empowered body of the ECI with members of judicial stature or a fast-track court that can appeal to High Courts.

Provide the Election Commission with real authority on platforms during elections rather than rely on voluntary agreements, and make them enforceable.

Require transparency of political advertising, including accessible repositories of political advertisements and disclosure of targeting practices. The EU experience also demonstrates the value of co-regulatory mechanisms: under the DSA framework, adherence to the Code of Conduct on Disinformation by participating VLOPs and VLOSEs is independently audited and may inform assessment and enforcement of their systemic-risk mitigation obligations.

Include sunset provisions and automatic review on emergency restrictions on content during elections. Differentiate between foreign interference and domestic political speech, imposing greater restrictions on foreign interference and more protection on domestic political speech.

All of these models should not be reproduced inappropriately in words. The EU's system is reliant on having a well-resourced and independent regulator, one India would have to create, not assume. No Indian law should simply copy the text of foreign laws, but should rather learn from the underlying lessons of each one of them, particularly the importance of independent decision-making.

IX. CONCLUSION

Electoral disinformation is a challenging problem for constitutional democracy online. There is no 'free' answer. Too weak regulation can lead to false and misleading information, which can sway voters, undermine trust in elections, and impact election integrity. However, too much regulation can lead to a lack of freedom of speech and an overpowering of political information by the government. It is thus the challenge for the protection of electoral democracy without violating the right to freedom of expression.

A comparative study of the United States, the European Union, Germany, the United Kingdom and Singapore reveal that each jurisdiction has responded in its own unique way to this issue. The European approach is more concerned with the responsibility of a platform and the systemic risks, while the United States is more concerned with the protection of political speech. Germany offers greater safeguards for democratic institutions, and Singapore a more state-centred approach to regulation. The methods illustrated show that there is no one-to-one transferability of foreign models to India. Every type of model comes with its own pros and cons.

The issue for India is not that there are no legal frameworks at all but that they are inadequate, lack clarity and comprehensiveness, and are not adequately balanced to tackle online electoral disinformation. There are important constitutional and institutional protections in place in India already. The litigation concerning the Fact Check Unit illustrates the constitutional importance of judicial and institutional scrutiny where executive authorities are empowered to classify government-related information as false or misleading. The Bombay High Court struck down the 2023 amendment on constitutional and statutory grounds; however, that judgment is presently under appeal before the Supreme Court. Accordingly, the analysis reflects the operative legal position pending final appellate determination.

The study, therefore, concludes that India needs a rights-based and institutionally independent strategy to combat electoral disinformation. Fact finding and enforcement should be subject to clear legal standards, transparency, independent oversight, and effective judicial review rather than being left to the discretion of the

political executive as the last word on the validity of the truth or falsity of political content. Social media platforms should also be held to proper responsibilities concerning the transparency of their operations, politics advertising, coordinated manipulation and creation of AI-generated content without an unnecessary limitation on the legitimate expression of politics.

Therefore, in response to the research questions, the study concludes that the Indian regulatory model should be guided by the lessons learnt from comparative regulatory models; however, should not be blindly replicated. The most practical take-away is the need to strike a balance between electoral integrity and freedom of speech, and to avoid giving a single institution too much power to regulate.

The goal should not be, in the end, to establish a system in which the government decides what citizens can believe or say. Rather, India needs to create a legal structure that is more transparent, accountable and more tamper-resistant making the digital electoral process more democratic. It is independent regulation with constitutional limits, however, which is the most critical protection. This can contribute to the safety of the electoral process and freedom of expression, which is the essence of India's constitutional democracy.

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