

THE SITUATED RATIONALITY IN REGULATING FAKE NEWS IN THE ONLINE COMMUNICATION ECOSYSTEM OF SRI LANKA.

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ABSTRACT

Fake news is one of the misinformation phenomena that is highly concerning to academia and industry in the communication ecosystem of the post-truth era. Therefore, regulation of fake news has become an important theoretical and practical problem at present. The Online Safety Act Number 9 of 2024 was introduced in the Parliament of Sri Lanka and it created many deliberations over its application. This paper argues that Sri Lankan online fake news regulations must be applied in view of both material and ideational factors, with an eye to the platform capital power that reigns the information eco-systems and a mere technical approach cannot remedy the issue. The research seeks to have a meaningful understanding and a deliberate investigation of fake news regulatory approaches in the world and the review of literature analyses the scholarly articles on fake news regulatory regimes and their theoretical perspectives. The paper depicts that there exists a regulatory inadequacy in terms of fake news in Sri Lanka in terms of theoretical approach. This study adopted quantitative and qualitative methods (mixed methods) with the assistance of a close-ended questionnaire, open-ended in-depth interviews, and document analysis. The theories and concepts such as Historical Institutionalism, Internet Governance, and Platform Capitalism apply. Hence, the paper argues that Sri Lankan fake news regulations must be formulated systematically, firmly in view of both material and ideational factors, with an eye to the platform capital power that reigns the information ecosystems without a mere technical approach. The findings of this research will assist Sri Lankan policymakers in evaluating the

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space for fake news regulations in the communication regulatory process in a sensible manner, as the rise of digital tools and social media are presenting new challenges.

Key Words: *Fake News, Misinformation, Post–Truth, Historical Institutionalism, Platform Capitalism*

1. INTRODUCTION

1.1 Fake News

The purpose of this paper is to establish the fact that Sri Lankan online fake news regulations must be applied in view of both material and ideational factors, with an eye to the *platform capital power* that reigns the information eco-systems and a mere technical approach cannot remedy the issue. The media and communication ecosystem of the post-truth era¹ has been formed by numerous exclusive elements and fake news is one of them which has been documented in the vernacular as early as 1898.² As per Clair Wardle,³ fake news is complicated whereas disinformation, misinformation, and related concepts are not new to disciplines like communication and political science.

Conventionally, fake news has been defined, as “intentionally and verifiably false viral posts based on fictitious accounts that have been

¹ Benkler, Yochai, Robert Faris, and Hal Roberts, ‘Network propaganda: Manipulation, disinformation, and radicalization in American politics.’ (online edn, Oxford University Press 2018).

² R. R Mourão and C. T Robertson, ‘Fake news as discursive integration: An analysis of sites that publish false, misleading, hyper partisan and sensational information. (2019) Journalism Studies, 20(14) 2077-2095.

³ R. Bernar, G.Bowsher, R. Sullivan, and F.Gibson-Fall, ‘Disinformation and epidemics: anticipating the next phase of biowarfare’. (2021). Health security, 19(1), 3-12.

made to look like news reports/news articles to mislead the reader”.⁴

Further, Clair Wardle, a communication scholar, states that the term “fake news” will not suffice when countering misleading information due to the complexity of the types of information and points out three elements of an information ecosystem viz.; the different types of content that are being created and shared, the motivations of those who create this content, and how these contents are being disseminated. Further, the scholar presents two other terms such as “misinformation” and “disinformation where misinformation is described as the unintentional sharing of false information, while disinformation is defined as the intentional creation and sharing of information known to be false.

The United Kingdom Government defines disinformation as false or manipulated information that has been produced or distributed for political ends and furthermore, disinformation can cause personal and financial harm⁵ when people unknowingly share false information. Subsequently, Clair Wardle has introduced seven (7) types of problematic information/content including the misleading use of information to frame an issue or individual (misleading content). More researchers have recently identified six types of fake news namely; satire, parody, fabrication, manipulation, propaganda, and advertising.⁶ The academic discussion on the terminology and the ontology of the term “fake news”, what constitutes and qualifies as fake news, and the definitions of

⁴ H. Allcott and M. Gentzkow, ‘Social media and fake news in the 2016 election.’ (2017). Vol 31(2), *Journal of economic perspectives*, 211-36.

⁵ Preventing Misinformation and Disinformation on online filter bubbles <<https://commonslibrary.parliament.uk/research-briefings/cdp-2024-0003/>> accessed 19.06.2024.

⁶ E. C Tandoc Jr, W. L., Zheng and R.Ling, “Defining ‘fake news’: a typology of scholarly definitions” (2018) Vol. 6(2) *Digital Journalism* 2, 137-153.

disinformation, misinformation and misleading information will be comprehensively dealt with the Literature review. Governments and other stakeholders have become alert to the dangers of online misinformation; particularly, since Donald Trump popularized the term fake news during the 2016 United States election campaign, whereas the World Health Organization (WHO) has designated the immense wave of false information around the Covid -19 pandemic as an “infodemic”.

The fake news phenomenon has developed into a universal cause for concern within international communication in a context that the Information and Communication Technologies (ICTs) and social media platforms are the major and most effective liberal means of engaging in international communication. The advancement in communication and information technologies in the late twentieth century has significantly enhanced the scope of international communication despite the fact many non-state international actors are increasingly shaping international communication above and beyond nation-states.⁷

Social media platforms essentially are a newly predominant type of business model premised upon bringing different groups together⁸ and the digital media and communication platform companies known as the FAANG (Facebook, Apple, Amazon, Netflix, and Google) or the FAMGA (Facebook, Apple, Microsoft, Google, Amazon) have earned a growing global significance. Apple, Alphabet (Google), Microsoft, Amazon and Facebook turned out to be the world’s five major companies by market capitalization, toppling energy and financial services companies that had earlier dominated such lists. The fundamental foundations of the economy

⁷ D.K. Thussu, ‘International Communication: Continuity and Change’, (London: Arnold; New York : Co-published in the United States of America by Oxford University Press, 2000).

⁸ Nick Srnicek, ‘Platform capitalism, theory redux.’ (reprint edn, Polity Press, 2016).

are rapidly being carved up among a small number of monopolistic platforms, and the platform introduces new tendencies within capitalism.⁹

1.2 Regulations and Sri Lankan Fake News problem

As per the researchers Meese and Hurcombe, there exist three different approaches viz.: voluntary co-regulatory measures, direct regulatory measures and non-regulatory activities¹⁰ in an attempt to challenge online misinformation and disinformation. In the Sri Lankan context, Online Safety Act Number 9 of 2024 was introduced in the Parliament of Sri Lanka and it created many discussions recently.

As far as Sri Lanka is concerned, the Easter Sunday bomb attack, literally exposed the country to the fake news regulation discussion and the government took instantaneous measures to curb violence which was triggered by social media fake news circulations (BBC, April 2019) while expressing the willingness to introduce “fake news laws” to criminalize fake news and impose penal actions so as to regulate them on social media platforms. Such moves created a widespread discussion on regulatory inadequacies of fake news on social media platforms in Sri Lanka.¹¹ After the aforementioned bomb attacks, with the massive spread of fake stories all over social media platforms, the government resorted to imposing severe measures to block social media platforms like Facebook, Facebook-owned WhatsApp and Instagram, YouTube, Snapchat, and Viber, on the date of 23rd April 2019, in an attempt to restraint the spread

⁹ *ibid.*

¹⁰ James Meese, 'Edward Hurcombe Regulating Misinformation: Policy Brief (2020) Melbourne, Analysis & Policy Observatory, RMIT University.

¹¹ D Cooray 'How Sri Lanka should respond to the threat of fake news' (2020).

of “false news reports”.

The Hindu (2019)¹² reported that the “Sri Lankan government has sought to criminalize fake news since the year 2019 in the wake of the Easter Sunday massacre on April 21, 2019 and the proposed “fake news laws” (The Diplomat, 2019)¹³ were sought to be drafted in order to remedy the urgency of regulations on fake news dissemination on online media. The following is the government press release which was issued in that regard.

Law and order authorities as well as civil society leaders have been increasingly concerned about the rising social tensions and worsening false stories and ‘hate speech’ messaging both on the internet as well in public statements by various groups in recent weeks following the shock suicide bombing attacks on Easter Sunday, April 21st. Aggravating these tensions has also been numerous news media reports that critics say fail to meet basic professional and legal standards of authenticity and reliability. With such public messaging, the law-and-order authorities are facing challenges in curbing public reactions and managing social tensions.¹⁴

Hence, there existed a gap in the regulatory framework, which calls for an immediate intervention of the policymakers to remedy the fake news problem.

¹² Sri Lanka Easter Bombings’. The Hindu (Colombo, August 21, 2024) <https://www.thehindu.com/topic/sri-lanka-easter-bombings> accessed 19.06.2024.

¹³ Rehab Mahamoor ‘The problems with Sri Lanka’s new fake news law’ The Diplomat (Colombo, August 07, 2019) < <https://thediplomat.com/2019/08/the-problem-with-sri-lankas-new-fake-news-law/> > accessed 19.06.2024.

¹⁴ Ramanayake ‘Tough laws against hate speech and false news’ (news.lk, June 06, 2019) <https://www.news.lk/component/k2/item/25868-tough-laws-against-false-news-and-hate-speech> accessed 19.06.2024.

This, in turn, amounts to a communication issue that puts the nation in danger, inciting riots and unrest from time to time.

As a result, the Online Safety Act Number 9 of 2024 has been introduced and the objectives are to establish an online safety commission, to provide safety from prohibited statements made online, to prohibit the use of online accounts for prohibited purposes and to suppress the financing for prohibited statements made online. This research that was conducted on the application of Sri Lankan online fake news regulations in view of both material and ideational factors, with an eye to the *platform capital power* that reigns the information eco-systems and devoid of a mere technical approach.

2. LITERATURE REVIEW

The following brief literature review explores various perspectives on the regulation of online fake news and related topics, shedding light on the preference for a principled approach over a technical one.

The article “Historical Institutionalism in Communication Studies”¹⁵ points out the prospects of using the theory of Historical Institutionalism in communication studies while highlighting the approach and its usefulness in the areas of communication policy and law. As stated by the author in this article, the theory is useful for communication scholars who research communication policy and law and the theory involves tracing the dealings of institutions, ideas, and agents over time and the mechanisms and procedures underlying institutional stability.

Historical institutionalism is applied both in formal and informal institutions

¹⁵ Bannerman Sara Haggart, Blayne, ‘Historical Institutionalism in Communication Studies’, (2014) Volume 25, Issue 1 Communication Theory, 1–22.

which play a key role in regulations.

“Regulating misinformation; Policy brief”,¹⁶ a publication by RMIT University, Melbourne, outlines three types of fake news regulatory mechanisms pertaining to online misinformation regulations, namely; voluntary co-regulatory measures, Direct regulatory measures and non-regulatory activities.

Publication “Internet Governance Theory and First Principles”¹⁷ explores the possibility of using the theory of Internet governance on regulatory mechanisms of internet-related entities. And also “New Guardrails for the information society”¹⁸ traces that with the expansion of the information society and the economic and social interdependencies, the malleability of digital technologies makes the future uncertain. This phenomenon necessitates dynamic policy models which establish the normative foundations of policy formulations.

The article “Fake news as a contemporary issue in global communication concern”,¹⁹ highlights how fake news plays a key role in the global communication arena including online platforms, and the paper “Regulatory responses to fake news and freedom of expression.

¹⁶ Meese James, Hurcomb Edward “Regulating misinformation; Policy brief” (RMIT University, 2020).

¹⁷ Bauar, Johannes “Internet governance theory and first principle (2007, Research Gate) <https://www.researchgate.net/publication/228800513_Internet_Governance_Theory_and_First_Principle> Accessed 19.06.2024.

¹⁸ *ibid.*

¹⁹ Guanah Jammy, “Fake news as a contemporary issue in global communication concern” highlights how fake news plays a key role in the global communication arena including online platforms. (2018) https://www.researchgate.net/publication/342715286_Fake_News_as_a_Contemporary_Issue_in_Global_Communication_Concern> Accessed 19.06.2024.

Normative and Empirical Evaluation”,²⁰ highlights the much-debated relationship between fake news regulation and the freedom of expression.

The article “Internet Governance in the Post-truth era, analyzing key topics in fake news discussion”,²¹ highlights that the governance of information sharing online is a complicated issue, especially in the context of varying global perspectives on speech rights, freedom of expression, the role of news media, and core internet values.

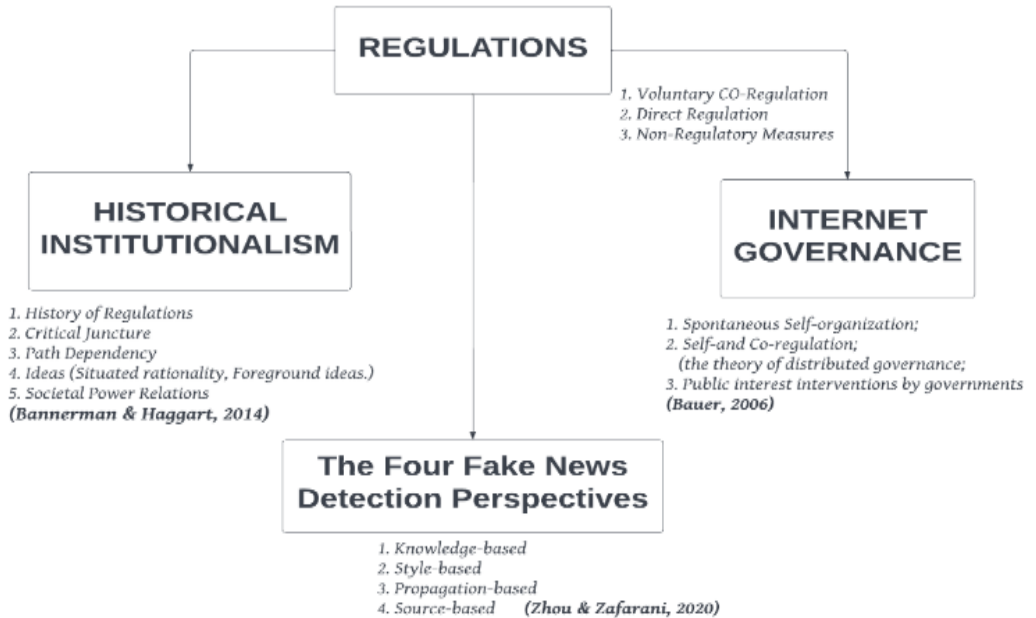
Further Fake news detection models, as invented by the recent research, are helpful in understanding the fake news problems from a psychological and sociological perspective, which paves the way for proper regulatory mechanisms. In the light of two aspects of the fake news detection problems i.e., characterization and detection the fake news issues in Sri Lanka can be characterized and the ideas which were explored by the interviews will be helpful in determining the detection mechanisms.

3. THEORETICAL FRAMEWORK

The following is the theoretical approach that the author takes to make proposals on the appropriate *flavour* of the fake news regulations that suit the social media communication ecosystem of Sri Lanka. The author believes that this kind of approach will be more suitable than merely adopting a technical regulatory approach.

²⁰ Rebecca K Helm, Hitoshi Nasu, ‘Regulatory Responses to ‘Fake News’ and Freedom of Expression: Normative and Empirical Evaluation’, (2021) Volume 21, Issue 2, Human Rights Law Review, 302.

²¹ Horne Chelsea, “Internet Governance in the Post-truth era, analyzing key topics in fake news discussion.” (2021) <https://www.researchgate.net/publication/350870715_Internet_governance_in_the_post-truth_era_Analyzing_key_topics_in_fake_news_discussions> Accessed 19.06.2024.



As per the theory of Historical Institutionalism, the government or the platforms must comply with the ideas that prevail within Sri Lankan society, when regulations are formed and the rationality of said regulations should be explained without merely forcing them on the public. The ideas that are explored in relation to the issues regarding fake news, regulations, agents and mechanisms are significant as they play a fundamental role as a tool in shaping the regulations. It is important to understand how the ideas create and/or shift the situated rationality of a society where the “goals, strategies and preferences” of the agents are “something to be explained” rather than simply assumed. The agents should use ideas as tools to follow their interests. Campbell refers to them as foreground ideas and they will offer “policy paradigms” for Sri Lankan policy frameworks in designing fake news regulations.

As per the Internet Governance theoretical approach, the governance of online information sharing in social media in Sri Lanka is a complex issue,

in the context of varying universal perspectives on speech rights, freedom of expression, the role of news media and core Internet values and also where the information both true and fake has become weaponized for political gain.²² Therefore consideration of such developments will improve normative principles on which information society policies are founded, along with the boundary conditions (“guardrails”) with visions of a good society”.²³ The four ways of internet regulations that were suggested by theory viz. spontaneous self-organization, forms of self-and co-regulation, the theory of distributed governance and public interest interventions by the governments will be instrumental in exploring appropriate mechanisms for Sri Lanka. In addition, three prerequisites²⁴ viz. good knowledge of the workings of the socio-technical system, shared vision of desirable outcomes and instruments known to achieve them and politically feasible solutions, will be helpful in devising feasible regulatory mechanisms.

4. RESEARCH PROBLEM

The proposition is elementary, that in Sri Lanka there exists a gap in the regulatory framework regarding online fake news dissemination that calls for an immediate intervention of the policymakers to remedy the fake news problem. This, in turn, amounts to a communication issue that puts the nation in danger, and incites riots and unrest from time to time. Literature

²² *ibid.*

²³ Bauar, Johannes “New guardrails for the information society. Bauer, Johannes M., *New Guardrails for the Information Society* (2021). Quello Center Working Paper No. 05-21, <https://doi.org/10.1016/j.telpol.2022.102350>, Available at SSRN: <https://ssrn.com/abstract=3938541> or <http://dx.doi.org/10.2139/ssrn.3938541> Accessed 19.06.2024”.

²⁴ *ibid.*

on keywords like fake news, misinformation, post-truth, Historical Institutionalism, and Platform Capitalism demonstrates a clear gap pertaining to regulatory frameworks and models to regulate online fake news phenomena in Sri Lanka, which creates an ideal space for this study. The introduction of Online Safety Act in Sri Lanka has started a fresh discussion over the application of the new regulations. The problem remains as to which approach should be adopted in the application of the new online fake news regulations.

5. RESEARCH QUESTIONS

1. What are the existing fake news regulations in Sri Lanka?
2. What is the present situation of fake news-related problems in Sri Lanka?
3. What are the key components of the fake news regulations appropriate for Sri Lanka?

6. OBJECTIVES OF THE STUDY

General Objectives

To identify the fake news regulatory problems in Sri Lanka and to recommend appropriate *flavour* of regulations.

Specific Objectives

1. To examine the existing fake news regulations in Sri Lanka.
2. To analyze the present situation of fake news-related problems in Sri Lanka.

3. To evaluate the key components of the fake news regulations, appropriate for Sri Lanka.

7. RESEARCH METHODOLOGY

The author used a mixed approach of both doctrinal and non-doctrinal research methods to achieve the objectives of this study. The doctrinal approach enables to obtain a rigorous and well-defined view of the issues related to online fake news regulation in Sri Lanka. The doctrinal legal research methodology was used by analysing primary and secondary sources, including legislation, case law, textbooks, law journals, and commentaries. A comparative method was also adopted to understand the legal positions of other jurisdictions, probing into the concepts, legal approaches, and regulations. The non-doctrinal approach was utilized based on primary sources of data, which include in-depth interviews, document analysis, and questionnaires to obtain clear data concerning the practical application of regulations governing fake news in Sri Lanka.

8. ANALYSIS

8.1. General Objectives and Specific Objectives

The general objective of this study is to identify the fake news regulatory problems in Sri Lanka and to recommend appropriate regulations while specific objectives are: (1) to examine the existing fake news regulations in Sri Lanka, (2) to examine the present situation of fake news related problems in Sri Lanka, and (3) to examine the key components of the fake news regulations, appropriate for Sri Lanka.

8.2. Data Analysis on Document Analysis findings on the existing online fake news regulations in Sri Lanka

The document analysis involves defining two elements: units of meaning and a set of categories. Additionally, it explores the first specific objective of the research. Article 15(2)²⁵ of the constitution restricts freedom of *expression* including publication rights that are guaranteed by Article 14(1) (a). Article 15(2) is empowered to restrict the contents in the national interest. Moreover, the ICCPR act²⁶ provides a certain foundation to counter hate speech in Section 6 of the code which has some relation to the contents that are disseminated online. The penal code²⁷ does not accommodate any provision for fake news and does not define fake news, even though it refers to preventing unwanted excitement among the public in terms of Section 120. Whereas “the Computer Crimes Act”,²⁸ has penalized illegal computer activities that could have an impact on public order. Section 69²⁹ of the Sri Lanka Telecommunications Act, as amended by “Act No. 27 of 1996”, (which established TRCSL), empowers the Government to prohibit or restrict the use of telecommunication activities during emergencies. In addition, the Information and Communication Technology Act³⁰ has established the Information Communication Technology Agency (ICTA) that obliges to enforce national policy on ICT through the Computer Emergency Readiness Team (CERT) which focuses on related issues but no reference to fake news-related matters.

²⁵ Article 15 (2) The Constitution of the Democratic Socialist Republic of Sri Lanka (1978).

²⁶ International Covenant on Civil and Political Rights Act No. 56 of 2007.

²⁷ The Penal Code of Sri Lanka (Ordinance No. 2 of 1883).

²⁸ The Computer Crimes Act No. 24 of 2007.

²⁹ Sri Lanka Telecommunications Act, No. 25 of 1991.

³⁰ Communication Technology Act, No. 27 of 2003.

It transpires that there are *no precise legislative provisions* that could penalize fake news in Sri Lanka except for a few mechanisms that come closer to that. However, currently, law enforcement agencies in Sri Lanka make efforts to counter fake news up to a certain extent with available *piecemeal* regulations. In considering, aforementioned data it is indicated that the “penal code” had been formulated in year 1883 being the oldest regulation among the considered documents while the latest regulation, the “Computer Crimes Act” was framed in the year 2007. During that period, no specific regulation that is empowered to combat fake news had been formulated in Sri Lanka.

Similarly, the research “Facebook, news media and platform dependency” by Meese and Hurcombe, conducted some in-depth interviews with Australian media institutions and found that there had not been much regulatory mechanism in Australian news media to incorporate technology into the news distribution in social media. It revealed a longer pattern of institutional inadequacy, which saw news media organizations struggle to incorporate new technology into their operations and the researchers sought to argue on the theory of Historical Institutionalism that this longer history helps to frame contemporary dependencies as partial and subject to change.

8.3. Analysis of In-Depth Interview Data on the present online fake news-related problems in Sri Lanka

The table of coding consists of four main categories of themes and 26 sub-themes, which answers the second research question of the study. The second specific objective deals with assessing the current online fake news-related issues in Sri Lanka, Fake news (availability), regulations (availability and sufficiency), agents of fake news regulation (government

and platforms) and mechanisms.

Fake news availability was emphasized in each interview and the majority were of the view that there should not be a specific definition of fake news while many raised the issue of visibility of the perpetrators and virality of the fake news dissemination, which worsened the issue. In terms of the regulations, non-regulation of fake news was considered as problematic whereas over-regulation of the contents was criticized while alternative self-regulation mechanisms also were anticipated. However, appointing an authority to regulate fake news or content was met with high disagreement in the context that freedom of speech, and human rights are also highly valued. However, a few stated that Sri Lanka has sufficient laws but non-implementation is the problem, and the penal code can be utilized to bring perpetrators to justice. When it comes to the agents, the government and platforms were considered responsible for making and executing regulations. Nevertheless, the total absence of regulations was criticized and blocking internet facilities frequently was blamed while the political involvement with content creation and regulations was highly criticized. The responsibility of the platforms to cooperate with the government was considered urgent and particularly the language issues in content monitoring were highlighted. The proper operation of community standards by the platforms and the platforms complying with government regulations was emphasized. The impunity of the perpetrators also was criticized and it was connected with bad faith in the political arrangements. When it comes to the mechanisms, mixed regulations were appreciated while civil society engagement in regulations was highly recommended. Moreover, it was discussed that the democracy of the country should be preserved in the process of regulating fake news and media literacy campaigns were highly recommended. Particularly, they discussed elections and laws regarding elections that are connected

with online activities and fake news. Asked about the winners or the losers of regulating fake news they gave different answers. Some were of the view that no one loses by a regulatory mechanism but everyone wins, whereas some stated that the government and the platforms lose.

Fake news issues pertaining to the definition, visibility, virality, non-regulation, over-regulation, and self-regulation possibilities frequently surfaced. However, appointing an authority to regulate fake news or content was met with high disagreement. Concepts like Democracy, Freedom of speech, and human rights were highly regarded whereas non-implementation, a total absence of regulations, and blocking of internet facilities were frequently blamed at while political involvement was also criticized. Further, the responsibility of the platforms to work in cooperation with the government was also pointed out; particularly in language issues in content monitoring, whereas the community standards of the platforms, and platforms complying with government regulations were emphasized. The Impunity to the perpetrators also was criticized where Mixed-regulations were appreciated and further civil society engagement and media Literacy campaigns were highly recommended. Elections-related issues surfaced and finally asked about the winners or the losers by the regulations, they had different answers.

Communication researchers have noted that fake news or misinformation emerges from a broader political and cultural context, which sees people choose to trust certain information since it helps their perception of the world.³¹ As per Corner, “Fake news” is a type of “false media product”³² and according to Chambers, it is about how much truth

³¹ A. E., Marwick, & R. Lewis, '*Media manipulation and disinformation online*. (Data & Society Research Institute, 2017)'.

³² Corner, (n 32) 1100.

is accessed, whereas post-truth is about peoples' attitudes toward the truth. In addition, ICTs have improved the link amongst social, political, and cultural processes, often on a global scale.

8.4. Analysis of the Close-Ended Questionnaire The key components of the fake news regulations, appropriate for Sri Lanka

Direct regulatory measures were the most preferred one from which the majority of lawyers (54.5%) who participated in the study chose, followed by non-regulatory measures (28.5%). Furthermore, "fact-checking and automatic tracking applications" are the appropriate direct regulatory measures factor by the majority (38.55%) of lawyers. Whereas, "media literacy campaigns" were regarded as the most preferred among the non-regulatory measures by the majority of lawyers (80.22%). Among the few lawyers who chose voluntary co-regulation as the key regulation mechanism, the majority of them (53.57%) chose "responsibility of digital service providers" to be the appropriate factor.

The age groups of the majority of participants (61% or 200) were between 31 to 45 years of age, while (32.3% or 106) were 20 to 30 years of age, and (6.7% or 22) were greater than 45 years of age. Approximately 93% of them are in the age group between 20 to 45 which sends a clear signal that the young generation is much exposed to concern about the fake news issues in Sri Lanka.

As per the findings, Direct regulatory measures were the most preferred component and the subcategory that was commonly favoured was "fact-checking and automatic tracking applications". Voluntary regulatory measures that were chosen by the majority were the "responsibility of the digital service providers" and "Media Literacy campaigns" were regarded

as the most preferred among non-regulatory measures and removing and banning fake content were preferred as the second-best direct measure.

Media Literacy, as per UNESCO interpretation is that:

“it covers competencies that enable people to critically and effectively engage with information, other forms of content, the institutions that facilitate information and diverse types of content, and the discerning use of digital technologies...for all citizens regardless of their ages or backgrounds”³³.

In Sri Lanka, media literacy should be reinforced in schools including media literacy in school curricula, and the Ministry of Education should introduce instructional materials and resources on how to evaluate reliable media. Media literacy laws can be introduced making it compulsory in all forms of educational institutes in Sri Lanka as per international best practices.

The government involvement as an agent of regulations has surfaced in response to growing concerns about the disadvantages of the digital society and the normative deficit of communication policy research has not been disregarded.

Yet, Sri Lanka is plagued with non-implementation of regulations, impunity and politically biased regulatory measures and the offenders often go unpunished. Therefore, the government, as an agent that formulates and executes regulations, must be mindful to act in good faith in the implementation of fake news regulations.

Hence, in essence, the paper argues that Sri Lankan fake news regulations must be applied based on both material and ideational factors

³³ Media and Information Literacy (UNESCO, 2022) <www.unesco.org> (accessed on 05 September 2024).

that prevail within the social fabric while paying special attention to platform capital power.

9. RECOMMENDATIONS

Accordingly, it is recommended that the state should arrive at policy decisions to set up a fact-checking mechanism that is manual or automatic adopting international best practices and sound strategies.

It is also recommended to make immediate policy decisions to influence the digital service providers to cooperate with the government and launch their own content monitoring tasks with Sinhala and Tamil language capabilities. In addition, the government should approach the platforms and should be briefed on new regulatory obligations for digital service providers to clarify their responsibilities to users on the platform and platform reaction to online disinformation. The language issues in content monitoring, community standards by platforms and complying with government regulations should be discussed and agreements should be entered.

It is recommended to implement a media literacy campaign to develop media literacy competencies in schools (including the ability to access relevant information, analyze media content, evaluate the accuracy of the information, and make educated decisions about products and services). Furthermore, it is also necessary to bring a media literacy grant program for organizations working on media literacy. It is also recommended in regard to election regulations that online political campaigns are required to disclose their spending and financial backers and make regulations to halt the dissemination of misinformation before elections.

Moreover, it is further recommended not to define or criminalize “fake

news” which would create a contentious situation and to adopt mixed regulatory mechanisms.

However, the punishments that are imposed for the offences in direct mechanisms should be fixed proportionate to the offence which will be clearly stated in an act or valid regulation which can be challenged before a court of law.

10. CONCLUSION

The general objective of this article was to examine the fake news problem in Sri Lanka and recommend an appropriate theoretical foundation of regulatory provisions. The discussion brought to light the fact that there are a number of aspects to consider when such a regulatory mechanism is introduced. The theory of historical Institutionalism and Internet governance provided insights into the problem whereas many other research works and findings also contributed to the final discussion. Article 14(1) (a) of the Constitution of the Democratic Socialist Republic of Sri Lanka (1978), guarantees, the “right to freedom of speech and expression” including publication rights. Although the Online Safety Act No. 09, 2024 has presented a new opportunity, an appropriate theoretical foundation will only make sure of a meaningful operation of the same in the social context. Hence, it is suggested that Sri Lankan fake news regulations must be applied systematically, firmly in view of both material and ideational factors, with an eye to the platform capital power that reigns the information eco-systems without a mere technical approach.