

Chilling Effect and Fake News Laws: Lessons from East and Southeast Asia



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Abstract This chapter identifies key parameters of the chilling effect and bridges them with international human rights principles to develop a structured analytical tool, the Chilling Effect Ranking (CER), for assessing the chilling effect of “fake news” regulations. Applying this framework to seven East and Southeast Asian jurisdictions—China, Taiwan, Hong Kong, Singapore, Malaysia, Japan, and South Korea—the chapter uncovers the underlying mechanisms behind the chilling effects produced by diverse fake news laws in the region, offering insights that go beyond Western-centric perspectives. The results show that no jurisdiction fully eliminates chilling effects, mainly due to legal ambiguities that allow government overreach. However, the intensity of these effects ranges from moderate to high. The chapter concludes that while chilling effects are not an inevitable byproduct of laws targeting falsehoods that cause public harm, they often stem from design flaws within the legal framework itself, which can enable such laws to serve as tools for state control and deter free expression.

1 Introduction

Over the past decade, ‘fake news laws’ have raised concerns about government powers over speech. Framed as measures against falsehoods that threaten public health and order, these laws include civil, criminal and administrative measures. However, the term ‘fake news’—understood here as socially harmful falsehoods—is heavily politicised and encompasses a broad spectrum of meanings, from

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deliberate falsehoods to unintentional inaccuracies and dissenting opinions, making it susceptible to misuse (McGonagle 2017). The lack of precision in many fake news laws enables governments to act as the ‘ultimate arbiter of truth’ (Teo 2021), making the truth ‘conditional’ on state-defined narratives (Sherstoboeva 2024) and potentially ‘chilling’ free expression (Lim and Bradshaw 2023; Carson and Gibbons 2023; Kenyon 2010).

Rooted in Western legal traditions, the concept of a chilling effect is central to understanding how legal uncertainty deters expression, even in the absence of direct state intervention. Schauer (1978) defines the chilling effect as an ‘act of deterrence’ (p. 689) from a lawful activity due to regulatory ambiguity, distinguishing it from outright suppression. While legal scholars frequently cite chilling effects in analyses of restrictive speech laws, they typically do so without systematically identifying the underlying legal mechanisms. Studies typically acknowledge that vague language, broad regulatory scope and disproportionate penalties contribute to chilling effects (Penney 2017; Baumbach 2018; Fajdiga and Zagorc 2023), yet these factors are not explicitly framed as distinct parameters. Nor is there an agreed analytical framework explaining how, in practical terms, legal uncertainty translates into self-censorship or how chilling effects could be assessed. The European Court of Human Rights (ECtHR) references chilling effects in free speech cases, but the application remains *ad hoc* and case-specific (Pech 2021; Fajdiga and Zagorc 2023). The absence of such a framework obscures crucial distinctions: does the chilling effect arise solely from free speech violations or is it a separate legal phenomenon? While related, these are not identical concepts—an often-overlooked point in existing scholarship.

These concerns about chilling effects are extremely relevant in discussions on fake news laws, which frequently produce legal uncertainty and undermine freedom of expression (McGonagle 2017; Richter 2018; Han 2019; Kok 2021; Teo 2021; Gosztonyi 2022; Lim and Bradshaw 2023; Chen 2024; Sherstoboeva 2024). Recent empirical studies, particularly those examining fake news laws in Asia, offer insights into journalists’ and editors’ perceptions of chilling effects (Han 2019; Teo 2021; Carson and Gibbons 2023). However, these studies provide little guidance on the legal design choices that shape chilling effects or on how they vary across different regulatory frameworks. In general, academic discourse on chilling effects remains largely Western-centric, overlooking non-Western contexts.

In response, this chapter addresses two critical gaps: first, the absence of a systematic legal framework for assessing the chilling effects of fake news laws across diverse jurisdictions and second, the predominant Western focus that neglects non-Western settings. To bridge these gaps, this study introduces a structured analytical tool, the *Chilling Effect Ranking (CER)*, designed to evaluate the chilling effect of fake news laws beyond Western narratives, connects international free speech principles with chilling effect parameters and examines how vague legal provisions facilitate government overreach and suppress expression. The CER assesses laws based on three primary and four additional parameters, categorised into a high/medium/low category. Applying this framework to seven East and Southeast Asian jurisdictions that exhibit comparable patterns of chilling effects—China, Taiwan,

Hong Kong, Singapore, Malaysia, Japan and South Korea—we reveal the diverse manifestations and underlying mechanisms of the chilling effects of fake news laws in the region, providing insights that extend beyond a Western-centric perspective.

East and Southeast Asia offer a distinct case due to their high concentration of such laws, many of which have been criticised for chilling free speech and media freedom (Lim and Bradshaw 2023; Carson and Gibbons 2023; Kok 2021). Neo (2022) highlights how authoritarian governments in the region have securitised the notion of fake news to consolidate political control over public discourse. Empirical studies from East Asia suggest that public support for fake news regulation is higher in countries with weaker democratic institutions, whereas in mature democracies like Japan and South Korea, fact-checking plays a larger role in tackling harmful lies (Cheng et al. 2021). Our initial aim was to provide a comprehensive analysis on East Asia, but due to the lack of data on North Korea and Mongolia we included in the sample two Southeast Asian countries, Singapore and Malaysia, given their heavily criticised fake news laws (Kok 2021; Carson and Gibbons 2023), to ensure the breadth of the comparative analysis. In Southeast Asia, government-operated fact-checking bodies reinforce the perception of fake news as a pervasive threat, justifying expansive regulatory interventions (Schuldt 2021). Despite widespread concerns about the chilling effects of Asian fake news laws, existing studies often fail to detail legal mechanisms that produce these effects and how they vary across diverse governance systems—from liberal democracies like South Korea and Japan to authoritarian regimes like Singapore and China. Further reinforcing the region's relevance is its prominence as a global leader in crisis management. Rapid digital transformation and high internet penetration in territories including China, South Korea and Singapore have amplified the challenges of combating falsehoods. While our study does not claim to be representative of the whole region, it aims to provide a more complete picture of chilling in different legal and policy contexts.¹

By developing our CER, the study offers a structured, rights-based framework for evaluating chilling effects of fake news laws. Our CER framework is grounded in the United Nations (UN) standards on restricting socially harmful falsehoods (UN General Assembly 2020, 2022; UNESCO 2020; Khan 2021). It is also based on key scholarship on chilling effects on freedom of expression (Schauer 1978; Townend 2017; Pech 2021) and informed by research on challenges posed by fake news laws (McGonagle 2017; Wardle and Derakhshan 2017; Richter 2018; Teo 2021; Kok 2021; Lim and Bradshaw 2023; Carson and Gibbons 2023; Chen 2024). A key foundation for our analysis is the three-part test for assessing speech restrictions, which requires that such measures be lawful, necessary and proportionate to protect legitimate aims (UN Human Rights Committee 2011, para 22). While the international human rights frameworks serve as a global benchmark for evaluating fake news laws (Wardle and Derakhshan 2017; Chen 2024), their application varies significantly across the region. Among the sample jurisdictions, Japan and South

¹ See studies covering countries with different contexts, e.g., Martínez Otero (2021) and Cheng et al. (2021).

Korea are parties to the International Covenant on Civil and Political Rights (ICCPR), while China, Singapore and Malaysia have not ratified it. Additionally, the Human Rights Declaration of the Association of Southeast Asian Nations (ASEAN) references UN principles, including freedom of expression, but introduces broader limitations absent in the ICCPR's Article 19. As a result, the region lacks a unified binding framework, leaving significant variation in how free speech guarantees are defined and enforced.

We **hypothesise** that the primary driver of chilling effects in fake news laws is legal ambiguity manifested through vague definitions and overly broad prohibitions, which create uncertainty about what speech may be punished, enabling governmental discretion and misuse. These effects are further exacerbated by disproportionality, particularly in relation to harsh penalties and the burden of proof placed on speakers. By systemically identifying key chilling effect parameters from existing scholarship and mapping them against international human rights standards, our research provides a structured framework for assessing and mitigating the chilling effect of fake news laws. When applied to East and Southeast Asia, our findings reveal that no jurisdiction fully eliminates chilling effects: all examined fake news laws contain ambiguities enabling discretionary enforcement. However, the severity of chilling effects varies significantly—from high (e.g., Singapore and China) to moderate (e.g., Taiwan, Hong Kong, Japan, and South Korea). This finding suggests that while chilling effects are not an inevitable byproduct of laws regulating socially harmful falsehoods, they frequently stem from endogenous flaws in legal design, which allow such laws to function as instruments of state control and deterrents to free expression.

Our dataset includes national laws and binding regulations for addressing the fake news problem.² The authors, not native speakers, examined laws and cases in English. For original documents written in languages outside of our competency, we relied on official English translations provided by authoritative sources such as the National People's Congress of the People's Republic of China (PRC), the South Korean Government's Korean Law Information Center and 'The Japanese Law Translation Project' at the Japanese Ministry of Justice. To enhance precision, we

²Our analysis covers national constitutions and criminal codes, as well as Public Security Administration Punishments Law, Cybersecurity Law, Administrative Measures for the Security Protection of Computer Information Networks Linked to the Internet, Administrative Measures on Internet Information Services, Provisions on the Governance of the Online Information Content Ecosystem, Provisions on the Administration of Deep Synthesis Internet Information Services, Cyber Violence Information Governance Provisions for China; the Summary Offences Ordinance (Cap. 228) for Hong Kong; the Public Offices Election Act and Broadcasting Act for Japan; the Communications and Multimedia Act 1998 (CMA), Printing Presses and Publications Act 1984 for Malaysia; Protection from Online Falsehoods and Manipulation Act 2019 (POFMA) for Singapore; Telecommunications Business Act (TBA), Public Official Election Act for South Korea; Satellite Broadcasting Act, Communicable Disease Control Act, Disaster Prevention and Protection Act, Act Governing Food Safety and Sanitation, Social Order Maintenance Act, Public officials Election And Recall Act, Presidential and Vice Presidential Election and Recall Act for Taiwan.

also prioritised translations from universities and specialised legal institutes, cross-checked multiple translation tools and consulted native speakers or fluent individuals for clarification.

To ensure data accuracy, we collected information from major legal databases in each jurisdiction. These include Westlaw for Hong Kong, Singapore and Malaysia; PKULaw for China; Law Data (月旦法學知識庫) and Laws & Regulations Database of the Republic of China for Taiwan; Korean Law Information Centre for South Korea and The Japanese Law Translation Project for Japan.³ However, comprehensive research on law enforcement and implementation remains challenging,⁴ requiring the use of secondary sources to complement primary data.⁵

The chapter starts with defining our CER parameters and their methodological significance. These parameters are then applied to seven East and Southeast Asian jurisdictions, with results summarised in a comparative table. The chapter concludes with key findings and recommendations for studying and mitigating chilling effects.

2 CER Parameters

Clarity in legal norms is the cornerstone of legal predictability and our primary CER parameter, as it directly shapes how individuals perceive the boundaries of permissible speech. Unlike other deficiencies, such as disproportionate penalties, a lack of clarity does not merely amplify chilling effects—it generates them. Vague legal provisions breed uncertainty, forcing individuals to second-guess whether their speech may be punished, leading to precautionary self-censorship. Unlike direct censorship, which explicitly prohibits expression, legal ambiguity deters speech through fear of misinterpretation and selective enforcement. It allows

³The search was conducted through the keywords, such as ‘false’, ‘fake’, ‘rumours’, ‘rumors’, ‘disinformation’, ‘misinformation’, ‘fabrication’, ‘fabricated’, ‘distortion’, ‘distorted’, ‘manipulation’, ‘lie’, ‘falsity’, ‘(un)verified’, ‘(in)accurate’.

⁴Data on fake news regulations remains incomplete and opaque. Limited access to full raw data from enforcement agencies, including arrests and prosecutions, hinders the understanding of the overall situation. Additionally, some court decisions are still unpublished.

⁵We collected secondary sources using the main search engines relevant to each jurisdiction, such as Baidu for China, and Google for others. This includes news reports from media outlets with different ownership structures, country origins and political orientations to mitigate bias. We verified the reliability of the sources by identifying major inconsistencies that may indicate credibility concerns. Additionally, we reviewed publications from NGOs and advocacy groups with different agendas to contextualise regulatory developments. For peer-reviewed legal scholarship and case law analysis, we relied on Westlaw and Lexis to supplement our primary sources. Where applicable, we also consulted legal databases such as PKULaw, Law Data (月旦法學知識庫) and Laws & Regulations Database of the Republic of China, ensuring broad jurisdictional coverage. These measures help maintain methodological rigour and minimise interpretation errors.

See other studies that use secondary sources to supplement primary data for legal analysis, e.g., Martínez Otero (2021) and Kok (2021).

authorities to interpret and apply laws discretionary⁶ (UN General Assembly 2022; Khan 2021), further amplifying uncertainty. If interpretation and enforcement are assigned to governments, they can manipulate fake news laws to impose state narratives, weaponising legal norms to monopolise the ‘truth’ and suppress dissent (Richter 2018; Teo 2021; Sherstoboeva 2024). As a result, individuals avoid discussing sensitive topics, regardless of their statements’ accuracy; law itself becomes a tool of deterrence, exerting a silencing effect even in the absence of direct state intervention. In contrast, clear prohibitions reduce excessive self-censorship by limiting opportunities for arbitrary enforcement.

Clarity is not merely a technical concern but a fundamental prerequisite for safeguarding free expression, which is closely tied to the principle of legality, or the ‘provided by law’ under international law. To meet this standard, legal provisions must be clear, precise and predictable in enforcement. Clarity mitigates chilling effects and aligns with international legal standards, emphasising the importance of understandable laws to protect lawful expression (Verpeaux 2010).

Additionally, the principle of legality requires laws to be accessible (Verpeaux 2010). While inaccessibility does not chill speech in the same way that vagueness does, it still generates uncertainty. If individuals cannot access laws, they remain unaware of their legal obligations, leading to self-censorship out of caution. Inaccessibility can also indicate governmental overreach, as restrictive laws may be deliberately hard to obtain, limiting public scrutiny. Furthermore, fragmented fake news laws can obscure clarity, compounding uncertainty and chilling effects.

Breadth is another important CER parameter. While legal scholarship debates whether clarity and breadth form a single criterion, we argue they are distinct yet interconnected. Clarity defines what is prohibited, while breadth indicates the scope of speech a law covers. A law can be broad yet clearly formulated—for example, an outright ban on *any* lies is unambiguous but extremely broad. Broad but clear laws mostly suppress speech directly through enforcement rather than indirectly through uncertainty. They may satisfy the ‘provided by law’ principle but raise concerns regarding their legitimacy, necessity and proportionality under international law. Conversely, narrower yet vaguely formulated bans, such as restrictions on falsehoods *endangering social stability*, fail to meet the predictability requirement under the same principle. Since excessive breadth often results from ambiguity, clarity remains the primary concern, with breadth serving as a secondary but reinforcing factor.

The additional CER parameters—**prior knowledge of falsity, intent to cause harm, and evaluation of actual harm**—complement clarity and breadth by refining legal precision and narrowing the scope of restrictions. They reduce uncertainty

⁶UN Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe Representative on Freedom of the Media, Organization of American States Special Rapporteur on Freedom of Expression, and African Commission on Human and Peoples’ Rights Special Rapporteur on Freedom of Expression and Access to Information (2017) Joint Declaration on Freedom of Expression and ‘Fake News’, Disinformation and Propaganda. <https://www.osce.org/fom/302796>.

by ensuring that fake news laws target only deliberate and harmful falsehoods and help assess the impact of such laws on free speech through an international legal lens, ensuring alignment with legality and proportionality principles (UNESCO 2020; Khan 2021; UN General Assembly 2022). Intent is crucial in distinguishing disinformation (malicious intent) from misinformation (innocent errors), preventing unjust penalisation for honest mistakes (Wardle and Derakhshan 2017). Nonetheless, some legal frameworks impose strict liability in criminal law, disregarding intent and penalising falsehoods *per se*. Although strict liability may be justified in limited contexts, such as public health emergencies or armed conflicts, it may raise concerns about proportionality, necessity and legal certainty.

Evaluating actual or potential harm is essential to ensure that restrictions remain proportionate and do not lead to overbroad and ambiguous prohibitions. In contrast, laws that disregard harm assessment amplify chilling effects by fostering legal uncertainty and fear of prosecution. While these CER parameters enhance legal predictability and mitigate risks of government manipulation, clarity remains the primary factor in chilling effects as self-censorship is mainly fostered by legal uncertainty.

The burden of proof is also crucial for evaluating the chilling effect of fake news laws. While it *clearly* assigns responsibility to the speaker, it can deter speech by requiring individuals to prove the truthfulness in all contexts, imposing a disproportionate and unnecessary burden. As the UN Human Rights Committee (2011, para 47) states, restrictions should not apply to forms of expression that are ‘not, of their nature, subject to verification’. This principle extends to satire, artistic expression and opinion, which may have a factual basis but, by their nature, do not lend themselves to proof. Additionally, the Committee stated that even untrue statements about public figures should not incur penalties if published in error and without malice, as this risks chilling political discourse. The burden of proof is especially harsh on those with limited resources, as even journalists may struggle to provide irrefutable evidence, making it unrealistic in practice.

Beyond disproportionality, the level of proof—or evidentiary threshold—reinforces chilling effects, bringing us back to clarity. Unclear or excessively high standards leave speakers uncertain about what qualifies as sufficient evidence, how it will be evaluated and whether all speech requires verification. Thus, legal uncertainty fosters fear of misinterpretation or prosecution, deterring speech beyond legal prohibitions and enabling government overreach.

The broader implications of fake news laws—specifically their **extra-territorial impacts** and **implications for other fundamental rights**—are also crucial considerations in assessing their chilling effects. These parameters highlight how such laws may extend beyond borders or restrict rights beyond freedom of expression, compounding their regulatory impact. For instance, some fake news laws restricting health-related information during the COVID-19 pandemic limited public access to essential knowledge, chilling both freedom of expression and the right to health (Neo 2022). While false health claims raised legitimate public concerns during the pandemic and other crises, this regulatory dilemma highlights the tension between curbing harmful speech and preventing excessive suppression.

The extra-territorial impact of fake news laws occurs when laws enacted in one jurisdiction influence legal frameworks in other jurisdictions (Han 2019). In such cases, chilling effects often arise not from the original law but from how it is adapted elsewhere. Even well-defined laws with independent oversight may be replicated without safeguards, leading to government overreach. Governments may cite the legitimacy of the original law's legitimacy to justify ambiguous and excessive local versions, making careful evaluation of regulatory models essential to avoid replicating overbroad restrictions.

Judicial oversight plays a crucial role in reducing the chilling effect. Courts can provide authoritative interpretations that clarify legal ambiguities and refine broad provisions in fake news laws, setting binding precedents that define the boundaries of permissible speech. However, the independence of the judiciary is not always guaranteed. Even when laws are clear, the perception—or reality—of judicial bias can foster uncertainty, leading individuals to self-censor beyond what the law explicitly prohibits out of fear of selective enforcement. Independent legal reviews also help mitigate chilling effects by guiding legislative drafting and implementation, though they lack judicial authority. While not binding, they reinforce checks and balances that deter arbitrary enforcement (UN General Assembly 2022).

The **severity of penalties**—including criminal and administrative sanctions such as fines, imprisonment, professional bans, content takedowns and correction notices—is another key CER parameter, closely linked to legality and proportionality under international law. When combined with vague legal provisions, disproportionate penalties exacerbate chilling effects fostering a climate of fear and suppression (UNESCO 2020; UN General Assembly 2020; Kenyon 2010). If individuals cannot determine the boundaries of legality and also face disproportionate sanctions, they are more likely to engage in excessive self-censorship out of fear of unpredictable enforcement.

Nonetheless, even when laws are clear and proportionate, severe penalties can *independently* deter speech. We align with scholars who argue that severity should be considered as a separate factor of chilling (Baumbach 2018; Pech 2021; Carson and Gibbons 2023), as the mere prospect of harsh consequences—such as heavy fines or lengthy prison terms—can make individuals and media outlets overly cautious, avoiding controversial but lawful expressions. This effect is particularly pronounced in politically or socially charged contexts, including armed conflicts or other crises. However, proportionate sanctions for well-defined violations may mitigate, or at least not exacerbate, chilling effects by reducing excessive fear of legal repercussions.

3 The Chilling Effect of East and Southeast Asian Fake News Laws

The vagueness of fake news laws is a common feature across the region, producing chilling effects by legal design. Ambiguous terms like ‘fake news’ or ‘false news’ allow governments broad discretion to restrict speech, including lawful expressions. These laws frequently incorporate broad and vague terms such as ‘fear’ or ‘social stability’, which can be flexibly interpreted to serve state interests, further expanding their legal scope. Consequently, legal uncertainty fosters self-censorship, with individuals avoiding expression to minimise legal risks.

While Singapore has a dedicated fake news law—POFMA, other jurisdictions regulate socially harmful falsehoods through scattered provisions across multiple laws, increasing confusion. China integrates fake news ban into its constitutional doctrine⁷ supplemented by an overwhelming number of additional regulations. Taiwan’s frameworks are also fragmented. The absence of a cohesive legal structure makes it difficult for individuals to determine lawful boundaries, reinforcing the deterrent effect and amplifying the risk of state misuse by fake news laws.

Table 1 summarises how different CER parameters contribute to the degree of chilling generated by fake news laws in East and Southeast Asia. As shown, all jurisdictions in our sample exhibit chilling effects, with no legal frameworks producing a low or negligible chilling impact. The intensity ranges from moderate to high, depending on how these laws address clarity, breadth and other regulatory factors, evaluated below. The most restrictive environments—Malaysia, Taiwan, China, and Singapore—demonstrate **high-intensity chilling** due to legal ambiguity and overbreadth, further exacerbated by severe penalties. Hong Kong, South Korea, and Japan exhibit **moderate chilling effects**, where clearer legal frameworks, more proportionate penalties and some degree of judicial oversight help mitigate—though not eliminate—the deterrent impact on free expression.

3.1 Clarity as a Central Factor in Chilling Effects

East and Southeast Asian fake news laws lack clarity to varying degrees—from moderate (in South Korea and Japan) to high (in other sample jurisdictions). Ambiguous bans on *false information* (China,⁸ South Korea⁹), *falsehoods* (Taiwan¹⁰),

⁷ Article 41 of the PRC Constitution.

⁸ Article 25 of the Public Security Administration Punishments Law; Article 12 of the Cybersecurity Law; Article 11 of the Provisions on the Administration of Deep Synthesis Internet Information Services.

⁹ Article 250(1) of the Public Official Election Act.

¹⁰ Article 90 of the Presidential and Vice Presidential Election and Recall Act.

Table 1 The Chilling Effects of East and Southeast Asian Fake News Laws

Parameters/ Jurisdictions	Singapore	China	Malaysia	Taiwan	Hong Kong	South Korea	Japan
Clarity	High CE	High CE	High CE	High CE	High CE	Moderate CE	Moderate CE
Breadth	High CE	High CE	High CE	Moderate CE	Moderate CE	Moderate CE	Moderate CE
Prior knowledge of falsity	Low CE	Moderate CE	High CE	High CE	Low CE	Moderate CE	High CE
Intent to cause harm	Low CE	Moderate CE	Low CE	High CE	Low CE	Moderate CE	High CE
Evaluation of actual harm	High CE	Moderate CE	High CE	Moderate CE	High CE	Moderate CE	Moderate CE
Judicial oversight ⁴⁵	High CE	High CE	Moderate CE	Moderate CE	Moderate CE	Low CE	Low CE
Severity of penalties	High CE	High CE	High CE	High CE	Moderate CE	High CE	High CE
The potential for broader implications	High CE	High CE	Requires further research	High CE	Requires further research	Requires further research	Requires further research

false statements of fact (Singapore¹¹), *false facts* (South Korea¹²) and *false content* (Malaysia¹³) allow for **broad interpretations**, granting authorities—whether ministries or courts lacking impartiality—nearly unlimited discretion to define truth, bolstering government narratives, suppressing inconvenient facts and skewing public debate.

¹¹ POFMA's Section 7(1)(a).

¹² Article 313 of the Criminal Act.

¹³ Section 211(1) of the CMA.

China,¹⁴ Malaysia,¹⁵ and Taiwan¹⁶ also restrict ‘rumours’, a term lacking a clear legal definition and is overly broad due to its ambiguity. The Merriam-Webster dictionary describes it as a ‘talk or opinion widely disseminated with no discernible source’ or ‘a statement or report current without known authority for its truth’.¹⁷ This vague and overly broad definition is inappropriate for legal use. It encompasses not only disinformation but also misinformation, truthful information and unverifiable opinions, as Sunstein (2014) notes. It also negates the prior knowledge parameter. Without distinguishing between harmful lies and harmless remarks, the ban on rumours encompasses a broad spectrum of communications, including innocuous and factually correct content.

The ambiguous wording of certain bans is likely to deter government criticism. For example, the Singaporean POFMA prohibits false statements that may ‘*diminish public confidence in the performance of any duty or function of, or in the exercise of any power by, the Government*’.¹⁸ Similarly, Malaysia’s CMA restricts false comments, requests, and suggestions¹⁹ that are unverifiable, which enables government misuse due to uncertainty about what constitutes violations. These unclear and broad prohibitions magnify chilling effects, deterring lawful criticism that fosters accountability. POFMA’s application in Singapore highlights these risks, as most cases targeted government-related statements, reinforcing concerns about its role in suppressing criticism. POFMA’s ambiguities often drive users away from public platforms, especially Facebook, to less monitored spaces, limiting open debate on government-related issues (Teo 2022; The Straits Times 2024). POFMA was actively invoked in the 2020 General Election, raising concerns about its impact on electoral discourse (The Straits Times 2024).

Although narrowing fake news bans may lessen chilling effects, it does not eliminate uncertainties and may even introduce new ambiguities. For instance, China’s ban on ‘fabricating or distorting facts’²⁰ is unclear: does it mean the deliberate creation of false information, such as through ‘troll factories’, or includes minor inaccuracies? Moreover, the ban on ‘distorting facts’ may deter journalistic criticism, as

¹⁴Article 25 of the Public Security Administration Punishments Law; Article 15 of the Administrative Measures on Internet Information Services; Article 6(8) of the Provisions on the Governance of the Online Information Content Ecosystem; Article 5 of the Administrative Measures for the Security Protection of Computer Information Networks Linked to the Internet.

¹⁵Section 505(b) of the Penal Code.

¹⁶Article 63 of the Communicable Disease Control Act; Article 53 of the Disaster Prevention and Protection Act; Article 63 of the Social Order Maintenance Act of Taiwan.

¹⁷See <https://www.merriam-webster.com/dictionary/rumor>.

¹⁸POFMA’s Section 7(1).

¹⁹Section 233(1)(a) of the Malaysian CMA.

²⁰According to Article 41 of the PRC Constitution, ‘citizens... shall have the right to criticize and make suggestions regarding any state organ or state employee, and have the right to file with relevant state organs complaints, charges or reports against any state organ or state employee..., but they shall not fabricate or distort facts to make false accusations’. See also Article 291a of the PRC Criminal Law and Article 5 of the Administrative Measures for the Security Protection of Computer Information Networks Linked to the Internet.

the government can misuse it against factual analytics or interpretations. This deficiency mirrors Japan's Broadcasting Act, which penalises 'fact distortion'²¹ without a clear definition, enabling government overreach and fostering self-censorship in broadcasts. Malaysia's Printing Presses and Publications Act chills speech even more significantly by criminalising any false news published by printers, publishers, editors and writers.²² It creates a significant threat due to its broad scope and harsh penalties for ambiguous violations, prompting self-censorship among media professionals who avoid controversial subjects to evade punishment.

These bans reveal the conflict between society's demand for journalistic accuracy and the risks of vague laws. While linked to journalistic verification and the need for accurate and reliable journalism to prevent harmful falsehoods,²³ journalistic standards must be clear and precise. The journalistic right to a fair mistake developed in international human rights law (McGonagle 2016) must also be respected. However, most fake news laws in the region fail to achieve this balance, allowing for the use of fake news laws to limit the scrutiny of government narratives and chill independent journalism, especially investigative reporting.

3.2 *Assessing Intent, Prior Knowledge and Harms*

East and Southeast Asian fake news laws vary significantly in addressing **intent** and **prior knowledge of falsity** but fail to alleviate chilling effects in their approaches. While Hong Kong, Malaysia and Singapore reference intent, these attempts remain imprecise. For example, the Malaysian Penal Code broadly prohibits expressions 'with intent to cause, or which is likely to cause, *fear or alarm* to the public',²⁴ and its CMA prohibits false content intended to '*annoy*'²⁵—using legally vague terms. Similarly, Hong Kong's Summary Offences Ordinance penalises sending *knowingly* false messages 'for the purpose of *causing annoyance, inconvenience or needless anxiety* to any other person',²⁶ without defining these terms or clarifying if they pertain to individuals or the public. Although comparable wording exists in UK law,²⁷ its enforcement is subject to judicial oversight and public scrutiny, limiting its scope and potential chilling effects. In contrast, East and Southeast Asian provisions often lack such safeguards, enabling broader application and greater chilling effects. Even where bans are narrow, such as Hong Kong's restriction to messages sent 'by telegraph, telephone, wireless telegraphy or wireless telephony', their applicability

²¹ Article 4 of the Broadcasting Act.

²² Section 8A of the Printing Presses and Publications Act 1984.

²³ See, e.g., in ECtHR *Bergens Tidende and Others v. Norway*, para. 53.

²⁴ Section 505(b) of the Malaysian Penal Code.

²⁵ Sections 211(1), 233(1)(a) of the Malaysian CMA.

²⁶ Section 20(b) of the Hong Kong Summary Offences Ordinance.

²⁷ Section 127 of the UK Communications Act 2003.

to social media remains unclear, creating additional uncertainty that deters lawful speech and enables potential government misuse.

In Taiwan and Japan, lacking an intent criterion allows the government to misuse bans against unintentional misinformation. In contrast, Singapore, Malaysia and Hong Kong incorporate this criterion, while China's and South Korea's laws vary. Some Chinese provisions,²⁸ including the Cybersecurity Law,²⁹ incorporate intent, but others lack clarity and broaden enforcement discretion. Although several other Chinese norms partially consider prior knowledge and intent, they still impose broad and ambiguous restrictions on fabricated facts and rumours.³⁰ Other regulations omit these criteria entirely,³¹ generating considerable uncertainty and allowing discretionary government enforcement. Consequently, individuals can resort to self-censorship, unsure of the boundaries between lawful and unlawful speech.

East and Southeast Asian laws often frame fake news as a danger to public order or stability, using vague and extensive concepts prone to misuse. For instance, China refers to threats to '*social stability*'³² and '*economic or social order*'³³ without clear distinctions. Singapore includes maintaining '*friendly relations*' with other countries³⁴ as a protected interest. Such elastic terminology enables a broader application and transforms these legal tools into mechanisms of government control, undermining their credibility as targeted measures.

Fake news laws in the region often neglect **actual harm** (e.g., Singapore, Malaysia, Hong Kong), lack criteria for its assessment or focus solely on *potential* harm without clarifying whether actual harm matters.³⁵ For instance, Malaysia's Penal Code criminalises statements based only on their potential to cause fear or alarm,³⁶ without requiring the consideration of actual harm. Taiwan criminalises

²⁸ Article 25 of the Public Security Administration Punishments Law bans '*intentionally disturbing public order* by spreading any rumour, giving false information'. See also Article 291a of the PRC Criminal Law.

²⁹ Article 12 of China's Cybersecurity Law prohibits the spread of falsehoods *to disrupt 'economic or social order'*.

³⁰ Article 5 of the PRC Administrative Measures for the Security Protection of Computer Information Networks Linked to the Internet.

³¹ Article 15 of the PRC Administrative Measures on Internet Information Services.

³² *Ibid.*

³³ Article 12 of the PRC Cybersecurity Law, Article 6(8) of the Provisions on the Governance of the Online Information Content Ecosystem.

³⁴ POFMA's Section 7(1)(b).

³⁵ Section 505(b) of the Malaysian Penal Code, Sections 211(1), 233(1)(a) of the Malaysian CMA; Section 7(1) of the Singaporean POFMA; Section 20 of the Hong Kong Summary Offences Ordinance; Article 12 of the PRC Cybersecurity Law; Article 63 of the Social Order Maintenance Act of Taiwan.

³⁶ According to Section 505(b) of the Malaysian Penal Code, whoever makes, publishes or circulates any statement, rumour or report '*with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity*' shall be punished with imprisonment.

‘spreading rumours in a way that is *sufficient* to undermine public order and peace’³⁷ but fails to define what ‘sufficient’ entails. China’s Criminal Law holds individuals liable for disseminating fabricated information ‘*seriously disturbing public order*’³⁸ without defining the threshold for such disturbance. Although authorities might consider actual harm in practice, the laws lack explicit criteria for this, allowing wide discretion and reinforcing chilling effects.

3.3 *Independent Oversight as a Mitigating Factor*

Judicial independence in the region has declined in the past five years, with 81% of surveyed countries reporting weaker checks on government power (World Justice Project 2023). Yet oversight varies: Japan ranks highest, followed by Singapore and South Korea, while Hong Kong shows moderate independence, and Malaysia and China rank lower (World Justice Project 2024). However, strong judicial independence does not guarantee protection against chilling effects, as courts in even highly ranked jurisdictions may interpret and enforce fake news laws inconsistently.

In South Korea, the Constitutional Court ruled that vague legal provisions criminalising ‘false communication’ violated free speech due to their chilling effect, emphasising that unclear laws deter expression by making individuals uncertain about legal boundaries.³⁹ While the ruling mitigated the chilling effects of fake news bans by highlighting clarity as a critical safeguard and repealing the vague norm, its narrow focus on the vagueness of the ‘public interest’ concept rather than the ambiguity and overbreadth of ‘false communication,’ left space for future restrictions.

By contrast, Singapore’s Court of Appeal took a far more restrictive approach. It upheld laws granting Ministers broad discretion to issue Correction Directions against alleged false statements, reinforcing chilling effects.⁴⁰ By legitimising executive power to define ‘public interest’ and placing the burden of proof on speakers rather than the government, the ruling entrenched government control over public discourse. The practical enforcement of these interpretations made it difficult for individuals and media actors to defend themselves, particularly given limited access to government-held data in Singapore (Teo 2022; The Straits Times 2024). Although most state-imposed Correction Directions go uncontested, attempts to challenge them revealed structural barriers that amplify POFMA’s chilling effects (Teo 2022).

³⁷ Article 63 of the Social Order Maintenance Act of Taiwan.

³⁸ Article 291a of the PRC Criminal Law.

³⁹ Constitutional Court of South Korea (2010). Criminal Penalty on False Communication, 2008Hun-Ba157-1 (2010). 22-2(B) KCCR 684, 2009Hun-Ba88 (Consolidated), December 28, 2010.

⁴⁰ Court of Appeal of Singapore (2021). The Online Citizen Pte Ltd. v Attorney-General and another appeal and other matters. [2021] SGCA 96, Civil Appeals Nos 47 and 52 of 2020, and Summonses Nos 72, 97 and 98 of 2020, decided on 8 October 2021.

A more extreme example is China, where the determination of ‘false publications’ often rests solely with executive authorities (Miao and Lei 2016). In such systems, vague legal provisions do not merely deter speech but become active instruments of state control over speech. Without judicial or regulatory checks, enforcement remains unpredictable, heightening chilling effects as individuals and media preemptively self-censor to avoid legal risks.

Nevertheless, these examples highlight the critical role of institutional safeguards: while judicial intervention constrained government overreach in South Korea, the absence of independent regulatory checks enabled broader executive control in Singapore and China, intensifying the chilling effects of fake news laws.

3.4 *Severity of Penalties*

The severity of penalties for fake news in East and Southeast Asia differs by jurisdiction, yet all jurisdictions impose criminal penalties, ranging from fines to imprisonment,⁴¹ which discourage controversial discourse. Even in Japan and South Korea, where specific fake news penalties are absent, some broad and ambiguous provisions criminalising defamation can apply to fake news,⁴² producing similar chilling effects. This legal environment stifles public debate, forcing speakers and media to alter their rhetoric or avoid contentious issues out of fear of prosecution.

While imprisonment is the harshest sanction, Hong Kong is the only jurisdiction where the maximum term is in months, not years. Financial penalties also deter expression, especially for individuals and small media outlets. Malaysiakini, for example, was fined 500,000 Malaysian Ringgits (€115,000) for allegedly false reader comments, relying on crowdfunding to stay afloat (Lim and Bradshaw 2023). Disproportionate penalties applied in the region discourage investigative journalism and chill diverse public discourse.

Other measures, such as content blocking or mandatory corrections, also generate chilling effects, though to a lesser extent. Content blocking or removals⁴³ undermine media viability, while correction requirements⁴⁴ primarily damage trust in media credibility. When combined with criminal sanctions, these mechanisms

⁴¹Article 291a of the PRC Criminal Law; Section 20 of the Hong Kong Summary Offences Ordinance; Sections 211 and 233 of the Malaysian CMA, Section 505(b) of the Malaysian Penal Code; Sections 7-8 of the Singaporean POFMA; Article 63 of the Social Order Maintenance Act of Taiwan, Article 53 of the Disaster Prevention and Protection Act of Taiwan; Article 63 of the Communicable Disease Control Act of Taiwan; Article 250(1) of the South Korean Public Official Election Act.

⁴²In both jurisdictions, in addition to the criminal code articles criminalizing defamation, there are separate articles prohibiting false rumors damaging the credibility or obstructing the business of another (Article 233 of the Penal Code of Japan) or false facts injuring the credit of another (Article 313 of the Criminal Act of South Korea).

⁴³E.g., ‘Stop Communication Directions’ under the Section 12 of the Singaporean POFMA.

⁴⁴E.g., ‘Correction Directions’ under POFMA’s Section 11.

amplify the chilling effects of fake news laws, limiting investigative journalism and public debate.

4 Conclusion

This study develops the CER framework as a structured tool for assessing the chilling effects of fake news laws, filling a key gap in legal and policy analysis. By applying our parameters, including clarity, scope and severity of penalties, we show how legal design shapes free expression. Our analysis demonstrates that the ambiguity and breadth of East and Southeast Asian fake news laws facilitate government misuse, leading to chilling effects reinforced by harsh penalties. China, Singapore, Malaysia, and Taiwan exhibit high chilling effects, while Hong Kong, Japan and South Korea experience more moderate levels. Despite variations, the persistence of moderate to high chilling effects across all jurisdictions signals a fundamental risk: the use of vague and overly broad fake news laws as tools of control rather than precise regulatory instruments. This trend, regardless of political and legal differences, fosters self-censorship with long-term consequences for public discourse.

This study makes three key contributions. First, it advances the debate on chilling effects by providing a structured framework for cross-jurisdictional legal analysis and systematic evaluation of fake news laws beyond Western contexts. Secondly, it bridges international human rights principles with chilling effect parameters. Third, it highlights how the legal design of fake news laws generates chilling effects by enabling government overreach through legal uncertainty.

While our approach is rooted in legal methodology, future research should incorporate empirical and interdisciplinary perspectives, such as media independence, judicial impartiality and political climate, for a more holistic understanding of chilling effects. Strengthening CER's comparative value would further require integrating international free speech standards into CER ranking more explicitly. In regions with binding oversight mechanisms like the Council of Europe, CER could be refined by mapping its parameters onto international legal tests for deeper cross-jurisdictional comparisons, highlighting divergences in legal design. Ultimately, our findings underscore that combating socially harmful falsehoods and protecting free expression requires legal clarity. When it is sacrificed, fake news bans do not merely chill speech—they recalibrate public discourse through uncertainty, consolidating state control under the pretext of safeguarding truth.

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