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Malaysia, Covid-19, And The New Fake News Ordinance: Is There A Reason To Be Apprehensive? Published 4 hours ago on July 2, 2021 **By Harsh Mahaseth**

Authors: Harsh Mahaseth and Gursimran*

No. 2) Ordinance 2021 ("The Ordinance") was issued on the basis of Article 150 (2B) of the Federal Constitution ("Constitution") by the Malaysian King ("Yang di-Pertuan Agong"). The Ordinance seeks to regulate misinformation on COVID-19 through the reenactment of the Anti-Fake News Act 2018 ("AFNA 2018"), while the country is in a nationwide state of emergency. Malaysia is a Parliamentary democracy with a

Comments

of information. With the suspension of the democratic system, these authoritarian tactics erode the leftover scrutiny and accountability that is expected from the Government. Earlier, the AFNA 2018 was repealed through the Anti-Fake News (Repeal) Bill 2019 because the Government was satisfied that there were enough laws to penalise fake news, such as the Penal Code[Act 574], the Printing Presses and Publications Act 1984 [Act 301]("PPPA 1984") and the Communications and Multimedia Act 1998 [Act 588]. Despite reiterating similar positions in the recent past, it re-enacted the law with amendments that are detrimental to media freedoms and jeopardised constitutional guarantees such as Article 10(1)(a) of the Constitution on the right to freedom of speech and expression not violating the three Rs namely, Race, Religion, and Royalty.

On 11 March, 2021, the Emergency (Essential Powers) (on disseminating misinformation

Constitutional monarchy, but the Constitution does not guarantee the right to freedom

The new law defines 'fake news' as "any news, information, data, and reports, which is or are wholly or partly false relating to COVID-19 or the proclamation of emergency, whether in the forms of features, visuals or audio recordings or in any other form capable of suggesting words or ideas." While this definition is narrower than its previous one because the objective is to curb fake news relating to the pandemic, the Government has failed to explain how and when can a piece of news can be categorised as false. The punishment for its violation is

a fine of 100,000 Ringgit (\$24,120) or imprisonment for 3 years or both. The threshold of criminal liability has been lowered from 'maliciously' to the 'likelihood of fear or alarm' that the dissemination of fake news will cause in public (Article 4). Moreover, the authorised officer is supposed to communicate to the violator that he must remove the information within 24 hours. But there is no clarity on whether the person must have actual or constructive knowledge on the dissemination. This is detrimental to media freedoms. The right to media freedom has no explicit mention in

High Court recognised free press as a constitutional right and not a privilege under Article 10 of the Constitution. It observed that the Deputy Minister decision of rejecting the publication permit under the PPPA 1984 without the want of reason is a perverse decision, illegal and unreasonable in nature. There are high chances that the Ordinance, especially during a state of emergency, can be misused to target political parties and postpone general elections. The Government has already postponed the implementation of the Undi-18, which jeopardises the right of universal adult suffrage of more than 1.2 million youths. The Undi-18 was allowed

through the Constitution (Amendment) Act 2019 in July 2019 to reduce the voting age

eligibility from 21 to 18 years by amending Article 119(1)(a) of the Constitution. Recently,

a judicial review application has been filed in the High Court against the Prime Minister

and the Election Commissioner challenging the unnecessary postponement of Undi-18.

Malaysia has also been engulfed in political instability for a long time after the abrupt

resignation of PM Mahathir Mohamad of the Pakatan Harapan coalition. The historic

collapse of the Pakatan and the appointment of PM Muhyiddin Yassin without the public

mandate is a reason why the Government would want to stay in power no matter what.

the Constitution. However, in Mkini Dotcom Sdn Bhd v. Home Minister and Ors., the

There is a general distrust in the public as they have been deprived of a stable and accountable Government from time to time. Although the Ordinance reflects the structural issues within the Government, it targets institutions by criminalising any kind of direct or indirect financial assistance (Article 5). Also, during this pandemic, there is a need for accurate information to be released, and that too in a manner that can be easily understood by the entire population. But, there is the hazard of seeing fake news being mixed with what is real, something that the citizens have not found easy to discern difference. It proves detrimental for rural people

who find it difficult to identify and verify the news sources, according to Dr Serina

Rahman, Visiting Fellow at the Malaysia Studies Programme. Hence, they might violate

the law even without knowing about it. The Ordinance considers the self-incriminating

statement of the accused, including the documents seized from him before or after his

arrest, as admissible in evidence (Article 12 & 13). The rule against self-incrimination is

Moreover, they may also then be punished without the right to a hearing because the

Court has the power to issue an order for the removal of the publication on an ex parte

application. But the Court cannot set aside an order if the Government orders them to

do so (Article 8.3). Malaysia also uses its colonial-era Sedition Act 1948 religiously, which

widely protected in most of the Constitutions around the world.

criminalises hatred, contempt, or excites disaffection towards the members of the Royal family to target free speech. These measures certainly fail to live up to the international standards of freedom of speech and expression. It unequivocally protects the right to seek and impart information such as Article 19 of the Universal Declaration of Human Rights 1948 and International Covenant on Civil and Political Rights 1966, respectively. Malaysia is one of the founding members of the Association of Southeast Asian Nations alongside Singapore, Thailand, and others, which also has a Human Rights Declaration 2012. The Declaration under Article 23 protects the right to information, speech-free, and media freedoms. Despite the existence of regional non-binding human rights instrument, Singapore and Thailand have also failed to protect this right. Singapore's Protection from Online Falsehood and Manipulation Act 2019 gives a minister of the Government overreaching powers to declare the information posted online as false. The violator is required to either publish a "correction order" of the Government on their

platform or simply remove the post in the public interest. Despite the fact that the Act

has a very broad and vague definition of 'public interest' (Article 4), which could almost

through its Anti-Fake News Centre, Vietnam has introduced fines, and Indonesia is still

encompass everything said by the Government, the High Court has upheld its

battling falsehood despite its enhanced digital infrastructure.

constitutionality. Whereas the Government of Thailand is managing disinformation

With a rise of measures that aim to stifle freedom of speech and free press, it is the

such unprecedented times, it is also up to the respective officials to help clarify the

could help in strengthening the Government's position within the public. With the

need of an hour to adopt a mechanism to fact-check information circulating online. In

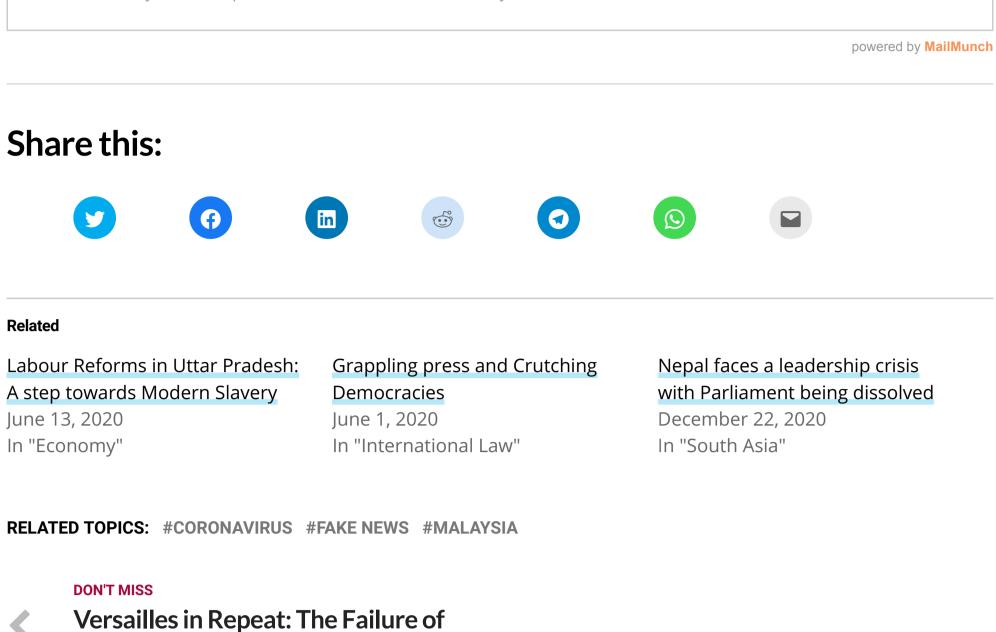
measures taken by the Government and also try to discern the fake news. Such a step

proper hindsight, amendments to the Ordinance, and a mechanism to disseminate authentic information, there is a possibility to use the fake news law to build confidence among the public rather than what it looks like right now. *Gursimran is a final year student at the National University of Study and Research in Law, Ranchi. **Subscribe to our Newsletter** moderndiplomacy

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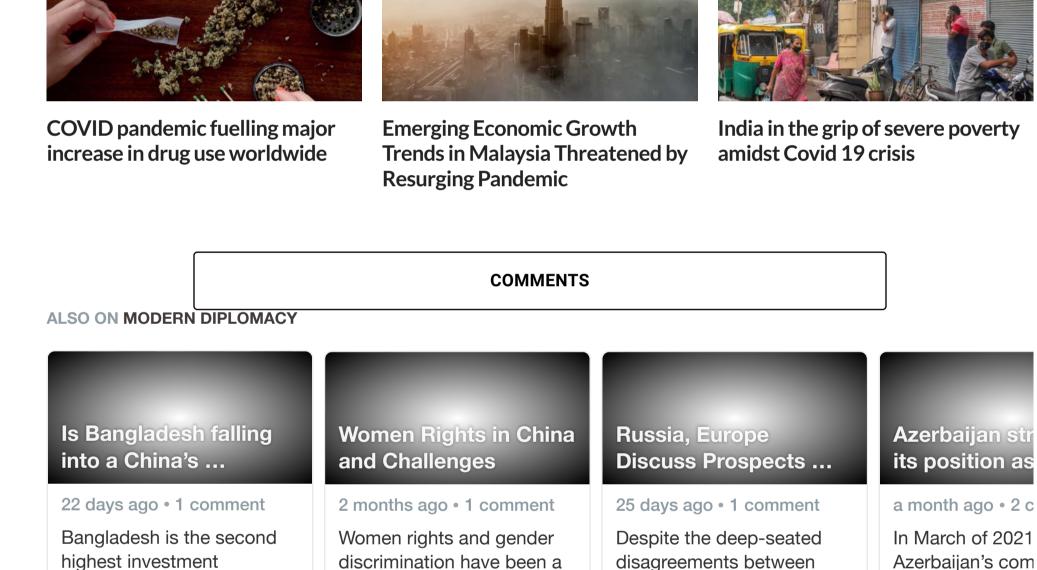
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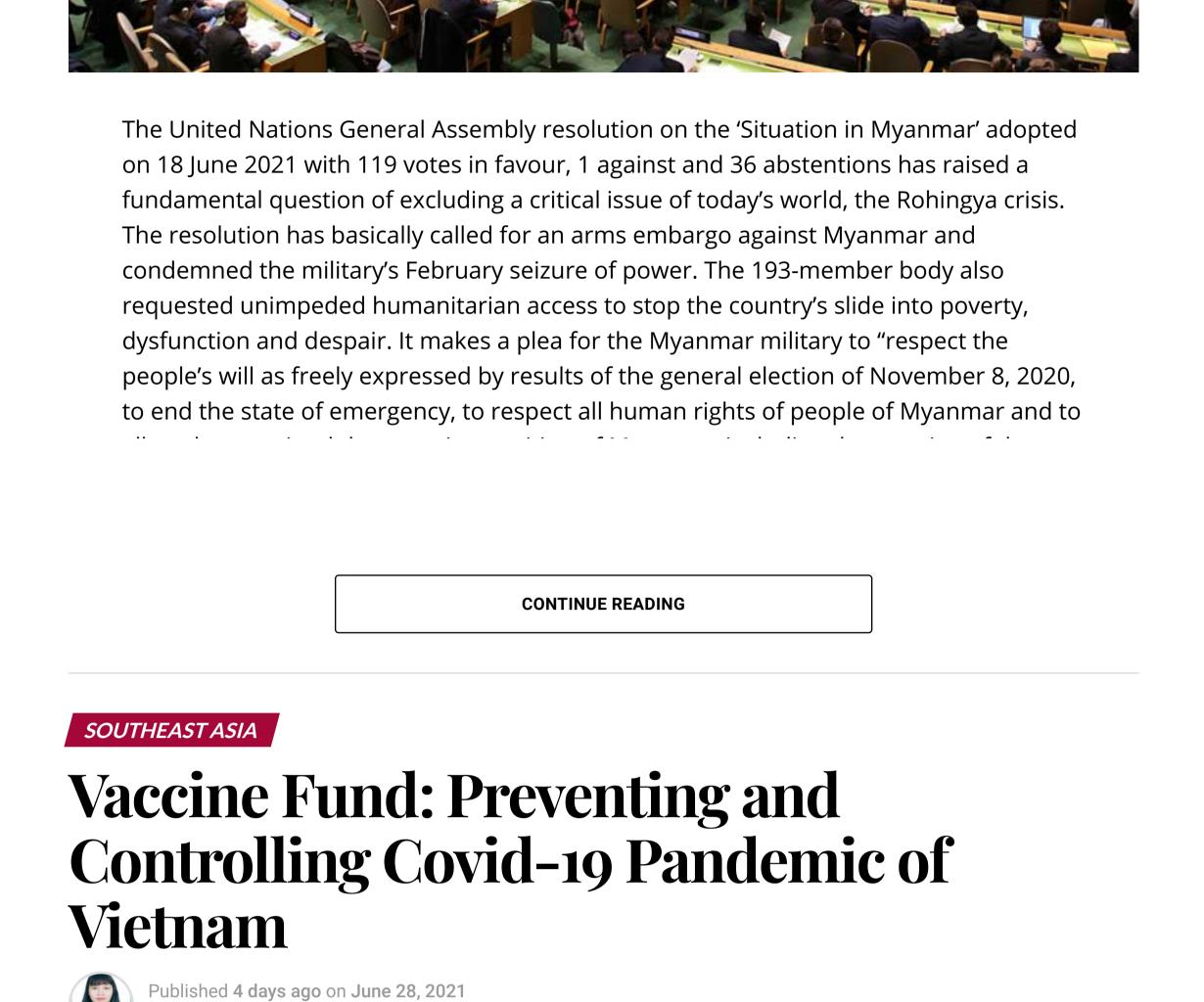
Laily Rachev, Indonesian Presidential Palace via AP On 24 April 2021, representatives of the ASEAN member states gathered in Jakarta to attend the Leaders' Meeting on the situation in Myanmar, where the threat of conflict escalation looms large. Having been pressured by the international community to solve this issue, the Southeast Asian countries have agreed to adopt the Five-Point Consensus as an attachment to its usual Chairman's Statement. In summary, the Consensus contains the following provisions: cessation of violence, constructive dialogue, the establishment of a special envoy, humanitarian assistance, and meetings with all conflicting parties.

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Compared to the previous three ones, the 4th outbreak was assessed to be the largest

in scale, more complicated and more difficult to be controlled due to the appearance of

new strains of virus. In addition to such epidemic preventing and controlling measures

Disinfecting, Medical Declarating, Keeping distance, and No gathering, the Government

of Vietnam has recently come up with a new solution; that is the establishment of the

Vaccine Fund. This new measure is evaluated as an initiative of the Government of

Vietnam to mobilize the participation and contributions of many individuals and

that have been applied during the previous three outbreaks as Wearing masks,

Ceremony of Vietnam's Vaccine Fund for Covid-19 Prevention and Control Photo: by Vietnam News Agency

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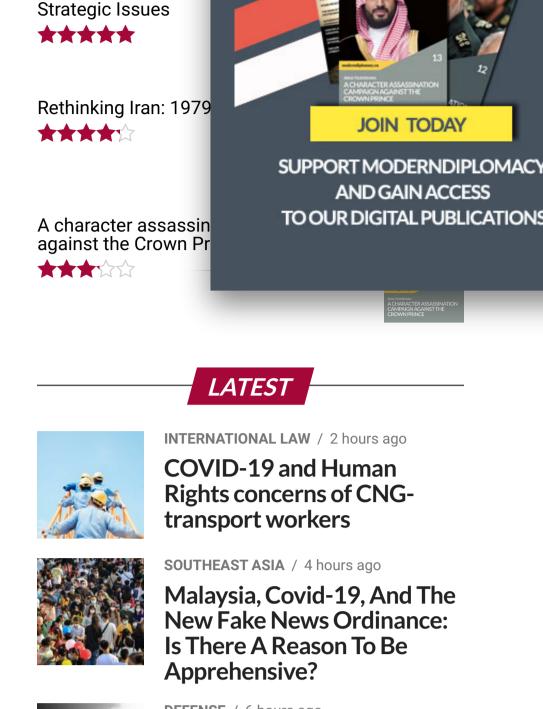
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