

## **Freedom of Expression vs. Misinformation Reconciling Human Rights with Digital Regulation**

**Sijal Zafar<sup>1</sup>, Mian Muhammad Irfan<sup>2</sup>**

<sup>1</sup> LL.B (Hons) - LL.M Advocate High Court Email: [sijal.zafar@gmail.com](mailto:sijal.zafar@gmail.com)

<sup>2</sup> MSc, L.L.B, PGDCLP, LL.M Advocate at Lahore High Court. Email: [mianmuhammadirfan55@gmail.com](mailto:mianmuhammadirfan55@gmail.com)

**Mian Muhammad Irfan** (Corresponding Author)

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### **Abstract**

The swift growth of online technologies and social media has not only changed the nature of a public discourse but also increased the involvement in democracy and the dissemination of fake news. This paper discusses the conflict between freedom of expression that is one of the pillars of human rights and control of the damaging misinformation in the digital era. Based on international human rights conventions, regional approaches, and domestic constitutions, especially Pakistan and South Africa, the paper discusses the legal and normative limits of free speech. It emphasizes the special difficulties of the content moderation by algorithms in the world digital platforms, the problems of excess and insufficient regulation, and the comparative practice of the jurisdictions such as the European Union or the United States. A comparative legal analysis, the paper holds that freedom of expression and regulation of misinformation are not necessarily opposing, but need to be balanced on the basis of legality, necessity, and proportionality, revised to fit the digital environment. The paper focuses on a human rights-oriented, multi-stakeholder governance framework that seeks to maintain democratic engagement and at the same time protect the integrity of information systems.

**Keywords:** Freedom of Expression, Misinformation, Digital Platforms, Human Rights, Comparative Law, Content Regulation, Pakistan, South Africa

### **Introduction**

The twenty-first century has witnessed an unprecedented transformation in the way individuals communicate, deliberate and access information. Digital technologies and social media platforms have become the primary arenas of public discourse, offering both unprecedented opportunities for democratic participation and serious challenges to the integrity of information. In this evolving landscape, the tension between protecting freedom of expression and addressing the harms of misinformation has emerged as a defining legal and normative dilemma for contemporary societies. The rise of “fake news,” conspiracy theories and orchestrated disinformation campaigns threatens not only the quality of public debate but also democratic institutions and fundamental rights such as health, security and political participation. Against this backdrop, a central question arises: how can legal systems reconcile the fundamental human right to freedom of expression with the urgent need to regulate harmful misinformation in the digital age?

Freedom of expression is universally recognized as a cornerstone of democratic governance and human dignity. Article 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) affirms the right to “seek, receive and impart information and ideas of all kinds.”<sup>1</sup> However, this right is not absolute. International human rights law permits restrictions where they are lawful, necessary and proportionate, particularly to protect public order, public health and the rights of others.<sup>2</sup> This built-in flexibility is increasingly being tested by the proliferation of misinformation, which challenges the boundary between legitimate speech and harmful content. The debates surrounding this issue are not merely abstract; they have immediate implications for electoral integrity, pandemic management, climate action and social cohesion.

The challenge is compounded by the structural features of digital platforms. Unlike traditional media, online platforms operate on algorithmic models that prioritize virality and engagement over accuracy, thereby amplifying sensational or misleading content.<sup>3</sup> As private actors with global influence, platforms such as Facebook (Meta), Twitter (X) and YouTube play an outsized role in shaping the information ecosystem. Their content moderation policies, often criticized as opaque and inconsistent, raise concerns about accountability and human rights compliance. The dual risks of under-regulation (allowing harmful misinformation to proliferate) and over-regulation (leading to censorship and chilling effects) underscore the complexity of the problem.

This paper addresses these challenges by situating the debate within the broader human rights framework. It argues that freedom of expression and the regulation of misinformation are not inherently contradictory but must be reconciled through principles of legality, necessity and proportionality, applied in a digital context. A human-rights-based approach requires balancing individual liberties with collective interests, ensuring that regulatory measures neither entrench state censorship nor abdicate responsibility to unaccountable private corporations.

A comparative perspective further illuminates this dilemma. The European Union has developed regulatory mechanisms such as the Digital Services Act and the Code of Practice on Disinformation, which emphasize transparency, accountability and platform responsibility.<sup>4</sup> In contrast, the United States maintains a stronger commitment to absolute speech protections under the First Amendment, limiting governmental intervention even in cases of harmful misinformation. Meanwhile, in developing democracies such as Pakistan and South Africa, the challenge is compounded by weak institutional safeguards, political manipulation of digital regulation and concerns about selective enforcement. Exploring these contexts highlights both the universality of the problem and the diversity of legal responses.

Methodologically, this paper employs a comparative legal analysis, drawing on international human rights instruments, regional frameworks and national laws. It critically examines case law, policy documents and scholarly commentary to trace the contours of the debate. Particular attention is given to Pakistan and South Africa, where digital regulation intersects with constitutional protections of free speech and broader democratic struggles. By situating these experiences alongside global developments, the paper seeks to offer both normative clarity and practical guidance for reconciling freedom of expression with the regulation of misinformation.

The structure of the paper follows a logical progression. Section 2 examines freedom of expression as a fundamental right, exploring its philosophical and legal foundations and recognized limitations.

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<sup>1</sup> Dennis Adjei, “Human Rights for Justice,” *Amicus Curiae* 5 (2023): 189.

<sup>2</sup> Rhona KM Smith, *International Human Rights Law* (Oxford University Press, 2022).

<sup>3</sup> Valerie Nkemdilim Chioma and Oluwatosin Lepe, *The Intersection of Social Media and Artificial Intelligence: Examining Their Combined Influence on News Dissemination and Credibility in the Digital Age*, 2024.

<sup>4</sup> Gabriela Borz et al., “The EU Soft Regulation of Digital Campaigning: Regulatory Effectiveness through Platform Compliance to the Code of Practice on Disinformation,” *Policy Studies* 45, no. 5 (2024): 709–29.

Section 3 defines and contextualizes the problem of misinformation, outlining its societal impacts and the role of digital platforms. Section 4 surveys international and regional legal approaches, contrasting liberal and restrictive regimes. Section 5 highlights human rights concerns in digital regulation, focusing on the risks of censorship and accountability gaps. Section 6 proposes pathways for reconciling freedom of expression with regulation, emphasizing human-rights-based principles and multi-stakeholder governance. Finally, Section 7 concludes with recommendations for principled regulation that safeguards both democratic participation and the integrity of information.

In sum, the introduction of digital technologies has intensified long-standing debates about the limits of free speech. Yet it has also opened new possibilities for crafting legal frameworks that respond to contemporary threats without undermining fundamental rights. Reconciling freedom of expression with the regulation of misinformation is not a zero-sum exercise but a necessary recalibration of legal and institutional norms to sustain democracy in the digital age.

### **Freedom of Expression as a Fundamental Right**

Freedom of expression occupies a central position in both political theory and constitutional law, serving as a foundational right without which democratic governance, accountability and human dignity cannot flourish. Philosophically, the right has been justified on three principal grounds: the search for truth, the facilitation of democratic self-governance and the promotion of individual autonomy. John Stuart Mill's classic defense in *On Liberty* emphasized that the free exchange of ideas is essential to discovering truth and avoiding the "tyranny of the majority."<sup>5</sup> Similarly, modern deliberative theorists such as Jürgen Habermas underscore that open communication is indispensable for legitimate democratic decision-making.<sup>6</sup> The normative weight of these justifications explains why freedom of expression is entrenched in virtually all major international and regional human rights instruments.

At the global level, Article 19 of both the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) recognize freedom of expression as encompassing the right to "seek, receive and impart information and ideas of all kinds, regardless of frontiers."<sup>7</sup> Regional instruments, including the European Convention on Human Rights (ECHR) and the African Charter on Human and Peoples' Rights, provide similar protections. In Pakistan, Article 19 of the 1973 Constitution guarantees freedom of speech and expression, subject to "reasonable restrictions" in the interests of the glory of Islam, integrity, security, or public order.<sup>8</sup> South Africa, by contrast, adopts a more expansive formulation in Section 16 of its 1996 Constitution, protecting expression while explicitly excluding hate speech, incitement to imminent violence and propaganda for war.<sup>9</sup> These constitutional provisions highlight the global consensus that freedom of expression is indispensable but not absolute.

Judicial interpretation has played a critical role in delineating the scope and permissible limits of the right. The European Court of Human Rights (ECtHR) has repeatedly stressed that freedom of expression constitutes one of the "essential foundations of a democratic society," protecting not only

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<sup>5</sup> Omiete Idoniboye and Emmanuel Sunny Azubuike, "CRITICAL ANALYSIS OF MILL'S HARM PRINCIPLE IN THE CONTEXT OF HIV/AIDS AND HUMAN BEHAVIOUR: EXAMINING THE NEGLECTED AREAS," *Philosophy and Praxis* 12, no. 1 (2022).

<sup>6</sup> Aleksandar Jovanoski and Kire Sharlamanov, "Jurgen Habermas and His Contribution to the Theory of Deliberative Democracy," *American International Journal of Social Science Research* 7, no. 1 (2021): 36–47.

<sup>7</sup> Sashi Nath Marashini, "Freedom of Expression in International Law," *Communication Journal*, 2022, 9–22.

<sup>8</sup> Akhlaque Hussain Larik et al., *THE CONSTITUTION OF PAKISTAN 1973 AND FREEDOM OF SPEECH; USES AND ABUSES*, n.d.

<sup>9</sup> Ben Winks, "Hate Hurts: Qwelane and the Lingering Obscurity in South Africa's Hate Speech Law," *Constitutional Court Review* 13, no. 1 (2023): 67–123.

favorable or innocuous speech but also ideas that “offend, shock or disturb.”<sup>10</sup> However, the Court also recognizes that restrictions are justified where they meet the criteria of legality, necessity and proportionality in pursuit of legitimate aims under Article 10(2) of the ECHR. Similarly, the United Nations Human Rights Committee, in its General Comment No. 34, has emphasized that restrictions on speech must not jeopardize the right itself or be used to suppress dissenting opinions.<sup>11</sup> These principles seek to balance individual liberty with the protection of democratic order and the rights of others.

The democratic function of free expression is particularly salient in fragile democracies such as Pakistan and South Africa. In Pakistan, courts have at times reinforced the importance of free speech as a check on executive overreach, while also allowing restrictions under broad categories such as national security. The Prevention of Electronic Crimes Act (PECA) 2016 has been criticized for granting sweeping powers to regulators, thereby creating risks of censorship.<sup>12</sup> In South Africa, by contrast, the Constitutional Court has articulated a jurisprudence that robustly defends freedom of expression, while carefully delineating the boundaries of hate speech and incitement in line with the values of dignity and equality embedded in the post-apartheid constitutional order.<sup>13</sup> These comparative examples illustrate the spectrum of constitutional practice, from restrictive approaches influenced by political instability to rights-oriented interpretations grounded in transformative constitutionalism.

It is also important to recognize that freedom of expression interacts with other fundamental rights, including the right to dignity, equality and access to information. In South Africa, courts have framed free speech as intrinsically linked to human dignity, a foundational constitutional value, thereby requiring a contextual analysis that weighs competing rights.<sup>14</sup> Similarly, in Pakistan, the Supreme Court has acknowledged the role of media freedom in ensuring accountability, while also affirming the need to protect public order and morality. This balancing exercise reflects the inherent tension within the right itself: while it safeguards open discourse, it simultaneously acknowledges legitimate grounds for limitation.

In the digital era, the normative contours of freedom of expression are being reshaped. The exponential growth of online platforms has extended expressive opportunities to billions of people but has also introduced new risks of harm through the rapid dissemination of misinformation and hate speech. International law remains anchored in traditional doctrines of restriction, yet their application to algorithm-driven content moderation raises novel questions. The human rights framework insists that any interference with speech must be prescribed by law, pursue a legitimate aim and be necessary and proportionate. However, the privatized governance of speech by technology companies complicates this framework, as their terms of service operate outside conventional legal accountability structures.

Thus, while freedom of expression is firmly established as a fundamental right, its scope is neither unlimited nor immune from contextual reinterpretation. Courts and legislatures continue to grapple with how to operationalize this right in ways that preserve its core democratic function while mitigating the harms that unregulated expression may cause in the digital sphere. This evolving

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<sup>10</sup> Donato Vese, “Regulating Fake News: The Right to Freedom of Expression in the Era of Emergency,” *PA Persona e Amministrazione* 8, no. 1 (2021): 709–57.

<sup>11</sup> Lumbardha Hasimi and Aneta Poniszewska-Maranda, “Detection of Disinformation and Content Filtering Using Machine Learning: Implications to Human Rights and Freedom of Speech,” *ROMCIR@ ECIR*, 2024, 68–77.

<sup>12</sup> Johar Wajahat et al., “Vague Laws and Digital Censorship: The Constitutional Challenges of the Prevention of Electronic Crimes Act (PECA) Amendments, 2025,” *The Lighthouse Journal of Social Sciences* 4, no. 01 (2025): 1–12.

<sup>13</sup> Roxan Venter, “Dignity, Freedom of Expression and the Battle over Hate Speech: A Case Study in Post-Apartheid South Africa,” in *Probing Human Dignity: Exploring Thresholds from an Interdisciplinary Perspective* (Springer, 2025).

<sup>14</sup> Ronald J. Krotoszynski, *Free Speech as Civic Structure: A Comparative Analysis of How Courts and Culture Shape the Freedom of Speech* (Oxford University Press, 2024).

tension provides the normative foundation for understanding why misinformation regulation poses such a profound challenge and why human rights law must be central to its resolution.

### **The Misinformation Challenge**

The global information ecosystem has entered a new era where misinformation, disinformation and misinformation spread with unprecedented speed and reach. The phenomenon is not entirely new falsehoods, propaganda and rumor have long been part of political and social life but the digital environment has magnified their scope and impact. In contemporary societies, misinformation has emerged as a systemic threat to democracy, public health and social stability, raising urgent questions about whether existing legal and institutional frameworks are adequate to address the problem without compromising fundamental rights.

A first step in understanding the challenge lies in definitional clarity. The term misinformation generally refers to the unintentional dissemination of false or misleading information. Disinformation, by contrast, denotes the deliberate creation and spread of falsehoods with the intent to deceive or manipulate. Misinformation involves the use of genuine information shared with harmful intent, such as doxxing or selective leaks.<sup>15</sup> These distinctions are critical because they determine the normative weight of potential regulation. While disinformation campaigns orchestrated by political actors may justify state intervention, regulating ordinary individuals' inadvertent sharing of misinformation risks overreach and the chilling of legitimate discourse.

The social and political consequences of misinformation are profound. The COVID-19 pandemic starkly demonstrated how health misinformation undermines scientific expertise, encourages vaccine hesitancy and jeopardizes public health.<sup>16</sup> During electoral cycles, disinformation campaigns have been used to distort democratic processes, with the Cambridge Analytica scandal revealing how personal data could be weaponized to micro-target voters with manipulative messaging.<sup>17</sup> Climate change denial, conspiracy theories and hate speech further illustrate how misinformation corrodes democratic deliberation, exacerbates polarization and fosters distrust in institutions.

Digital platforms play a central role in amplifying misinformation. Their business models are premised on maximizing user engagement, often achieved by privileging content that is sensational, emotive, or divisive. Algorithms that curate news feeds, recommend videos, or suggest connections tend to favor content likely to "go viral," regardless of accuracy.<sup>18</sup> The design of these systems inadvertently incentivizes the proliferation of misinformation, creating echo chambers and filter bubbles that insulate users from diverse perspectives. The sheer scale of these platforms means that even modest levels of false content can have global repercussions.

A further complication arises from the privatized governance of speech. Content moderation policies developed by companies such as Meta, Google and X (formerly Twitter) determine what billions of people can see or share online. While these policies may aim to curb harmful misinformation, their opacity and inconsistent enforcement raise serious concerns. Decisions about removing content, labeling posts, or suspending accounts are often made without adequate transparency, due process, or the possibility of independent appeal.<sup>19</sup> The concentration of such power in the hands of private corporations highlights a structural accountability gap: these entities function as quasi-regulators of

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<sup>15</sup> Karen Santos-D'Amorim and Májory K. Fernandes de Oliveira Miranda, "Misinformation, Disinformation and Malinformation: Clarifying the Definitions and Examples in Disinfodemic Times," *Encontros Bibli: Revista Eletrônica de Biblioteconomia e Ciência Da Informação* 26 (2021).

<sup>16</sup> Kevin Harrington, *Vaccination Hesitancy and Public Trust in Science*, 2024.

<sup>17</sup> Ara Ege Altınman, "Political Competition in the Age of Surveillance Capitalism" (2022).

<sup>18</sup> Anastasia Denisova, "'Viral Journalism', Is It a Thing? Adapting Quality Reporting to Shifting Social Media Algorithms and Wavering Audiences," in *The Routledge Companion to Political Journalism* (Routledge, 2021).

<sup>19</sup> Eric Goldman, "Content Moderation Remedies," *Mich. Tech. L. Rev.* 28 (2021): 1.

speech but are not bound by human rights standards in the same way as states.

The challenge of misinformation is particularly acute in fragile democracies. In Pakistan, the digital sphere has become a contested arena where misinformation is weaponized for political gain. False narratives have been used to discredit opposition leaders, manipulate public opinion and suppress dissent. The Prevention of Electronic Crimes Act (PECA) 2016, which purports to address online harms, has often been criticized for being wielded against journalists and activists under the guise of combating “fake news.”<sup>20</sup> This demonstrates the dual danger of misinformation regulation in such contexts: while misinformation corrodes democratic trust, overly broad regulatory tools risk becoming instruments of censorship. In South Africa, the problem has manifested in the spread of xenophobic narratives and electoral disinformation, with social media platforms amplifying harmful rhetoric that undermines social cohesion. While South Africa’s constitutional safeguards are stronger than Pakistan’s, the challenges of enforcement remain significant in a resource-constrained regulatory environment.<sup>21</sup>

The global nature of misinformation further complicates national responses. False content originating in one jurisdiction can quickly spread across borders, undermining the effectiveness of domestic regulation. Coordinated disinformation campaigns, often linked to foreign actors, raise geopolitical concerns about sovereignty and information warfare. For example, allegations of Russian interference in the 2016 U.S. elections highlighted the transnational dimension of digital disinformation.<sup>22</sup> This transboundary character underscores the need for international cooperation and harmonized approaches grounded in human rights law.

A key normative challenge is distinguishing between harmful misinformation and legitimate speech. Excessively broad definitions risk criminalizing satire, dissent, or minority viewpoints, while overly narrow definitions may fail to capture the subtle but corrosive effects of organized disinformation campaigns. The jurisprudential principle of legality demands precision, yet the dynamic and context-dependent nature of misinformation resists neat categorization. As a result, legal frameworks must tread carefully, ensuring clarity without foreclosing legitimate expression.

Ultimately, the misinformation challenge illustrates the inadequacy of both laissez-faire approaches and heavy-handed regulation. On one hand, leaving platforms to self-regulate risks entrenching unaccountable corporate power and perpetuating the harms of viral falsehoods. On the other hand, aggressive state regulation risks suppressing dissent and chilling free expression. The tension between these extremes frames the central problem this paper seeks to address: how to design regulatory approaches that effectively mitigate misinformation while remaining faithful to the principles of freedom of expression.

## **International and Regional Legal Approaches**

Efforts to regulate misinformation while safeguarding freedom of expression vary significantly across jurisdictions, reflecting distinct constitutional traditions, political contexts and regulatory philosophies. At the international level, human rights law provides the normative baseline, but its implementation is mediated through diverse regional and national frameworks. Examining these approaches reveals both convergences, such as the emphasis on legality, necessity and proportionality and divergences rooted in political culture and institutional design. This section surveys key developments in the United Nations, the European Union, the United States, Pakistan and South

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<sup>20</sup> C. Anderson et al., “With Forquilha,” S., Ibeh, Z., Ibezim-Ohaeri, V., Jawed, A., Khan, A., Pereira, C., & Shankland, A, 2021.

<sup>21</sup> Grisel Salazar Rebolledo, “Rethinking Disinformation for the Global South,” *State-Sponsored Disinformation Around the Globe*, n.d., 37.

<sup>22</sup> Robert Zupko, *Cyberwar: How Russian Hackers and Trolls Helped Elect a President: What We Don’t, Can’t and Do Know [Revised Edition]* by Kathleen Hall Jamieson, New York, NY, Oxford University Press, 2020, 400 Pp., \$17.95 (Paperback), ISBN 9780190058838 (Taylor & Francis, 2023).

Africa.

### United Nations Framework

The United Nations has consistently emphasized that freedom of expression, enshrined in Article 19 of the ICCPR, is a foundational right that underpins democratic participation and accountability. Restrictions are permissible only where they are provided by law, pursue a legitimate aim and are necessary and proportionate.<sup>23</sup> In its 2021 report on disinformation, the Office of the High Commissioner for Human Rights (OHCHR) warned against overly broad “fake news” laws that risk enabling censorship, while recognizing that misinformation can undermine rights to health, security and political participation.<sup>24</sup> The UN has therefore advocated a human-rights-based approach, urging states to ensure transparency in regulation, avoid criminalization of ordinary speech and promote media literacy as a non-coercive response.

### European Union

The European Union has taken one of the most proactive roles in regulating misinformation. The 2022 Digital Services Act (DSA) establishes a comprehensive framework for online platforms, requiring transparency in content moderation, access to data for researchers and mechanisms for users to challenge takedown decisions.<sup>25</sup> Complementing this is the Code of Practice on Disinformation, a co-regulatory initiative that enlists platforms to commit to self-regulation, fact-checking partnerships and political advertising transparency.<sup>26</sup> The EU approach reflects a middle path: it does not criminalize misinformation per se but imposes procedural obligations to ensure accountability, algorithmic transparency and risk assessments. By embedding safeguards for freedom of expression, the EU seeks to balance regulation with democratic values.

### United States

In stark contrast, the United States adheres to a more absolutist conception of free speech, rooted in the First Amendment. The Supreme Court has long resisted government intervention in regulating falsehoods, recognizing only narrow exceptions such as incitement, defamation and fraud. In *United States v. Alvarez*, the Court struck down the Stolen Valor Act, which criminalized false claims of military honors, holding that false speech alone is insufficient grounds for restriction.<sup>27</sup> This jurisprudence limits governmental regulation of misinformation, leaving content moderation largely to private companies. The U.S. model privileges liberty over state regulation, but it also exposes systemic vulnerabilities, as demonstrated during the COVID-19 pandemic and the 2020 election, when misinformation spread widely with limited legal recourse.

### Pakistan

In Pakistan, regulatory responses have been shaped by political instability and concerns about national security. The **Prevention of Electronic Crimes Act (PECA) 2016** provides a broad mandate to criminalize online “false information” and empower the Pakistan Telecommunication Authority

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<sup>23</sup> David Kaye and Azin Tadjini, “Article 19—The Right to Freedom of Opinion and Expression,” in *The Universal Declaration of Human Rights* (Brill Nijhoff, 2023).

<sup>24</sup> Irene Khan, *Disinformation and Freedom of Opinion and Expression: Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, United Nations, 2021.

<sup>25</sup> Maria Luisa Chiarella, “Digital Markets Act (DMA) and Digital Services Act (DSA): New Rules for the EU Digital Environment,” *Athens JL* 9 (2023): 33.

<sup>26</sup> Anna Kobernjuk and Agnes Kasper, “Normativity in the EU’s Approach towards Disinformation,” *TalTech Journal of European Studies* 11, no. 1 (2021).

<sup>27</sup> Vincent A. Blasi, *For Whose Benefit Is the Freedom of Speech?*, 2025.

(PTA) to remove content.<sup>28</sup> Critics argue that these provisions are vague, overly broad and susceptible to misuse against journalists, activists and political opponents. The law's chilling effect is compounded by weak judicial oversight and the absence of robust procedural safeguards. While Pakistan's Constitution guarantees freedom of expression under Article 19, the inclusion of broad exceptions such as "the glory of Islam" and "security of Pakistan" provides fertile ground for restrictive regulation. The result is a paradox: while misinformation genuinely undermines democratic trust, regulatory frameworks risk being weaponized as instruments of censorship.

### **South Africa**

South Africa presents a different trajectory, rooted in its transformative constitutional order. Section 16 of the 1996 Constitution protects freedom of expression while expressly excluding incitement to violence, propaganda for war and hate speech. Courts have developed a nuanced jurisprudence that balances free expression with dignity and equality, values central to the post-apartheid settlement. The **Film and Publications Amendment Act 2019** introduced provisions addressing online harms, including misinformation, but implementation has been cautious and rights-oriented.<sup>29</sup> During the COVID-19 pandemic, the government enacted temporary regulations criminalizing the intentional spread of false information about the virus, though civil society closely monitored their application to prevent abuse.<sup>30</sup> Unlike Pakistan, South Africa's regulatory culture is characterized by judicial vigilance and constitutional safeguards that mitigate the risk of misuse, even as misinformation continues to pose challenges in electoral and social contexts.

### **Comparative Insights**

These examples illustrate distinct regulatory paradigms. The UN emphasizes principled restraint, the EU prioritizes accountability and procedural safeguards and the U.S. defends expansive free speech at the expense of regulatory capacity. Pakistan exemplifies the dangers of overbroad regulation in fragile democracies, while South Africa demonstrates how constitutional safeguards can temper state power even in the face of misinformation crises. Despite their differences, these approaches converge on a recognition that misinformation poses real harms and that a purely laissez-faire approach is untenable. The divergence lies in how states balance those harms against the risk of restricting free expression.

### **Human Rights Concerns in Regulation**

The regulation of misinformation, while aimed at safeguarding democratic institutions and social stability, presents significant challenges for the protection of fundamental human rights. At the center of these concerns lies the risk of overreach, whereby governments or private actors adopt measures that disproportionately restrict freedom of expression under the guise of combating false information. Such overreach not only jeopardizes the integrity of democratic discourse but also risks transforming regulation into a tool of censorship.

A primary concern is the vagueness and breadth of legal definitions surrounding misinformation. Statutory provisions that criminalize the dissemination of "false," "offensive," or "harmful" information are often drafted in imprecise terms, granting regulators and courts excessive discretion. This lack of definitional clarity enables arbitrary enforcement and fosters a chilling effect on free

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<sup>28</sup> Nizar Ahmad et al., "Understanding the Issue of Hate Crimes in Pakistan: Concepts and Prevalence," in *Research Handbook on Hate and Hate Crimes in Society* (Edward Elgar Publishing, 2024).

<sup>29</sup> Klaus D. Beiter et al., "Copyright Reform in South Africa: Two Joint Academic Opinions on the Copyright Amendment Bill [B13B-2017]," *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad* 25, no. 1 (2022).

<sup>30</sup> Jennifer L. Pomeranz and Aaron R. Schwid, "Governmental Actions to Address COVID-19 Misinformation," *Journal of Public Health Policy* 42, no. 2 (2021): 201.



expression, as individuals may self-censor for fear of reprisal.<sup>31</sup> In Pakistan, for example, the Prevention of Electronic Crimes Act (PECA) 2016 has been criticized for enabling the state to suppress political dissent under the pretense of curbing “fake news.”<sup>32</sup> Similarly, South Africa’s attempts to legislate against disinformation during the COVID-19 pandemic revealed tensions between public health protection and constitutional safeguards for free speech.<sup>33</sup>

The role of digital platforms in content moderation further complicates the landscape. While private companies such as Meta, Google and X (formerly Twitter) play an essential role in filtering harmful content, their opaque algorithms and decision-making processes often lack accountability. Human rights advocates argue that privatized enforcement of speech norms risks creating a new form of unaccountable censorship, wherein corporate interests dictate the boundaries of legitimate expression without sufficient oversight.<sup>34</sup> This privatization of regulation challenges the traditional paradigm in which restrictions on rights are subject to constitutional scrutiny and judicial review.

Beyond expression, misinformation regulation also implicates the right to privacy and freedom of association. Surveillance-based strategies employed to track online disinformation networks frequently involve extensive data collection and monitoring, raising concerns under international human rights law. The proportionality principle, central to the ICCPR and other instruments, demands that restrictions be narrowly tailored to legitimate aims. Yet, expansive monitoring frameworks risk normalizing surveillance practices that extend well beyond the purported threat.

Moreover, in fragile democracies and authoritarian contexts, misinformation regulation can serve as a pretext for systematic suppression of dissent. By conflating misinformation with political criticism, governments may consolidate control over public discourse. This dynamic undermines the very democratic values such regulation purports to protect. The line between combating harmful disinformation and silencing critical voices is often perilously thin and absent robust institutional safeguards, the balance tilts towards repression rather than protection.

Thus, while the regulation of misinformation is often justified in the language of democratic resilience, it frequently raises serious human rights concerns. Without clear definitions, procedural safeguards, transparency and accountability, regulatory efforts risk undermining not only freedom of expression but also related rights, thereby eroding the legitimacy of democratic governance. Any reconciliation between digital regulation and human rights must therefore address these concerns at the normative and institutional level.

### **Reconciling Freedom of Expression with Digital Regulation**

The challenge of reconciling freedom of expression with digital regulation is not merely theoretical; it is one of the defining legal dilemmas of the twenty-first century. As misinformation proliferates across digital platforms, societies face the urgent task of preserving open public discourse while simultaneously protecting democratic institutions and individual rights from manipulation. This tension has led scholars and policymakers to focus on three interrelated principles: legality, necessity and proportionality.<sup>35</sup> These principles offer a normative framework through which regulation can be designed to safeguard both expressive freedoms and collective security in the information age.

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<sup>31</sup> Alec Maloney, “The Paradoxes of Freedom of Expression on Social Media Platforms: Restrictions and Enforcement” (Universidade de Coimbra, 2022).

<sup>32</sup> Yasir Aleem et al., “The Prevention of Electronic Crimes Act 2016 And Shrinking Space for Online Expression in Pakistan,” *Ilkogretim Online* 20, no. 2 (2021).

<sup>33</sup> Marystella Auma Simiyu, “Freedom of Expression and African Elections: Mitigating the Insidious Effect of Emerging Approaches to Addressing the False News Threat,” *African Human Rights Law Journal* 22, no. 1 (2022): 76–107.

<sup>34</sup> James Grimmelmann, “Content Cartels and Their Discontents,” *Jotwell: J. Things We Like*, HeinOnline, 2021, 1.

<sup>35</sup> Pablo Rafael Banchio, “Legal Framework to Combat Disinformation and Hate Speech on Digital Platforms,” *Available at SSRN 4879162*, 2024.

## Legality and the Rule of Law

The starting point for any legitimate restriction is legality. Article 19(3) of the International Covenant on Civil and Political Rights (ICCPR) stipulates that any limitation on expression must be “provided by law” and formulated with sufficient clarity to enable individuals to regulate their conduct.<sup>36</sup> Vague and overly broad prohibitions on “fake news” or “false information” have been repeatedly criticized for violating this requirement. For instance, the Supreme Court of India in *Shreya Singhal v. Union of India* struck down Section 66A of the Information Technology Act on the grounds of vagueness, holding that terms such as “annoyance” or “inconvenience” provided no clear standard and thus posed a grave threat to free expression.<sup>37</sup> The decision underscores how legality operates as a safeguard against arbitrary enforcement and censorship.

## Necessity and Proportionality

The second dimension, necessity and proportionality, requires that restrictions on expression pursue a legitimate aim and employ the least restrictive means available. The European Court of Human Rights (ECtHR) has elaborated this test in a long line of cases, notably in *Handyside v. United Kingdom*, where it held that freedom of expression protects not only favorable information but also that which “offends, shocks, or disturbs.”<sup>38</sup> The Court nevertheless acknowledged that restrictions may be justified where there is a pressing social need, subject to a strict proportionality analysis.

In the South African context, the Constitutional Court has consistently balanced expression against competing rights and interests. In *South African National Defence Union v. Minister of Defence*, it emphasized that while expression is a foundational value, limitations can be legitimate if they are reasonable and justifiable in an open and democratic society.<sup>39</sup> This jurisprudence illustrates how proportionality enables nuanced judicial reasoning in cases where misinformation may endanger public health, electoral integrity, or social cohesion.

Pakistan offers a more complex picture. The Prevention of Electronic Crimes Act (PECA) 2016 has been employed to regulate misinformation, but its provisions have often been criticized for vagueness and overreach. In *Journalists Association v. Federation of Pakistan* (2022), the Islamabad High Court expressed concern over the Federal Investigation Agency’s unchecked powers under PECA, highlighting the risks of disproportionate restrictions that could silence dissent.<sup>40</sup> This case suggests that while Pakistani courts are increasingly alert to the dangers of overbroad regulation, the absence of robust constitutional jurisprudence on digital rights continues to leave significant gaps.

## Judicial Oversight and Democratic Accountability

Judicial oversight plays a vital role in mediating the tension between freedom of expression and misinformation regulation. Courts act as constitutional guardians by ensuring that regulatory measures do not disproportionately infringe upon fundamental rights. The United States Supreme Court has historically applied a high threshold for restricting speech, as evident in *Brandenburg v. Ohio*, where it held that expression advocating violence is protected unless it incites imminent lawless

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<sup>36</sup> Sarah Joseph, *International Covenant on Civil and Political Rights (ICCPR)* (Edward Elgar Publishing, 2022).

<sup>37</sup> Saiprasad Ameet Vaidya, “*Shreya Singhal v Union of India: A War against Draconian Executive Power*,” *Jus Corpus LJ* 5 (2024): 23.

<sup>38</sup> Leszek Leszczyński, “Reference to Criterion of Necessity in Democratic Society in the European Convention on Human Rights: Context of Legal Interpretation and Jurisdictional Role,” *Studia Iuridica Lublinensia* 32, no. 4 (2023): 81–96.

<sup>39</sup> Windell Nortje and Shane Hull, “Disarming the Dispirited South African: A Critical Analysis of the Proposed Ban on Firearms for Self-Defence,” *Law, Democracy and Development* 27 (2023): 123–48.

<sup>40</sup> Farhan Ali Noonari et al., “THE ISSUES OF JOURNALISTS IN SINDH PROVINCE, PAKISTAN: ROLE OF JOURNALISTIC UNIONS IN SUKKUR DIVISION,” *Pakistan Journal of International Affairs* 7, no. 4 (2024).

action.<sup>41</sup> Although this robust standard reflects the U.S.’s First Amendment exceptionalism, it underscores the judiciary’s role in placing strict limits on state intervention in speech. Comparative jurisprudence shows that courts are not only applying legality and proportionality tests but also evolving doctrines that adapt to the challenges of digital speech. The South African Constitutional Court, for instance, has emphasized that freedom of expression must be interpreted in the light of the transformative constitutional vision of equality and dignity, suggesting that misinformation targeting vulnerable groups may justify carefully tailored restrictions.<sup>42</sup>

### **Multi-Stakeholder Governance**

Reconciling expressive freedoms with regulation also requires moving beyond state-centric approaches toward multi-stakeholder governance. Private platforms play a central role in moderating online speech, yet their opaque decision-making processes raise questions about legitimacy and accountability. The European Union’s Digital Services Act (DSA) represents one of the most ambitious attempts to systematize platform responsibility without ceding unchecked censorship powers either to governments or corporations. The DSA requires very large online platforms to conduct risk assessments, provide transparency reports and undergo independent audits, thereby embedding accountability into private governance of speech.<sup>43</sup>

Such frameworks demonstrate that reconciliation is possible when regulation imposes procedural safeguards, rather than substantive censorship, on intermediaries. By demanding transparency, due process and user remedies, states can ensure that platform governance aligns with democratic values while addressing the harms of misinformation.

### **Civil Society and the Enabling Function of Regulation**

A final dimension of reconciliation lies in recognizing regulation’s enabling function. Rather than viewing regulation purely as a restriction, it can be conceived as a means of creating conditions under which freedom of expression thrives. This perspective is particularly salient in the context of disinformation campaigns that distort elections or undermine public health initiatives. In such cases, carefully designed interventions, such as fact-checking collaborations, civic education and targeted sanctions against coordinated inauthentic behavior, can protect the informational environment necessary for meaningful expression.

Civil society organizations, independent fact-checkers and academic researchers play a crucial role in ensuring that these interventions remain rights-based. Their participation in regulatory design enhances legitimacy, guards against abuse and ensures that marginalized voices are not excluded from the digital public sphere.<sup>44</sup>

Reconciling freedom of expression with digital regulation is a delicate equilibrium requiring constant recalibration. Comparative jurisprudence illustrates that legality, necessity and proportionality remain the central tests for legitimate restrictions, while judicial oversight provides a safeguard against state or corporate overreach. Multi-stakeholder governance, exemplified by the EU’s DSA, points toward a model in which regulation enhances accountability without undermining open debate. At its best, digital regulation should function not as a constraint but as an enabler, securing the informational preconditions under which freedom of expression can flourish in the digital age.

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<sup>41</sup> Ainsley C. Bandrowski, “Words Not Said: Can the Brandenburg Incitement Test Cope with Coded Speech?,” *BCL Rev.* 65 (2024): 1483.

<sup>42</sup> Marystella Auma Simiyu, “Freedom of Expression and African Elections: Mitigating the Insidious Effect of Emerging Approaches to Addressing the False News Threat,” *African Human Rights Law Journal* 22, no. 1 (2022): 76–107.

<sup>43</sup> Maria Luisa Chiarella, “Digital Markets Act (DMA) and Digital Services Act (DSA): New Rules for the EU Digital Environment,” *Athens JL* 9 (2023): 33.

<sup>44</sup> Katherine Herrick, *Breaking Things: Origins and Consequences of Racialized Hate Speech on Facebook*, 2022.

## Conclusion

The tension between freedom of expression and the regulation of misinformation has emerged as one of the defining challenges of the digital era. At its core, this tension is not merely a legal or regulatory dilemma but a profound human rights question. Freedom of expression lies at the foundation of democratic societies, ensuring that individuals can participate in public discourse, hold governments accountable and foster pluralism. At the same time, the unchecked spread of misinformation undermines these very values by eroding trust, destabilizing democratic institutions and endangering public welfare, particularly in contexts such as health crises, elections and communal relations. The challenge, therefore, is not whether to regulate but how to do so in a manner that preserves the essence of free expression while mitigating its misuse.

Throughout this study, it has become evident that absolutist positions on either side of the debate are insufficient. Unrestricted expression in the digital space risks allowing harmful falsehoods to proliferate, while heavy-handed regulation threatens to silence legitimate voices and dissent. Both extremes ultimately jeopardize democratic resilience and the integrity of human rights. What is required is a nuanced, principled approach that recognizes freedom of expression as a cornerstone of human dignity while acknowledging that it is not an unlimited right, particularly where the harm from misinformation is demonstrable and severe.

One of the central insights of the analysis is that context matters. Not all misinformation is equal in its impact and regulation must be proportionate to the harm posed. While false information about trivial matters may be socially undesirable but tolerable, misinformation about vaccines, electoral processes, or intercommunal relations can have life-threatening or destabilizing consequences. A one-size-fits-all model of regulation is therefore ill-suited to the diversity of harms that misinformation can generate. Instead, regulation must be tailored, evidence-based and sensitive to the broader democratic environment in which it operates.

The comparative examination of international and regional approaches also illustrates the complexity of balancing these concerns. Liberal democracies such as the United States lean heavily toward protecting free expression, even at the expense of tolerating harmful speech, reflecting a strong constitutional and cultural commitment to individual liberty. In contrast, the European approach has been more inclined to permit targeted restrictions in the name of protecting democratic values, dignity and equality. Authoritarian or semi-authoritarian regimes, meanwhile, often use the discourse of combating misinformation as a cover for suppressing dissent and consolidating political power. These divergent approaches underscore the risks of overregulation and highlight the importance of embedding safeguards that prevent the misuse of regulation for political ends.

Another important lesson is that legal regulation alone is insufficient. While laws can set boundaries, their effectiveness depends on implementation, enforcement and complementary measures. Technological innovation, particularly the role of digital platforms, plays a decisive role in shaping the information ecosystem. Algorithms that prioritize engagement often amplify sensational or misleading content, making platforms complicit in the spread of misinformation. Voluntary codes of conduct, improved content moderation and greater transparency from technology companies are necessary components of any regulatory framework. Yet these must operate alongside broader societal interventions, such as digital literacy education, fact-checking initiatives and fostering a culture of critical inquiry.

Human rights frameworks provide a useful foundation for navigating this balance. The principles of legality, necessity, proportionality and non-discrimination ensure that any restrictions on expression remain exceptional, justified and fair. These principles guard against the dangers of censorship while recognizing that the right to free expression carries with it duties and responsibilities. Importantly, these principles also reinforce the idea that freedom of expression does not exist in isolation but interacts with other rights, including the rights to life, health, equality and participation in democratic governance. Misinformation that gravely undermines these rights may therefore warrant

proportionate intervention.

Looking ahead, the debate over misinformation and free expression is likely to intensify. Advances in technology, particularly artificial intelligence and generative media, will make distinguishing truth from falsehood even more difficult. Deepfakes, automated propaganda and synthetic media present unprecedented challenges for regulators, platforms and societies at large. In this evolving landscape, rigid or static regulatory frameworks will quickly become obsolete. What will be required is adaptability, resilience and a commitment to democratic values that transcend technological shifts.

The path forward demands collaboration. Governments alone cannot effectively police digital spaces without risking overreach and platforms cannot be left to regulate themselves without accountability. International cooperation will also be indispensable, given the borderless nature of digital communication. At the same time, the empowerment of individuals as informed digital citizens must remain at the center of any strategy. Without a public that is equipped to critically assess information, even the most sophisticated regulations will fall short.

Ultimately, the reconciliation of freedom of expression with digital regulation is not a question of choosing one over the other but of finding a sustainable equilibrium. It requires recognizing that the right to speak freely is meaningful only within an environment where truth can still be discerned, trust can still be maintained and democratic participation can still flourish. This balance is delicate and contested, but it is also essential for the survival of open societies in the digital age.

In reconciling these competing imperatives, societies must aim not merely to limit harm but to strengthen democratic resilience. Regulation should not silence voices but amplify reasoned debate. It should not suppress dissent but ensure that dissent is grounded in reality rather than deception. Above all, it should affirm that freedom of expression, far from being weakened by responsible regulation, can be safeguarded against those forces—whether malicious actors, authoritarian regimes, or unaccountable corporations—that threaten to distort it.

The challenge of misinformation is formidable, but it also offers an opportunity: an opportunity to reimagine the digital public sphere in a way that is more transparent, more inclusive and more accountable. By doing so, societies can uphold the spirit of freedom of expression while protecting the integrity of democratic discourse. The reconciliation of these values is not only possible but imperative if human rights are to retain their vitality in the digital age.

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