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# FREEDOM OF SPEECH IN THE DIGITAL AGE: SOCIAL MEDIA REGULATION

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## ABSTRACT

Article 19, Freedom of Speech and Expression, plays the most pivotal role in fundamental rights and is the cornerstone of autonomy that encourages open communication among the people through the exchange of ideas and expressions. In recent trends, we find a rapid shift towards technology and digitization that has influenced the entire globe, where individuals increasingly use online platforms to freely connect with each other, exchange their ideas. In the era of social media, where easy access to internet is available worldwide, freedom of speech comes with many consequences that can twist the reality, creating a realm of illusions that makes it difficult to distinguish between genuine and fake. However, their unprecedented scale and influence have raised complex questions regarding regulation, platform accountability, misinformation, hate speech, and user rights. This paper determines the interpretation of freedom of speech and expression in the digital era, regulatory challenges, and frameworks that govern social media platforms in a democratic society. It contends that current legal systems need to evolve in order to strike a balance between protecting the fundamental right to expression and preventing harm, while also ensuring that censorship does not become excessive and that transparency and accountability are maintained.

**Keywords:** Freedom of speech, Digitalization, Social media platforms, Accountability.

## **INTRODUCTION**

As said by George Washington, “Freedom of speech and expression is a cornerstone of autonomy which is needed to preserve the sanctity of democracy”, “If freedom of speech is taken away, then dumb and silent we may be led, like sheep to the slaughter.” Thus, this right allows individuals to express their thoughts and opinions without any fear. Traditionally Freedom of speech and expression under Article 19 (1) (a) was intended to promote free and open communication among individuals by sharing their ideas. However, the past two decades narrate a different side of the story. The swift expansion of digitalization has opened a new realm, embracing and enabling individuals to use online platforms and voice their opinions across the globe. Platforms like Facebook, Twitter, and Instagram have changed the way people interact and share their ideas. Although this transformation has opened new spaces for democratic participation, it has also introduced complex legal and ethical dilemmas concerning hate speech, fake news, state surveillance, misinformation, and censorship, raising debates about how freedom of expression should be safeguarded and regulated in the digital space. However, various government organizations and the governments are making efforts to curb the misinformation flooded on social media and combat with the tussle between real and fake.

Freedom of speech and expression is safeguarded under various constitutions and international frameworks and is enshrined under various international legal frameworks. It plays a vital role in human growth and self-fulfillment, enables the exchange of ideas and expressions. This is an essential right to the functioning of democracy and effective governance. However, a good democratic government is identified with the right of free speech with certain limitations.

This paper aims to examine the functioning of freedom of expression in the era of social media. It seeks to evaluate the legal frameworks, significant judicial decisions, and regulations that influence and govern online speech and expression.

## **OBJECTIVES**

- To study the concept of freedom of expression.
- To evaluate International and National laws regulating digital media.
- To highlight the incidents of misuse of the right to freedom of expression.

- To find reasons for the misuse of the right to freedom of expression through digital platforms.

## HYPOTHESIS

- In the digital era, effective social media regulation must strike a constitutional balance between protecting freedom of speech and preventing online harm, without resulting in excessive state control or private censorship.
- Innovation is needed in existing digital media technology to avoid incidents of misusing freedom of expression.

## METHODOLOGY

This research paper adopts the doctrinal method of legal research, which primarily relies on the analysis of existing legal principles, statutes, judicial decisions, and scholarly literature. The study examines relevant national and international legal frameworks governing social media platforms and content moderation, with particular reference to international human rights standards. Secondary sources such as books, research articles, reports, policy documents, and official publications have been used to understand the evolving regulatory landscape of platform governance.

## LITERATURE REVIEW

### 1. Freedom Of Speech in Digital Age: Balancing Rights and Responsibilities.

Naing A, Chan N, *Proceeding of the International Conference on Law and Human Rights (2024) 1(1) 29-34* ISSN: 3089-9826<sup>1</sup>

The authors have analysed the complexities of protecting freedom of speech and expression in the digital age, where social media plays a critical role. Findings of this paper suggest that there must be a balance between upholding freedom of speech and expression and preventing harm,

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<sup>1</sup> Naing, A., & Chan, N. (2024). Freedom Of Expression In The Digital Age: Balancing Rights and Responsibilities. *Proceeding of the International Conference on Law and Human Rights*, 1(1), 29–34. Retrieved from <https://doi.org/10.62383/iclehr.v1i2.26>

protecting rights and dignity, and calling for a regulatory approach to balance rights and responsibilities.

## **2. The Impact of Social Media on Freedom of Speech and Privacy Rights.**

**Sobia Bashira, Muhammad Hamza Zakir, Syed Hammad Khan, Shazia Ibrahim, *Journal of Regional Studies Review* (2025)<sup>2</sup>**

The authors explore how social media has the ability to influence freedom of speech and privacy in contemporary society. They have discussed the historical evolution and effects on freedom of speech and expression, and on the privacy of individuals. It examines how the existing regulatory approaches may be only partially effective in addressing the complex rights-related issues arising from social media. Ultimately, the paper highlights the broader perspective on future trends and the impact of social media regulation, considering the emergence of new media technologies and the evolving socio-legal landscape.

## **3. Freedom of expression in Digital Age of Online platforms: The promise and Pitfalls of a Human Rights Based Approach to Content Moderation.**

**Sander, B. (2020), *Social Science Research Network*.<sup>3</sup>**

The authors analyze three key dimensions of adopting a human rights-based approach to social media platform moderation. First, it highlights the substantive dimension, which involves ensuring that content moderation rules are consistent with international human rights law. Second, it discusses the process dimension, which focuses on the need for transparency and effective oversight mechanisms that platforms should adopt as part of their human rights due diligence. Third, it addresses the procedural and remedial dimension, which includes the procedural safeguards and grievance redressal mechanisms that platforms should incorporate within their content moderation systems. The article concludes by acknowledging the limitations of this approach and warns against treating human rights as a complete or universal solution to the challenges of platform governance.

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<sup>2</sup> Journal of Regional Studies Review (JRSR) Volume 4, Issue 1 (Winter 2025) | Pages: 304–315 ISSN(Online): 3006-6646 10.62843/jrsr/2025.4a077

<sup>3</sup> Sander, B. (2020). Freedom of Expression in the Age of Online Platforms: The Promise and Pitfalls of a Human Rights-Based Approach to Content Moderation. *Social Science Research Network*. <https://doi.org/10.2139/SSRN.3434972>

## INTERNATIONAL FRAMEWORKS FOR FREEDOM OF SPEECH

The right to freedom of expression is safeguarded under various international instruments like **Article 19** of the Universal Declaration of Human Rights,<sup>4</sup> as well as under the International Covenant on Civil and Political Rights 1966.<sup>5</sup> **Article 19 (2) of the ICCPR** states, “the right to freedom of expression applies regardless of frontiers and through any media of one’s choice which includes internet-based modes of communication.” The same rights mean freedom of expression that people have offline and must also be protected online which is applicable without interference and through any media of one’s choice, in accordance with Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Freedom of expression is further safeguarded by several regional human rights instruments. Notably, it is protected under **Article 10** of the European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>6</sup>, which guarantees the right to freedom of expression within the framework of the European human rights system.

While there may be limitations placed on the exercise of freedom of expression, there is limited clarity on when and how freedom of expression can be legitimately circumscribed. There have been attempts by civil society groups to articulate more clearly the specific conditions when freedom of expression may be derogated, most notably the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights ("Siracusa Principles"), and the Johannesburg Principles on National Security, Freedom of Expression and Access to Information ("Johannesburg Principles- PRINCIPLE 1").<sup>7</sup>

Freedom of expression is also safeguarded under **Article 10** of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which says, “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive

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<sup>4</sup> “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.

<sup>5</sup> “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or print, in the form of art, or through any other media of his choice”.

<sup>6</sup> Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

<sup>7</sup> <https://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf>

and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television, or cinema enterprises”.

**Article 13** of the American Convention on Human Rights also mentions freedom of speech and expression: “Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice”.

Unlike regions such as Europe, America, and Africa, Asia does not have a well-established regional human rights enforcement mechanism. Nevertheless, the ten member states of the Association of Southeast Asian Nations (ASEAN) created the ASEAN Intergovernmental Commission on Human Rights (AICHR) on 23 October 2009 at the 15th ASEAN Summit.

In addition, ASEAN adopted the ASEAN Human Rights Declaration, which affirms the right to freedom of opinion and expression. Article 23 of the Declaration provides that every individual is entitled to hold opinions without interference and to seek, receive, and communicate information and ideas, whether verbally, in writing, or through any medium of their choice.

## **LIMITATIONS OF FREEDOM OF SPEECH AND EXPRESSION**

Internet facilitates the participation of people by providing simpler and quicker ways to raise their voice, opinions and thoughts over wide audience. But to some extent, the right to freedom of speech and expression is restricted, it gives the possibility of infringement of the right to privacy, attack to the reputation and security that are in conflict with the right to freedom of speech. Going too far with social media freedoms can put people in trouble, too. It may result in the following kinds of crimes, such as risk of online fraud, cyber bullying, online sexualization, and harassment that endangers victims safety. As these rights are not absolute, they are subject to certain levels of restrictions.

These limitations can be broadly categorized into three types: Legal/Governmental, Platform-Specific, and the emerging regulations surrounding AI and Deepfakes.

## 1. Constitutional and Legal Restrictions

Most democratic countries protect free speech but allow "reasonable restrictions" to protect the greater good. <sup>8</sup>For example, in India, Article 19(2) of the Constitution allows the state to limit speech in the interest of:

- **National Security & Sovereignty:** Speech that threatens the integrity of the nation or incite war.
- **Public Order:** Content that could lead to riots, communal violence, or general lawlessness.
- **Decency or Morality:** Restrictions on obscenity or sexually explicit content that violates community standards.
- **Defamation:** You cannot legally use social media to damage someone’s reputation with false statements.
- **Contempt of Court:** Speech that interferes with the administration of justice or lowers the authority of the courts.

## 2. Platform-Specific Limitations (Community Guidelines)

- Social media companies are private entities. Unlike the government, they are not always bound by constitutional free speech protections and can set their own "House Rules." If you violate these, your content can be removed or your account banned:

Restriction Category	Examples of Banned Content
Hate Speech	Attacks based on race, religion, sexual orientation, or disability.
Harassment	Cyberbullying, doxing (sharing private info), or persistent unwanted contact.

<sup>8</sup> <https://lawctopus.com/clatalogue/clat-pg/reasonable-restrictions-article-19-indian-constitution/>

Restriction Category	Examples of Banned Content
Misinformation	False medical advice (e.g., vaccine myths) or coordinated election interference.
Graphic Content	Extreme violence, self-harm, or non-consensual intimate imagery.
Intellectual Property	Posting copyrighted music, movies, or art without permission.

### 3. Emerging 2026 Regulations (AI & Deepfakes)

As of early 2026, many countries have passed strict new laws targeting AI-generated content to prevent digital "fakery" from causing real-world harm:

- Compressed Takedown Windows:** In some jurisdictions (like India under the 2026 IT Amendment Rules)<sup>9</sup>, platforms are now required to remove "Deepfake"<sup>10</sup> content within **3 hours** of a government order or a user complaint.
- Mandatory Labeling:** Users and platforms are increasingly required to clearly tag any content created or altered by AI to prevent it from being mistaken for reality.
- Algorithmic Accountability:** Regulators are now forcing platforms to use proactive detection systems to find harmful AI content before it goes viral, rather than waiting for a report.

## CHALLENGES IN REGULATING SOCIAL MEDIA

- 1. Challenge in defining harmful content-** A major challenge arises in defining harmful content. Material that appears offensive to one person may not be offensive or

<sup>9</sup> The amendment introduces four key structural changes:

- A statutory definition of "deepfake."
- A drastic reduction in the takedown timeline from 36 hours to three hours.
- Mandatory technical disclosure and traceability measures for AI-generated content.
- Expanded compliance and dispute resolution obligations for significant intermediaries.

<sup>10</sup> A video, image, etc. in which a person's face, body, or voice has been **digitally** altered so that they appear to be someone else, typically used **maliciously** or to spread false information.

damaging to another. Moreover, differences in cultural norms, political ideologies, and social values across different nations further complicate the process, as each country may have its own standards for identifying harmful content.

Some countries disagree with the critical post against the government and may label them as offensive and are subject to removal. At the same time, other democratic nations may consider freedom of speech as a healthy form for debates, discussion, and dissent. The absence of a globally accepted definition of harmful content makes it difficult to frame effective content moderation policies. Contents such as fake news, hate speech, and harmful material are differentially interpreted across different jurisdictions, platforms, and legal systems. As a result, social media platforms face criticisms regardless of the approach they adopt - being accused of censorship by some, while others claim they are at fault for failing to curb harmful content.

- 2. Privacy and Data Protection concerns-** Data privacy represents a major challenge for social media platforms. These platforms gather and retain personal information of the users such as locations, preferences, browsing patterns, and online interactions. Although this data helps the companies in delivering personalized services, it also creates serious concerns regarding the manner in which such information is generally stored, utilized, disclosed, or commercially exploited. Many countries have introduced data protection laws<sup>11</sup> aiming to safeguard users' privacy, providing them with control over their data and obtaining their consent before collecting or processing it.

Nevertheless, enforcing these laws continues to be difficult because social media platforms operate on a global scale. Companies functioning across different jurisdictions are required to adhere to multiple legal systems, which are often inconsistent or conflicting. Moreover, prominent incidents such as the "Cambridge Analytical Scandal"<sup>12</sup> where Facebook was found to have improperly handled user data for political objectives, The event, which caused public outrage has taught us a number of important lessons regarding data use and business analytics, have further strengthened demands for more stringent regulatory oversight.

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<sup>11</sup> European Union's General Data Protection Regulation (GDPR). Regulation 2016/679, May 25, 2018.

<sup>12</sup> Personal data of 50 million users was obtained by Cambridge Analytica to help elect US President Donald Trump.

- 3. Intermediary Liability and Content Removal-** “Intermediary liability” refers to the legal accountability of online platforms for content posted by third parties. Under Section 79 of the Information Technology Act, 2000,<sup>13</sup> intermediaries are granted “safe harbour” protection, provided they act swiftly to remove unlawful material upon receiving notice. However, the absence of a clear and precise definition of what constitutes “unlawful content” often results in arbitrary or excessive takedowns, thereby restricting the effective exercise of freedom of speech and expression.

## CONCLUSION

The rapid evolution of technology has moved human interaction into a virtual sphere, fundamentally altering our social fabric. To keep the core of democracy alive in this new landscape, we must adapt to digital trends while ensuring that freedom of expression continues to protect the individual. In this digital age, the right to free speech exists in a delicate, complex balance with social media platforms and the rise of anti-misinformation legislation.

The evolution of free speech has granted every individual a global megaphone, transforming social media into a space where expression can transcend traditional barriers such as background, caste, or color. However, this digital expansion necessitates a sophisticated regulatory framework—one that is precise enough to curb harm without being so broad that it stifles legitimate dissent. Creating a secure yet open digital ecosystem requires a foundation of transparency and a unified front between governments, tech platforms, and the public.

Achieving a true balance between open expression and the containment of misinformation is not a task for any single entity; it demands a collective, societal commitment. We must strive for a future where users exercise their digital influence with a keen sense of ethics and where governments wield their constitutional authority with restraint and integrity. Ultimately, the transition into a truly advanced digital era will only be complete when we collectively internalize a single guiding principle: **with great power comes great responsibility.**

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<sup>13</sup> An intermediary shall not be liable for any third-party information, data, or communication link made available or hosted by him. The function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted