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Free Speech, Misinformation, Regulation on Social Media Platforms

-Rishabh Jain

Introduction

The rapid proliferation of social media over the last two decades has transformed the way information is created, disseminated, and consumed across the world. Platforms such as Facebook, Twitter, Instagram, and YouTube serve as modern public squares where billions engage in political discourse, cultural exchange, and social interaction. While social media has democratized speech and empowered marginalized voices, it has concomitantly created fertile ground for the rapid spread of misinformation, hate speech, and harmful content. This dual challenge presses lawmakers, courts, and regulators to balance the fundamental right of free speech with the urgent need to combat misinformation that threatens public health, electoral integrity, and social harmony. This paper explores the evolving legal and regulatory landscape governing free speech and misinformation on social media platforms, analyzing key freedoms and restrictions under comparative constitutional and international law, the nature and impact of misinformation, and the spectrum of regulatory responses to this complex 21st-century dilemma.

I. Foundations of Free Speech in the Digital Age

A. Historical and Legal Context

Free speech is a cornerstone of democratic governance, enshrined in various constitutional frameworks globally. In India, Article 19(1)(a) of the Constitution guarantees the right to freedom of speech and expression, subject to reasonable restrictions under Article 19(2) to protect sovereignty, integrity, public order, decency, morality, defamation, and other interests. The U.S. Constitution's First Amendment offers robust protections for speech, prohibiting Congress from making laws abridging the freedom of speech or of the press. These provisions

historically protected speech in the public square but are continuously challenged to adapt to the online environment where voice is amplified and reach unprecedented.¹ Indian jurisprudence has grappled with applying free speech principles online. In *Shreya Singhal v. Union of India* (2015), the Supreme Court struck down Section 66A of the Information Technology Act, 2000, which criminalized sending offensive messages through communication service, recognizing that vague and overbroad restrictions chill online speech.² Similarly, in *Maneka Gandhi v. Union of India* (1978), the Court expanded the scope of the right to privacy and freedom, laying groundwork for digital rights.³ In the U.S., the landmark case *Packingham v. North Carolina* (2017) affirmed social media as a protected space for speech, emphasizing the internet's vital role in democratic discourse.⁴ These cases underscore evolving judicial recognition of the internet as an essential platform for free expression. Internationally, the Universal Declaration of Human Rights (Article 19) and the International Covenant on Civil and Political Rights (ICCPR, Article 19) provide foundational standards affirming the right to hold opinions without interference and to seek, receive, and impart information through any media regardless of frontiers.⁵ However, these rights are not absolute. The Rabat Plan of Action and the Johannesburg Principles outline that restrictions on speech must meet criteria of legality, legitimacy, necessity, and proportionality.⁶

B. Social Media's Role and Impact

Social media platforms act as global digital forums where individuals and groups express opinions, mobilize communities, and engage in political debate. Their algorithms prioritize engagement often by amplifying emotionally charged and sensational content, inadvertently driving the viral spread of misinformation.⁷ Anonymity and pseudonymity online can empower

¹ India Const. art. 19, cl. 1(a), 2; U.S. Const. amend. I; *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India).

² *Shreya Singhal v. Union of India*, (2015) 5 SCC 1 (India).

³ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India).

⁴ *Packingham v. North Carolina*, 582 U.S. ____ (2017).

⁵ Universal Declaration of Human Rights, art. 19, G.A. Res. 217A (III), U.N. Doc. A/810 (1948); International Covenant on Civil and Political Rights art. 19, Dec. 16, 1966, 999 U.N.T.S. 171.

⁶ Office of the United Nations High Commissioner for Human Rights, Rabat Plan of Action (2013); Johannesburg Principles on National Security, Freedom of Expression and Access to Information (1995).

⁷ L. Barroso, *Combating Misinformation on Social Media*, SciencesPo (2025).

dissidents but also facilitate abuse, harassment, and manipulation through bots or coordinated networks.⁸ Platforms are private entities, operating under terms of service and community guidelines that shape permissible speech, influenced by economic interests and regulatory environments.⁹ Section 230 of the U.S. Communications Decency Act provides immunity to online intermediaries from liability for third-party content, enabling platforms to host diverse speech without fear of crippling lawsuits but also raising questions about platform accountability and content moderation practices.¹⁰ This immunity has sparked debates about reform to better address misinformation while safeguarding free expression.¹¹

C. Balancing Rights and Responsibilities

Modern digital free speech governance must reconcile the individual right to express ideas with the collective interest in preventing harm caused by misinformation. This entails a delicate balance between protecting speech from undue censorship and ensuring platforms do not become conduits for dangerous falsehoods, hate speech, or incitement to violence.¹² Emerging frameworks suggest co-regulation involving states, platforms, civil society, and users, with transparency, accountability, and respect for due process as essential pillars.¹³

II. The Misinformation Dilemma

A. Types and Tactics of Misinformation

Misinformation on social media is multifaceted and proliferates in various forms that complicate regulatory efforts. Generally, misinformation refers to false or inaccurate information shared without intent to deceive, while disinformation denotes deliberately fabricated or manipulated

⁸ S.K. Mathew, *The Disaster of Misinformation: A Review of Research in Social Media*, *J. of Public Health* (2022).

⁹ S. M. Harley, *Protecting Free Speech in Social Media: A Pathway to Self-Governance*, *Emory Int'l L. Rev.* (2024).

¹⁰ 47 U.S.C. § 230 (1996).

¹¹ Akriti Shashank et al., *Social Media and the Right to Free Speech in India: Constitutional Challenges*, *IJCRT* (2024).

¹² M. Shahbazi, *Social Media Trust: Fighting Misinformation in the Time of Crisis*, *Info & Mgmt.* (2024).

¹³ "Legal Frameworks that Govern Online Expression," *New America*, June 2025.

content designed to mislead audiences for political, financial, or social gain. Mal-information, by contrast, involves the dissemination of truthful information with the purpose of causing harm, such as through doxxing or targeted harassment.¹⁴ Social media platforms exacerbate misinformation through their architecture—algorithm-driven feeds prioritize engagement and virality over accuracy, promoting sensationalism, conspiracy theories, and divisive content.¹⁵ Techniques such as bot amplification, fake accounts, deepfake videos, and coordinated campaigns distort public discourse and manufacture artificial consensus.¹⁶

Research shows that false information spreads faster and deeper than truth on social media, driven partly by human psychology favoring emotionally charged or novel stories.¹⁷

B. Effects on Society

The consequences of rampant misinformation are profound and far-reaching. During public health crises—such as the COVID-19 pandemic—misinformation about vaccines and treatments has led to vaccine hesitancy, mistrust in medical authorities, and preventable loss of life.¹⁸ In political contexts, misinformation undermines electoral integrity by spreading false claims about voting processes or candidates, thereby eroding democratic legitimacy.¹⁹ Social cohesion is also strained as misinformation fuels polarization, tribalism, and, in extreme cases, violence against minority or vulnerable groups.²⁰ The infectiousness of misinformation has prompted calls for urgent action to mitigate harm without infringing on free speech principles. However, efforts to regulate misinformation face both legal constraints and practical challenges, given the sheer volume of content and the boundary between harmful falsehoods and protected speech.²¹

¹⁴ S.K. Mathew, *The Disaster of Misinformation: A Review of Research in Social Media*, *J. of Public Health* (2022).

¹⁵ L. Barroso, *Combating Misinformation on Social Media*, *SciencesPo* (2025).

¹⁶ M. Shahbazi, *Social Media Trust: Fighting Misinformation in the Time of Crisis*, *Info & Mgmt.* (2024).

¹⁷ S.K. Mathew, *supra* note 14.

¹⁸ *Id.*; E. Denniss, *Social media and the spread of misinformation*, *Health Promotion International* (2025).

¹⁹ “Legal Framework to Combat Disinformation and Hate Speech on Digital Platforms,” *SSRN* (2024).

²⁰ S. M. Harley, *Protecting Free Speech in Social Media: A Pathway to Self-Governance*, *Emory Int’l L. Rev.* (2024).

²¹ L. Barroso, *supra* note 15.

C. Challenges in Identifying and Regulating Misinformation

The regulation of misinformation is hampered by definitional ambiguity, contextual variability, and enforcement complexity. What constitutes misinformation can depend on evolving scientific knowledge, political perspectives, or cultural norms, complicating the establishment of clear legal standards.²² Overbroad laws risk curtailing legitimate dissent or investigative journalism, particularly where governments use anti-misinformation measures to suppress opposition.²³ Platform content moderation invariably involves trade-offs between automatic detection technologies, often imperfect, and human review which is costly and slow.²⁴ Transparency and accountability mechanisms for moderation decisions remain limited, raising concerns about inconsistent enforcement, bias, and lack of remedies for wrongful takedowns.²⁵ Internationally divergent regulatory approaches further complicate compliance for global platforms operating across jurisdictions with differing free speech and misinformation standards.²⁶

III. Regulatory Responses: A Comparative Legal Analysis

A. United States

The United States embodies a particularly robust legal protection for free speech under the First Amendment, which guards against government abridgement of expression, including on digital platforms.²⁷ The Supreme Court has consistently maintained that speech cannot be restricted simply because it is offensive or false, except in narrowly defined categories such as true threats, incitement to imminent lawless action, and obscenity.²⁸ This strong constitutional shield imposes significant constraints on governmental attempts to regulate misinformation directly.

²² “The dichotomy of regulating disinformation and protecting online free speech,” SFLC (2025).

²³ *Id.*

²⁴ “Holding platforms accountable in the fight against misinformation: A cross-national analysis,” Sage (2024).

²⁵ *Id.*

²⁶ “Legal Frameworks that Govern Online Expression,” New America, June 2025.

²⁷ U.S. Const. amend. I; *Reno v. ACLU*, 521 U.S. 844 (1997).

²⁸ *Brandenburg v. Ohio*, 395 U.S. 444 (1969); *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942).

of the Communications Decency Act (CDA), enacted in 1996, protects online intermediaries from liability for third-party content while allowing them to moderate content in good faith.²⁹ This immunity has helped foster the growth of social media platforms but has generated heated debate regarding platform accountability for harmful content, including misinformation. Proposals to amend or repeal Section 230 are frequently discussed in legislative and public policy arenas, with concerns that removing immunity may incentivize excessive censorship or expose platforms to overwhelming litigation.³⁰ Major cases such as *Packingham v. North Carolina* affirm the crucial role of social media as modern public forums subject to constitutional free speech protections.³¹ However, the increasing prevalence of misinformation has spurred executive orders and Federal Trade Commission (FTC) initiatives aimed at promoting transparency and fighting deceptive practices without infringing constitutional rights.³²

B. European Union

The European Union adopts a distinctive regulatory approach balancing fundamental rights, including freedom of expression and privacy, with the need to protect users from illicit content and misinformation. The Digital Services Act (DSA), effective from 2024, imposes rigorous obligations on platforms to identify and remove illegal content swiftly, ensure transparency regarding algorithms, and provide mechanisms for user redress.³³ The DSA does not mandate wholesale content censorship but represents a comprehensive regulatory framework for platform accountability. Data protection laws like the General Data Protection Regulation (GDPR) complement the DSA by regulating how personal data may be used, affecting targeted misinformation campaigns.³⁴ The EU model emphasizes procedural safeguards, independent

²⁹ 47 U.S.C. § 230 (1996).

³⁰ Jack Balkin, *The Path Forward on Section 230 Reform*, Yale Law Journal (2023).

³¹ *Packingham v. North Carolina*, 582 U.S. ____ (2017).

³² Federal Trade Commission, *Combatting Deceptive Practices Online*, 2024.

³³ Digital Services Act, Regulation (EU) 2022/2065, 2024 O.J. (L 277).

³⁴ General Data Protection Regulation, Regulation (EU) 2016/679.

oversight, and the proportionality of restrictions to preserve pluralism and democratic discourse.³⁵

C. India

India's constitutional free speech framework guarantees the right to freedom of speech and expression under Article 19(1)(a), subject to 'reasonable restrictions' under Article 19(2).³⁶ The Supreme Court has interpreted these restrictions narrowly, protecting robust digital expression.³⁷ However, India's legal regime for online speech includes complex and often controversial provisions, such as the Information Technology Act 2000 and the IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, which set out intermediaries' duties to monitor and remove unlawful content.³⁸ Notably, the Supreme Court's landmark judgment in *Shreya Singhal* invalidated Section 66A of the IT Act, a provision that criminalized 'offensive' electronic messages, for its vagueness and potential misuse to stifle lawful dissent.³⁹ Nevertheless, Indian regulators continue to grapple with balancing state security interests and the need to prevent misinformation amidst concerns of government overreach and insufficient procedural protections.⁴⁰

D. Other Jurisdictions and Private Regulation

Countries such as Brazil and Argentina exhibit regulatory experiments with mixed outcomes, often confronted by tensions between enhancing platform responsibility and safeguarding freedom of expression.⁴¹ Globally, platforms exert increasing control over content through terms of service enforcement, AI-driven moderation, and partnerships with fact-checkers.⁴² While

³⁵ European Commission, *The Digital Services Act: Ensuring a Safe and Transparent Digital Space* (2024).

³⁶ India Const. art. 19(1)(a), (2).

³⁷ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1 (India).

³⁸ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

³⁹ *Shreya Singhal*, supra note 37.

⁴⁰ "Misinformation Laws in India," Cyber Law Consulting (2023).

⁴¹ L. Barroso, supra note 7.

⁴² S. M. Harley, supra note 20.

private regulation offers agility, its opacity and profit incentives raise concerns about consistency, bias, and remedies for wrongful removals.⁴³

IV. Challenges and Controversies in Regulating Digital Speech

A. Overregulation and State Abuse

While regulation aims to curb misinformation, overly broad or vague laws risk facilitating state overreach and censorship. Numerous jurisdictions demonstrate how anti-misinformation measures can be manipulated to suppress political dissent, censor journalists, and silence minorities. For example, India's Information Technology Rules have been criticized for lack of procedural safeguards, leading to arbitrary takedown orders without meaningful oversight or remedy.⁴⁴ Similarly, countries such as Russia and Turkey employ vaguely worded 'fake news' laws to detain critics and restrict independent media.⁴⁵ Algorithmic content moderation can also cause over-blocking, where legitimate speech is removed or shadowbanned by automated systems unable to understand context or nuance. This chilling effect deters free expression, disproportionately affecting marginalized voices and activists.⁴⁶ The lack of transparency in moderation practices and absence of effective appeals mechanisms exacerbate concerns about accountability and fairness.⁴⁷

B. Underregulation and Societal Harm

Conversely, insufficient regulation permits misinformation to flourish unchecked, undermining public trust and democratic processes. Delays in takedown, inconsistent enforcement, and inadequate tools leave users vulnerable to disinformation campaigns, fraud, and incitement to violence.⁴⁸ Social media's scale and speed complicate real-time intervention, while profit

⁴³ "Holding platforms accountable in the fight against misinformation," supra note 24.

⁴⁴ "Misinformation Laws in India," Cyber Law Consulting (2023).

⁴⁵ Human Rights Watch, "Russia: 'Fake News' Law Used to Silence Critics," 2023.

⁴⁶ S. M. Harley, supra note 20.

⁴⁷ "The dichotomy of regulating disinformation and protecting online free speech," SFLC (2025).

⁴⁸ "Holding platforms accountable in the fight against misinformation," supra note 24.

motives discourage platforms from aggressive policing of content that drives engagement.⁴⁹ The ongoing vaccine misinformation crisis exemplifies the real-world consequences of regulatory gaps, as public health campaigns have been undermined by falsehoods spread widely online.⁵⁰ Election interference through coordinated misinformation poses existential threats to democratic legitimacy worldwide.⁵¹

C. The Difficulty of Definitional Clarity and Implementation

A fundamental challenge to any legal regime is defining misinformation without infringing on free speech.⁵² The line between disinformation and unpopular or controversial opinions is often blurred. Scientific knowledge evolves, complicating labeling information as false, and cultural-political contexts affect perceptions of truth.⁵³ Laws targeting ‘false news’ are therefore susceptible to misuse and legal uncertainty. Globally diverse legal cultures and standards further complicate enforcement for multinational platforms, creating regulatory fragmentation and forum shopping by users or governments. Emerging regulatory proposals emphasize the need for clear, narrow, and evidence-based criteria to target harmful misinformation while protecting legitimate discourse.⁵⁴

V. Striking a Balance: Principles and Pathways

A. Necessity, Proportionality, and Clarity

Effective regulation of digital speech must be grounded in fundamental legal principles of necessity and proportionality to ensure that restrictions are limited to what is essential to achieve legitimate aims, such as preventing harm from misinformation, while minimizing infringement on free expression.⁵⁵ Laws and platform policies should employ clear, narrowly tailored

⁴⁹ L. Barroso, *supra* note 7.

⁵⁰ E. Denniss, *supra* note 18.

⁵¹ “Legal Framework to Combat Disinformation,” *supra* note 19.

⁵² “The dichotomy of regulating disinformation,” *supra* note 22.

⁵³ “Legal Frameworks that Govern Online Expression,” *New America*, June 2025.

⁵⁴ “Protecting Free Speech in Social Media,” *Emory Int’l L. Rev.*, *supra* note 9.

⁵⁵ “Legal Framework to Combat Disinformation and Hate Speech,” *supra* note 19.

definitions of prohibited content and emphasize transparency in enforcement practices.⁵⁶ The Rabat Plan of Action and Johannesburg Principles provide benchmarks for states to uphold these standards, demanding procedural safeguards including notice, opportunity to contest removals, and independent oversight.⁵⁷

B. Multi-Stakeholder Governance

Addressing misinformation demands collaborative governance involving governments, social media platforms, civil society, academia, and users.⁵⁸ Governments should enact clear, rights-respecting laws while providing regulatory oversight mechanisms that foster accountability and transparency.⁵⁹ Platforms must invest in robust content moderation tools blended with human review, facilitate appeals, and provide algorithmic transparency to limit bias and overreach.⁶⁰ Civil society plays a critical role in media literacy campaigns, fact-checking, and empowerment of users to critically evaluate information.⁶¹

C. Recommendations for the Future

First, legislators should align anti-misinformation measures with international human rights frameworks, ensuring they are precise, proportionate, and subject to judicial review.⁶² Second, platforms must develop mechanisms for meaningful user participation in governance and dispute resolution, enhancing procedural fairness. Third, investment in digital literacy and public awareness campaigns can arm users with the tools to discern and resist misinformation

⁵⁶ Office of the United Nations High Commissioner for Human Rights, Rabat Plan of Action (2013); Johannesburg Principles (1995).

⁵⁷ "Protecting Free Speech in Social Media," Emory Int'l L. Rev., supra note 9.

⁵⁸ "Digital Services Act," Regulation (EU) 2022/2065, supra note 33.

⁵⁹ "Holding platforms accountable in the fight against misinformation," supra note 24.

⁶⁰ L. Barroso, supra note 7.

⁶¹ "The dichotomy of regulating disinformation," supra note 22.

⁶² S. M. Harley, supra note 20.

independently.⁶³ Finally, international cooperation is vital to harmonize regulatory approaches and tackle the transnational nature of digital misinformation.⁶⁴

Conclusion

The interplay of free speech, misinformation, and regulation on social media platforms poses one of the most intricate legal and policy challenges of the digital age. While recognizing the indispensable role of free expression in democracy, the unchecked spread of misinformation threatens public health, democratic processes, and social cohesion. A nuanced, principled approach that employs clear legal standards, promotes transparency, ensures multi-stakeholder cooperation, and empowers users offers the best pathway to safeguarding both freedom and truth in an increasingly digital world.

⁶³ E. Denniss, *supra* note 18.

⁶⁴ "Legal Frameworks that Govern Online Expression," *New America*, June 2025.