



# THE STUDY OF RIGHT TO FREEDOM OF EXPRESSION, DIGITAL MEDIA LAWS AND DEMAND FOR INNOVATION

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## ABSTRACT

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This paper provides an overview of the concept of the right to freedom of expression, the concept of digital media, relating and applicable laws as well as needed innovation in the existing legal framework to prohibit misinformation on digital media. Nowadays digital platforms are the prime platform for communication. This study highlights the right to freedom of expression at the National and International level with certain limitations. It explains legal protection for individuals and the responsibilities of digital media. It elaborates on key issues of sharing misinformation. This paper focuses on incidents of misuse of freedom of expression on digital media, case laws, recent developments, and international standards of digital governance as well as addresses the harms associated with misinformation shared on digital platforms. It suggests effective measures against digital abuse which will help to prohibit the misuse of the right to freedom of expression on various digital platforms.

## INTRODUCTION

Information communication technologies and the internet have become important parts of everyone's life around the world. It is useful for improving openness and public debate in the society. But this right to freedom of expression is not absolute. It is with some restrictions. The same restrictions apply to the person who is sharing any kind of information on digital media platforms. There are various guidelines, conventions, and international action plans to cope with the situation of sharing misinformation, and misleading content as well as obscene, and defamatory, provocative, alarming information. The whole World is facing issues because of misuse of digital media technology and misuse of freedom of expression. Many more States are trying to adopt laws and policies to tackle such kinds of issues on a domestic level.

Digital media has become the primary tool for sharing information in various kinds of information. People use Facebook, WeChat, Twitter, Instagram, Pinterest Hike, Messenger Whatsapp and YouTube, Vlogs, Blogs, and Websites for communication as well as sharing information. The information that is shared through all these platforms is not always appropriate; it creates tensions in society or misleads the public. There are various examples of Cyber-crimes reported in various countries, which include blackmailing, fraud, harassment, cyber defamation, and misleading sexual offenses. The public misuses technology or sometimes they misuse the right to freedom of expression on digital media platforms Worldwide.

Digital media which includes social media, communication apps, video games, streaming, and augmented and virtual reality, are used by everyone for gaining knowledge, communication, awareness, education, and entertainment. This provides affordances and gratifications that promote media use and overuse, trigger dopamine reward pathways, and influence public identity, self-esteem, socialization, learning and development, and behavior. Nowadays it is the biggest issue that various apps are used to collect information and share that information for profitable advertisement, cyberbullying, and misguiding to the public or for spreading rumors.

Sikarwar Rahul defined Digital Media as "digi-

tized content that can be transmitted over the internet or computer networks"<sup>1</sup>. Digital media is the media which processed, stored, analyzed, and distributed by electronic machines or devices like mobile phones, computers, podcasts, or applications. Various companies, organizations, and people use digital media to share information for any kind of purpose which includes education. Awareness, politically updated entertainment, games, advertisements, and businesses.

The digital era started in the 20<sup>th</sup> century as information technology was used by industries and then after it became a part of public life. Information is shared on digital media in the form of articles, audio, videos, advertisements, music, podcasts, audiobooks, and games, audio and video stories. In the years that followed, newspapers, magazines, radio, and broadcast television were shifting nowadays into the digital world. Google, Netflix, Apple, Facebook, Twitter, and Amazon are popular digital media companies in the World.

Freedom of expression is the most important right which is protected under national as well as international laws and it has a place in various Constitutions also. This right is necessary for human development, personal fulfillment, for searching truth, and information, to sharing ideas and thoughts and it is the requisite of democracy and good governance. Citizens can raise their voice against the injustice. They can use it as a weapon for fulfilling any demand from the government which is coming under basic need. Authorities or the government can frame policies and enact new legislation as per the demand of the public. Therefore free debate is necessary with some limitations. A good democratic government is identified with the right of free speech with certain limitations.

'Freedom of expression' is important to share any kind of information or to express our ideas and thoughts through offline as well as online media. There is a close connection between the right to freedom of expression and the use of digital media. People can share various types of information through digital platforms because they have the right to freedom of expression which includes the right to seek, receive, and impart information, and

1 Rahul, S. (2016). Definition of Digital Media. Available at: <https://www.linkedin.com/pulse/definition-digital-media-rahul-sikarwar-digitalmarketing-expert/>

ideas without interference and regardless of frontiers through any media. In a broader sense freedom of expression is the freedom to make fair criticism against government and public office, posting on social media. Protesting in public, listening radio and watching TV, enjoying on the bank of a lake, or river, painting, drawing, acting, dancing, playing music, singing songs, collecting information, and sharing it the part of freedom of expression This right is with some limitations which include not harming others reputation, not to interfere in other's privacy, not to incite for violence or discrimination. These restrictions are lawful, and executed with court oversight.

## INTERNATIONAL FRAMEWORKS AND FREEDOM OF EXPRESSION

The right to freedom of expression is safeguarded under various international instruments like Article 19 of the Universal Declaration of Human Rights as well as Under the International Covenant on Civil and Political Rights 1966. The UDHR states that '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>2</sup> Article 19 of The ICCPR holds that, '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>3</sup> Article 19 (2) of the IC-CPR 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'.<sup>4</sup> The same rights means 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 articles 19 of the Universal Declaration of Human Rights and the In-

2 Universal Declaration of Human Rights. (1948). Article 19. General Assembly resolution 217 A of the United Nations, p. 5.

3 International Covenants on Civil and Political Rights. (1966). Article 19. General Assembly resolution 2200A XXI of the United Nations, p. 11.

4 Ed. Article 19(2).

ternational Covenant on Civil and Political Rights".

Johannesburg Principles There is no clarity among people about the restrictions imposed upon freedom of expression when and how this freedom is curtailed or restricted and in which manner. There was an try to limit this freedom of expression under a specific condition as mentioned under Siracusa Principles and Johannesburg Principle which includes National Security, Freedom of Expression, and Access to Information.<sup>5</sup>

Frank La Rue highlighted in 2013 under the UN Special Rapporteur<sup>6</sup> on the promotion and protection there may be no disagreements on freedom of expression as a legal right, but it is important that is not a non-derogable right, and therefore may be restricted or limited and it is subject to safeguards as mentioned under Article 19(3) of the ICCPR.

Freedom of expression has also been protected under various regional Conventions on Human Rights. It is also protected under the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 10 of the European Convention on Human Rights and Fundamental Freedoms states that '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> European Union adopted The General Data Protection Regulation (GDPR)<sup>8</sup> to regulate digital media which regulates the sharing of personal information online as well as its management. It secures the privacy of individuals, data protection, and freedom of expression in the modern era. There is needed consent from the individual to process his data. It was cleared that prior censorship, any kind of direct or indirect interference upon any expression, opinion, or information transmitted through any means in

5 Johannesburg Principles. (1995). Adopted by international law, national security, and human rights convened by Article 19, the International Centre Against Censorship, in collaboration with the Centre for Applied Legal Studies of the University of the Witwatersrand, Johannesburg. Available at: [refworld.org](http://refworld.org).

6 Rue, F.L. (2013). UN Special Rapporteur on freedom of opinion and expression, UN Digital Library, p. 6.

7 European Council of Human Rights, Convention for the Protection of Human Rights and Fundamental Freedoms (Rome). (1950). Article 10.

8 European Union. (2016). General Data Protection Regulation. Available at: [gdpr.eu](http://gdpr.eu).

oral, written, artistic, visual, or electronic form must be prohibited by law.<sup>9</sup> Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information, violate the right to freedom of expression.

The Indian Constitution<sup>10</sup> ensures the fundamental right to freedom of speech and expression under Article 19(1)(a) for every citizen of India. This is a fundamental right to share and express all kinds of thoughts, opinions, and ideas. But this freedom is not absolute. As per Article 19(2) of the Indian Constitution, it is needed to follow a few reasonable restrictions which include not harming India's sovereignty and integrity, security of the State, not disturbing public order and law, not violating decency and morality, not to defame anyone unnecessarily and not to make contempt of Court. These restrictions apply to online media or digital media users also.

Despite having laws there are various incidents of sharing misinformation through digital platforms. It is observed that many instances came into focus that digital media have been misused by users in many countries as well as in India. Fake news is the biggest problem today, it influences negatively to public. It shapes public opinion. Many people make wrong decisions, fall into wrong investments, they face fraud incidents.

Digital media, websites, blogs, vlogs, Social media, and online users all are part of the problem and contributing to the spreading of misinformation. Fake information shapes public opinion and sets local, national, and international agendas with the help of digital setup. There is a trend in business communities to spread fake information and influence the public to increase demand for any product. These businessmen use digital media to tell fake stories of scarcity of products in the future. By reading or watching such information public purchases products immediately even though they don't need them. Fake information is shared to achieve political, social, business, publicity, or any other goal. One of the actresses in India shared fake information about her death through her social media account just for publicity. This is also the trend

in political information to share some fake stories against the opposition or against the ruling party which affects voters during the election period. It results in increasing demand for a particular stock or product in the market. Nowadays this has become a trend in digital media. It is very difficult for the common person to find the truth and facts. They become a victim of such fake information. Fake information is shared intentionally and sometimes unintentionally. People are trapped in fake stories because of a lack of awareness; they don't realize and know that they are under the influence of misleading content information. It is difficult to handle fake stories that are being circulated through digital media due to a lack of evidence and sufficient proof to prove that are fake. If there is sufficient proof or evidence available to prove the story is fake but the main issue is to take down that misleading information because of one's post, another one likes, and the third one shares.

Human Rights Watch said that 83 governments worldwide have justified free speech and peaceful assembly during the COVID-19 Pandemic.<sup>11</sup> Authorities have attacked detained, prosecuted, killed critics, broken up peaceful protests, closed media outlets, and enacted vague laws criminalizing speech that they claim threatens public health. The government took action against journalists, activists, healthcare workers, political opposition groups, and others for criticizing government responses to the coronavirus.

Media Defence published that the UN Educational, Scientific, and Cultural Organization (UNESCO) has found that three-quarters of women journalists have experienced online violence. Among them, 30% responded to online violence by self-censoring on social media. Black, indigenous, Jewish, Arab, and lesbian women journalists experienced the highest and most severe form of online violence. 20% of women surveyed were physically attacked or abused offline in connection with online violence that they had experienced.<sup>12</sup>

Reporters Without Borders sheds light on the latest danger of journalist's threats and insults on social networks that are designed to intimidate

9 Inter-American Commission on Human Rights. (2000). Declaration of Principles of Freedom of Expression. Principle 5. Available at: [oas.org](https://www.oas.org).

10 Indian Constitutional Law. Article 19(1)(a) and Article 19(2).

11 Human Rights Watch. (2021). Review of Free Speech During COVID-19. International Centre for Non-Profit-Law.

12 United Nation's Educational, Scientific, and Cultural Organization Survey Report. (2021). Threats faced by women journalists. Available at: [mediadefence.org](https://www.mediadefence.org).

them into silence. The sources of these threats and insults may be ordinary trolls. Individuals or communities of individuals hiding behind their screens or armies of online mercenaries. Harassing journalists has never been as easy as it is now. Freedom of expression and bots are being used to curtail the freedom to inform.<sup>13</sup>

United Nations has provided key guidelines on freedom of expression. Incitement to discrimination, hostility, and violence which are prohibited by law under these guidelines. States have to use alternative tools or remedies by educating and creating awareness of the impact of hate speech online and offline.<sup>14</sup>

Individuals hesitate to express their opinions and thoughts on digital media because of trolling incidents are increased after sharing any free speech. Posetti J. and Bontcheva K. and Et. al. (2023) write that Rana Ayyub and Disha Ravi, journalists have faced legal threats for their work.<sup>15</sup>

According to Boivin and Johnson (2024), "Digital literacy can help to reduce heavy censorship and it will empower to public to participate in shaping values for online communities against the hate speech".<sup>16</sup> They demanded communication technologies should be positive for civic engagement.

The European Court of Human Rights found that the sanctions imposed on a blogger for offending the feelings of religious believers and inciting hatred toward a social group in a series of video messages had breached the blogger's right to freedom of expression.<sup>17</sup> European Court of Human Rights cleared that criminal prosecution and conviction of the blogger is disproportionate interference which was not necessary in a democratic society and such interference is not justified. Ruslan Gennadyevich Sokolovskiy, a content-creator and blogger. His

YouTube channel had 470,000 subscribers. He was convicted for a series of videos posted on YouTube. He shared hate speech through videos. The videos contained Sokolovskiy's comments on a ban of an atheist group from a social network in the Chechen Republic, comments on hate mail he had received from religious believers, and his criticism of the Russian Orthodox Church. He also made statements about the existence of Jesus and the Prophet Muhammad. In the case of Sokolovskiy v. Russia the European Court of Human Rights dealt with the issue of religious hate speech as a criminal offense interfering with the right to freedom of expression and information under Article 10 of the European Court of Human Rights.

Incidents of sharing false information are increasing day by day. Various false or misleading advertisements are published or shared through Pinterest, Facebook page, Instagram as well as Whatsapp also. The public is coming under the influence of such advertisements and facing issues of money loss. Few fraudulent advertisements are published or shared for participating in conferences, workshops, seminars, and paper publications or to purchase clothes and various products. One of my colleagues sent money to purchase clothes after seeing an online advertisement. The product was not delivered. He was asked to pay more money to start GPS to reach the location by a delivery service person. The colleague asked to return the paid amount, then the seller man sent one transaction message of a bigger amount and told him to return immediately extra transacted amount, but there was no amount transacted in the actual, and a fake transaction message was created and sent by the mobile number. The bank never sends transaction details through mobile numbers. This incident took place online in India with the Maharashtra victim person in November 2024.

The Ministry of Information and Technology issued a notice to WhatsApp to use such preventive technology to prevent the messages and information shared through WhatsApp groups in large numbers which was the cause of rumors and violence.<sup>18</sup> Then after Whatsapp technology was modified and admin could restrict group members from sharing messages. One more feature added to WhatsApp

13 Reporters Without Borders. (2018). Online Harassment of Journalists: The Trolls Attack. Global Investigative Journalism Network. Available at: [gijn.org](https://gijn.org).

14 United Nation's Strategy and Plan of Action on Hate Speech, pp. 2-5. Available at: <https://www.un.org/en/hate-speech/understanding-hate-speech/hate-speech-versus-freedom-of-speech>.

15 Posetti, J., Bontcheva, K., et. al. (2023). Rana Ayyub: Targeted Online Violence at the Intersection of Misogyny and Islamophobia. International Centre for Journalists, University of Sheffield, p. 4.

16 Boivin, K.B., Johnson, M. (2024). Digital Media Literacy as a Precondition for Engaged Digital Citizenship. Centre for International Governance Innovation, pp. 1-5.

17 ECtHR. Sokolovskiy v. Russia (04.06.2024).

18 Ministry of Electronic and Information Technology India. Available at: [meity.gov.in](https://meity.gov.in).



technology is to find the original source of messages or information shared through it.

'In India Government ordered the violation of free speech'.<sup>19</sup> YouTube is a popular digital platform for sharing videos. Many videos that are available on YouTube are misguided to the public. Untested health care tips, rumors about celebrities, untested food recipes are shared, untested and uncertified beauty formulas, magic tips are shared and wrong activities of children are promoted. Users violate the idea of freedom of expression and broadcast or share anything with the public. Many people follow YouTube videos and get affected. Provocative information is also shared through various YouTube channels which leads to violence. YouTube doesn't allow sharing that information which poses a risk of harm by spreading wrong medical information which is contrary to the local health authorities. YouTube policy doesn't allow medical misinformation that contradicts health authority guidance on the prevention or transmission of specific health conditions or on the safety, efficacy, or ingredients of currently approved and administered vaccines. YouTube policy doesn't promote information that contradicts health authority guidance on treatments for specific health conditions, including promotion of specific harmful substances or practices that have not been approved by local health authorities or the World Health Organization as safe or effective, or that have been confirmed to cause severe harm. YouTube does not allow sharing information denying the existence of specific health conditions. It applies to videos, video descriptions, comments, live streams, and any other YouTube product or feature. Many YouTube users share unverified and uncertified healthcare information. Surety for weight Loss and wet gain products is shared. Risk-causing stunts are captured by cameras and shared through YouTube. Children follow the same stunts and get affected.

Various bloggers share misinformation through their blogs. There was a story of a 100-year-old granny living her life with good fitness. The secret of her fitness was the herbal medicinal product of a particular company. A Newly established company gives such a surety about the herbal medicinal

product and through their advertisement, they tell that Granny has been taking that herbal product for many years. This is a great example of misinformation shared through digital media.

'The Great Hack' a documentary on Netflix is one of the examples of a breach of users' data. Netflix created political controversy through its international productions like 'The Mechanism' which is about a political scandal in Brazil. Netflix is another digital platform to share information in video forms. It is famous for documentaries, TV shows, and web series. It is the top streaming service. Many films are broadcast on Netflix. Standard of these films is less than films which are shown on T.V. or Cinema theaters and approved by the Censor board. Film is an artistic expression. It is coming within the ambit of freedom of expression. Many film producers misuse freedom of expression and share vulgar, obscene films through Netflix which is against the norms.

## Significance

Based on various incidents and cases, it is observed that misinformation is shared through digital media which affects society, disturbs public order, violates morality and decency, leads to violence, and creates a threat to national security. Obscene content corrupts the minds of the public which leads to incidents of sexual harassment. Many people are defamed unnecessarily. Private is interfered with. Various people make false decisions based on false information available on digital media. It is necessary to find an urgent solution to prohibit the public from sharing inappropriate content on digital media. Therefore it is important to find out the answers few questions such as:

- Whether the public have a lack of knowledge about existing laws that regulate digital media?
- Is there any other reason for misusing freedom of expression on digital platforms?

## Objectives

- To study the concept of freedom of expression.
- To evaluate International and National laws

19 Wire Staff. (2024). In India Government Ordered for the Violation of Free Speech. Available at: <https://thewire-hindi.com/272168/bolta-hindustan-youtube-alternate-media-govt/>.

regulating digital media.

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

## Hypothesis

- Innovation is needed in the existing legal framework to regulate digital media.
- Innovation is needed in existing digital media technology to avoid incidents of misusing freedom of expression.

## Methodology

This research has been carried out with the combined method of qualitative as well as quantitative methods. Data related to the legal framework which protects the right to freedom of expression and laws relating to digital media were collected by using doctrinal research methods and hypotheses are tested by using non doctrinal methods – quantitative research which includes observation and survey by using Google questionnaire.

## Results And Discussion

Based on International and National legal frameworks, incidents, case laws, and various reports, it is observed that digital media users share misinformation on digital platforms. Such incidents are increasing day by day. Many conventions and legal frameworks adopted to curtail this burning issue but even abusive, malicious, misleading, defamatory and obscene information is shared on digital platforms which is the biggest headache of various nationals today. The United Nations Global Action Plan is appreciated but the challenge is here rules should be matched with fast-changing communication digital media technology and should be sustained in future years; it is one of the biggest challenges here. Social media surveillance carried out by the US government will be beneficial to prohibiting the content.

32 People participated in this research from Ma-

harashtra and Kerala region of India. They were lawyers and law students from the age group of 21 to 45 and they are users of digital media. They shared their opinion (*see Chart I, Chart II*).

People were asked how many times they use digital media then 87.50% people answered that they use it daily, 6.30% people use it 2/3 times in a week and 3.10% people said they use once in a week and same 3.10 % people said they use rarely as shown in chart I. Participants were asked which digital platform they used to share information then 43.80% people answered that they used Instagram, 25% Facebook, 25% other apps like a We chat, WhatsApp, and Telegram, and 6.20% participants said they used Twitter for communication or sharing information on digital platform. As shown in Chart II. One notable thing is here that Instagram is the most liked and used app by youngsters for sharing information whereas Facebook is used by middle-aged people (*see Chart III, Chart IV*).

71.90% of participants were aware of digital media laws but the remarkable point is here that 28.10 % of law field people are not aware of digital media laws as shown in Chart III. Based on this it is clear that there is a possibility of less awareness among the common public about digital media laws and this can be one of the reasons for misusing freedom of expression. 84.40% of participants were not sure about the misuse of freedom of expression on the digital platform but 9.40% of participants said that people misuse the right to freedom of expression and 6.30% said that people don't misuse it as shown in Chart IV. All participants demanded change in existing digital media laws and technology to prohibit the misuse of the right to freedom of expression on digital media platforms.

Participants opined that the government should educate every citizen about digital platforms and freedom of expression; governments may restrict freedom of expression when it's necessary and proportionate to protect national security, public order, and the rights of others. Social media platforms should not be used as a means for unrestricted freedom of expression. In a very short period, harmful information religious hate, and vulgarity goes viral. Many young people are using these platforms to promote and display such negativity, which has serious consequences for society. The unchecked nature of social media allows these harmful mes-

sages to reach a wide audience quickly, exacerbating social divisions and spreading intolerance. They demanded a limit to age and sharing information per day. There is a demand for monitoring such information and taking fast actions against wrong information, more strict legislation to regulate digital media as well as to prohibit misuse of language on digital platforms. They demanded protection for whistleblowers and journalists who use digital media to expose corruption and promote accountability. Laws on freedom of expression for digital media should balance free speech with accountability. A legal framework that includes immediate action and punishment is one where the law ensures swift responses to violations and provides timely consequences for wrongdoers and compliance with a particular code of conduct. One must get the proper information before commenting or writing on a particular topic. There is also a demand to impose penalties for repeat offenders who violate platform policies.

Participants demanded change in existing technology to prevent the misuse of freedom of expression in digital media which includes enhancement of content moderation, use of AI with human oversight, advanced AI systems for detecting hate speech, misinformation, and harmful information with regular audits and human oversight to reduce biases and errors, culturally aware algorithms to respect regional norms and laws, ensuring context-sensitive moderation, platforms should disclose how information is promoted or suppressed to detect that biases or malicious intention and harmful narratives, optional identity verification methods that allow accountability for users who spread harmful or illegal content, while maintaining anonymity for those who require it for legitimate reasons, governments and NGOs should educate users about responsible and online behavior, improved reporting mechanisms which will make easier for users to report harmful information faster, stricter enforcement of terms, collaboration between platforms to track and prevent coordinated disinformation campaigns, harassment, and other malicious activities, tools for Fact-Checking, integrate real-time fact-checking tools within platforms to help users verify the authenticity of information before sharing, train AI models using diverse datasets to minimize biases. Technology innovation can

help to tackle the issue of misuse of freedom of expression on digital platforms.

## CONCLUSION

This research brings to notice that only lawyers are aware of the digital media laws and they follow policies and principles underlined in various laws while using such technology for communication but most of the public in the world never fall into gaining knowledge about digital media technology and policies which restricts the sharing of misinformation through a digital platform. Law field people demand change in existing laws as well as digital media technology as a remedy to prohibit the misuse of misinformation and misuse of freedom of expression on digital platforms.

## Suggestions:

- Users must be educated about privacy policies, avoiding copyrighted material, defamatory information, or anything that threatens national security or friendly relations;
- Awareness among the public about laws relating to digital media should be created;
- The government should take strict action against misinformation shared through digital media;
- Comprehensive Data Protection Legislation should be enacted;
- Transparent Content Moderation Practices should be ensured;
- Appropriate changes should be made in digital media technology which is used to share various kinds of information;
- There is a need for strict laws to control hate speech, fake news, and fake posts;
- Immediate action after reporting the misuse is necessary;
- Compliance with a particular code of conduct is necessary.



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