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Disinformation and Legal Responsibility: Regulating Digital Speech Without Curtailing Dissent

Ivan. Petrov[1] , Rajeev. Kumar[2]*

[1] Department of Public Law, Sofia University, Sofia, Bulgaria
[2] Department of Public Law, University of Delhi, Delhi, India

* Corresponding author email address: rajeev.kumar@du.ac.in

ABSTRACT

This study aims to explore how legal systems and digital platforms can regulate disinformation in online environments without infringing upon the right to dissent and freedom of expression. A narrative review design using a descriptive analysis method was employed to examine international human rights instruments, national legal frameworks, landmark case law, and platform governance models related to disinformation regulation. Academic journal articles, legal documents, institutional reports, and policy papers published between 2020 and 2024 were selected through targeted database searches. The analysis focused on key themes such as the misuse of disinformation laws to suppress dissent, the role of digital platforms in moderating speech, and the legal ambiguities surrounding definitions of harm and intent. The study found that while many jurisdictions have developed legal tools to counteract disinformation, these tools often suffer from vagueness and overbreadth, creating risks for democratic dissent. International legal standards provide foundational protections for freedom of speech, but their domestic implementation varies, sometimes resulting in overregulation or abuse. Case studies reveal that anti-disinformation laws have been used in several countries to target journalists, activists, and political opponents. Moreover, global digital platforms play a central role in moderating content but often operate with insufficient transparency and accountability. The analysis also highlights the challenges of jurisdictional conflicts, definitional ambiguities, and the complexities of establishing legal responsibility in a decentralized digital space. Effective regulation of disinformation must strike a balance between mitigating informational harm and preserving democratic freedoms. Legal and platform-based approaches must be rooted in clear definitions, proportional measures, and independent oversight to prevent misuse and ensure accountability. Enhancing media literacy and civic engagement is also essential to building public resilience against disinformation while protecting the legitimacy of dissenting voices.

Keywords: disinformation, digital regulation, freedom of expression, dissent, platform governance, legal responsibility, speech moderation

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1. Introduction

The digital age has revolutionized communication, offering unprecedented opportunities for information exchange across global communities. However, alongside these benefits has emerged a parallel phenomenon—digital disinformation. Disinformation, characterized by the deliberate spread of false or misleading content, has become a pervasive challenge in contemporary societies. Its rapid dissemination is often fueled by algorithmic amplification on digital platforms, where content virality takes precedence over accuracy. The consequences of disinformation are wide-ranging and deeply socio-political, influencing public opinion, undermining democratic institutions, and intensifying social

polarization. Events such as elections, public health crises, and geopolitical conflicts have demonstrated the power of disinformation to shape collective behavior and erode trust in both media and governance. As Azwar notes, virtual communities have increasingly become fertile ground for the circulation of disinformation due to their decentralized nature and limited content moderation frameworks (Azwar et al., 2023). This transformation has significantly shifted the public sphere, often blurring the line between truth and falsehood.

Regulating disinformation has thus become a pressing imperative for governments, international organizations, and digital platforms. Yet, such regulation is fraught with complications. Attempts to legislate disinformation are often met with concerns about censorship, political manipulation, and threats to democratic dissent. As Domalewska observes, even well-intentioned legal interventions may inadvertently suppress free expression if definitions of disinformation are too vague or overly broad (Domalewska, 2024). In authoritarian or hybrid regimes, anti-disinformation laws have frequently been weaponized to silence critics and marginalize oppositional voices, creating a chilling effect that discourages legitimate public discourse (Kenes & Yılmaz, 2024). The stakes are high: while regulation is necessary to prevent societal harm, especially in cases involving hate speech, election interference, or public health misinformation, there is a persistent risk that legal mechanisms will be co-opted for political control. As Shams notes in the context of Bangladesh, digital repression through ambiguous disinformation laws has become a tool for targeting dissent under the guise of maintaining national security (Shams, 2024).

This tension reflects a deeper legal and philosophical dilemma—the conflict between curbing disinformation and upholding freedom of expression. In liberal democracies, freedom of speech is a cornerstone of constitutional rights and public participation. However, this freedom is not absolute and must be balanced against other fundamental interests such as national security, public order, and the protection of democratic processes. Miller highlights the complexities of navigating this legal terrain, particularly when computational propaganda techniques obscure the source and intent behind certain types of disinformation (Miller & Bossomaier, 2024). Moreover, as Nossel argues, overregulation poses a direct threat to democratic resilience by undermining the open exchange of ideas, even those that are controversial or unpopular (Nossel, 2024). The legal challenge, then, is to develop frameworks that can effectively counter disinformation without encroaching on civil liberties or facilitating state overreach.

The aim of this study is to examine existing legal frameworks, both national and international, that address the regulation of digital disinformation while safeguarding the space for dissent. The article employs a narrative review approach, supported by a descriptive analysis method, to explore how different jurisdictions conceptualize and respond to the disinformation dilemma. By analyzing case law, statutory instruments, platform policies, and theoretical perspectives, the study seeks to identify best practices and normative principles for regulating digital speech responsibly. In doing so, it emphasizes the need for precision, proportionality, and democratic accountability in the crafting of legal interventions. Ultimately, this article aspires to contribute to the ongoing debate on how societies can confront the disinformation crisis without undermining the democratic ideals they seek to protect.

2. Methodology

This study employed a narrative review design utilizing a descriptive analysis method to explore the complex legal, political, and technological landscape surrounding the regulation of disinformation in digital spaces. A narrative review approach was selected for its flexibility in synthesizing diverse sources, including legal documents, scholarly literature, policy analyses, and institutional reports. The descriptive analysis method allowed for a thematic and conceptual examination of the intersection between disinformation, legal responsibility, and the protection of democratic dissent, without relying on statistical aggregation or meta-analytic quantification. The purpose of this methodology was to provide a comprehensive, interpretive account of existing legal frameworks, jurisprudence, and policy trends, with an emphasis on normative and doctrinal analysis.

In terms of source selection, the study drew from peer-reviewed journal articles, legal case analyses, international human rights instruments, national

legislation, and regulatory policy documents published between 2020 and 2024. A systematic search was conducted using academic databases such as Scopus, JSTOR, HeinOnline, and Google Scholar, complemented by targeted searches of institutional websites, including those of the United Nations, the European Commission, and national legislative bodies. Key search terms included "disinformation regulation," "freedom of expression," "digital speech," "platform liability," "democratic dissent," "legal responsibility," and "online harm." Priority was given to sources offering theoretical insights, comparative legal frameworks, and practical regulatory models. Where appropriate, landmark legal cases and policy briefs from institutions such as the UN Special Rapporteur on Freedom of Expression, the Council of Europe, and national courts were incorporated to enrich the legal dimension of the analysis.

The data analysis process involved a qualitative synthesis of selected literature, organized thematically to identify key legal tensions, conceptual ambiguities, and regulatory strategies. Thematic categories were established iteratively during the review process, beginning with a broad examination of disinformation typologies and gradually refining into specific domains such as international law, national regulatory approaches, platform governance mechanisms, and the delineation between harmful speech and protected dissent. Special attention was paid to identifying patterns of overregulation or misuse of disinformation laws to suppress legitimate expression. The descriptive analysis culminated in a critical evaluation of existing frameworks, aiming to extract principles that support democratic accountability while mitigating digital harms. This approach ensured that the article presents a balanced and comprehensive understanding of the evolving legal responsibility for digital speech in the context of disinformation control.

3. Theoretical and Conceptual Foundations

To understand the legal and normative complexities of disinformation regulation, it is essential to first establish a clear conceptual framework. Disinformation is commonly defined as the intentional dissemination of false information with the aim of misleading or manipulating an audience. This distinguishes it from misinformation, which involves the unintentional sharing of inaccurate content, and from propaganda, which typically refers to information, true or false, disseminated to promote a specific political agenda. According to Azwar, this differentiation is crucial for assessing the intent and potential harm behind the content, which in turn affects the legal responsibility of the communicator (Azwar et al., 2023). Starbird emphasizes that the structural dynamics of digital platforms, especially the use of echo chambers and filter bubbles, contribute to the virality of disinformation by reinforcing cognitive biases (Starbird, 2022). In this sense, disinformation is not merely an epistemic concern but also a socio-technical problem that thrives within particular digital ecosystems.

Freedom of speech remains a foundational value in both democratic theory and international human rights law. However, as Török contends, the principle of free speech must be applied with contextual sensitivity when confronting the challenges of the digital era (Török, 2024). The tension arises when disinformation begins to infringe upon other rights or societal interests, such as electoral integrity, public health, or minority protections. In such cases, the question becomes not whether speech should be regulated, but how it should be regulated in a manner that respects both liberty and accountability. Rashid highlights this balance in the context of Pakistan, where the judiciary and legislature have struggled to delineate the limits of acceptable speech without enabling censorship or political persecution (Rashid et al., 2024).

The concept of public interest is often invoked as a justification for limiting harmful speech. Yet, what constitutes the public interest is itself contested and contingent on the political, cultural, and legal context. Maroń argues that fact-checking, though essential for combating falsehoods, can become problematic when it is monopolized by state-sanctioned institutions or lacks transparency and oversight (Maroń, 2022). This raises concerns about the potential instrumentalization of truth mechanisms for political ends. As Xu observes in the context of digital China, regulatory measures aimed at controlling online narratives often blur the line between truth-seeking and ideological enforcement (Xu et al., 2022). Therefore, any regulatory effort must be grounded in a democratic understanding of the public

interest, one that prioritizes inclusivity, transparency, and the protection of minority voices.

Another key concept is democratic dissent—the ability of individuals and groups to challenge prevailing norms, question authority, and advocate for alternative visions of society. Peters emphasizes that in the digital age, dissent is increasingly expressed through visual and viral mediums such as memes, which complicate traditional legal categories of speech and expression (Peters & Allan, 2021). The regulation of such content requires legal models that are attuned to both the symbolic and practical dimensions of dissent. Tosi, for instance, argues that the linguistic and discursive forms of dissent must be preserved as part of a healthy democratic culture, even when they provoke discomfort or controversy (Tosi, 2021).

The governance of digital platforms introduces an additional layer of complexity. These platforms function as both facilitators of expression and gatekeepers of information, wielding significant power over what content is visible, suppressed, or amplified. As McDowell notes, the digital infrastructure of communication now mirrors and, in many ways, replaces traditional public forums, making platform governance a central concern for legal theory (McDowell, 2023). The delegation of regulatory power to private companies raises questions about legitimacy, transparency, and due process. Cornish points out that in cases of employee expression on social media, employers and platforms often act as de facto regulators, determining the limits of permissible speech without clear legal guidance (Cornish, 2022).

Theoretical models of speech regulation offer various frameworks for addressing these challenges. The harm principle, articulated by John Stuart Mill and developed in legal theory, posits that speech should only be restricted when it causes direct harm to others. This principle underlies many democratic legal systems but is often difficult to apply in cases of disinformation, where harm may be diffuse, indirect, or cumulative. Hendricks critiques the simplistic application of the harm principle in the context of modern information ecosystems, where algorithmic manipulation and psychological influence complicate notions of direct causality (Hendricks & Mehlsen, 2022). Alternatively, the democratic theory of speech emphasizes the role of free expression in fostering informed citizenry and collective deliberation. From this perspective, the regulation of disinformation

must be guided by principles that enhance, rather than undermine, democratic engagement. As Balcerzak illustrates through case studies from Myanmar and Ukraine, the failure to adequately regulate propaganda and disinformation has had devastating effects on democratic processes and human rights (Balcerzak & Kapelańska-Pręgowska, 2024).

Taken together, these conceptual foundations highlight the multifaceted nature of disinformation regulation. Any legal response must balance competing values—truth and liberty, order and dissent, regulation and autonomy—within a rapidly evolving digital landscape. Through an integrated understanding of disinformation typologies, speech theories, and platform governance, it becomes possible to craft nuanced, rights-respecting approaches to one of the most pressing legal challenges of the information age.

4.   Legal and Jurisprudential Landscape

The legal and jurisprudential landscape surrounding disinformation regulation is shaped by an intricate interplay between international human rights instruments, domestic legal systems, and evolving case law. At the international level, foundational texts such as Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and Article 10 of the European Convention on Human Rights (ECHR) enshrine the right to freedom of expression. These provisions underscore the essential role of free speech in democratic societies, while also acknowledging that this right may be subject to certain restrictions. Article 19 of the ICCPR explicitly allows for limitations that are necessary to respect the rights or reputations of others and to protect national security, public order, or public health. Similarly, Article 10 of the ECHR includes a clause permitting state interference when it is lawful, necessary in a democratic society, and proportionate to the legitimate aims pursued. These instruments form the normative backbone of many national legal systems and have been interpreted by courts to ensure that any restriction on speech, including measures targeting disinformation, must meet high thresholds of necessity and proportionality.

Within the context of the European Union, the Digital Services Act (DSA) represents a landmark regulatory development aimed at establishing accountability among digital platforms while protecting users' rights.

Marushchak outlines how the DSA introduces due diligence obligations for very large online platforms, compelling them to address systemic risks such as the spread of disinformation while upholding the right to freedom of expression (Marushchak & Petrov, 2024). The act reflects the EU's broader commitment to ensuring that digital governance aligns with human rights standards, setting a precedent for balancing state interests with civil liberties. Domalewska notes that several EU member states have also adopted national laws to combat disinformation, although these efforts have not always been harmonized and sometimes risk veering into overregulation (Domalewska, 2024). Germany's Network Enforcement Act (NetzDG) is one example, requiring platforms to remove "obviously illegal" content within 24 hours of notification, but it has also drawn criticism for incentivizing excessive content removal to avoid penalties.

In the United States, the First Amendment of the Constitution provides robust protections for speech, making it legally and politically difficult to regulate disinformation through direct state action. As Miller explains, even false or misleading statements are often protected under U.S. jurisprudence unless they meet the high bar of inciting imminent lawless action or constituting defamation or fraud (Miller & Bossomaier, 2024). The Supreme Court's decisions in cases such as *United States v. Alvarez* have reinforced the principle that the government cannot generally punish speech simply because it is false, affirming the value of open discourse in uncovering truth. However, this commitment to free expression has left a regulatory gap, often shifting responsibility to private platforms without a comprehensive legal framework for government intervention.

In contrast, legal approaches in countries such as India, Bangladesh, and Pakistan reveal how anti-disinformation measures can be used to justify broad state surveillance and censorship. Shams documents how laws purportedly designed to curb disinformation in Bangladesh have been employed to target journalists, activists, and political dissidents, often without clear legal standards or judicial oversight (Shams, 2024). Similarly, Rashid illustrates how freedom of expression in Pakistan is undermined by state regulations that conflate criticism with misinformation, allowing authorities to penalize oppositional voices under vague

legal categories (Rashid et al., 2024). These cases underscore the risks of using disinformation as a pretext for suppressing dissent, especially in contexts where judicial independence and press freedom are fragile.

Case law plays a pivotal role in shaping the boundaries of lawful speech and state responsibility. In Europe, the European Court of Human Rights has developed a rich jurisprudence on Article 10 of the ECHR, emphasizing that restrictions on expression must be prescribed by law, pursue a legitimate aim, and be necessary in a democratic society. The court has consistently warned against the "chilling effect" of vague or disproportionate restrictions, particularly when they pertain to political or journalistic speech. Balcerzak highlights the importance of case law in maintaining a balance between state interests and individual rights, particularly in contexts of armed conflict or political instability where disinformation may serve as a tool of propaganda (Balcerzak & Kapelańska-Pręgowska, 2024).

In democratic legal systems, the boundaries of regulation are guided by constitutional principles that prioritize legal clarity, proportionality, and procedural safeguards. Zick points to the jurisprudential emphasis on preserving spaces for public demonstration and protest as central to democratic participation, cautioning against the use of anti-disinformation laws to restrict collective action (Zick, 2021). Similarly, Składanek critiques the tendency of some governments to invoke public health emergencies, such as the COVID-19 pandemic, as a justification for curbing speech, thereby revealing the thin line between legitimate regulation and authoritarian control (Składanek, 2023). The analysis of these legal boundaries reveals the necessity of crafting disinformation policies that are not only effective in curbing harmful content but also rooted in democratic values and legal precision.

Altogether, the legal and jurisprudential landscape reveals a complex matrix of norms, precedents, and institutional practices that seek to navigate the disinformation dilemma. While international human rights instruments offer a foundational guide, their interpretation and implementation vary across jurisdictions, shaped by constitutional norms, political pressures, and judicial philosophies. Striking the right balance remains an ongoing challenge, requiring continuous legal innovation and vigilance against the

erosion of civil liberties in the name of combating falsehoods.

5.   The Role of Digital Platforms

Digital platforms play a central role in the dissemination and regulation of online content, including disinformation. As the primary intermediaries of information in the digital age, platforms such as Facebook, Twitter (now X), and YouTube function both as enablers of free expression and as moderators of harmful speech. This dual role has made them pivotal actors in the broader ecosystem of speech governance. The debate around platform liability has intensified in recent years, particularly in relation to their responsibilities in mitigating the spread of false and manipulative content. As McDowell argues, digital platforms have effectively become the new public squares, but unlike traditional forums, they are governed by opaque rules and driven by commercial imperatives rather than public interest (McDowell, 2023).

Initially, platforms adopted a largely hands-off approach, emphasizing their role as neutral conduits of user-generated content. However, mounting public pressure and high-profile incidents of misinformation have led to the development of internal policies for content moderation, fact-checking, and account suspension. Cornish observes that in many cases, these policies are unevenly applied and lack transparency, raising concerns about privatized censorship and the arbitrary enforcement of rules (Cornish, 2022). The problem is further exacerbated when platforms operate under the threat of government regulation or legal penalties, as seen in countries that impose strict content removal deadlines under penalty of fines. These dynamics create incentives for over-censorship, often to the detriment of legitimate speech and political dissent.

A key issue in platform governance is the role of algorithmic amplification in shaping the visibility and reach of content. Starbird highlights how disinformation often exploits algorithmic structures that prioritize engagement over accuracy, leading to the viral spread of falsehoods that resonate emotionally or ideologically (Starbird, 2022). The architecture of these algorithms creates feedback loops in which users are exposed to increasingly sensational or biased content, reinforcing existing beliefs and deepening societal divisions. This dynamic complicates the task of regulation, as the harm is not solely in the content itself but in its systemic promotion by platform algorithms.

Platform responses to this challenge have included the introduction of content warning labels, downranking of suspect posts, and partnerships with third-party fact-checkers. While these measures represent steps toward greater accountability, their effectiveness and neutrality remain contested. Miller critiques the reliance on automated systems and AI tools in moderation processes, arguing that such technologies can misinterpret context and disproportionately affect marginalized voices (Miller & Bossomaier, 2024). Moreover, the lack of clear appeal mechanisms and user oversight further entrenches the power of platforms as de facto arbiters of speech.

Transparency and moderation standards are at the core of ongoing debates about digital governance. As Török notes, any restriction on online speech must be guided by clear, publicly available policies that are consistently enforced and subject to independent review (Török, 2024). The absence of such standards not only erodes user trust but also creates legal ambiguities, particularly in jurisdictions where national laws defer to platform terms of service. Putri points out that in many cases, platforms have been complicit in state efforts to suppress critical voices by complying with takedown requests that violate international human rights standards (Putri, 2021). This collusion raises serious ethical and legal concerns about the delegation of censorship powers to private actors without sufficient safeguards or accountability.

Kenes underscores the emergence of digital authoritarianism, where governments leverage platform policies and data access to monitor and silence dissent under the guise of combating disinformation (Kenes & Yılmaz, 2024). This phenomenon is particularly pronounced in hybrid regimes, where legal constraints are minimal and platforms often comply with repressive demands to maintain market access. Ladia adds that user-generated content, such as protest hashtags or viral tweets, can be misconstrued as disinformation by authorities, leading to selective enforcement and the erosion of digital citizenship (Ladia, 2023).

The problem of privatized censorship is further complicated by the global nature of platforms and the fragmentation of legal norms across jurisdictions. Hendricks notes that without a harmonized framework,

platforms are left to navigate a complex web of conflicting national regulations, often defaulting to the lowest common denominator of compliance to avoid liability (Hendricks & Mehlsen, 2022). This approach can undermine rights protections in jurisdictions with stronger free speech guarantees while entrenching censorship in more authoritarian contexts.

As platforms continue to shape the contours of public discourse, there is a growing consensus around the need for co-regulatory models that combine legal standards, independent oversight, and platform accountability. Terry emphasizes that especially in health communication, misinformation must be addressed through transparent collaboration between platforms, public institutions, and civil society rather than unilateral platform actions (Terry, 2024). Such models should be rooted in principles of legality, necessity, and proportionality, ensuring that disinformation regulation serves the public good without compromising the fundamental right to freedom of expression.

In sum, digital platforms are both part of the problem and part of the solution in addressing the challenges posed by disinformation. Their immense influence over content visibility, coupled with their private governance structures, makes them uniquely powerful yet insufficiently accountable. Developing effective regulatory frameworks requires a recalibration of responsibilities, where platforms are subject to clear legal obligations while preserving the open, participatory nature of the digital public sphere.

6. Disinformation vs. Dissent: A Legal-Political Tension

The legal regulation of disinformation occupies a precarious position at the intersection of truth, authority, and dissent. While regulatory efforts aim to preserve public order, national security, and democratic integrity, history reveals a troubling pattern: the misuse of anti-disinformation laws to suppress dissenting voices. In many political systems, especially those with weak institutional checks and balances, disinformation laws have functioned less as protective tools and more as instruments of political repression. Shams provides a compelling analysis of the situation in Bangladesh, where authorities have routinely invoked digital security legislation to detain journalists, censor social media users, and silence activists under vague allegations of

spreading false information (Shams, 2024). Such cases illustrate how legal tools intended to protect public discourse can be weaponized to eliminate oppositional narratives.

The historical misuse of disinformation laws is not confined to one region or political system. In Turkey, as Kenes observes, the government has exploited anti-disinformation measures to target journalists and critics under the broader framework of digital authoritarianism (Kenes & Yılmaz, 2024). Under the guise of combating fake news, religious populist regimes have manipulated the legal framework to reinforce ideological conformity and marginalize dissent. Similarly, Putri documents the ways in which laws addressing disinformation and propaganda in Southeast Asia have frequently resulted in punitive action against media professionals and civil society groups who report on state misconduct or corruption (Putri, 2021). These examples underscore the legal-political tension that arises when states monopolize the definition of "truth," effectively delegitimizing critical discourse by branding it as falsehood.

Case studies from democratic contexts reveal that even well-established legal systems are not immune to overreach. Składanek examines the European response to COVID-19 disinformation, noting that emergency regulations introduced under public health justifications sometimes curtailed speech in ways that lacked proportionality (Składanek, 2023). In countries like Hungary and Poland, these laws were used to prosecute individuals for social media posts expressing doubts or criticisms about governmental policies, highlighting how crisis narratives can serve as a pretext for silencing opposition. The use of anti-disinformation laws in such contexts illustrates the inherent risk of embedding too much discretionary power in the hands of the state without adequate judicial review or procedural safeguards.

A particularly acute issue arises when laws are drafted using vague or overly broad language. As Rashid notes in the case of Pakistan, legislation that prohibits the dissemination of "false or misleading" content without a clear definition opens the door to arbitrary and politically motivated enforcement (Rashid et al., 2024). When the criteria for identifying disinformation are not explicitly defined, law enforcement agencies and regulators gain excessive interpretive power, often

applying the law in ways that reflect political priorities rather than legal objectivity. Starbird warns that the absence of precise legal definitions allows for interpretive flexibility that can be exploited to criminalize legitimate debate and critique (Starbird, 2022). This ambiguity undermines the rule of law and contributes to a chilling effect in which individuals self-censor to avoid potential legal repercussions.

The criminalization of speech under vague statutes also threatens the broader democratic function of dissent. Tosi emphasizes that dissent is not merely a political act but a discursive one—it is expressed through language, symbolism, and public performance (Tosi, 2021). When the state conflates dissent with disinformation, it erodes the expressive space necessary for democratic deliberation. Cornish points out that employees who criticize institutions on digital platforms have faced disciplinary action under vaguely worded social media policies, suggesting that the boundary between professional critique and reputational harm is increasingly blurred (Cornish, 2022). In such cases, legal and institutional responses to disinformation often reflect power dynamics rather than principled assessments of truth or falsity.

Another significant concern is the absence of judicial accountability in enforcing anti-disinformation laws. Domalewska notes that in several European states, the administrative authorities tasked with implementing these laws operate without robust oversight mechanisms, leading to inconsistent and often politically biased enforcement (Domalewska, 2024). In the absence of transparent appeal processes or independent review, those accused of spreading disinformation may have limited recourse to challenge the charges or defend the legitimacy of their expression. Marushchak observes that legal mechanisms designed to combat disinformation are often implemented in national security contexts, where secrecy and urgency justify the circumvention of due process (Marushchak, 2022). This legal environment fosters an asymmetry in which the state's interpretation of truth becomes incontestable, while dissenting voices are treated with suspicion and hostility.

Overall, the tension between disinformation control and the protection of dissent reveals the paradox at the heart of digital speech regulation. While disinformation undoubtedly poses real threats to democratic stability and public well-being, legal responses must be carefully designed to avoid undermining the very freedoms they purport to defend. When states assume the role of ultimate arbiters of truth, particularly in the absence of procedural guarantees and definitional clarity, the line between regulation and repression becomes dangerously thin.

7. Challenges in Regulatory Approaches

One of the foremost challenges in regulating digital disinformation is the fragmented and conflicting nature of jurisdictional authority. Digital platforms operate across national boundaries, yet legal systems are territorially constrained. This mismatch creates regulatory gaps and inconsistencies. Hendricks highlights that platform companies are often subject to divergent legal requirements in different countries, forcing them to navigate contradictory demands regarding content removal, data access, and liability (Hendricks & Mehlsen, 2022). For instance, a social media post that is permissible under U.S. First Amendment protections might be deemed illegal under Germany's NetzDG law. This jurisdictional conflict makes uniform enforcement nearly impossible and incentivizes platforms to adopt inconsistent standards depending on the regulatory climate of a given country.

Global platforms also tend to default to the most restrictive legal environments to avoid sanctions, resulting in over-compliance that suppresses lawful speech. As Balcerzak notes, platforms often err on the side of caution by removing content that may fall within a legal grey area, leading to the suppression of political expression, especially in authoritarian or semi-authoritarian regimes (Balcerzak & Kapelańska-Pręgowska, 2024). This phenomenon is exacerbated when platforms lack localized legal expertise and rely on automated moderation systems that fail to grasp cultural or contextual nuances. The global reach of platforms, combined with the decentralized nature of content generation, makes the application of national laws both technically and conceptually challenging.

Vagueness and overbreadth in legal definitions further compound these regulatory difficulties. Miller explains that when laws lack specificity, they fail to provide clear guidance to both users and platforms, creating a chilling effect in which individuals self-censor out of fear of legal consequences (Miller & Bossomaier, 2024). This effect is particularly pronounced in politically volatile

environments, where accusations of disinformation are frequently weaponized. Zick emphasizes that vague laws do not merely suppress speech—they corrode the legal culture of democratic participation by undermining public trust in the fairness and predictability of legal norms (Zick, 2021). Legal certainty is a cornerstone of the rule of law, and its absence opens the door to arbitrary enforcement.

Another central challenge lies in defining the concept of "harm" in relation to disinformation. Public health, election integrity, and national security are commonly cited justifications for regulation, but these concepts are often ambiguous and politically charged. Terry highlights how, during the COVID-19 pandemic, health-related misinformation was used as a rationale for significant speech restrictions, sometimes extending beyond scientifically inaccurate statements to include criticism of governmental health policies (Terry, 2024). Similarly, Nossel warns that vague appeals to national security can be used to justify sweeping restrictions that target political opposition or minority groups (Nossel, 2024). The elasticity of the term "harm" allows for expansive interpretations that may not align with democratic values or proportional legal standards.

The problem of defining harm is also epistemological. As Xu argues in the context of media regulation in China, state authorities often frame dissenting narratives as "false" or "misleading" not on the basis of factual inaccuracy, but because they challenge dominant ideological frameworks (Xu et al., 2022). This raises the question of whether harm should be assessed objectively, based on demonstrable effects such as incitement or panic, or subjectively, based on institutional discomfort. Starbird suggests that a narrow, context-specific definition of harm—focusing on direct and imminent consequences—may offer a more defensible legal standard (Starbird, 2022). However, operationalizing such a definition in law remains a formidable task.

Legal responsibility in the context of disinformation also hinges on the question of intent and knowledge. Cornish points out that users may share false content unknowingly, raising concerns about how liability should be assigned in a decentralized digital environment (Cornish, 2022). Criminalizing the sharing of inaccurate information without proof of intent to deceive risks penalizing individuals who act in good faith. Maroń proposes a more nuanced model that distinguishes between malicious disinformation, negligent misinformation, and protected opinion, each with different legal implications (Maroń, 2022). This gradation of responsibility aligns with traditional legal doctrines that require mens rea—intentional or reckless conduct—as a prerequisite for criminal liability.

Yet in practice, few legal systems have fully integrated this standard. Azwar highlights that many regulatory frameworks treat all disinformation uniformly, regardless of the disseminator's knowledge or intent (Azwar et al., 2023). This approach not only risks unfair punishment but also undermines educational and preventative strategies aimed at improving media literacy and digital competence. Regulatory regimes that fail to differentiate between malicious and unintentional behavior may ultimately discourage user participation and erode the inclusivity of the digital public sphere.

In sum, the challenges of disinformation regulation are deeply structural and conceptual. Jurisdictional fragmentation, vague legal definitions, contested notions of harm, and difficulties in assessing intent all complicate the development of coherent and rights-respecting legal frameworks. Addressing these challenges requires a multi-dimensional approach that includes legal clarity, judicial accountability, platform transparency, and public education. Without these elements, efforts to regulate disinformation risk undermining the democratic values they seek to uphold.

8. Conclusion

The proliferation of digital disinformation presents one of the most pressing and multifaceted challenges for contemporary societies. As the digital public sphere becomes increasingly central to political discourse, social interaction, and information dissemination, the spread of false or misleading content has profound implications for democratic institutions, public trust, and social cohesion. In response, governments, legal systems, and digital platforms have sought to establish frameworks to identify, regulate, and counteract disinformation. However, the task of designing effective regulatory responses is complicated by the inherent tension between maintaining informational integrity and safeguarding fundamental rights, especially the right to freedom of expression and the right to dissent.

This narrative review has sought to navigate this complex terrain by analyzing the legal, conceptual, and institutional dimensions of disinformation regulation. At the heart of the inquiry lies a critical dilemma: how can societies address the harmful consequences of disinformation without enabling censorship or suppressing legitimate democratic expression? Legal and policy responses to this question must be grounded in a deep understanding of both the risks posed by disinformation and the equally significant dangers of overregulation. When laws are crafted without clear definitions, proportional enforcement mechanisms, or adequate oversight, they risk becoming tools of political control rather than instruments of public protection.

The global legal landscape reveals a wide range of approaches to disinformation regulation, from robust protections for free speech to expansive state powers to monitor and remove online content. While international human rights instruments provide essential normative guidance, their implementation at the national level varies considerably, influenced by political contexts, legal traditions, and institutional capacities. Some jurisdictions have successfully developed nuanced models that balance regulatory needs with constitutional safeguards, while others have used disinformation laws to justify broad surveillance, restrict political opposition, and curtail civic space. This variation underscores the importance of legal clarity and judicial independence in ensuring that disinformation regulations do not infringe on fundamental freedoms.

Digital platforms have emerged as central actors in the governance of online speech. Their policies and algorithms shape the visibility and reach of information, effectively determining what constitutes the boundaries of acceptable discourse. While platforms have made strides in developing moderation systems and transparency tools, they often operate without meaningful accountability or consistent enforcement. The privatization of speech regulation introduces new challenges, including opaque decision-making, inconsistent content moderation, and the potential for collusion with state actors. This environment calls for the establishment of clear, democratically anchored guidelines for platform governance, along with mechanisms for user redress and independent oversight. A particularly troubling dimension of disinformation regulation is its potential to conflate dissent with deceit.

Throughout history and in various political systems, legal tools designed to combat disinformation have been used to stifle criticism, silence marginalized voices, and delegitimize protest. The blurring of lines between dissent and disinformation not only undermines democratic engagement but also corrodes public confidence in legal institutions. To prevent this outcome, it is essential that regulatory frameworks distinguish between harmful disinformation and expressions of dissent, even when those expressions are controversial, critical, or unpopular. The ability to question, criticize, and challenge authority is fundamental to democratic health and must be preserved alongside efforts to mitigate harm.

Several conceptual and legal challenges remain unresolved. The cross-border nature of digital platforms complicates jurisdictional authority and raises questions about which laws apply to which content. The vagueness and overbreadth of legal definitions create uncertainty and a chilling effect, discouraging users from participating fully in public discourse. Determining the nature and scope of harm—whether in the realms of public health, election integrity, or national security—requires careful, context-sensitive analysis. Additionally, assigning legal responsibility in a decentralized, user-driven information environment demands consideration of intent, knowledge, and the differentiated roles of actors within the digital ecosystem.

Moving forward, any meaningful response to disinformation must be multifaceted. Legal reforms should prioritize precision, proportionality, and the protection of rights. Regulatory frameworks must be transparent and enforceable, with safeguards against abuse. Platform governance needs to evolve toward co-regulatory models that involve civil society, independent oversight bodies, and affected communities in policy development and implementation. Most importantly, the societal response to disinformation must include educational initiatives to enhance media literacy, critical thinking, and digital competence among the public. Empowering individuals to navigate information environments responsibly is a foundational step toward building democratic resilience in the face of disinformation.

Ultimately, the challenge of disinformation is not solely a legal or technological issue; it is a democratic one. It demands a careful balancing act between protecting the

integrity of information and upholding the freedom of individuals to express themselves, challenge authority, and participate meaningfully in public life. Achieving this balance requires ongoing dialogue, legal innovation, and a steadfast commitment to the principles of justice, transparency, and accountability. By recognizing the risks of both disinformation and overregulation, societies can develop thoughtful, rights-respecting strategies that strengthen democracy rather than weaken it.

Authors' Contributions

Authors contributed equally to this article.

Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Transparency Statement

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Declaration of Interest

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Ethical Considerations

In this research, ethical standards including obtaining informed consent, ensuring privacy and confidentiality were observed.

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