

## BALANCING ACT: FREEDOM OF EXPRESSION VERSUS PROTECTION OF HONOR IN THE DIGITAL WORLD

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### Abstract

*In the digital age, the interplay between freedom of expression and the protection of honor has become a critical issue, as the internet facilitates both the free exchange of ideas and the potential for harm to personal dignity. This article examines the historical evolution of these rights and their contemporary challenges in the online environment. While freedom of expression is foundational to democratic societies, enabling individuals to voice opinions and participate in public discourse, it often clashes with the right to protect one's honor from defamation, harassment, and privacy invasion. The European Court of Human Rights (ECtHR) plays a pivotal role in balancing these rights, particularly in cases involving public figures where the limits of acceptable criticism are broader. However, the rapid spread of misinformation and the anonymity afforded by the internet complicate efforts to protect individuals' reputations. The article highlights and illustrates these tensions and proposes legal frameworks to better align the protection of honor with freedom of expression in the digital realm. Ultimately, the article advocates for a nuanced approach that considers both national and international legal precedents while promoting digital literacy and responsible online behavior to foster a more respectful and inclusive digital public sphere.*

**Keywords:** *freedom of expression, protection of honor, human rights, cyberbullying, defamation, digital communication, public discourse, online privacy, misinformation, digital literacy, social media regulation, ECtHR, ECHR.*

### Introduction

In the age of digital communication, the clash between freedom of expression and the protection of honor has reached unprecedented heights. The internet, with its boundless potential for connectivity and discourse, has become the base of both free speech and a battleground for the preservation of personal dignity. As individuals navigate the vast expanse of online platforms, they encounter a complex web of rights and responsibilities, where the right to express oneself freely must be balanced against the need to safeguard one's reputation and integrity. From the vibrant exchanges of ideas on social media to the darker corners of cyberbullying and defamation, the digital world presents a mass of challenges and opportunities for upholding these fundamental rights. On one hand, freedom of expression stands as a pillar of democratic societies, empowering individuals to voice their opinions, challenge authority, and participate in public discourse. On the other hand, the right to protection of honor and dignity ensures that individuals are shielded from harm, defamation, and invasion of privacy. In this balancing act between freedom and protection, individuals, and lawmakers grapple with complex questions about where to draw the line. How do we foster a vibrant digital public sphere while also safeguarding individuals from online abuse? And how can we ensure that the principles of freedom of expression and protection of honor remain steadfast in the face of ever-evolving digital landscapes?

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### **Why is there a clash between freedom of expression and the right to protection of honor and dignity?**

In the dynamic landscape of digital communication, the dispute between freedom of expression and the right to protection of honor and dignity has reached new heights. As online platforms become the battleground for ideas, opinions, and interactions, navigating the delicate balance between these fundamental rights poses significant challenges for lawmakers, internet users, and content moderators alike. At the heart of this balancing act lies the tension between two core principles: *the right to express oneself freely and the right to be protected from defamation, harassment, and invasion of privacy*. While freedom of expression is enshrined as a fundamental human right in many legal systems, it is not an absolute right and must be balanced against other rights, including the right to dignity and reputation. In the digital world, where opinions can spread like wildfire and misinformation can go viral in an instant, maintaining this balance is not easy. On one hand, the internet provides a platform for individuals to express themselves, engage in public discourse, and hold those in power accountable [9]. On the other hand, it also opens the door to abuse, harassment, and the dissemination of false or harmful information that can tarnish reputations and cause irreparable harm to individuals' dignity. While freedom of expression is a fundamental right, it is not absolute, and there are legitimate concerns about the impact of online abuse on individuals' mental health, reputation, and democratic discourse. Balancing these competing interests requires a nuanced approach that takes into account the unique challenges of the digital world while upholding core principles of human rights and dignity. Freedom of expression and the right to honor are both essential rights, holding equal importance. They are recognized as human rights, intrinsic to everyone, and protected by various international human rights agreements [9]. When these fundamental rights clash, conflicts should be resolved by considering both national and international laws and precedents to determine which right takes precedence or should be limited in each specific situation [9]. Except for the right to life, all fundamental rights are relative and have boundaries, as the exercise of one right must respect the exercise of another [9].

### **Historical context of freedom of expression and protection of honor and dignity**

To understand the clash between freedom of expression and protection of honor in the digital world, it's essential to examine their historical evolution and how they intersect in different contexts.

Since *ancient civilizations* period, freedom of expression historically developed whereas in Greece philosophers like Socrates defended the right to speak freely. During the *Middle Ages*, freedom of expression was often constrained by religious and political authorities. However, the *Renaissance* saw a revival of interest in classical ideas of free speech and intellectual inquiry [8]. *The Enlightenment of the 17th and 18th centuries* marked a watershed moment for the concept of freedom of expression. Philosophers such as Voltaire, Montesquieu, and Rousseau advocated for the importance of free speech as a cornerstone of liberal democracy [8]. The emergence of the printing press facilitated the dissemination of ideas and fueled debates about censorship, leading to calls for greater tolerance and freedom of the press. *The American and French Revolutions of the late 18th century* enshrined freedom of expression as a fundamental human right. The First Amendment to the United States Constitution, adopted in 1791, guarantees freedom of speech, press, assembly, and petition. Similarly, the French Declaration of the Rights of Man and the Citizen indicated the freedom of speech and the press as natural and inalienable rights. *The 19th and 20th*

centuries saw the expansion and codification of freedom of expression in international law. The fundamental right to freedom of expression was established in documents like the International Covenant on Civil and Political Rights (1966) and the Universal Declaration of Human Rights (1948). However, this period also witnessed challenges to free speech, including censorship during times of war and political repression under authoritarian regimes. The advent of the internet and digital communication technologies has revolutionized the landscape of freedom of expression in the 21st century [8].

The notion of protecting honor and dignity also has a long history, rooted in cultural and religious traditions that emphasize the importance of preserving one's reputation and integrity. Ancient cultures including Mesopotamia, Egypt, Greece, and Rome were woven together largely by ideas of honor and dignity [10]. In these communities, reputation, family history, and conformity to social norms were frequently considered indicators of honor. Violations of honor, such as defamation or betrayal, were met with social ostracism or legal repercussions. During *Medieval Europe*, the idea of honor took on new dimensions, particularly in the context of chivalry and feudalism. Knights were expected to uphold codes of conduct that emphasized courage, loyalty, and integrity [11]. The notion of personal honor became intertwined with notions of nobility and virtue. *The Renaissance* witnessed a resurgence of interest in classical ideals of honor and virtue. Renaissance humanists such as Petrarch and Castiglione explored the concept of the "gentleman" as someone who embodied both intellectual and moral excellence. Similarly, Enlightenment thinkers like Immanuel Kant and Jean-Jacques Rousseau emphasized the importance of individual dignity and autonomy. *The modern concept* of protecting honor and dignity finds expression in legal frameworks that safeguard individuals' rights and reputations. For example, defamation laws emerged in the 17th and 18th centuries to protect individuals from false statements that harm their reputation [11]. Similarly, privacy laws have evolved to safeguard individuals' dignity and autonomy, particularly in the context of intrusive media practices and technological advancements. Human rights movements that promoted the defense of honor and dignity as essential rights came into being in the 20th century. The right to privacy, reputation, and dignity are fundamental elements of human dignity, also as stated in documents like the European Convention on Human Rights (1950) and the Universal Declaration of Human Rights (1948) [11].

As mentioned before, with the advent of the internet and digital communication technologies, the intersection between freedom of expression and protection of honor has become more pronounced. The internet has democratized access to information and provided a platform for individuals to express themselves freely. However, it has also facilitated the spread of harmful content, such as hate speech, cyberbullying, and false information, which can tarnish reputations and damage individuals' dignity.

The rise of social media platforms in the early 2000s further complicated this dynamic. Social media offers unprecedented opportunities for individuals to share their thoughts, connect with others, and participate in public discourse. However, it also created new challenges in moderating content and protecting users from abuse. The anonymity and reach of social media enabled malicious actors to engage in cyberbullying, harassment, and defamation with impunity.

Governments and policymakers have responded to these challenges by enacting laws and regulations aimed at protecting individuals' rights online. These include laws against cyberbullying, defamation, and hate speech, as well as data privacy regulations

aimed at safeguarding individuals' personal information. However, enforcing these laws in the digital realm presents unique challenges, such as jurisdictional issues and the role of intermediaries like social media companies in moderating content.

### **Case study**

Freedom of expression can impact the reputation and dignity of politicians in various ways. This topic is sensitive concerning the equality of citizens, regardless of their societal position. However, it's important to consider the unique actions and characteristics of individuals in this context. For instance, ECtHR ruled that the limits of acceptable criticism are wider for politicians than for ordinary individuals [1]. Unlike ordinary individuals, politicians must inevitably and consciously accept the rigorous scrutiny of their every word and deed by journalists and the general public. Consequently, they must show a greater degree of tolerance [1]. Mr. Lingens, a journalist, had published several articles describing the Austrian Chancellor as being "immoral" and "undignified," displaying "the most detestable opportunism" [1]. Following a complaint by the Chancellor, Lingens was fined by the Austrian courts for insult, as they determined that the Chancellor's reputation had been damaged [Lingens v. Austria]. ECtHR examined the context, noting that the articles were written after a general election and before the formation of a governing coalition [1]. In such circumstances, politicians are expected to tolerate a higher degree of scrutiny and criticism regarding matters of public interest conveyed through the media [1]. In the case of *Oberschlick v. Austria*, the analysis centered on a term used by a journalist "idiot" to describe a political speech by an Austrian politician [1]. While the term "idiot" might seem like a personal attack and gratuitously offensive on its own, the court must examine the entire context in which it was used when a complaint is filed [1]. In this instance, the ECtHR determined that the term, though insulting, was used to critique a political speech by Mr. Haider, a political party leader [Oberschlick v. Austria]. The court recognized it as a value judgment of the politician's speech, albeit disproportionate to the message. Thus, the protection of freedom of expression extends even to words that may shock, offend, or disturb [1].

Exercising certain personal rights can often interfere with the rights of others, leading to conflicts. For example, using the right to freedom of expression might harm someone's dignity, honor, public image, and reputation. Protecting these aspects is a common reason for limiting freedom of expression, creating a clash between fundamental democratic values [7, p.114-126]. The European Convention on Human Rights (ECHR) doesn't specify how states should protect the right to honor and reputation, so different countries use both civil and criminal laws. However, ECtHR stresses that sanctions on freedom of expression shouldn't have a chilling effect. In some cases, ECtHR has found even minor, non-criminal penalties to be disproportionate when the restriction on freedom of expression isn't well-justified [7, p.114-126].

ECtHR balances reputation protection and freedom of expression by evaluating whether a publication contributes to a debate of public interest [5]. Public interest information includes topics like national security, public order, human rights, and factors affecting societal welfare [5]. Information that significantly impacts society and is of legitimate public interest is protected. Certain criteria are used by ECtHR [1]:

1. Contribution to public interest discussion.
2. Publicity of the person involved.

3. Topic of publication.
4. Previous behavior of the person.
5. Method of obtaining information.
6. Form, content, and consequences of the publication.
7. Degree of punishment.

Distinguishing between facts and value judgments is crucial, as facts can be proven, but value judgments should be based on factual components [1]. The purpose of the publication is also important, differentiating between information meant to foster public debate and that aimed at defamation or satisfying unhealthy curiosity. The judiciary may use linguistic expertise to make these determinations [1].

Changes in criminal legislation are needed to balance media freedom with protecting individuals' honor and reputation. Simply abolishing defamation laws doesn't solve the issue, as every criminal act against honor and reputation can restrict media freedom [6]. Instead, aligning criminal penalties with European standards, focusing on banning "hate speech" and incitement to violence, could be more effective [6]. ECtHR advises against criminal proceedings for defamation but allows for appropriate measures against baseless or malicious accusations. ECtHR's rulings suggest that compensation for non-material damages can sometimes excessively restrict freedom of expression [6]. National courts should follow these guidelines, avoiding punitive damages that could deter freedom of expression. Judges in Serbia are cautious about awarding non-material damage compensation for harm to honor and reputation, influenced by the country's economic situation [6]. Overall, there seems to be a current emphasis on protecting freedom of expression over personal rights protection [6].

### **Challenges and opportunities of two fundamental rights working together**

Having both freedom of expression and protection of honor in the digital age leads us to discuss the opportunities and challenges of these fundamental rights working together. The internet democratizes access to information, empowering marginalized communities and amplifying voices that may have been historically silenced. Online platforms serve as powerful tools for activism and advocacy, enabling individuals and organizations to mobilize support, raise awareness, and effect change on a global scale. Conversely, the swift dissemination of misinformation and fake news on social media erodes trust in information sources and threatens public discourse and democratic processes. The anonymity and reach of the internet can facilitate *cyberbullying and harassment*, causing psychological harm and infringing on individuals' right to dignity and safety. The gathering and utilization of personal data by technology companies spark concerns about privacy breaches and surveillance, jeopardizing individuals' autonomy and their right to privacy. The challenge of effectively *moderating content* on online platforms raises questions about censorship, freedom of speech, and the role of intermediaries in regulating online discourse.

To solve these challenges of balancing freedom of expression with the protection of honor in the digital world, there are a few proposals. Introducing legislation that clearly defines and prohibits online defamation, providing legal recourse for individuals whose reputation has been harmed by false or defamatory statements made online. There can be a *Social Media Responsibility Act*, to hold social media platforms accountable for their role in facilitating harmful online behavior by imposing legal obligations to prevent and address harassment, defamation, and other forms of abuse on their platforms. Implement penalties for platforms that fail to comply with these obligations. Creating *Digital*

*Citizenship Education Law*, and integrating digital citizenship education into school curricula to teach students about their rights and responsibilities as digital citizens, including respect for others' rights to dignity and privacy online. Provide resources and training for educators to deliver effective digital citizenship education

By implementing these law proposals, policymakers can help mitigate the challenges posed by the digital world while upholding the principles of freedom of expression and protecting individuals' honor and dignity online.

### **Conclusion**

As we navigate the complexities of the digital world, the tension between freedom of expression and protection of honor remains ever-present. While the internet has democratized communication and expanded the reach of free speech, it has also exposed individuals to unprecedented risks and vulnerabilities. As we move forward, it is imperative that we strike a delicate balance between these competing rights, fostering an online environment that is both inclusive and respectful.

This requires a multi-faceted approach that involves collaboration between governments, tech companies, civil society, and users themselves. Legal frameworks must be strengthened to address online abuse and protect individuals' rights, while technological innovations can help empower users to control their online experiences. At the same time, fostering digital literacy and promoting responsible online behavior is essential for creating a culture of respect and dignity in the digital age.

Ultimately, by upholding the principles of both freedom of expression and protection of honor, we can create a digital world that reflects the values of democracy, equality, and human dignity. As we navigate the challenges ahead, let us remain vigilant in our commitment to preserving these fundamental rights for generations to come.

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