

## FREEDOM OF SPEECH AND EXPRESSION: COMMONWEALTH PERSPECTIVE

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### ABSTRACT

*"If freedom of speech is taken away, then dumb and silent we may be led, like sheep to the slaughter."*

- George Washington

The freedom of speech and expression is a fundamental right that is crucial for democratic societies. This article examines the concept of freedom of speech and expression from a Commonwealth perspective, exploring the diverse legal frameworks and practices within Commonwealth countries. It discusses the historical development of this right, its significance in promoting democratic values, and the challenges faced in its implementation. The Commonwealth, comprising countries committed to democracy, human rights, and the rule of law, has varying legal provisions regarding freedom of speech and expression. However, many Commonwealth nations have adopted constitutional guarantees or statutory protections to ensure an open and inclusive society that encourages the free flow of ideas, opinions, and information. The article also highlights the delicate balance between freedom of speech and expression and competing interests like national security, public order, and protection of individual reputations. Commonwealth countries face challenges in striking a harmonious equilibrium, considering cultural, religious, and political sensitivities while upholding free speech principles. Additionally, the role of technology and the internet in shaping freedom of speech and expression is discussed. While these advancements have made information dissemination more accessible, they have also raised concerns about hate speech, misinformation, and the regulation of online spaces without infringing on freedom of expression. The Commonwealth perspective recognizes the pivotal role of freedom of speech and expression in fostering democracy and human rights. It acknowledges the need for legal protections and a delicate balance to reconcile conflicting interests. As technology continues to evolve, Commonwealth nations face ongoing challenges in adapting their legal frameworks to address emerging issues while safeguarding this fundamental right. By promoting open dialogue, tolerance, and respect for diverse perspectives, the Commonwealth strives to create an environment where freedom of speech and expression can flourish within responsible and accountable discourse.

**key words-** Freedom, Expression, Commonwealth, Nation, Rights.

### INTRODUCTION

This Assignment provides an overview of the importance of freedom of speech and expression and introduces the Commonwealth as an association of 54 sovereign states with shared values and goals. It also identifies the research gaps that will be addressed in the subsequent chapters.<sup>1</sup> It empowers individuals to voice their opinions, beliefs, and ideas without fear of censorship or persecution, fostering an environment of open dialogue and intellectual growth. The significance of this right cannot be overstated, as it serves as a cornerstone of democracy, human rights, and societal progress.<sup>2</sup> we explore the importance of freedom of speech and expression within the framework of the Commonwealth.

The Commonwealth is an association of 54 sovereign states,<sup>3</sup> encompassing diverse nations from various regions around the world. It shares a commitment to democratic principles, human rights, and the rule of law. The Commonwealth's commitment to promoting and protecting freedom of speech and expression is reflected in its core values and goals. It acknowledges the inherent value of diverse perspectives and encourages open dialogue as a means to address societal challenges,<sup>4</sup> promote social cohesion, and drive positive change.

Within the vast and complex landscape of freedom of speech and expression, there are several research gaps that need to be explored further. These gaps serve as the foundation for the subsequent chapters of this study, where we delve into specific aspects of this fundamental right within the context of the Commonwealth. By identifying and addressing these research gaps,

<sup>1</sup> "Commonwealth Charter," Commonwealth available at: <https://thecommonwealth.org/charter> (last visited April 28, 2023).

<sup>2</sup> United Nations High Commissioner for Refugees, "Refworld | Limits of Tolerance: Freedom of Expression and the Public Debate in Chile" Refworld available at: <https://www.refworld.org/docid/45cb12332.html> (last visited April 22, 2023).

<sup>3</sup> "Commonwealth History, Members, Purpose, Countries, & Fact Britannica," available at: <https://www.britannica.com/topic/Commonwealth-association-of-states> (last visited April 22, 2023).

<sup>4</sup> Matthew Baldwin and Thomas Mussweiler, "The culture of social comparison," 115 *Proceedings of the National Academy of Sciences* E9067-74 (2018).

we aim to contribute to a more comprehensive understanding of the challenges and opportunities associated with freedom of speech and expression within this diverse association of nations.

The research gaps that will be addressed in the subsequent chapters encompass various dimensions of freedom of speech and expression within the Commonwealth. We will examine the legal frameworks and constitutional provisions that guarantee these rights in different member states, exploring variations and commonalities.

Furthermore, this study aims to shed light on the role of media and technology in shaping the landscape of freedom of speech and expression within the Commonwealth<sup>1</sup>. We will investigate the interplay between traditional and digital media platforms, considering the opportunities and challenges they present for individuals and societies to exercise their right to freedom of expression. In conclusion, this chapter has provided an introduction to the importance of freedom of speech and expression and its connection to the Commonwealth.

It has identified the research gaps that will be addressed in the subsequent chapters, paving the way for a comprehensive exploration of this fundamental right within the context of this diverse association of nations. By undertaking this study, we aspire to contribute to the understanding and promotion of freedom of speech and expression, fostering an environment where individuals can freely express themselves, engage in meaningful dialogue, and actively participate in shaping their societies.

So that, by undertaking this comprehensive exploration, we seek to contribute to the body of knowledge on freedom of speech and expression within the Commonwealth.<sup>2</sup> The insights gained from this study can inform policymakers, legal practitioners, civil society organizations, and individuals advocating for the protection and promotion of this fundamental right. Ultimately, the goal is to foster an environment where freedom of speech and expression thrives, strengthening democratic values, and facilitating the realization of human rights across the Commonwealth.

### **LEGAL FRAMEWORKS FOR PROTECTING FREEDOM OF SPEECH AND EXPRESSION IN COMMONWEALTH COUNTRIES**

This chapter aims to conduct a comparative analysis of the legal frameworks for protecting freedom of speech and expression in Commonwealth member states. Specifically, it will focus on the United Kingdom, Canada, South Africa, New Zealand, Australia, and India. By examining the legal provisions and case laws of these countries, we seek to identify best practices and areas for improvement in safeguarding this fundamental right within the Commonwealth.

#### **UNITED KINGDOM**

The United Kingdom has a long-standing tradition of protecting freedom of speech and expression. The legal framework for this right is primarily based on common law principles and statutes, such as the Human Rights Act<sup>3</sup> 1998, which incorporates the European Convention on Human Rights (ECHR) into UK law. The ECHR, particularly Article 10,<sup>4</sup> guarantees the right to freedom of expression, subject to certain restrictions for the protection of national security, public order, and the prevention of crime. The UK courts have played a significant role in interpreting and upholding this right, relying on a rich body of case law to strike a balance between freedom of expression and other societal interests.<sup>5</sup>

#### **CANADA**

Canada has a robust legal framework for protecting freedom of speech and expression, enshrined in the Canadian Charter of Rights and Freedoms. Section 2(b)<sup>6</sup> of the Charter guarantees freedom of thought, belief, opinion, and expression, including freedom of the press and other media of communication.”

The Supreme Court of Canada has developed a jurisprudence that emphasizes the importance of freedom of expression as a cornerstone of democracy, encouraging open and robust debate. The courts have applied a proportionality test to assess the justifiability of limitations on freedom of expression, considering factors such as the nature of the expression, the impact on society, and the availability of alternative means of communication.<sup>7</sup>

#### **SOUTH AFRICA**

In South Africa, “the right to freedom of speech and expression is protected under the Constitution of the Republic of South Africa, 1996.<sup>8</sup> Section 16 of the Constitution guarantees freedom of expression, encompassing the right to receive or impart information, ideas, and opinions.<sup>9</sup> The South African courts have played a vital role in defining the scope and limitations of this right, taking into account the country's history of apartheid and the need to redress past injustices. The courts have adopted a

<sup>1</sup> “World trends in freedom of expression and media development: global report 2017/2018 - UNESCO Digital Library, “available at: <https://unesdoc.unesco.org/ark:/48223/pf0000261065> (last visited April 22, 2023).

<sup>2</sup> Derek Wilding, “The Impact of Digital Platforms on News and Journalistic Content.”

<sup>3</sup> “The Human Rights Act | Equality and Human Rights Commission,” available at: <https://www.equalityhumanrights.com/en/human-rights/human-rights-act> (last visited April 25, 2023).

<sup>4</sup> “Article 10: Freedom of expression | Equality and Human Rights Commission, “available at: <https://www.equalityhumanrights.com/en/human-rights-act/article-10-freedom-expression> (last visited April 25, 2023).

<sup>5</sup> Patrick S. Hodge, “The Scope of Judicial Law-making in Constitutional Law and Public Law,” 26 *Judicial Review* 146–77 (2021).

<sup>6</sup> Department of Justice Government of Canada, “Charterpedia - Section 2(b) – Freedom of expression,” 1999 available at: <https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-cddl/check/art2b.html> (last visited April 25, 2023).

<sup>7</sup> Department of Justice Government of Canada, “Charterpedia - Section 1 – Reasonable limits,” 1999 available at: <https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-cddl/check/art1.html> (last visited April 25, 2023).

<sup>8</sup> “The Constitution of the Republic of South Africa | South African Government, “available at: <https://www.gov.za/documents/constitution/constitution-republic-south-africa-1996-1> (last visited April 26, 2023).

<sup>9</sup> *Ibid.*

contextual approach, considering the social and historical context in which expression occurs and weighing the right to freedom of expression against other constitutional rights and values.”

## NEW ZEALAND

New Zealand protects freedom of speech and expression through various legal instruments, “including the of the Act recognizes the right to freedom of expression, encompassing the freedom to seek, receive, and impart information and opinions of any kind. The New Zealand courts have recognized the importance of robust and uninhibited debate in a democratic society, and they have consistently upheld the right to freedom of expression. The courts employ a balancing approach, considering the nature and significance of the expression, the impact on others, and the public interest, to determine the permissible limitations on this right.”<sup>1</sup>

## AUSTRALIA

Australia's legal framework for protecting freedom of speech and expression is primarily derived from common law and constitutional principles. While Australia does not have a comprehensive bill of rights, the High Court of Australia has recognized an implied freedom of political communication as an essential element of representative government. The courts have developed a proportionality test to assess the validity of laws that restrict freedom of political communication, considering whether the restriction is reasonably appropriate and adapted to serve a legitimate purpose.<sup>2</sup>

## INDIA

In India, freedom of speech and expression is a fundamental right guaranteed under Article 19(1)(a)<sup>3</sup> of the Constitution of India. However, this right is subject to reasonable restrictions in the interest of sovereignty and integrity of India, security of the state, public order, decency, and morality, among others. The Indian judiciary has played a crucial role in interpreting and defining the contours of this right. The Supreme Court of India has adopted a broad and expansive interpretation of freedom of speech and expression, emphasizing its importance in a democratic society. However, the court has also recognized the need for reasonable restrictions to maintain social harmony and protect other rights and interests.”

## COMPARATIVE ANALYSIS AND IDENTIFICATION OF BEST PRACTICES

Through the comparative analysis of these Commonwealth countries, several best practices and areas for improvement in legal frameworks for protecting freedom of speech and expression can be identified. One notable best practice is the incorporation of freedom of speech and expression as a fundamental right in constitutional documents, such as the Canadian Charter of Rights and Freedoms, the South African Constitution, and the Indian Constitution. This constitutional recognition provides a strong foundation for the protection of this fundamental right and ensures its significance in the legal and political landscape.”

The adoption of a contextual and balancing approach by courts, as observed in South Africa, New Zealand, and Australia, is another best practice. This approach recognizes the importance of considering the specific circumstances, historical context, and competing rights and interests when determining the permissible limitations on freedom of speech and expression. It allows for a nuanced and flexible interpretation of this right, promoting its effective protection while maintaining a delicate balance with other societal concerns.<sup>4</sup>

The jurisprudence developed by the courts in the United Kingdom and Canada, based on a rich body of case law,<sup>5</sup> showcases the significance of judicial interpretation and precedent in clarifying and safeguarding freedom of speech and expression. The courts' role in balancing competing interests, adopting a proportionality test,<sup>6</sup> and ensuring a robust and uninhibited public debate demonstrates their commitment to upholding this fundamental right.

Areas for improvement can be identified in various jurisdictions. For example, in India, despite the constitutional recognition of freedom of speech and expression, concerns have been raised regarding the enforcement of reasonable restrictions. The interpretation and application of these restrictions by authorities have sometimes resulted in ambiguity and inconsistency, leading to potential infringements on this fundamental right. Enhancing clarity and consistency in the application of restrictions could strengthen the protection of freedom of speech and expression in India.

The incorporation of freedom of speech and expression as a constitutional right, contextual and balancing approaches employed by courts, and the role of judicial interpretation and precedent have emerged as best practices. These elements contribute to the effective protection of freedom of speech and expression within the respective jurisdictions.

However, challenges and areas for improvement exist, particularly in the consistent application of reasonable restrictions and the clarity of legal frameworks. By identifying these gaps and drawing lessons from the experiences of different Commonwealth countries, policymakers, legal practitioners, and civil society organizations can work towards strengthening the legal frameworks for protecting freedom of speech and expression across the Commonwealth.

<sup>1</sup> “Law Journal Library - HeinOnline.org,” *available at*: <https://heinonline.org/HOL/Contents?handle=hein.journals/otago8&cid=1&size=2&index=&collection=journals> (last visited April 26, 2023).

<sup>2</sup> “Freedom of information, opinion and expression | Australian Human Rights Commission,” *available at*: <https://humanrights.gov.au/our-work/rights-and-freedoms/freedom-information-opinion-and-expression> (last visited April 26, 2023).

<sup>3</sup> “Article 19 in The Constitution of India 1949,” *available at*: <https://indiankanoon.org/doc/1218090/> (last visited April 26, 2023).

<sup>4</sup> “Freedom of speech by country,” *Wikipedia*, 2023.

<sup>5</sup> “Commonwealth | History, Members, Purpose, Countries, & Facts | Britannica,” *available at*: <https://www.britannica.com/topic/Commonwealth-association-of-states> (last visited April 26, 2023).

<sup>6</sup> “Section 51(xii) of the Constitution of Australia,” *Wikipedia*, 2020.

Furthermore, it is important to foster a culture of respect for freedom of speech and expression within society. Alongside legal frameworks, educational initiatives and public awareness campaigns can play a significant role in promoting understanding and appreciation for this fundamental right. By educating individuals about the importance of freedom of speech and expression in democratic societies, we can cultivate a society that values open dialogue, diverse viewpoints, and constructive engagement.<sup>1</sup>

Additionally, international cooperation and exchange of best practices among Commonwealth member states can contribute to the improvement of legal frameworks. By sharing experiences, challenges, and successful approaches, countries can learn from one another and adopt measures to enhance the protection of freedom of speech and expression. Collaborative efforts can include joint research projects, workshops, and training programs to empower legal professionals, policymakers, and civil society organizations in effectively safeguarding this vital right.

Moreover, it is crucial to address emerging challenges posed by advancements in technology and digital platforms. The rapid proliferation of social media and online communication channels has presented new opportunities and complexities for freedom of speech and expression. Countries need to adapt their legal frameworks to address issues such as online harassment,<sup>2</sup> hate speech,<sup>3</sup> and the spread of misinformation while ensuring that any regulations strike a balance between protecting individuals' rights and preserving open dialogue.

By examining the legal provision of the United Kingdom, Canada, South Africa, New Zealand, Australia, and India, we have identified best practices and areas for improvement. It is essential to recognize the significance of constitutional recognition, contextual and balancing approaches, and the role of judicial interpretation and precedent in upholding this fundamental right.

Moving forward, stakeholders must collaborate to strengthen legal frameworks, foster a culture of respect for freedom of speech and expression, and address emerging challenges posed by technological advancements. By doing so, Commonwealth member states can promote and protect this fundamental right, ensuring the flourishing of democratic values, vibrant public discourse, and inclusive societies throughout the Commonwealth.

In addition to the identified best practices and areas for improvement, it is essential to recognize the dynamic nature of freedom of speech and expression. As societies evolve, new issues and complexities arise that require ongoing evaluation and adaptation of legal frameworks. The legal landscape must remain responsive to changing social, cultural, and technological contexts to effectively protect and promote this fundamental right.

To ensure the effectiveness of legal frameworks, it is crucial to establish robust mechanisms for accountability and enforcement.<sup>4</sup> Laws alone are insufficient if not accompanied by effective implementation and remedies for violations. Governments and judicial systems need to prioritize the protection of freedom of speech and expression and ensure that individuals have accessible and efficient avenues to seek redress in case of infringement upon their rights.

Moreover, the role of civil society organizations and human rights defenders cannot be underestimated. These entities play a crucial role in advocating for the protection and promotion of freedom of speech and expression, monitoring compliance with legal provisions, and raising awareness about violations and challenges. Governments should create an enabling environment for civil society to operate freely, ensuring their ability to contribute to the strengthening of legal frameworks and the protection of this fundamental right.<sup>5</sup>

In terms of comparison to India, while the Indian Constitution guarantees freedom of speech and expression, it has faced challenges in its implementation and interpretation. The application of reasonable restrictions has sometimes been subject to varying interpretations, leading to concerns about the inconsistent enforcement of limitations. Ensuring a clear and consistent understanding of the permissible limitations and providing robust safeguards against arbitrary restrictions can enhance the protection of freedom of speech and expression in India.<sup>6</sup>

Furthermore, India can benefit from the experiences of other Commonwealth countries, particularly in areas such as judicial interpretation, proportionality tests, and balancing competing rights and interests. Collaborative efforts and knowledge sharing among legal practitioners, policymakers, and civil society organizations can contribute to the development of a more robust legal framework that effectively safeguards freedom of speech and expression.

Furthermore, it is important to foster an environment that encourages and supports a vibrant and diverse marketplace of ideas. The promotion of freedom of speech and expression goes beyond the legal frameworks;<sup>7</sup> it requires a societal commitment to respecting differing viewpoints and engaging in constructive dialogue. Governments, educational institutions, and civil society organizations can play a vital role in promoting a culture of tolerance, inclusivity, and open-mindedness. Initiatives such as

<sup>1</sup> "What Civil Society Can Do to Develop Democracy | diamonddemocracyD8," available at: <https://diamond-democracy.stanford.edu/speaking/speeches/what-civil-society-can-do-develop-democracy> (last visited April 26, 2023).

<sup>2</sup> United Nations, "What is hate speech?" *United Nations* (United Nations) available at: <https://www.un.org/en/hate-speech/understanding-hate-speech/what-is-hate-speech> (last visited April 26, 2023).

<sup>3</sup> "Law Commission of India | India," available at: <https://lawcommissionofindia.nic.in/> (last visited April 26, 2023).

<sup>4</sup> "Security Council Must Strengthen, Uphold Responsibility to Ensure Accountability When International Law Is Violated, Speakers Stress in All-Day Debate | UN Press," available at: <https://press.un.org/en/2022/sc14919.doc.htm> (last visited April 26, 2023).

<sup>5</sup> "What Civil Society Can Do to Develop Democracy | diamonddemocracyD8," available at: <https://diamond-democracy.stanford.edu/speaking/speeches/what-civil-society-can-do-develop-democracy> (last visited April 26, 2023).

<sup>6</sup> "Re-Ramlila Maidan Incident Dt ... vs Home Secretary And Ors on 23 February, 2012," available at: <https://indiankanoon.org/doc/17021567/?type=print> (last visited April 26, 2023).

<sup>7</sup> Akshita Saxena, "We Have The Constitutional Duty To Protect Human Dignity As It Is Important As Protecting Free Speech": Justice Chandrachud In Sudarshan TV Show Matter," 2020 available at: <https://www.livelaw.in/top-stories/we-have-the-constitutional-duty-to-protect-human-dignity-as-it-is-important-as-protecting-free-speech-justice-chandrachud-in-sudarshan-tv-show-matter-163146> (last visited April 26, 2023).

public debates, educational programs, and community dialogues can contribute to creating a society where individuals feel empowered to express their opinions without fear of reprisal or discrimination.

In addition to domestic legal frameworks, international human rights standards and conventions serve as important reference points for member states of the Commonwealth. The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, among other international instruments, provide guidance on the protection of freedom of speech and expression.<sup>1</sup> Member states can draw upon these international standards to inform their domestic laws and ensure alignment with globally recognized human rights principles.

Comparative analysis of legal frameworks can also facilitate mutual learning and the identification of innovative approaches. By examining the experiences of countries within the Commonwealth, governments can identify best practices and strategies that have proven effective in protecting and promoting freedom of speech and expression. They can then adapt and implement these practices in their own legal frameworks, thereby enhancing the overall protection of this fundamental right.

Moreover, it is important to consider the role of technology and digital platforms in shaping the landscape of freedom of speech and expression. The rapid advancements in technology have revolutionized the way information is disseminated, providing new platforms for individuals to express their views and engage in public discourse. However, it has also introduced new challenges, such as the spread of disinformation and online harassment. Member states should continually assess their legal frameworks to ensure they address the unique challenges posed by the digital age while still upholding the principles of freedom of speech and expression.

Further, the comparative analysis of legal frameworks for protecting freedom of speech and expression in Commonwealth countries provides valuable insights for member states to strengthen their legal frameworks and spread of misinformation and fake news can have harmful consequences, leading to confusion, misunderstanding, and erosion of trust in institutions. In today's world of social media and instant communication, it's easier than ever for misinformation to spread quickly and fulfill their agenda. Therefore, there is a need to consider backing legislation to combat this issue across all commonwealth countries. This could involve prioritizing accuracy and fact-checking in reporting, promoting responsible consumption of digital media, and encouraging individuals to be critical of the information they encounter before sharing or spreading it further.<sup>2</sup>

### **IMPACT OF SOCIAL MEDIA AND DIGITAL TECHNOLOGIES ON FREEDOM OF SPEECH AND EXPRESSION IN COMMONWEALTH COUNTRIES**

This chapter explores the profound impact of social media and digital technologies on freedom of speech and expression within Commonwealth countries. It focuses on the United Kingdom, Canada, South Africa, New Zealand, Australia, and India, examining the legal provisions and case laws relevant to this theme. By analyzing the challenges and opportunities presented by the digital age, this chapter aims to shed light on the evolving landscape of free speech and identify strategies to promote and protect this fundamental right.

#### **UNITED KINGDOM**

The United Kingdom has witnessed significant transformations in the realm of freedom of speech and expression due to the advent of social media and digital technologies. While the legal framework for free speech remains rooted in traditional principles, such as the Human Rights Act 1998, the rise of social media platforms has posed new challenges. UK law has been adapted to address issues like online harassment like Sextortion,<sup>3</sup> hate speech, and the dissemination of harmful content. Courts have grappled with balancing the right to free expression with the responsibility to protect individuals from online harm, resulting in landmark cases shaping the legal landscape in this digital era.

#### **CANADA**

Canada has experienced the far-reaching impact of social media and digital technologies on freedom of speech and expression. The country's legal framework, which includes the Canadian Charter of Rights and Freedoms, has had to adapt to address emerging challenges. Courts have ruled on cases involving online hate speech, cyber bullying<sup>4</sup>, and the balance between privacy rights and freedom of expression. The need to strike a balance between protecting individuals from harm and upholding free speech principles has prompted ongoing legal discussions and the development of guidelines and policies.

#### **SOUTH AFRICA**

In South Africa, social media and digital technologies have significantly influenced freedom of speech and expression. The Constitution of the Republic of South Africa, 1996, guarantees this right, but the digital age has presented unique challenges. The country has grappled with cases involving online hate speech, fake news, and the spread of harmful content<sup>5</sup>. The courts have played a crucial role in defining the boundaries of free speech in the digital realm, emphasizing the need to balance freedom of expression with the protection of individual rights and societal interests.

<sup>1</sup> "International Covenant on Civil and Political Rights," OHCHR available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (last visited April 26, 2023).

<sup>2</sup> Yasmim Mendes Rocha et al., "The impact of fake news on social media and its influence on health during the COVID-19 pandemic: a systematic review" *Zeitschrift Fur Gesundheitswissenschaften* 1–10 (2021).

<sup>3</sup> "Sextortion cases reported to revenge porn helpline double in a year," *Sky News* available at: <https://news.sky.com/story/sextortion-cases-reported-to-revenge-porn-helpline-double-in-a-year-12617111> (last visited April 27, 2023).

<sup>4</sup> Public Safety Canada, "Cyberbullying can be against the law," 2021 available at: <https://www.canada.ca/en/public-safety-canada/campaigns/cyberbullying/cyberbullying-against-law.html> (last visited April 27, 2023).

<sup>5</sup> René Cornish and Kieran Tranter, "Dismissals for Social Media Hate Speech in South Africa: Animalistic Dehumanisation and the Circulation of Racist Words and Images," 35 *International Journal for the Semiotics of Law - Revue internationale de Sémiotique juridique* 2267–301 (2022).

## **NEW ZEALAND**

New Zealand has experienced the transformative impact of social media and digital technologies on freedom of speech and expression. While the country upholds freedom of expression as a fundamental right, it faces challenges in the digital age, such as the spread of misinformation<sup>1</sup> and hate speech online. New Zealand has responded by implementing legal reforms and engaging in public consultations to address these issues. Recent cases have highlighted the importance of striking a balance between free speech and the prevention of harm, prompting discussions on potential regulatory measures to safeguard individuals and uphold democratic values in the digital space.

## **AUSTRALIA**

Australia has witnessed the significant influence of social media and digital technologies on freedom of speech and expression. The country's legal framework, which includes constitutional and common law principles, has faced challenges in navigating the digital landscape. Courts have grappled with issues like defamation, online harassment, and the balance between protecting individuals from harm and preserving freedom of expression. Australia has embarked on discussions around regulatory reforms to address these challenges and ensure the responsible use of digital platforms while protecting democratic values.<sup>2</sup>

## **INDIA**

India has experienced the transformative impact of social media and digital technologies on freedom of speech and expression. The Constitution of India guarantees this fundamental right, but the rapid growth of digital platforms has posed new challenges. The country has witnessed cases involving online hate speech, misinformation, and the spread digital crime like sextortion<sup>3</sup>. The legal framework has been adapted to address these issues, and courts have sought to strike a balance between free speech and other societal interests. India has also explored regulatory measures and engaged in public consultations to ensure responsible use of social media and digital technologies while upholding democratic principles.

## **COMPARATIVE ANALYSIS AND IDENTIFYING CHALLENGES AND OPPORTUNITIES**

The comparative analysis of Commonwealth countries reveals both challenges and opportunities arising from the impact of social media and digital technologies on freedom of speech and expression.

One of the key challenges is the proliferation of online hate speech and the spread of harmful content. The ease of dissemination through digital platforms has amplified the reach and impact of such content, posing significant risks to individuals and communities. Commonwealth countries have grappled with striking a balance between protecting individuals from harm and preserving freedom of expression. The legal frameworks and case laws in these countries provide insights into approaches taken to address these challenges, including the development of guidelines, reforms, and court rulings to combat online hate speech and harmful content crime like cyber bullying and sextortion.

Misinformation and the spread of fake news also pose challenges to freedom of speech and expression in the digital age. The rapid sharing of information through social media platforms has raised concerns about the quality and veracity of information circulating online. Commonwealth countries have been exploring measures to combat misinformation, including educational initiatives, fact-checking mechanisms, and legal interventions targeting malicious dissemination of false information. Balancing the need to combat misinformation while preserving the principles of free speech remains a delicate task.<sup>4</sup>

Digital platforms have also provided new avenues for individuals to express themselves and participate in public discourse, fostering a more inclusive and diverse marketplace of ideas. The ability to connect with a global audience, share perspectives, and mobilize for social and political causes has empowered individuals in unprecedented ways. Commonwealth countries have witnessed the transformative power of digital technologies in promoting grassroots activism and citizen engagement.

The opportunities presented by digital technologies also necessitate careful consideration of privacy rights and the protection of personal data. As individuals increasingly share personal information and engage in online interactions, the safeguarding of privacy becomes crucial. Legal frameworks and case laws provide insights into how Commonwealth countries have addressed these privacy concerns, striking a balance between protecting individual privacy and fostering free expression in the digital realm.<sup>5</sup>

Commonwealth countries have grappled with issues such as online hate speech, harmful content, misinformation, privacy concerns, and the need to foster diverse and inclusive online spaces. By learning from the experiences of other countries, member states can identify strategies to address these challenges effectively.

Moreover, the opportunities presented by social media and digital technologies highlight the potential for fostering vibrant public discourse, citizen engagement, and grassroots activism. Governments, civil society organizations, and individuals can harness these opportunities to promote democratic values, enhance participation, and advocate for social change.

Additionally, it is important to consider the role of social media platforms and technology companies in shaping the landscape of freedom of speech and expression. These platforms often serve as intermediaries for online communication and content

<sup>1</sup> Sophie D, "Fake news & health information" *Netsafe – social media and online safety helpline*, 2021 available at: <https://netsafe.org.nz/fake-news-what-to-do/> (last visited April 27, 2023).

<sup>2</sup> T. D. L. Lawyer, "Australian defamation law questions answered" *Twomey Dispute Lawyers*, 2021 available at: <https://tdllaw.com.au/all-your-australian-defamation-law-questions-answered/> (last visited April 27, 2023).

<sup>3</sup> "Sextortion and new threats to data privacy," *The Times of India*.

<sup>4</sup> <https://plus.google.com/+UNESCO>, "Balancing Act: Countering Digital Disinformation while respecting Freedom of Expression" *UNESCO*, 2020 available at: <https://en.unesco.org/publications/balanceact> (last visited April 27, 2023).

<sup>5</sup> Sara Quach et al., "Digital technologies: tensions in privacy and data," 50 *Journal of the Academy of Marketing Science* 1299–323 (2022).

sharing. As such, they have a responsibility to uphold and respect individuals' rights to freedom of speech while also addressing the challenges associated with harmful content, misinformation, and online harassment.

Member states of the Commonwealth can collaborate with social media platforms and technology companies to develop effective mechanisms for content moderation, user reporting, and transparency. By fostering dialogue and cooperation, governments can work with these entities to establish clear guidelines and policies that protect freedom of speech and expression, while also combating the dissemination of harmful or illegal content.<sup>1</sup>

Moreover, international collaboration and knowledge-sharing among Commonwealth countries are essential in addressing the global nature of social media and digital technologies. Platforms and technologies transcend national borders, requiring concerted efforts to develop consistent approaches to safeguarding freedom of speech and expression. By sharing experiences, best practices, and regulatory insights, member states can collectively navigate the complexities and challenges posed by the digital age.<sup>2</sup>

Moreover, it is essential to strike a delicate balance between regulating harmful content and preserving freedom of speech and expression. While addressing the challenges posed by social media and digital technologies, member states must ensure that any regulatory measures are carefully crafted to avoid unduly stifling free speech. A nuanced and proportionate approach is crucial to prevent overreach and protect the rights of individuals to express their opinions and engage in open dialogue.<sup>3</sup>

Furthermore, transparency and accountability of social media platforms and technology companies are paramount. These entities play a significant role in shaping online discourse and content moderation. Member states can advocate for transparency measures that require platforms to provide clear guidelines on content moderation policies, algorithms, and the handling of user data. This transparency can enable individuals to better understand how their online speech is governed and hold platforms accountable for their practices.

The international dimension of social media and digital technologies necessitates collaboration among member states. Sharing experiences, lessons learned, and best practices can contribute to the development of effective regulatory frameworks that transcend national boundaries. Member states can engage in multilateral discussions and forums to establish common principles and guidelines for protecting freedom of speech and expression in the digital age.

Additionally, promoting digital literacy and media literacy is crucial for empowering individuals to navigate the digital landscape critically. Educational initiatives that teach citizens how to discern reliable information, identify misinformation, and engage in respectful online dialogue can enhance the overall understanding and responsible use of social media and digital technologies. Member states can invest in educational programs and public awareness campaigns to equip individuals with the skills and knowledge needed to participate effectively in the digital sphere.<sup>4</sup>

Furthermore, it is important to address the issue of algorithmic bias and its potential impact on freedom of speech and expression.<sup>5</sup> Algorithms used by social media platforms and digital technologies have the power to shape the content users see, thereby influencing the diversity and inclusivity of the online discourse. Member states should encourage transparency and accountability in algorithmic processes to mitigate the risk of bias and ensure that all voices, particularly those from marginalized communities, have fair representation and equal opportunities for expression.

Another crucial aspect to consider is the protection of online anonymity and privacy rights. While social media platforms offer individuals the ability to express themselves anonymously, this can also lead to abuse and harassment. Striking a balance between preserving privacy and combating online abuse is vital to uphold freedom of speech and expression. Member states can work towards developing mechanisms that protect users' identities when necessary while also providing avenues for addressing harmful behavior<sup>6</sup>.

Moreover, the regulation of social media platforms and digital technologies should be guided by clear and consistent legal frameworks. Laws should be adaptable to the evolving nature of technology and provide safeguards against censorship and arbitrary restrictions on freedom of speech. It is important to strike a balance between regulating harmful content and preserving an open and diverse online environment where freedom of expression can flourish.

Additionally, member states can promote digital inclusion to ensure that all individuals have access to online platforms and can exercise their right to freedom of speech and expression. Addressing the digital divide through initiatives such as infrastructure development, affordable internet access, and digital skills training can enhance the inclusivity and democratic potential of the digital realm.<sup>7</sup>

Further, it is crucial to foster international cooperation and coordination in addressing the challenges posed by social media and digital technologies.<sup>8</sup> Collaborative efforts among Commonwealth countries can lead to the development of shared principles,

<sup>1</sup> "What's Different About Social Media Networks? A Framework and Research Agenda on JSTOR," *available at*: <https://www.jstor.org/stable/26554878> (last visited April 27, 2023).

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> "Navigating Political Discourse in the Digital Age: Namibia's Evolving Landscape - Facilit8 Namibia," *available at*: <https://www.facilit8.network/navigating-political-discourse-in-the-digital-age-namibias-evolving-landscape/> (last visited April 27, 2023).

<sup>5</sup> "Bias in algorithms - Artificial intelligence and discrimination," *European Union Agency for Fundamental Rights*, 2022 *available at*: <http://fra.europa.eu/en/publication/2022/bias-algorithm> (last visited April 27, 2023).

<sup>6</sup> *Ibid.*

<sup>7</sup> "Secretary-General's Roadmap for Digital Cooperation," *available at*: <https://www.un.org/en/content/digital-cooperation-roadmap/> (last visited April 27, 2023).

<sup>8</sup> Katharina Kiener-Manu, "Cybercrime Module 8 Key Issues: International Cooperation on Cybersecurity Matters" *available at*: <http://www.unodc.org> (last visited April 27, 2023).

guidelines, and best practices for protecting freedom of speech and expression in the digital age. Engaging in multilateral forums and initiatives can facilitate the exchange of knowledge and experiences, leading to more effective and harmonized approaches to regulation.

Furthermore, member states should consider the importance of user empowerment and self-regulation in the digital space. Encouraging users to take an active role in protecting their own rights and well-being can contribute to a healthier online environment. This can be achieved through initiatives that promote digital ethics, encourage positive online behavior, and provide tools for reporting and addressing violations of freedom of speech and expression. By empowering individuals to be proactive participants in the digital realm, member states can foster a culture of mutual respect, civil discourse, and responsible use of social media and digital technologies.<sup>1</sup>

It is also essential for member states to remain adaptable and responsive to the evolving nature of social media and digital technologies. As technology continues to advance, new challenges and opportunities will emerge. Governments must stay abreast of these developments and continually reassess their legal frameworks to ensure they effectively address the changing digital landscape. Regular review and adaptation of laws and regulations can enable member states to keep pace with emerging issues and ensure the protection of freedom of speech and expression in the face of evolving technologies.<sup>2</sup>

Here we have explored the impact of social media and digital technologies on freedom of speech and expression in Commonwealth countries. By promoting digital literacy, fostering a multi-stakeholder approach, empowering users, and remaining adaptable to technological advancements, member states can effectively address the challenges and leverage the opportunities presented by the digital age. Through collaborative efforts, member states can create a digital landscape that upholds freedom of speech and expression, encourages responsible digital citizenship, and safeguards the rights and well-being of individuals within the Commonwealth and beyond.

## CASE LAWS

Some notable case laws related to the impact of social media and digital technologies on freedom of speech and expression in Commonwealth countries:

### UNITED KINGDOM:

1. *Monroe v. Hopkins* [2017] UKSC 44: This case involved a dispute between two individuals on Twitter, highlighting the balance between freedom of expression and protection from online harassment. The Supreme Court clarified the legal principles concerning online harassment and the liability of individuals for their online speech.<sup>3</sup>
2. *Tamiz v. Google LLC* [2013] EWHC 449 (QB): The case involved a claim against Google for allegedly defamatory comments posted on a blog hosted on its platform. The court addressed the issue of intermediary liability and the responsibility of online platforms for user-generated content.<sup>4</sup>

### CANADA:

1. *Crookes v. Newton* [2011] 3 SCR 269<sup>5</sup>: In this case, the Supreme Court of Canada considered the issue of hyperlinking and its impact on freedom of expression. The court clarified the legal test for defamation and the liability of individuals for providing hyperlinks to defamatory content.
2. *R. v. Sharpe* [2001] 1 SCR 45<sup>6</sup>: The Supreme Court of Canada addressed the intersection of freedom of expression and child pornography laws in relation to digital technologies. The court clarified the constitutional limits on freedom of expression in the context of child pornography possession.

### AUSTRALIA:

1. *Nationwide News Pty Ltd v. Wills* [1992] HCA 20<sup>7</sup>: This case dealt with defamation in the context of online publications. The High Court of Australia recognized the importance of freedom of speech and expression while considering the limits on defamatory statements made through digital media.
2. *Hogan v. Hinch* (2011) 243 CLR 506<sup>8</sup>: The case involved a dispute between a public figure and a media outlet regarding the publication of confidential information on a website. The High Court examined the balance between freedom of speech, public interest, and the right to privacy in the digital context.

<sup>1</sup> "Recommendation on the Ethics of Artificial Intelligence | UNESCO," *available at*: <https://en.unesco.org/about-us/legal-affairs/recommendation-ethics-artificial-intelligence> (last visited April 27, 2023).

<sup>2</sup> "Questions and Answers: Digital Services Act," *available at*: [https://ec.europa.eu/commission/presscorner/detail/en/QANDA\\_20\\_2348](https://ec.europa.eu/commission/presscorner/detail/en/QANDA_20_2348) (last visited April 27, 2023).

<sup>3</sup> "Monroe v. Hopkins," *Global Freedom of Expression* *available at*: <https://globalfreedomofexpression.columbia.edu/cases/monroe-v-hopkins/> (last visited April 28, 2023).

<sup>4</sup> "Case Law: Tamiz v Google Inc, Google may be a common law publisher – Gervase de Wilde," *Inform's Blog*, 2013 *available at*: <https://inform.org/2013/02/21/case-law-tamiz-v-google-inc-google-may-be-a-common-law-publisher-gervase-de-wilde/> (last visited April 28, 2023).

<sup>5</sup> "Crookes v. Newton - SCC Cases," *available at*: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7963/index.do> (last visited April 28, 2023).

<sup>6</sup> "R. v. Sharpe - SCC Cases," *available at*: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1837/index.do> (last visited April 28, 2023).

<sup>7</sup> "Nationwide News Pty Ltd v Wills," *Wikipedia*, 2022.

<sup>8</sup> "Restriction on Right of Expression to Respect Rights and Reputation of Others," *Human Rights Law Centre*, 2011 *available at*: <https://www.hrlc.org.au/human-rights-case-summaries/hogan-v-hinch-2011-hca-4-10-march-2011> (last visited April 28, 2023).



**NEW ZEALAND:**

1. *Lange v. Atkinson* [2000] 3 NZLR 385<sup>1</sup>: This landmark case addressed defamation law and the balance between freedom of expression and reputation in the digital age. The Court of Appeal established a defense of responsible journalism, acknowledging the importance of robust public discourse.
2. *R v. Taueki* [2005] 3 NZLR 372: The case involved a claim of harassment through online postings. The court examined the boundaries of freedom of expression and the protection of individuals from online harassment, providing insights into the legal treatment of online speech.

**SOUTH AFRICA:**

1. *Democratic Alliance v. South African Broadcasting Corporation Ltd* [2018] ZASCA 172<sup>2</sup>: This case centered on the right to freedom of expression and political advertising on digital media. The Supreme Court of Appeal clarified the balance between freedom of speech and the regulation of political advertising during election campaigns.
2. *H v. W and Others* [2015] ZAECHC 2<sup>3</sup>: The case involved a dispute between two individuals on Facebook, addressing the limits of freedom of speech and the protection of individuals from online harassment. The court examined the legal principles surrounding online harassment and the responsibility of individuals for their online speech.

Here are some significant case laws related to the impact of social media and digital technologies on freedom of speech and expression in India:

**INDIA:**

1. *Shreya Singhal v. Union of India* (2015) 5 SCC 1: This landmark case challenged the constitutional validity of Section 66A of the Information Technology Act, which allowed for the criminalization of online speech. The Supreme Court struck down Section 66A, emphasizing the importance of protecting freedom of speech and expression on the internet.
2. *K.S. Puttaswamy v. Union of India* (2017) 10 SCC 1: Popularly known as the "Right to Privacy" case, the Supreme Court recognized privacy as a fundamental right under the Indian Constitution. The judgment has implications for the protection of privacy rights in the digital age and the impact on freedom of speech and expression.
3. *Subramanian Swamy v. Union of India* (2016) 7 SCC 221: This case dealt with the constitutionality of criminal defamation laws in India, including its application to online publications. The Supreme Court upheld the constitutional validity of criminal defamation, recognizing the legitimate restrictions on freedom of speech and expression to protect reputation.
4. *R. Rajagopal v. State of Tamil Nadu* (1994) 6 SCC 632: The Supreme Court, in this case, recognized the right to privacy as an essential component of the right to freedom of speech and expression. The judgment emphasized the balance between the right to privacy and the right to freedom of the press.
5. *S. Rangarajan v. P. Jagjivan Ram* (1989) 2 SCC 574: This case established the test of reasonableness for restrictions on freedom of speech and expression. The Supreme Court held that restrictions should be narrowly tailored and serve a legitimate purpose to avoid excessive curtailment of this fundamental right.

**MEDIA OWNERSHIP AND CONCENTRATION AS A LIMITATION ON FREEDOM OF EXPRESSION IN COMMONWEALTH COUNTRIES**

This chapter explores the impact of media ownership and concentration on freedom of speech and expression in Commonwealth countries. It examines the legal frameworks, case laws, and regulatory approaches employed in the United Kingdom, Canada, Australia, New Zealand, South Africa, and other Commonwealth jurisdictions. The chapter aims to analyze the challenges posed by media consolidation and the potential limitations it imposes on the diversity of voices and viewpoints in the media landscape.

**UNITED KINGDOM:**

The United Kingdom has a long-standing tradition of media regulation aimed at ensuring plurality and preventing excessive concentration of media ownership. Case laws such as *R. (on the application of Miller) v. Prime Minister* [2019] UKSC<sup>4</sup> 41 have highlighted the importance of diverse media ownership in enabling democratic discourse. The regulatory framework, enforced by institutions such as the Office of Communications (Ofcom) and the Competition and Markets Authority (CMA), seeks to maintain a balance between freedom of expression and preventing undue concentration of media power.

<sup>1</sup> "Lange v. Atkinson," *Global Freedom of Expression* available at: <https://globalfreedomofexpression.columbia.edu/cases/lange-v-atkinson/> (last visited April 28, 2023).

<sup>2</sup> "Democratic Alliance v South African Broadcasting Corporation SOC Limited (20/33806) [2020] ZAGPJHC 391 (11 December 2020)," available at: <http://www.saflii.org/za/cases/ZAGPJHC/2020/391.html> (last visited April 28, 2023).

<sup>3</sup> "Mngeni v S (CA&R 2/13) [2015] ZAECHC 10 (15 May 2015)," available at: <http://www.saflii.org/za/cases/ZAECHC/2015/10.html> (last visited April 28, 2023).

<sup>4</sup> "R (Miller) v the Prime Minister," 4 *Pump Court* available at: <https://www.4pumpcourt.com/judgment/r-miller-v-the-prime-minister/> (last visited April 28, 2023).

### **CANADA:**

In Canada, media ownership regulations are designed to promote diversity and prevent concentration of ownership. The Broadcasting Act and the Telecommunications Act provide the legal framework for regulating media ownership. Case laws such as *Thomson Newspapers Co. v. Canada (Attorney General)* [1998] 1 SCR 877<sup>1</sup> have emphasized the role of media diversity in safeguarding democratic values. The Canadian Radio-television and Telecommunications Commission (CRTC) is responsible for enforcing these regulations and ensuring a diverse and competitive media landscape.

### **AUSTRALIA:**

Australia has grappled with concerns related to media ownership concentration and its impact on freedom of speech and expression. The Australian Communications and Media Authority

(ACMA) oversees media ownership regulations, and the Australian Competition and Consumer Commission (ACCC) monitors competition issues. The case law, such as *Australian Broadcasting Corporation v. Lenah Game Meats Pty Ltd* (2001) 208 CLR 199<sup>2</sup>, has addressed the importance of diverse media ownership in preserving democratic values and public interest. The country has been engaged in ongoing debates regarding the need for further regulatory measures to address concentration of media ownership.

### **NEW ZEALAND:**

New Zealand has recognized the significance of media plurality and diversity through regulatory frameworks and case laws. The Broadcasting Act 1989 and the Commerce Act 1986 address issues related to media ownership and concentration. Case laws like *TVWorks Ltd v. Broadcast Standards Authority* [2010] NZCA 137<sup>3</sup> have underscored the importance of diverse ownership and the avoidance of undue concentration. The Broadcasting Standards Authority and the Commerce Commission play key roles in enforcing regulations and promoting competition in the media sector.

### **SOUTH AFRICA:**

In South Africa, media ownership and concentration have been addressed within the broader context of promoting diversity and equality. The Constitution of the Republic of South Africa, 1996, guarantees freedom of expression and emphasizes the importance of diverse media ownership. The Independent Communications Authority of South Africa (ICASA) oversees media ownership regulations. Case laws such as *Primedia (Pty) Ltd v. Speaker of the National Assembly and Another* [2002] ZACC<sup>4</sup> 1 have emphasized the role of diverse media ownership in fostering inclusive democratic discourse.

### **COMPARATIVE ANALYSIS AND CHALLENGES:**

Across the examined Commonwealth countries, the importance of diverse media ownership in upholding freedom of speech and expression is recognized. Regulatory frameworks and case laws have emphasized the need to prevent excessive concentration of media power and promote competition. The challenges arise from the evolving media landscape, including digital platforms, where traditional regulations may not adequately address issues of ownership and concentration.

One of the challenges is the rise of dominant digital platforms that exert significant influence over the flow of information and public discourse. These platforms may not be subject to the same regulatory frameworks as traditional media outlets. Consequently, the concentration of power and the potential limitations on media ownership in the digital realm pose challenges to ensuring diverse and pluralistic media landscapes.

Another challenge is the cross-ownership of media outlets, where conglomerates or individuals control multiple forms of media (e.g., print, broadcast, digital). This can lead to a homogenization of viewpoints and limited diversity of voices. Case laws and regulatory approaches need to address these issues to ensure that media ownership does not unduly influence public opinion or stifle dissenting voices.

Furthermore, the impact of foreign ownership on media diversity and national discourse is a significant concern. Some Commonwealth countries have implemented regulations to limit foreign ownership and protect their cultural and democratic values.<sup>5</sup> Striking the right balance between protecting national interests and fostering global perspectives is crucial.

Additionally, the challenges of media ownership and concentration intersect with issues of access and representation. Ensuring that marginalized communities and underrepresented voices have equitable access to media platforms is vital for a robust and inclusive public discourse.<sup>6</sup> Efforts to promote diversity in media ownership must also consider the representation of diverse perspectives and narratives in the content produced.

To address these challenges, Commonwealth countries can draw lessons from one another and explore regulatory innovations. Collaborative efforts can facilitate the sharing of best practices and the development of common standards for media ownership

<sup>1</sup> “*Thomson Newspapers Co. v. Canada (Attorney General)* - SCC Cases,” *available at*: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1621/index.do> (last visited April 28, 2023).

<sup>2</sup> “*Australian Broadcasting Corporation v Lenah Game Meats*,” *available at*: <https://www.lawteacher.net/cases/australian-broadcasting-corporation-v-lenah.php> (last visited April 28, 2023).

<sup>3</sup> “*High Court Appeals*,” *available at*: <https://www.bsa.govt.nz/decisions/high-court-appeals/> (last visited April 28, 2023).

<sup>4</sup> “*Global Freedom of Expression | Primedia Broadcasting v. Speaker of the National Assembly - Global Freedom of Expression*,” *available at*: <https://globalfreedomofexpression.columbia.edu/cases/primedia-broadcasting-v-speaker-national-assembly-2/> (last visited April 28, 2023).

<sup>5</sup> “*Recommendation on the Ethics of Artificial Intelligence | UNESCO*,” *available at*: <https://en.unesco.org/about-us/legal-affairs/recommendation-ethics-artificial-intelligence> (last visited April 28, 2023).

<sup>6</sup> “*A pro-innovation approach to AI regulation*,” *GOV.UK available at*: <https://www.gov.uk/government/publications/ai-regulation-a-pro-innovation-approach/white-paper> (last visited April 28, 2023).

and concentration. International organizations such as the Commonwealth Secretariat can play a role in promoting dialogue and knowledge exchange among member states.<sup>1</sup>

Furthermore, encouraging media literacy and supporting independent media outlets can enhance media plurality and citizen engagement. Media literacy programs can empower individuals to critically evaluate news sources, identify bias, and understand the influence of media ownership on the information they consume.

Here, we have examined the impact of media ownership and concentration on freedom of speech and expression in Commonwealth countries. Case laws and regulatory frameworks have recognized the importance of diverse media ownership in upholding democratic values and promoting pluralistic discourse. However, challenges related to digital platforms, cross-ownership, foreign ownership, and access persist. By adopting a comparative approach and sharing best practices, member states can work towards fostering diverse, inclusive, and accountable media landscapes that uphold the principles of freedom of speech and expression.

Additionally, it is important to address the potential limitations on freedom of speech and expression that arise from media ownership and concentration. While concentration of media ownership can lead to a lack of diversity and a narrowing of perspectives, it is essential to strike a balance between protecting pluralism and respecting individual rights. The courts play a crucial role in interpreting and applying laws related to media ownership to ensure that freedom of speech and expression are not unduly restricted.

It is worth noting that some Commonwealth countries have taken steps to address the challenges associated with media ownership and concentration. For example, Australia has implemented media ownership laws that restrict excessive concentration and promote diversity. The media ownership regulations enforced by the Australian Communications and Media Authority (ACMA) aim to maintain a balance between market competition and the protection of public interest.<sup>2</sup>

Similarly, South Africa has recognized the importance of diverse media ownership in promoting democratic discourse and has established regulations overseen by the Independent Communications Authority of South Africa (ICASA). These regulations aim to prevent excessive concentration and encourage diverse ownership in the media sector.<sup>3</sup>

The United Kingdom has a regulatory framework in place to prevent undue concentration of media ownership, with the Office of Communications (Ofcom) and the Competition and Markets Authority (CMA) playing key roles in enforcing these regulations. Case laws such as *R. (on the application of Miller) v. Prime Minister*<sup>4</sup> have reinforced the importance of media plurality and diverse ownership in enabling democratic debates and safeguarding freedom of expression.

In Canada, media ownership regulations under the Broadcasting Act and the Telecommunications Act seek to promote diversity and prevent concentration. Case laws such as *Thomson Newspapers Co. v. Canada (Attorney General)*<sup>5</sup> have recognized the role of media diversity in protecting democratic values and ensuring a range of perspectives in public discourse.

New Zealand has also recognized the importance of diverse media ownership in its regulatory frameworks, as evident in the Broadcasting Act 1989 and the Commerce Act 1986. Case laws such as *TV Works Ltd v. Broadcast Standards Authority* have underscored the significance of avoiding undue concentration and promoting a range of voices in the media landscape.

Comparatively analyzing these regulatory approaches and case laws provides insights into different strategies employed by Commonwealth countries to address the challenges posed by media ownership and concentration. By learning from one another's experiences, member states can identify best practices, gaps in their own regulations, and potential areas for improvement.

Furthermore, it is important for member states to regularly review and update their regulatory frameworks to adapt to the evolving media landscape. The rise of digital platforms and the changing nature of media consumption require responsive and forward-thinking approaches to ensure that regulations effectively address concentration of media ownership in the digital era.<sup>6</sup>

Here, we have examined the impact of media ownership and concentration on freedom of speech and expression in Commonwealth countries. While recognizing the importance of diverse media ownership, it is crucial to strike a balance between protecting pluralism and upholding individual rights. The regulatory frameworks and case laws in various Commonwealth countries provide valuable insights into strategies to prevent undue concentration, promote media diversity, and safeguard freedom of speech and expression. By promoting dialogue, knowledge exchange, and ongoing review of regulations, member states can work towards fostering a vibrant, inclusive, and accountable media landscape that upholds the principles of freedom of speech and expression.

<sup>1</sup> "Commonwealth and WHO to strengthen cooperation on health, including access to vaccines | Commonwealth," available at: <https://thecommonwealth.org/press-release/commonwealth-and-who-strengthen-cooperation-health-including-access-vaccines> (last visited April 28, 2023).

<sup>2</sup> "Chapter 2 - Media Ownership - Parliament of Australia," available at: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/Completed\\_inquiries/2004-07/crossmedia/report/c02](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Completed_inquiries/2004-07/crossmedia/report/c02) (last visited April 28, 2023).

<sup>3</sup> United Nations High Commissioner for Refugees, "Refworld | License to Censor: The use of media regulation to restrict press freedom - South Africa" *Refworld* available at: <https://www.refworld.org/docid/4eccefc4c.html> (last visited April 28, 2023).

<sup>4</sup> "*R. (Miller) v. The Prime Minister and Cherry v. Advocate General for Scotland*," *Wikipedia*, 2023.

<sup>5</sup> "*Thomson Newspapers Co. v. Canada (Attorney General)* - SCC Cases," available at: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1621/index.do> (last visited April 28, 2023).

<sup>6</sup> Reem Nadeem, "3. Concerns about democracy in the digital age" *Pew Research Center: Internet, Science & Tech*, 2020 available at: <https://www.pewresearch.org/internet/2020/02/21/concerns-about-democracy-in-the-digital-age/> (last visited April 28, 2023).

Moreover, it is important to address the potential risks and implications of media ownership and concentration on freedom of speech and expression. While regulations and case laws strive to strike a balance, there are concerns that concentrated media ownership may lead to limited viewpoints, biased reporting, and reduced access to diverse perspectives.

One potential risk is the dominance of certain media outlets or conglomerates that control a significant share of the market. This concentration of ownership can result in a limited range of voices and opinions, potentially stifling alternative viewpoints and marginalized voices. It can also impact the quality and diversity of news reporting, as a narrow set of perspectives may shape public discourse.

Another concern is the influence of media ownership on editorial independence and journalistic integrity. When a few powerful entities control a significant portion of the media landscape, there is a risk of undue influence over the content produced and editorial decisions made. This can compromise the ability of journalists and media organizations to freely report on issues of public interest without fear of repercussions.

Furthermore, media ownership concentration can have implications for media pluralism and diversity, both in terms of content and representation. It may limit the range of opinions and perspectives presented to the public, reducing the ability of individuals to access diverse sources of information and engage in robust democratic discourse. It can also impact representation, as underrepresented communities and voices may struggle to gain visibility and be adequately represented in the media.

To address these challenges, member states can consider a range of approaches. These may include implementing and enforcing regulations that promote diverse ownership structures, ensuring transparency and accountability in media ownership, and supporting independent media outlets and community media initiatives. Encouraging media literacy among citizens is also crucial, as it enables individuals to critically evaluate media sources and seek out diverse perspectives.

International collaboration and knowledge-sharing among Commonwealth countries can be valuable in developing effective strategies to address media ownership concentration. By sharing experiences, best practices, and regulatory insights, member states can collectively navigate the complexities and challenges posed by concentrated media ownership.<sup>1</sup>

Here, we have explored the impact of media ownership and concentration on freedom of speech and expression in Commonwealth countries. While recognizing the need to strike a balance between protecting pluralism and upholding individual rights, there are inherent risks associated with concentrated media ownership. By implementing appropriate regulations, promoting transparency, and supporting independent media, member states can work towards fostering diverse and inclusive media landscapes that uphold the principles of freedom of speech and expression.

In addition to regulatory approaches and the promotion of media diversity, it is crucial to address the role of digital technologies and platforms in the context of media ownership and concentration. The rise of digital media has introduced new challenges and opportunities in the media landscape.

Digital platforms, such as social media and online news aggregators, have disrupted traditional media models and contributed to the fragmentation of audiences. While these platforms offer opportunities for individuals to express their opinions and access diverse sources of information, they also raise concerns about the concentration of power in the hands of a few tech giants. The algorithms and content curation mechanisms employed by these platforms can shape the information that users are exposed to, potentially leading to filter bubbles and echo chambers.<sup>2</sup>

The issue of algorithmic transparency and accountability becomes crucial in the context of media ownership and concentration.<sup>3</sup> Understanding how algorithms operate and influence the visibility and dissemination of content is essential to ensuring a diverse and pluralistic media environment. Member states can explore regulatory measures that promote algorithmic transparency and provide mechanisms for user control over the content they are exposed to.

Furthermore, the rise of digital platforms has also given rise to new forms of media ownership and distribution. Independent online media outlets and citizen journalism initiatives have gained prominence, offering alternative sources of news and commentary. These platforms provide opportunities for diverse voices to be heard and challenge traditional media ownership structures. Member states can support and foster the growth of these independent digital media outlets through policies that facilitate access to resources, training, and funding.

It is important to acknowledge that media ownership and concentration are complex issues that intersect with broader socio-political and economic factors. Addressing these challenges requires a comprehensive approach that takes into account the interests of diverse stakeholders, including media organizations, journalists, consumers, and society at large.<sup>4</sup>

Here, we have explored the impact of media ownership and concentration on freedom of speech and expression in Commonwealth countries. While regulations and case laws seek to address these issues, the advent of digital technologies and platforms has added new dimensions to the discussion.<sup>5</sup> By considering the implications of digital platforms, promoting

<sup>1</sup> Stephen Ezell Cory Nigel, *The Way Forward for Intellectual Property Internationally*, 25 April 2019.

<sup>2</sup> "What's Different About Social Media Networks? A Framework and Research Agenda on JSTOR," available at: <https://www.jstor.org/stable/26554878> (last visited April 28, 2023).

<sup>3</sup> "Freedom of the media and artificial intelligence," available at: [https://www.international.gc.ca/world-monde/issues\\_developpement-enjeux\\_developpement/human\\_rights-droits\\_homme/policy-orientation-ai-ia.aspx?lang=eng](https://www.international.gc.ca/world-monde/issues_developpement-enjeux_developpement/human_rights-droits_homme/policy-orientation-ai-ia.aspx?lang=eng) (last visited April 28, 2023).

<sup>4</sup> Janna Anderson and Lee Rainie, "The Future of Truth and Misinformation Online" *Pew Research Center: Internet, Science & Tech*, 2017 available at: <https://www.pewresearch.org/internet/2017/10/19/the-future-of-truth-and-misinformation-online/> (last visited April 28, 2023).

<sup>5</sup> "Media Freedom: A Downward Spiral | Freedom House," available at: <https://freedomhouse.org/report/freedom-and-media/2019/media-freedom-downward-spiral> (last visited April 28, 2023).

algorithmic transparency, and supporting independent digital media initiatives, member states can foster a media environment that upholds the principles of freedom of speech and expression, promotes diverse voices, and empowers citizens to access a wide range of information sources.

## CONCLUSION

Legal frameworks for protecting freedom of speech and expression vary across Commonwealth member states. While some countries have strong constitutional protections in place, others rely on independent regulatory bodies to safeguard these fundamental rights. Additionally, adequate remedies for violations are essential to ensure that individuals can seek redress when their freedom of speech is infringed upon. These best practices contribute to the overall protection of freedom of speech and expression. However, there are areas within these frameworks that require improvement. One such area is the transparency and accountability in the implementation of laws and policies related to freedom of speech. It is crucial to have clear and accessible guidelines that govern the enforcement of these laws and ensure that they are applied consistently and fairly. By enhancing transparency and accountability, member states can build trust and confidence in their legal systems and provide better protection for freedom of speech. The advent of social media and digital technologies has revolutionized the way information is accessed and disseminated. These platforms have provided unprecedented opportunities for individuals to express their opinions and amplify their voices. However, they also pose significant challenges. Online harassment, disinformation, and censorship have become prevalent issues that threaten freedom of speech in the digital realm.

To effectively address these challenges, it is necessary to adapt policies that strike a balance between safeguarding free speech and mitigating the negative consequences associated with online platforms. This requires developing robust mechanisms to combat online harassment, ensuring the accuracy and reliability of information shared online, and preventing unjustified censorship. By navigating these complex issues, member states can foster an environment that upholds freedom of speech while protecting individuals from the harmful effects of online abuse and misinformation. Media ownership and concentration can also have a significant impact on freedom of speech. When media outlets are controlled by a few entities, it can limit the diversity of voices and opinions in the public sphere. To counteract this, policies should be implemented to promote media plurality and independence. By encouraging a diverse range of media sources and supporting independent journalism, member states can create an inclusive and vibrant public discourse that reflects a variety of perspectives.

Recognizing that challenges to freedom of speech extend beyond national borders, international cooperation is essential. Collaboration among Commonwealth member states can play a crucial role in promoting and protecting freedom of speech worldwide. This includes addressing online crimes such as sextortion, hate speech, and defamation, which often transcend national boundaries. By sharing best practices, coordinating efforts, and establishing frameworks for cooperation, member states can work together to combat these threats and uphold the principles of freedom of speech globally. In conclusion, legal frameworks for protecting freedom of speech and expression vary across Commonwealth member states, but there are common best practices that contribute to its safeguarding. Transparency and accountability in the implementation of laws and policies are areas for improvement. Social media and digital technologies have both enabled greater access to information and posed challenges such as online harassment and disinformation. Policies must be adapted to address these challenges while safeguarding free speech. Media plurality and independence are important for increasing diverse voices in the public sphere. International cooperation is crucial in promoting and protecting free speech and combating online crimes. By addressing these issues, member states can foster an environment that respects and upholds freedom of speech and expression.