

# The Human Right To Freedom Of Opinion And Expression In Times Of Covid-19: An Analysis

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## Abstract

*The right to freedom of opinion and expression has been recognised as a fundamental human right in several international conventions. Similar protection has been afforded in regional instruments and in different national constitutions. Yet, freedom of expression is not absolute, in so far as it may be curtailed subject to reasonable restrictions. The current COVID-19 pandemic is a public health emergency and as such, governments have adopted and imposed measures to curtail the freedom of expression. In doing so, questions have arisen with respect to the extent and legitimacy of these restrictions. This paper makes an analysis of the repercussions of COVID-19 pandemic on the human right to freedom of opinion and expression and highlights the criteria of necessity, proportionality and non-discrimination that any derogation from the freedom of expression has to meet with. Challenges that these restrictions may bring in the effective realisation of this freedom have also been highlighted along with observations for ensuring a more effective mechanism for regulating the right to freedom of opinion and expression in times of pandemics.*

**Keywords:** Human Rights, Freedom of Opinion and Expression, UDHR, ICCPR, COVID-19 Pandemic

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## Introduction

Almost a century ago, Justice Oliver Wendell Holmes Jr., while giving his dissenting view in the celebrated case of *Abrams v. United States*,<sup>1</sup> observed that “that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out”. In the instant case, Justice John Clarke, writing on behalf of the 7 member bench of the U.S Supreme Court, upheld the conviction of immigrants for distribution of leaflets which condemned the American intervention in the Russian civil war.<sup>2</sup> The act of the immigrants was considered to be violative of an amendment to the 1917 Espionage Act.<sup>3</sup> While dissenting, Justice Holmes asserted for a more liberal approach to be adopted while dealing with the question of freedom of expression and advocated for a free and open interchange of ideas and information through discussion and debate.<sup>4</sup> He also observed that the government is allowed to regulate expression only to “..punish speech that produces or is intended to produce a clear and imminent danger that it will bring about forthwith certain substantive evils..”.<sup>5</sup> Writing in as early as in 1919, views of Justice Holmes have come to characterize the indispensability of free flow of information, especially in democratic societies. But for there to exist untrampled and fearless interchange of ideas and information in any society, people need to firstly have the liberty to access information, thereafter, frame opinions and then to express them.

To be able to freely form an opinion and express it remains one of the most cherished attributes of any human life. Not only is the right important for the holistic development of the subject-holder, it remains equally vital for the society at large.<sup>6</sup> It is the kind of liberty that empowers a person to develop, through intake of information and expression of his opinions, but also aims to strike a balance with the interests of the society. The realization of various other human rights depends upon the effective exercise of the right to freedom of opinion and its expression. The right to vote,<sup>7</sup> for instance, will be truly realized in a democratic society, only when citizens are well-

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informed and form suitable opinions and express them. This facilitates a healthy association to be built between speakers and listeners, thereby fostering an open exchange of ideas and information and becomes the lifeline of any democracy.

Justice P.N. Bhagwati,<sup>8</sup> writing several decades after Justice Holmes, also highlighted the essence of freedom of opinion and speech for a democracy to thrive, in the following words:

*“Democracy is based essentially on free debate and open discussion, for that is the only corrective of government action in a democratic set up. If democracy means government of the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matters is absolutely essential.”*

The rationale for the legal protection of expression in any society is to attain certain fundamental objectives, namely to: (i) enable a citizen to fearlessly express his or her own views and beliefs; (ii) aid the process of discovery of truth by unrestricted; transparent and open discussions;<sup>9</sup> (iii) foster self-development of an individual; and (iv) strengthen the decision-making process through participation and deliberations.<sup>10</sup> With the multifaceted objectives associated with protecting the right to freedom of opinion and expression, it therefore is no surprise at all that the right has been recognized as a human right in numerous international instruments and conventions including the 1948 Universal Declaration of Human Rights<sup>11</sup> (“UDHR”) and the 1966 International Covenant on the Civil and Political Rights<sup>12</sup> (“ICCPR”). Regional instruments such as the European Convention on Human Rights<sup>13</sup> and the African Charter on Human and Peoples Rights<sup>14</sup> also contain similar protective measures. A large number of constitutions of the world expressly incorporate the provisions for the protection of the right to freedom of opinion and its expression. The American<sup>15</sup> and Indian<sup>16</sup> Constitutions, both starting with similar phrases, “We the people...”, proceed to protect the inherent right of their citizens to hold opinions and express the same. The Indian Constitution does not afford absolute freedom of speech; it subjects it to certain exceptions such as public policy, health and morality<sup>17</sup> which is in line with the reasonable restrictive provisions contained under the ICCPR.

Although the international, regional and national protection offered to the right to freedom of speech and expression is extensive and all-embracing, it remains pertinent to note that while freedom to frame opinion is an absolute right under the ICCPR, freedom of expression is not absolute<sup>18</sup> and is subject to exceptions including public health and morality. Thus, reasonable restrictions enable governments to impose necessary measures to curtail the right for the larger interest of the society, for instance, during a public health emergency or when an event in occurrence is likely to jeopardize public morality. Much attention has come to be given upon the right to freedom of opinion and expression especially in recent times on account of the COVID-19 pandemic.<sup>19</sup> Various governments have, as part of their response mechanism, adopted measures to curtail the said right in larger interest of their respective States. However, the real question that arises is the extent and legitimacy of such governmental restrictions and curbs that suppress the inherent, inalienable right of individuals to freely express themselves, during a public health emergency, since the emergency event may be used by governments in imposing unnecessary and unjustified curbs as far as human rights are concerned.<sup>20</sup> It remains vital to ensure that all such restrictive measures adopted by States conform to the well-established principles of legality, necessity and proportionality.<sup>21</sup>

This paper makes an analysis of the concerns encircling the human right to freedom of opinion and expression that may stand trampled upon during the COVID-19 pandemic. In doing so, part II of the paper highlights the international legal framework affording protection to the human

right to freedom of opinion and expression. Part III presents a factual analysis of the COVID-19 pandemic that has affected hundreds of countries and millions of people across the world. Part IV offers an overview of the dynamics of the freedom of expression as a non-absolute right in terms of the response measures adopted by different governments in placing curbs on the right during the COVID-19 pandemic. Conclusion and certain observations on better enforcement of the right during public health emergencies have been presented in Part V.

## **International Legal Framework for the Right to Freedom of Opinion and Expression**

The right to freedom of opinion and expression has been championed as necessary not only for an individual but is of equal importance to the State.<sup>22</sup> The right is of importance for intellectual advancement thereby enabling individuals to pursue higher aspirations and contribute to societal progress and development. Being able to fearlessly frame opinions and express them aids the decision-making process which benefits not only the individual but the State as well. Appreciating the importance of the right to freedom of speech and expression, one of the earliest instruments to offer recognition and protection to the right was the UDHR, promulgated by the United Nations General Assembly in the aftermath of the dire consequences of the Holocaust.<sup>23</sup> Apart from the UDHR, similar recognition and protection has been enshrined upon the right in numerous other international conventions, a brief analysis of which has been made hereinafter.

### **UDHR**

Article 19 of the UDHR recognizes the right to freedom of opinion and expression and presents it as inclusive of certain other important freedoms. The right as is available under the UDHR provides: *“Everyone has the right to freedom of opinion and expression; this right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”*

Thus, apart from simpliciter recognizing the freedom as a human right available to all and to be exercised without any form of discrimination, the language used in the UDHR makes it evident that the right also includes within its ambit the freedom to hold opinions, to seek and receive information and to impart the same through any media. The right is available to all, without any barriers or any discrimination, thereby highlighting the principles of freedom and discrimination<sup>24</sup> which are essential for any individual to survive and to attain emancipation for all.

### **ICCPR**

The ICCPR primarily arose as a document that characterizes the debate between the first and second generations of human rights, the latter being addressed in the 1966 International Covenant on Economic, Social and Cultural Rights<sup>25</sup>. The ICCPR entails civil and political rights available to all persons, and in doing so, Article 19 of the ICCPR provides recognition to the right to freedom of opinion and expression as hereunder:

- “1. *Everyone shall have the right to hold opinions without interference.*
2. *Everyone shall have the right to freedom of expression; this right include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media of his choice.*

3. *The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*

(a) *For respect of the rights or reputations of others;*

(b) *For the protection of national security or of public order (ordre public), or of public health or morals."*

The ICCPR not only recognizes the inherent rights of all individuals to hold opinions and express them, but goes one step ahead of the provision contained under the UDHR, in so far as it clarifies that while the right to form opinions is absolute, the right of expression is not absolute and is subjected to identified restrictions. The restrictions are only those that are statutorily recognized and are necessary for (i) respecting the rights or reputation of other people; and (ii) in interest of national security, public order, public health or morals.<sup>26</sup> Despite the recognition bestowed upon the freedom of opinion and expression, it has been observed that many governments across the world often find varied means of preventing the effective exercise and realization of this right, especially those governments who seek to display power.<sup>27</sup> Very often, contracting States restrict themselves to the legal recognition given to the right under their constitutions and national legislations.

The Committee on Civil and Political Rights has, in its General Comment No. 34<sup>28</sup> ("General Comment No.34"), observed that the effective realization of this right is also important for the exercise and realization of other rights, such as the freedom of assembly and the right to vote. In its General Comment No.34, the Committee on Civil and Political Rights highlights certain important domains of the freedom of opinion and expression as is highlighted hereinafter.

### **To Hold Opinions Freely**

While the right to freedom of expression has been subjected to certain specific restrictions, the right to frame and hold opinions is absolute and is not subjected to any restrictions or exceptions. All persons are, at all times, irrespective of the restrictions to which the freedom of expression is subjected, entitled to frame their opinions<sup>29</sup> and in its exercise, such persons should not be subjected to imprisonment, torture or any other form of punishment.

### **To Express Opinions**

After recognizing the right to frame opinions, paragraph 2 of Article 19 protects the right of all persons to express those opinions. Since communication is a two-way process, not only is it necessary to be able to access information, it remains important to frame views and thereafter one's own opinions as well. The right to freedom of expression of opinions as is available under paragraph 2 of Article 19 of the ICCPR includes in its ambit the right to receive and impart information, without any frontiers and through any instrument of communication. This has been interpreted to include the transmission of information through political discourse, discussion on human rights and even canvassing.<sup>30</sup>

### **To Access Information**

The ICCR in paragraph 2 of Article 19 includes the right to access information by an individual as part of the right to freedom of expression. Right to access information has to be interpreted within the framework of freedom of opinion and expression and it specifically applies to information held by public bodies.<sup>31</sup> Information in this context includes data and records held by any public body, irrespective of the form in which such information is held.<sup>32</sup>

## **Restrictions on the Freedom of Expression**

As indicated above, the right to freedom of expression can be subjected to reasonable restrictions for respecting rights or reputation of others or where it is needed in interest of national security, or for public health or morals. However, it has been clarified that where a contracting State imposes restrictions on the exercise of the freedom of expression on account of the reasonable restrictions, the contracting States are not to put the freedom of expression in jeopardy itself.<sup>33</sup> Thus, the protection offered under Article 19 is all inclusive as it incorporates certain intricate elements as far as the effective realization of the right is concerned.

## **International Convention on Elimination of All Forms of Racial Discrimination<sup>34</sup> (“ICERD”)**

The ICERD was adopted to create obligations for contracting States to take necessary measures for elimination of racial discrimination in all its forms and to combat racists doctrines<sup>35</sup> and practices for respecting the dignity and worth of all individuals. The ICERD, drawing inspiration from the UDHR and ICCPR, creates obligations for States to take measures to prohibit racial discrimination and to guarantee civil, political, economic, social and cultural rights,<sup>36</sup> including the right to freedom of opinion and its expression,<sup>37</sup> without discrimination on the grounds of race. Thus, it is premised upon the principle of equality.

## **Convention on Elimination of All Forms of Discrimination against Women<sup>38</sup> (“CEDAW”)**

The CEDAW is a monumental instrument in the field of protection of women’s rights. Strong obligations are created upon contracting States to ensure that all practices discriminatory to women are prohibited. Contracting States are under a strong mandate to undertake appropriate measures in economic, political, social and cultural fields, through implementation of legislations, to ensure the advancement and development of women, and to guarantee them the exercise of their inherent human rights and fundamental freedoms on par with men.<sup>39</sup> Thus, while the CEDAW does not specifically highlight each of the human rights, it carves out strong measures to be undertaken by contracting States for realizing women’s rights, which includes their freedom of opinion and expression.

## **Convention on the Rights of the Child 1989<sup>40</sup> (“UNCRC”)**

Children have, for the longest time, been at the subject-matter of a celebrated debate, on whether they are subject holders of rights or if they are objects, to whom protection and care needs to be afforded.<sup>41</sup> Putting the debate at rest, the UNCRC recognizes rights of children and considers them equal citizens, by affording them with numerous rights including the right to freedom of expression. This freedom includes the right to receive and seek information as well as impart the same, without any frontiers.<sup>42</sup> Similar restrictions are contained in the UNCRC like those in the ICCPR as far as reasonable restrictions on the rights of children to express themselves is concerned, that being protection of others’ rights; and in case of emergencies.<sup>43</sup>

Thus, numerous international conventions expressly enshrine that freedom of opinion and its expression is a human right, available to all persons, irrespective of their gender, racial or ethnic origin, or even their age. Equality, non-discrimination and freedom of opinion and expression come to form important hallmarks of all lives.

## COVID-19 Pandemic

The United Nations Development Programme considers the COVID-19 pandemic as the “*the defining global health crisis of our time and the greatest challenge we have faced since World War Two*”.<sup>44</sup> Since its origin in China in December 2019, the coronavirus has spread across all continents, except Antarctica.<sup>45</sup> On December 31, 2019, China reported the novel coronavirus to the country office of the World Health Organization<sup>46</sup> (“WHO”). Thereafter, the WHO, on January 30, 2020, declared the outbreak of the novel coronavirus as a Public Health Emergency of International Concern.<sup>47</sup> Countries have undertaken numerous measures to arrest the spread of the coronavirus, with various restrictions and lockdown measures imposed upon their respective populations.<sup>48</sup> Social distancing has now emerged as the new normal in the post-COVID-19 world order as people have effectively adapted to its need and included the practice in their daily lives. As of May 13, 2020, the WHO reports<sup>49</sup> that there is a total of 4,139,794 global cases of COVID-19 and a total of 285,328 casualties have been reported globally. Amongst the nations with the highest burden of the disease, United States of America has the largest followed by the Russian Federation, Spain, the United Kingdom and Italy.<sup>50</sup>

It is believed that the COVID-19 pandemic is likely to have a significant impact upon global economy, trade, employment and livelihood.<sup>51</sup> A large number of people are losing their jobs daily on account of the shutting down of operations resulting from strict measures imposed by governments upon movement and assembly of people, except for essential services. The World Trade Organization speculates that global trade is expected to fall between 13% and 32% in 2020 on account of the disruptions caused by the pandemic.<sup>52</sup> Thus the socio-economic and cultural costs of the COVID-19 pandemic are predicted to be incredibly high especially on vulnerable groups or those living in vulnerable regions.

Growing attention has come to be paid upon an important yet underdiscussed component of the COVID-19 pandemic, that being its impact upon human rights. With governments adopting and implementing widespread measures to contain the spread of coronavirus including lockdowns, imposition of curbs and restrictions on freedom of movement and assembly as well as on trade and commerce, a pertinent question arises with respect to the impact of such measures on human rights norms. Antonia Guterres, the current Secretary General of the United Nations, while speaking in respect of the COVID-19 pandemic, describes it as: “a human crisis that is fast becoming a human rights crisis”.<sup>53</sup> Although the COVID-19 pandemic is likely to have largescale repercussions for human rights, for the purposes of this paper, attention of its impact on human right to freedom of opinion and expression has been drawn.

## COVID-19 Pandemic and Freedom of Expression

Extraordinary situations often require extraordinary responses. Similar is the case of the current COVID-19 pandemic that has posed an unprecedented challenge before State governments. In such dire times, governments have to make difficult decisions while responding to the health emergency and as such, may impose emergency measures that restrict human rights. However, even when such restrictive measures are undertaken by the State governments, it is important to ensure that these are in consonance with the rule of law, and should be within the bulwark of international human rights law, particularly the provisions of the ICCPR.<sup>54</sup> Derogation from the provisions contained under the ICCPR are permitted in situations of emergency “which threatens the life of the nation and the existence of which if officially proclaimed”<sup>55</sup> but even in such times, these extraordinary measure should comply with certain well-established criteria. Brief summary of the said criteria is provided hereinafter.

## **Legality**

The principle of legality highlights the need for the restriction that is being adopted and imposed by the governments of States to be one that is “provided by law”.<sup>56</sup> As such, the restriction that is being imposed by the State must be provided for in the national laws of the country and should be of a general application, and must be in force at the time when it is applied.<sup>57</sup> Moreover, while dealing with the complex issue of derogation envisaged under Article 4(1) of the ICCPR, it becomes important to ensure that States continue to comply with the requirements of the principle of legality and at no times, derogate from it.<sup>58</sup> Even with respect to the current COVID-19 pandemic, States need to ensure that they impose only such restrictions as are of a general nature and provided for in their local laws.

## **Necessity**

The restriction that is imposed by the contracting State needs to be one that is necessary for responding to the emergency at hand, that being any one of the grounds in the ICCPR, including public health, and must be a response mechanism towards a pressing and dire social need.<sup>59</sup> Thus, only the extent to which the restrictions are truly needed to attend to the exigency in question<sup>60</sup> should be imposed by contracting States in the larger interest of the society. States imposing restrictions need to be able to justify them and show that in their absence, significantly adversities could affect the State and its people.

## **Proportionality**

Restrictive measure adopted by the contracting State must be proportionate to the interest forming subject-matter of the issue<sup>61</sup> i.e. it must be appropriate to achieve its protective function and must be the least intrusive option. Anything which is far-fetched and goes beyond the protective function it ought to serve, will be viewed contrary to the provisions of international human rights law and the rule of law. In India, for instance, the Supreme Court of India<sup>62</sup> has observed that: “310....Proportionality is an essential facet of the guarantee against arbitrary State action because it ensures that the nature and equality of the encroachment on the right is not disproportionate to the purpose of the law...”. Thus, it is necessary to ensure that the governmental actions are not arbitrary nor are they disproportionate to the need of the situation at hand.

## **Non-Discrimination**

The restrictive measures that are adopted by contracting States should not be discriminatory on any ground whatsoever. As such, they should not defeat the provisions of equality of all persons,<sup>63</sup> a principle which is at the heart of all international human rights<sup>64</sup> instruments. Measures undertaken should not be arbitrarily selective and apply to certain groups, primarily discriminated on basis of caste, religion, gender or political opinion.

These are the core criteria that contracting States ought to comply with while imposing restrictive measures on human rights. With regard to the current COVID-19 pandemic which has emerged as and recognized by the WHO as a public health emergency, powers must be used by States only to pursue legitimate goals and not for quashing dissent, silencing the work of human rights defenders or journalists or deny other human rights.<sup>65</sup> The Council of Europe<sup>66</sup> observes that the provision of timely and effective information about a public health emergency and its risks is a critical component as far as providing response to the crisis. Independent media occupies a very important place in disseminating reliable and accurate information. Governments have

the enhanced responsibility of ensuring people are not caused to panic and fosters greater co-operation of people.

Even in times of public health emergencies such as the COVID-19 pandemic, governments are under a responsibility for providing information that is necessary for the protection of rights, including right to health. Thus, reliable information needs to be made available and accessible about the COVID-19 pandemic to all people. Despite these affirmations, during the COVID-19 pandemic, the Human Rights Watch has reported<sup>67</sup> that a number of governments have in fact failed to respect and uphold the right to freedom of expression and have contrarily taken action against journalists and healthcare workers. Such arbitrary actions could undermine public trust and faith in governments.

For instance, in China, it has been reported that the Chinese Communist Party took action against Dr. Wenliang, who was treating COVID-19 infected patients in Wuhan after he sent warnings about a new virus in an online chatroom.<sup>68</sup> Likewise, the Chinese Communist Party is also alleged to have withheld basic information about the coronavirus from the public including the downplay of the severity of the infection and also dismissed the likelihood of transmission between humans.<sup>69</sup> In the Islamic Republic of Iran, the outbreak of the COVID-19 pandemic emerged after the governmental authorities had already severely damaged public trust by repressing a large number of anti-governmental protests that were taking place.<sup>70</sup> The unusually high rate of reported cases of governmental officers contracting the virus, as well as the inconsistency in figures reported by the officials and domestic media, heightened concerns that the data was either deliberately underreported or was poorly analyzed.<sup>71</sup> Additionally, the government of Bolivia promulgated a decree which gave the government widespread powers to prosecute those who criticized any policies of the Bolivian government.<sup>72</sup>

However, governments of many other countries including South Korea, Singapore and Taiwan<sup>73</sup> have been appreciated for taking swift actions in combating the spread of COVID-19 and at the same time, have been prompt in making pertinent information available to the public. Daily press briefings are being conducted by the concerned health officials and their respective governmental websites are updated from time to time. Even in India, daily press briefings are conducted by the representatives of the Ministry of Home Affairs and the Ministry of Health along with those from the Indian Council of Medical Research. Thus, such kind of transparency is needed from the governments in order to ensure that people are able to access and seek information and thereafter frame opinion and express the same.

### **COVID-19 Pandemic and Challenges to Freedom of Expression**

The COVID-19 pandemic has presented certain challenges with respect to the effective realisation of the right to freedom of opinion and expression, especially with respect to accessing information from governmental authorities, accessing the internet, freedom of the press and media, protection against disinformation and surveillance.<sup>74</sup> Any government that denies its public, access to information on a public health emergency puts the individual and consequently, the society at risk. The WHO has observed that risk communication is a two way process, and as such, it is necessary to ensure that governments disclose reliable and up to date information on the status of the pandemic in question.<sup>75</sup> Even when governments withhold information with the greater objective of preventing panic amongst public, it is necessary to ensure that alternate means are evaluated in order to reduce panic amongst persons instead of simpliciter withholding information from public.<sup>76</sup> Lack of awareness may in fact deny people the ability to be in the know of the developments taking place and adopt suitable precautionary measures. This may



even to a great extent prevent rumour mongering from taking place along with a reduced risk of dissemination of fake news.

In recent times, while information and communication technology, including the internet, have been recognised as powerful tools of media, there has been a steep rise in the number of government ordered internet blackouts including in India, Bangladesh, Myanmar, Ethiopia and other countries in the Middle East.<sup>77</sup> Internet blackouts put individuals at an increased risk of facing the dire consequences of lack of availability of information, while also impeding the ability of healthcare workers to access the same. Accessing the internet, especially in times of a pandemic like COVID-19 that has led to lockdowns, enables people to stay in touch with their loved ones and gives them a sense of security.<sup>78</sup> Denying access to the same can have greater costs including mental health and other serious complications associated with the ensuing denial of accessing the internet. Free press is largely hailed as the fourth pillar of democracy,<sup>79</sup> and as such, can continue to play a vital role during pandemics in disseminating timely information to the public, and in questioning the governmental authorities and officers. However, the COVID-19 pandemic has witnessed a large number of police brutalities as well as attacks against media,<sup>80</sup> that has destroyed a conducive environment that is need for their functioning. Independent media is very important in times of public health emergencies, especially in disseminating trustworthy and reliable information to the viewers and in combating any rumour mongering, that is the need of the hour in such testing times. Disinformation and fake news can cost tremendous lives in times of contagions and hence it is necessary to safeguard and restrict the dissemination of such false news and disinformation.

## **Conclusion and Recommendations**

The Human Rights Committee has rightly observed that the freedom of opinion and expression is intrinsic in so far it is needed for the development of the individual and the society. As such, these provisions do not simply wither away during the times of a contagion but may be reasonably and prudently regulated by the States in larger interest of public. However, restrictive measures, if any, sought to be imposed under Article 19(3) of the ICCPR, need to meet the criteria of legality, proportionality, necessity and non-discrimination. The COVID-19 pandemic should not be resorted to by the governments for the purpose of imposing more than necessary restrictions upon people and should particularly, not be used as a tool for curbing dissent or the views of human rights defenders and activists that is necessary to ensure accountability and transparency in governmental actions during times of pandemics. Healthy criticism and raising legitimate questions is needed to review performance of governments. Such criticism can be expressed only and only if people have the liberty to access reliable information and frame their views accordingly and voice the same fearlessly.

Curtailing the human right to freedom of opinion and expression in an arbitrary way is a gross violation of the right in itself and may significantly hamper the functioning of any democratic set-up. It may also impede the ability of the people to fight the COVID-19 pandemic and may also adversely affect their adaptive skills. Governments need to take necessary measures to regulate dissemination of disinformation in order to prevent any untoward consequence resulting from the same. Impact of disinformation is particularly bothersome for the vulnerable communities including migrant workers who may fall easy prey to such campaign whilst creating resultant panic. While regulating such disinformation, governments need to ensure that the least intrusive measures are adopted so as to filter out the disinformation and prevent them from reaching the public. At the same time, while restricting the freedom of expression, all measures should be undertaken to ensure that the same do

not prejudice voices of the minority and are done only to the extent necessary for the maintenance of public order, harmony and attainment of the desired goal.

To this extent, independent media plays an important role and the same must be appreciated and suitable protection needs to be given to the journalists and associated media personnel. They play an important role in communicating reliable, updated information to the public and in questioning the governmental authorities on matters of public interest and policy decisions, without fear of any punishment or persecution. However, media personnel are bound to ensure that authentic and trustworthy data and information are provided to public in a systematic manner. Likewise, all heroes of the COVID-19 pandemic including doctors, healthcare workers need to be protected, especially when they are expressing vital facts on the pandemic in question. Curbing their freedom to express themselves runs an immediate risk to the health of the society since timely receipt of facts and information may enable medical developments and progress and swift action may thereafter be pursued to mitigate any potential losses yet to be caused.

Most importantly, States need to ensure that penalties, if any, levied for violation of any limitations that States impose are not unreasonable or arbitrary and should be stipulated in strict compliance of the human rights norms that have been established from time to time. Penalties to be levied should be necessary and commensurate with the offence that has been committed. Governments should refrain from imposing internet blackouts as the same amounts to a gross violation of the human right to freedom of opinion and expression. Curbs, if any, that are direly necessary should at all times be legitimate and imposed only when necessary. Realising that freedom of opinion and expression is the essence of life itself, measures to regulate the same should at all times comply with international human rights norms so as to respect the inherent dignity and worth of all persons and to prevent arbitrary suppression of the same.

## Footnotes

- <sup>1</sup> Abrams et al v. United States, 250 U.S. 616 (1919).
- <sup>2</sup> Free Speech Centre, The First Amendment Encyclopedia, MIDDLE TENNESSEE UNIVERSITY, (May 5, 2020, 10:15 AM), <https://www.mtsu.edu/first-amendment/article/328/abrams-v-united-states>.
- <sup>3</sup> The Espionage Act 18 U.S.C §§ 792 (1917).
- <sup>4</sup> Supra note 1.
- <sup>5</sup> Supra note 1.
- <sup>6</sup> Emily Howie, Protecting the Human Right to Freedom of Expression in International Law, 20 INT. J. SPEECH-LANG. PATHOL. 12,15 (2018).
- <sup>7</sup> Committee on Civil and Political Rights, General Comment No. 10 (General Comments), Freedom of Expression (Article 19), Jun. 29, 1983, (May 5, 2020, 11:00 AM), <https://www.ohchr.org/Documents/Issues/Opinion/CCPRGeneralCommentNo10.pdf>.
- <sup>8</sup> Maneka Gandhi v. Union of India, AIR 1978 SC 597: (1978) 1 SCC 248.
- <sup>9</sup> Anthea J. Jeffrey, Free Speech and Press: An Absolute Right?, 8(2) HUM. RTS. Q. 197, 226 (1986).
- <sup>10</sup> Id.
- <sup>11</sup> United Nations General Assembly, Universal Declaration of Human Rights, 217 A (Dec. 10, 1948).
- <sup>12</sup> UN General Assembly, International Covenant on Civil and Political Rights, United Nations, Treaty Series, vol. 999, 171 (Dec. 16, 1966).
- <sup>13</sup> Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, Europe. T. S. No. 5; 213 U.N.T.S. 221 (Nov. 4, 1950).
- <sup>14</sup> Organization of African Union (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter"), CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) (Jun. 27, 1981).
- <sup>15</sup> U.S CONST. amen I.
- <sup>16</sup> INDIA CONST. art. 19(1)(a).
- <sup>17</sup> Id.
- <sup>18</sup> Law Library, Limits on Freedom of Expression, LIBRARYOF CONGRESS, (May 5, 2020, 11:45 AM) <https://www.loc.gov/law/help/freedom-expression/limits-expression.pdf>.
- <sup>19</sup> The World Health Organisation declared the outbreak of the viral disease COVID-19 as a pandemic on Mar. 11, 2020.
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