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THE BALANCING ACT: FREEDOM OF SPEECH & FIGHT AGAINST MISINFORMATION

-by: Shubhransh Vir¹

To exercise the Freedom of Speech of oneself is to exercise one's humanity. The very notion of conveying one's idea to others is the very foundation of humanity. Freedom of Speech, glorified as a Fundamental or Human Right, often finds a mention in the **Charter of Rights** sections of various constitutions of the world. It has also been notably placed in the **Universal Declaration of Human Rights (UDHR)** which suggests that it has been accepted by all UN members. A **French philosopher, Michel Foucault** made significant contributions to it while talking about knowledge, beliefs, and the practices of society and laying all of the same in the **idea of Communication**. Foucault was convinced that a change in the **subject matter of "Discourse"**² of a society has a very wide impact on the society. However, this is where the situation could take a dark turn, what if such discourse becomes misinformed? What if the conversation of our society, entailing the sharing of ideas, finds its basis in wrong facts? That is when a society might get enslaved by an unhealthy conversation which is not required for its sustenance.

FREE SPEECH: A PERSPECTIVE FOR UN AND INDIA:

There are various international organizations which work towards a world with a higher degree of free speech. Among them, **Amnesty International** has been championing the ideals of free speech. In order to ensure that people know the importance of free speech, it has gone as far as to state that anyone, **if imprisoned for exercising free speech peacefully, is a prisoner of**

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² Read more at: Michel Foucault, *The Archaeology of Knowledge* (1969); and at: Gerald Turkel, *Michel Foucault: Law, Power, and Knowledge*, 17 J.L. & Soc'y 170 (1990), Available at: <https://www.jstor.org/stable/pdf/1410084.pdf> (Last Accessed on July 11, 2025).

conscience.³ On a similar note, the **UDHR**, in its **Art. 19**⁴ talks about a vast sea of rights associated with freedom of speech, it not only talks about the freedom to express but also a freedom to hold opinions. Such a right makes it so that an individual is able to make their own opinion without being affected by the state or any other functionaries. It inculcates the idea that if a person can think freely then only, they can express themselves freely and aims to protect the very essence of free speech.

Free speech, often more restricted than the UDHR, has been introduced by various nations into their **constitution** in order to ensure that the Fundamental Human Right is available to its people and can be claimed by them. The Indian Constitution, made by “we the people” uses **Art. 19(1)(a)**⁵ to protect the Freedom of Speech and Expression. It can be viewed as not one, but a bundle of rights that forms the bedrock of democratic ideals of India, it allows the individual to oppose and criticize the governance for practices which they would deem unfit,⁶ or to rationalize their right to access information⁷ among various other things.

Read with the reasonable restrictions as mentioned under **Art. 19(2)**, it ensures that there is a balance between the legitimate free speech of individuals and the interest of the state and its diverse communities as a whole. The article, restricting the speech on grounds of: **maintaining** sovereignty, integrity and security, of India along with **protecting** its relations with a foreign state, public order, standards of decency and morality, and **ensuring** no contempt of court, defamation or incitement of offence takes place, is an important and careful incorporation to ensure a balanced approach towards a **robust Civil Society** while protecting the individuals with **diverse character.**⁸

STRIKING A BALANCE: MISINFORMATION AND FREE SPEECH:

Knowing the power that comes with communication, we must understand that the same needs to be exercised with care and caution. Time and again it has been proved that the laid down

³ Amnesty Int'l, *Freedom of Expression*, Available at: <https://www.amnesty.org/en/what-we-do/freedom-of-expression/> (Last Accessed on July 11, 2025).

⁴ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/810, art. 19 (1948).

⁵ India Const. art. 19(1)(a): All citizens shall have the right to freedom of speech and expression.

⁶ S. Rangarajan v. P. Jagjivan Ram, (1989) 2 S.C.C. 574.

⁷ State of U.P. v. Raj Narain, (1975) 4 S.C.C. 428.

⁸ India Const. art. 19(2): Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

restrictions are not sufficient, they falter when an individual, knowingly or unknowingly, spreads untrue information. Such misinformation can take various modes, from **Deepfakes** targeting the sanctity of one's privacy and public image to **fake news from media outlets**, all misleading the public. Going back to Foucault, such types of communications can artificially create a discourse which might not hold any significant progressive consequences.

The ill-informed discourse which emerges from such misinformation could deeply affect an individual and their public image if they are someone known in the public sphere. An unwelcoming example could be of the **deepfake incident** with the **Actor Rashmika Mandanna** who defined the whole incident as “extremely scary”⁹ urging the victims of such incidents to speak up, showing how information can be manipulated to the detriment of a person’s lives. Another, more popular, example of the same could be the one related to the recent **Indo-Pak border escalations**. While the people who live on the borders were in constant fear amidst the power cuts, emergency war drills and a direct threat to their lives, the media outlets and the social media groups of both the nations decided to show such fake news that they can rake in the most clicks. This resulted in a lack of clarity among the people regarding the gravity of threat they were facing, effectively drowning the facts for momentary engagement, disregarding the needs of “we the people” and exploiting a war-like situation for a **self-serving purpose**.

It is time that India takes a balanced approach towards misinformation seriously, the urgent need of **Media Literacy, Accountability, Content moderation and mechanisms of Oversight on social media and traditional news outlets**, to be balanced with Free Speech and Press is a must going forward. This is how we might be able to get back to discourse which matters and is supported by facts rather than flaws.

⁹ Rashmika Mandanna: India Actress Urges Women to Speak Up on Deepfake Videos, *BBC News* (Nov. 28, 2023), Available at: <https://www.bbc.com/news/world-asia-india-67449421> (Last Accessed on July 11, 2025).