

Confrontations and Limitations on the Freedom of Expression in Pakistan

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Abstract: *The significance of the right to free speech is evident from the fact that the societies that curb and limit the freedom of expression are more prone to crimes and incidents of torture, ill-treatment and disappearances. Almost every state has imposed restrictions on the right to free speech on account of national security, defamation, religious hatred, extremism or radicalism. This article starts with the general discussion on the topic of free speech under the Pakistani laws and current regime. It examines the limitations on the freedom of speech under judicial interpretations. The article explores the confrontations in the context of defamation, blasphemy laws and contempt of court in Pakistan. It concludes that the limitations and restrictions imposed on the right to free speech must be clearly defined and reasonable.*

Key Words: Article 19 Constitution of Pakistan, Freedom of Expression Pakistan, Right to Free Speech, Limitations on the Freedom of Speech, Restrictions on the Freedom of Expression

Introduction

Mental inter-dependence is as significant as material inter-dependence. Man being a social animal, cannot survive, flourish and advance in isolation. Discursive interaction with all its utilities is also important in moral character building owing to its directness and precision. Without being able to express, one cannot even ask for and enjoy all other most cherishable rights and liberties. Hence ability and freedom of expression lay the very edifice of all other human rights. A democratic society, ensuring basic human rights, cannot possibly be imagined sans freedom of speech and expression, being cornerstones of every egalitarian society. Shaping such a society is impossible if the dominant narrative is not open to challenge or criticism. Nothing can be more devastating for the norms of a democratic society than the savage crackdown, just to gag dissentient elements. Hence freedom of speech is of immense significance, and it also

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presupposes that what one says must be of some value and must not be devoid of reasonableness to get **into** the cover of protected speech and a fundamental right.

[Nelson Mandela \(1990\)](#) has aptly remarked to sufficiently indicate the significance of basic human rights, i.e., “To deny people, their human rights, is to challenge their very humanity.” The contemporary world has reached a unanimous consensus as to the hierarchy of rights, and freedom of speech unequivocally takes priority ([Mondal, 2016](#)). The rationale for putting free speech at the top of the hierarchy is the assumption that "freedom of expression is not just an important liberty, but the very foundation of liberty" [Malik, K. \(2010\)](#). The same view also finds mention in Milton's "Areopagitica" reproduced hereunder, “Give me the liberty to know, to utter and to argue freely according to conscience, above all liberties.” Freedom of speech is primarily the right to think, act or express as one likes, as well as the right to impart, receive or seek ideas or information without any fear or unreasonable interference. All the revolutions witnessed across the globe are thought to be an ultimate consequence of all the aggression and repulsion to the tyrannical rules. Revolutions were a reaction against regimes that didn't allow masses the right to speak even, rather free speech. The Universal Declaration of Human Rights (UDHR), concluded in 1948, provides for the right to free speech and the same was reiterated in 1993 of universal significance and establishment of a globally common politico-legal culture was sought across the regions or nation-states. A bird's eye view of constitutional laws of different nation-states reveals there is a noticeable influence on written constitutional laws of respective state's culture, but human rights related language is almost all the same in all constitutions of the world. Yet, interpretations and implications may be different in one particular culture than in the other ([Jang & Chon, 2003](#)). For instance, after the Charlie Hebdo killings in January 2015, media groups from the West and Muslim world were entirely divided. BBC News and NY Times lauded Charlie Hebdo for protecting free speech and its Western values, including the liberty to offend religious sentiments of a community. Conversely, the Muslim world and its representative media, Al-Arabiya and Al-Jazeera, stressed the necessity of professionalism and good taste in journalism and took the discourse of western media as anti-Muslim and Islamophobia.

Freedom of Speech in Pakistan; An Overview

There is not even a single constitution across the globe that doesn't speak of free speech as a fundamental right. The same is also enshrined in the Constitution of Pakistan 1973 under Article 19. Likewise, the 1st amendment to the American Constitution guarantees freedom of speech to the people of the U.S. Article 10 of the UK's Human Rights Act of 1998 and Article 19 of the Universal Declaration of Human Rights also protect the right to speak freely. Article 19 of the Pakistan Constitution, 1973 assures freedom of speech to every citizen of Pakistan, individually as well as collectively exercisable. Freedom of expression to the press, including electronic and print media, has been protected in explicit terms under Article 19. Yet freedom on the anvil is not absolute freedom. As a single sentence guaranteeing this freedom also obligates its beneficiaries to certain “reasonable restrictions imposed by law”. Here come confrontations and

limitations witnessed by many of us many times. Law of Defamation, Law of Contempt of Court, Anti-Hate Laws to prevent hate propaganda, Laws as to Fighting Words, Blasphemy Laws, Censorship related laws and laws to counter obscenity etc., are glaring examples of limitations on the freedom of speech. So much so that the constitution itself places a limit on free speech under Article 68. It ordains conduct while running the professional business by the judges of superior courts of Pakistan, i.e., the Supreme Court and the High Courts shall not be open to discussion in the august **house** by parliamentarians.

On the contrary, Article 66 extends an absolute privilege to the members of parliament. No judicial proceedings can be initiated before the court of law, for anything said by such members on the floor of the house, come what may. This parliamentary privilege amply establishes the significance of free and open speech for the better and effective running of the political process. The Supreme Court had the time and again upheld freedom of speech must be enjoyed, giving a considerate view to the privileged protection of the dignity of a person propounded under Article 14. The Sindh High Court held that the dignity of a person is an inseparable and precious part of life, and the same can never be allowed to be compromised unduly at any cost ([Mohsin v Air Waves, 2020](#)). On another occasion, the apex court proceeded to grant injunctions against the broadcast of libellous content on television to individuals in fit cases where electronic media was found compromising criterion of "responsible journalism or reporting" or failed to maintain the minimum standards of fair reporting with all the due diligence, to get the blanket of "qualified privilege". These restrictions are inevitable for the structured exercise of the right to speak freely. The rationale being "ignorant free speech often works against the speaker, that is one of several reasons **why** it must be given reins, instead of suppressed" (Brainy Quotes, n.d.).

Free speech is taken as a symbol of enlightenment and progression, and there was a time when developing states were in a kind of rivalry to ensure more freedom to their subjects, and states with more protection of free speech were viewed with esteemed admiration on international fora (Anam, 2019). Societies with a lesser degree of freedom of speech were and are regarded as orthodox and backward for very obvious reasons. For instance, tactics employed to gag those who dare to speak carry numerous ills with them. Masses, when they cannot enjoy the liberty to express themselves truly, fully and freely without running the risk of being subjected to torture, victimization, ill-treatment, forced disappearance or even extrajudicial killings, they tend to lose themselves in the murky hands of frustration. Frustration is a fit recipe to brutalize a society. It can be safely gathered; societies with more curbs and limitations on free speech are more prone to the danger of having a higher crime rate. Hence, the significance of the free press cannot be overemphasized. Even a cursory look at Article 19 of the Pakistan Constitution amply reveals that free press has been explicitly guaranteed right after conferring this right to all and sundry. It reads as; "Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press....". What compelled the legislature to distinctly mention it can be better understood by the aggressive and intimidating tactics employed by the dictatorial regimes as well as by authoritarian democracies, ranging from brutal killings of journalists to their undue arrests, pressurizing them by vilification and degenerating campaigns, threatening

calls, in the garb of protecting larger state interest enacting oppressive laws. All the above stated are, in a way, media censorship tools, despite having a legitimate censorship mechanism in the name of reasonable restrictions. In this grim and murky picture, the sole satisfying fact is a downward trend in the number of media personnel killed in the year 2019 when put into juxtaposition with the number of killings in 2018, as it decreased from 79 to 47 ([Mahfuz, 2019](#)). Yet, enough to raise concern is the fact that, with this downward trend of killings, the tendency to employ non-lethal tactics stands doubled. This crisis is alarming to all those who aspire to have open, free, just, fair and transparent societies, where the majority of people would have mastered the art of agreeing to disagree without feeling offended or using hideous ways and means to silence the dissent.

Freedom of Speech Under the Current Regime

Nonetheless, the current legal regime in Pakistan upholds free speech, but if the prevalent scene is looked at, in July 2020, 10 days' ban on TikTok, a social media application, was faced in Pakistan. The justification behind this ban was "decency and morality", as the same has been laid down under Article 19 to be a reasonable restriction on "free speech". Now, what is "decency and morality" and what is "obscenity and vulgarity" are questions to be answered and interpreted by no less but constitutional courts of Pakistan. Ironically, the same is not censoring authority, but this notorious and overbroad power rests with PTA officials conferred under section 37 of "[Pakistan Electronic Crimes Regulations Act 2016](#)". Such arbitrary and capricious moves undermine the democratic values of a nation-state. A few years back, YouTube was banned for four years in Pakistan, which left us lagged behind competitors on the forum. A prominent figure from the legal fraternity and a political activist Aitizaz Ahsan rightly raised the following question over that four-year ban; "should we burn down an entire library if we disapprove of a few books within it."

But all is not dark and gloomy. This is one side of the picture. Media houses here in Pakistan enjoy great freedom. Almost 90 screaming channels are testimony to it. These channels give coverage to the government as well as people from opposition benches equally. Opposition benches always feel free to blatantly criticize the incumbent government. A PTI led government is very often dubbed as inefficient, illegitimate and a failed government by its opponents. Parliamentarians from opposition benches go to the extent of calling the incumbent prime minister the most inefficient, incompetent and incapable person in the office throughout the political history of Pakistan. All projects are openly discussed and criticized by political analysts as well as opposition. The incumbent regime faced the most aggressive criticism, also owing to its accountability drive, which too is labelled as "witch-hunting" very openly. The degree of freedom enjoyed in Pakistan is also evident from speeches delivered on the platform of PDM, i.e., a coalition of eleven opposition parties. As per national security analysts, these speakers went to the extent of compromising national security interests, still were aired by all private channels, and watched through the length and breadth of Pakistan. For instance, while addressing a rally in

Quetta, 3 times premier's daughter Maryam Nawaz dubbed running of the government in office an ongoing puppet show and further stated, strings of these officials are pulled by someone else. She spoke of both executive and armed forces very disdainfully. Even though the law of contempt of court is very much there, the apex court's decisions are routinely brought on the anvil.

Recently, Chairman CPEC authority resigned, and the sole driving force behind his quitting from office was public opinion, given from every nook and corner out-rightly and the same was very loud and clear despite his coming from the most powerful institution in Pakistan, very often taken as sacrosanct for the sake of criticism. Likewise, the chairman of the ruling party in Sindh Bilawal Zardari, accused the sitting Prime Minister of snatching resources from provinces instead of giving them their due share and that Imran Khan is trying to fail the mega project of CPEC advertently, termed as game-changer by many. Another party leader held the establishment responsible for PTI victory in July 2018 elections and demanded the ouster of the government before completion of its constitutional tenure, i.e., 5 years. People openly call it a hybrid regime and a new experiment with the political infrastructure of Pakistan vociferously and repeatedly. PTI was once viewed as the genesis of a third force on the political landscape of Pakistan and a sound competitor to share power with existing two strong political parties; It is now termed as an establishment-backed party. When the presidential reference against a justice of the constitutional court got struck down apex court in Pakistan, the very next day, the entire media was bashing the head of the state, i.e., The President, for not applying his conscious and judicious mind before forwarding such reference to the supreme judicial council. Besides this, every policy is vehemently criticized. Opposition leaders had the time and again directly addressed the prime minister, labelled him as "selected" by the establishment and "rejected" by the masses of Pakistan. There are instances where the right to free speech is being exploited out rightly; there are also instances of frequent and blatant curbs on free speech, on the factual plane.

Limitations on the Right to Free Speech

Theoretically, concerning law has reconciled these confrontational regions. It guarantees rights with limitations. The significant limitations are included in this article as follow;

Defamation

The most famous amongst limitations is the law of defamation. Defamation in Pakistani Jurisdiction is both a crime as well as a civil wrong. An FIR to initiate criminal prosecution against the accused under section 499 of Pakistan Penal Code (PPC), as well as a civil suit for damages against tort-feaser, is competent under section 9 of Civil Procedure Code. It is a wrong actionable per se; hence no special damage to reputation is required to be proved by the plaintiff. The likelihood or potential to injure reputation will suffice. A special legislative instrument, "Defamation Ordinance 2000" also restricts offensive, outrageous and defamatory speech. Here speech implies, uttering words or making visual representation either by writing, drawing or sketching, even gestures or any other mode of signifying meanings, capable of communicating

derisory, hateful, contemptuous and false material, which consequently lowers the victim in the estimation of right-thinking members of the society generally, or expose him to contempt, ridicule, disdain, disrespect, loath, detest, dis-esteem or even fear. The law of defamation is the armour to guard against any invasion of a citizen's right to reputation. An Individual's dignity is integrally based on his reputation. Several decisions are taken on the basis of what sort of reputation someone enjoys in the community. For instance, who should be voted for, who is suitable to strike a business deal with, who should be promoted, who should be employed or worked for? It is conducive to the larger public interest that reputation should be protected, and it has also **been** protected under Article 4(2)(a) and (14).

Every interest recognized and protected by law is 'right'. An interest when finds mention in a statute is taken as "recognized", and when in case of infringement, a mechanism to vindicate or enforce that interest through the judicial branch of the state is provided, it is "protected" under the law of the land. Since the right to reputation is both recognized as well as protected under the law of defamation, it can never be allowed flagrant violation in the name of "freedom of speech". Seemingly, the right to reputation and the right to speak freely become two clashing rights. Then "reasonable restrictions" on free speech come to strike a balance between these two conflicting rights and to avoid confrontation. The law of defamation seeks to prevent the speaker from publishing defamatory material. Likewise, speaking ill of others is viewed with utter aversion and is detested in religious commandments too. The Holy Prophet (P.B.U.H) enlisted the act of defaming others amongst those five classes of sins that can never be expiated ([Musnad al-Shāmiyyīn No 1161](#)). On another occasion, Holy Prophet 'peace and blessing be upon Him' ordained to abstain from using abusive or defamatory words for a Muslim brother, in words reproduced hereunder; "Amongst the worst kind of usury is to disparage the honor of a Muslim brother, without right" ([Hanbal, A. I No. 1586](#)). While enumerating appreciable moral characteristics of a believer of Islam, "Holy Prophet (P.B.U.H) said; A believer never defames someone, nor can he be a curser, neither coarse nor obscene. It was further emphasized by putting a query and Himself solving that; "Do you know what calumny is? It is spreading news between people to ruin their relationships" ([Al-Adab al-Mufrad, No. 425](#)). It can be safely gathered; religious injunctions refrain from the publication of libellous or slanderous material as well as the law of the land. Apex court, too, in a recent verdict, upheld that, in the name of free speech, no individual or organization, e.g., newspaper or television channels, can be allowed to go unbridled **and** play havoc with the reputation of dignified individuals.

No one can be allowed to disgrace, humiliate, to bring the dignity of another to nought. Common men, as well as media houses, are to operate under legal parameters. Recently, the head of an educational institute was awarded an amount of 1000,000 rupees by the apex court while deciding a suit for defamation as general damages applying "Rule of thumb", against a newspaper for defamation and consequent agony, mental torture and anguish. The Law of Defamation further allows room for free speech, in the form of defences, available to the accused person, in proceedings for defamation suits. A few of those defences are; 1. Defendant affords an unconditional written apology, 2. Plaintiff himself consents to the defamatory speech, 3—plea of

justification, 4. Defendant offers to deny his/her published statement, 5. Published defamatory material falls within the ambit of "fair comment" with no malice but good faith made for the larger public good, 6. The defendant is not the author, editor, publisher or printer of the statement complained of, 7. Privileged communication, such as communication between lawyer and client or between persons having a fiduciary relationship, 8. Absolute privileges, including legislative or parliamentary proceedings, judicial proceedings and communication amongst state officials, 9. Qualified privileges, i.e. fair and accurate publication of parliamentary proceedings and fair reporting of judicial proceedings.

Contempt Proceedings

Another, very frequently invoked jurisdiction, in recent past or post-Panama verdict periods, in Pakistani courts, on free speech is in the form of contempt proceedings. There is special legislation, named "Contempt of Court Ordinance 2003" dealing with the subject. Same has also got constitutional cover under Article 204 of the Pakistan Constitution. This article delineates actions or omissions which shall be taken as contemptuous. But where to strike a balance between these two contrasting laws? The constitution stipulates the right to free speech, and the constitution itself labels derogatory speech and even disobedience as contemptuous and renders the same amenable to the jurisdiction of courts. While hearing contempt proceedings against a PMLN's political leader, the then minister of state for interior affairs Talal Chaudhary, Supreme Court further interpreted and reiterated that the right to free speech is no doubt, undeniable but its protective cover can never be stretched to allow speakers to speak at the cost of the seamless and **proper** administration of justice.

A publication, comment or speech cannot be covered tending to bring honourable judges into contempt, ridicule or hatred or may scandalize the judiciary as an institution, or may obstruct, embarrass, impede or influence better dispensation of justice (Talal Vs State, 2019). Talal Chaudhary, after the Panama verdict against the then-premier Nawaz Sharif, unleashed severe criticism on Apex Court while speaking at a public rally and personally targeted five-member judges of the bench, constituted to hear famous rather notorious Panama case, in the language reproduced hereunder; Mian Sahib! This is a public court that doesn't even recognize the verdict by the masses of Pakistan, who voted for you...By pronouncing such a judgment, judges of the Supreme Court have blatantly humiliated the verdict of 22 crore Pakistanis. Hence notice of contempt must be issued against such judges. He further went on to the level of equating judges of the apex court with idols. He again addressed PMLN supremo and loudly stated; Mian Sahib! There was a time when Kaaba (The most sacred place for Muslims on earth located in Saudi Arabia) was filled with idols; now we see, our supreme court is filled with idols. Kick these PCO idols off this august institution. They are never going to provide justice but will remain unjust." The Supreme Court issued notice against the speaker and ordered him to attend the court in Pakistan. After framing charges for contemptuous speeches and being put to trial, he was declared contemnor. After conviction, the contemnor was sentenced with a fine of the amount of 100,000 rupees as well as was made to undergo imprisonment for two complete hours and five minutes

within the premises of the courtroom that was actually from the moment of his conviction till the rising of the court. This conviction consequently disqualified the contemnor for a term of five years to be a member of parliament under article 63 (1)(g) of the Pakistan Constitution. Which amply testifies how serious a repercussion a contemnor has to face. During the trial, the alleged contemnor raised the plea as to his right to free speech. The court is of the view that the exercise of fundamental rights should always be subservient to the larger and collective public good. Hence, no one is allowed to conduct himself/herself in a manner that is detrimental to integrity, good-name or independent and fair working of the whole judicial system.

Law of contempt is not to hinder the speakers from analyzing merits, demerits and repercussions of court's verdicts, but comes into actuation only where conduct or personality of honourable judges is brought to the anvil to tarnish the whole just and transparent image of the judicial system and to shatter the confidence of the general public ineffective and even dispensation of justice by the courts, by employing pre-meditated and well-thought-out conspiracy theories. Law of contempt is primarily aimed at upholding, sustaining and defending the efficacy, impartiality, highest moral codes of conduct and dignity of courts of justice. Secondly, the law of contempt also seeks to ensure public confidence in the judicial system of the state. A touchstone that shouldn't be compromised while exercising the right to free speech is that language used should not be notably pungent, smacking bitterness, indicative of resentment, shocking, outrageous, scandalizing or disgraceful for courts, intemperate expressions, suggesting abnormal understanding leading to form a stumbling block in the proper administration of justice to all and sundry. In the domain of the law of contempt, constitutional, "i.e. Article 204 of the Constitution of Pakistan 1973" as well as statutory law, "i.e. Contempt of Court Ordinance, 2003". Speech is not necessarily a written or oral assertion, expression or negation but disobedience or disregard of orders passed by the court also amount to speech. Such speech is **actionable** under the law of contempt.

In 2012, the then-premier Yousuf Raza Gillani was charged, put to trial and convicted for contempt of court, for refusing to reopen old corruption cases and writing a letter to Swiss authorities against the then president and chairman PPP Asif Ali Zardari and consequently Prime Minister had to quit office too, as he stood disqualified to hold public office under Article 63(1)(g) of The Constitution of Pakistan 1973, after being convicted ([Azhar Vs Pakistan, 2012](#)). Though the law of contempt postulates a way out for contemnor too, and that is tender of an unconditional apology to the court, yet such tender doesn't operate to automatically exculpate or purge the accused and not to be accepted necessarily. In [Masroor Absan](#), the court held that for an apology to be accepted, it must fulfil the following criteria laid down by superior courts time and again through various judgments. Firstly, it must be tendered at the earliest possible opportunity and not as a measure of caution or as a last resort after having contested whole contempt proceedings. Secondly, an apology tendered by the alleged contemnor must be unequivocal, unqualified, unreserved and unconditional. Thirdly, an apology should not be a mere formality or tendered half-heartedly; rather must be representative of genuine and sincere remorse to the

satisfaction of the court. Fourthly and lastly, the alleged contemnor should not have taken the plea of justification as to his speech or conduct.

Blasphemy Laws

Blasphemy laws are another limitation; most talked about, most invoked and most criticized, on the right to free speech. Pakistan's blasphemy laws owe their provenance to the colonial era of the Indian subcontinent. These laws were first adopted and justified as a measure to prevent skirmishes and violence between the Muslim and Hindu community based on religious differences. Penal Code, still in force in Pakistan from its very day of enforcement in 1860, contains section 295, 296, 297 and 298. Later, in 1927, section 295-A was incorporated. These provisions were equally applicable to all religions. Then under the military regime of Zia-ul-Haq in 1980 298-A, in 1982 295-B, in 1984, 298-B 298-C, in 1986, 295-C was introduced in penal law ([Amnesty International, 2016](#)). These later amendments are Islam specific. Article 19 advocates nothing should be expressed to undermine the glory of Islam, as it is considered the view here in Pakistan that the right to free speech is not inclusive of the right to offend too. Owing to this stance, Pakistan is often taken to task, even though Pakistan is not the only state but Blasphemy laws are part of legal order across 77 states. Blasphemy laws are here to regulate free speech and to prevent outrageous speech, potentially hurting religious sentiments. Though the biggest negative repercussion, rendering their legitimacy doubtful, is when blasphemy laws are **weaponized** through vigilante justice. Recent history has witnessed several such fateful incidents.

The highest-profile of those was when Salman Taseer, the then Governor of Punjab Province of Pakistan, was gunned down by his guard Mumtaz Qadri in broad daylight in front of cameras, who was later executed for such killing after conviction by the apex court of Pakistan. Reason being that such vigilante justice, violence, or extremist conduct mistakenly inspired by religion is not at all within the contemplation of Islamic injunctions. Islam is an all-embracing term, encapsulating political, social, religious, legal and economic system and a complete code encompassing all spheres of life. Word "ISLAM" is a derivation of the Arabic word "Salam" implying "peace", and the word Islam means "to enter into peace." Messenger of Islam Holy Prophet (P.B.U.H) was a staunch champion of freedom of speech and expression, of honouring opposing views, of religious tolerance, of harmony and golden principles of co-existence. Yet, in the name of free speech, mocking, degrading or insulting others devalues a modern, civilized and democratic society. Hence such an exploitative exercise of the right to free speech is neither was nor is recommended, appreciated or even permitted in Islam ([Muhammad Ayoub V. Pakistan, 2018](#)). Furthermore, defence of state and national security are paramount considerations, and the same is also justified as a reasonable restriction on free speech. National security cannot be jeopardized at the altar of free speech.

Then there are Anti-hate laws. This restriction is imposed by Article 19 as well as finds mention in "The International Covenant on Civil and Political Rights." Its mandate is the prohibition of war propaganda, advocating religious violence or extremism, radicalism, the

nationalism that thrive on hatred, causing incitement to violence, hostility and discrimination. For instance, hostile and stereotypical rhetoric against Islam and Muslims in Europe is fueling discrimination as a direct product of hate speech. So hate speech is not within the legitimate domain of free speech.

Conclusion

Freedom of expression is guaranteed in societies across the globe. However, it may not be recognized as an absolute right. The luxury to express freely is burdened with certain restrictions at varied levels ([Library of Congress, n.d.](#)). These entire restrictions pose a question, i.e., are we striving to achieve a utopian, benign and offence free society? The answer is that offence free and benign society should not be regarded as a Utopian thing; rather a sincere and genuine effort must be made to make it happen. On the other hand, limitations and restrictions must not be flawed, unclear or overbroad, as they pose a danger to not only the right to free speech but to all fundamental human rights. Limitations must not be there to facilitate a crackdown on civil liberties or to stifle dissent. Stifled or outlawed dissent is most probably to go underground and fester, culminating in a potential threat to durable peace across the globe. The only way out is not to let these limitations become a risky tool.

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