



TRIGGERED WAVES OF FREEDOM OF SPEECH AND EXPRESSION

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ABSTRACT

The freedom to speech and expression is undeniably a rudimentary right, deserved by every citizen in order to propagate one's thoughts, ideas, opinions and views. This right apparently has certain reasonable restrictions, which if violated, create a heavy hassle. Every citizen is patently aware about the ongoing corona virus pandemic, which has bought up an enormous amount of intolerance among the general public worldwide as well as the authorities. This circumstance moulds up a situation of trepidation and panic among the citizens, as a result of which certain citizens spread news pertaining to the virus which is fake and false in nature. Failing to realize about the reasonable restrictions while executing their right, these citizens violate the right to freedom of speech and expression. This article deals with the methods used by the citizens to express their rights in a wrongful manner during the ongoing pandemic. The researcher would mention the ways by which advantage of the mentioned right has been taken during the span of lockdown, which occurred in India. After all, the researcher would also be delighted to mention the multiple measures and immediate course of action taken by the authorities and the laws pertaining for the control of the same. Lastly, the researcher would terminate the article by means of a brief conclusion.

KEYWORDS – Speech, Expression, Corona virus, violation, laws.

INTRODUCTION:

India, one of the largest democracies in the world, is predominantly guarded by the principles laid in the revered Constitution of the country. This Constitution endows and entrusts substantial power in the citizens. The Constitution of India comprises of several legal provisions, ensuring the welfare of its citizens in executing their fundamental rights. Right to speech and expression, being one of the rudimentary right, is guaranteed to the citizens under Article 19(1) (a) of the Indian Constitution where the citizens possess the right to freely express their ideologies, thoughts, views, opinions etc. without any fright. However, this right is

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restrained by Article 19(2) of the Constitution, which lists down the reasonable restrictions imposed to this freedom to secure the integrity of the nation and to maintain public order. The article is primarily based on the violation of these reasonable restrictions by the citizens during the pandemic caused due to the outbreak of novel corona virus.

The pandemic has left various countries of the world in a state of disarray, causing the unfortunate demise of an unexpected number of people. Considering the severity of the contemporary situation, spreading news which is fake in nature (reasonable restrictions to freedom of speech and expression) poses and upholds severe threat to the communication conducted among the public as well as on online platforms. It is also stated by the World Health Organization that the pandemic is accompanied by an ‘infodemic’, i.e. information pandemic, while the correct information assists in alleviating the crisis due to the pandemic, the incorrect one might intensify it. During such critical times, there exists an undeniable threat to the public health. Therefore, the governments are permitted, rather required to take more productive and restrictive measures than the usual circumstances.

The primary objectives of the article predominantly revolve around the methods pertaining to the dissemination of misinformation during the pandemic and analysing certain illustrations pertaining to the same. The article precisely analyses certain measures to combat the research problem and mentions about the laws / legal provisions for the same. The reasonable restrictions to the freedom of speech and expression were not followed by a huge chunk of crowd, often leading to a barrier in the spread of significant news.

DISSEMINATION OF MISINFORMATION:

In the contemporary era, mass media and social media platforms have played a vital role in circulating and publicizing information pertaining to public health. In the course of the pandemic, the dissemination of fake news and misinformation have been a core issue sowing the seeds of bewilderment and trepidation among a vast population. This however has influenced the public perception of risk. In multiple scenarios, people have regrettably discovered themselves overwhelmed with the information consisting of fake reports and fake



news, which for those with lack of knowledge can be intricate to digest. A few months post the commencement of the pandemic, information from non – specialists in infectious – respiratory issues could be observed in the mainstream media. The public was thus engulfed by this flood of knowledge that they did not have time to verify or know it correctly.

The enormous presence inside the broad communications of specialists who offered their viewpoints, regularly not upheld by logical proof, may be taken as a desire instead of the necessity to produce the right indications. Comparably, the mass media, in an endeavour to realize visibility, have probably inadvertently misinformed the general public whenever an experimental treatment begun. The commencement of this experimental treatment was reported and published by newspapers that reported it because the decisive discovery to combat SARS-CoV-2, therefore accentuating people’s sense of security². It is evidently known that social media platforms disseminate false information and deny scientific literature. Disseminated news has weakened the relevance of evidence-based prevention measures advocated by the National Health Service³. The WHO gives WhatsApp to invalidate counterfeit news, however lamentably, the quick popular spread of bogus data via online media is boundless to the point that the populace has confronted hurt.

In a few cases, sufferers refused to take ibuprofen or different anti – inflammatory tablets due to the misguided concept that they might growth the probabilities of having inflamed with the coronavirus. Misleading facts approximately remedy for COVID-19 has ended in more and more vitamin D abuse or even mass poisoning from methanol intake⁴. After the lockdown, in nations wherein social distancing and using face mask had been mandated, information of correlation among most cancers and masks coverings seemed on social networks. The lockdown and the agony bore by people, as a result of the burdensome pandemic, has already caused trauma to numerous patients and their respective families. As per thorough research, a few also unfortunately were detected of PTSD (Posttraumatic Stress Syndrome), which is often characterized by distress, anxiety, sleep deprivation or disturbances and much more.

² “Freedom of Speech and Expression during the Coronavirus Lockdown”, Bar and Bench, available at: <https://www.barandbench.com/apprentice-lawyer/freedom-of-speech-and-expression-in-the-times-of-coronavirus> (last visited on September 11, 2021).

³ *Ibid*

⁴ *Id.* at 2



Misinformation and false news has been a contributing factor to the sad onset of PTSD to several people.

Poor quality information or dissemination of information in the forthcoming future might upraise anxiety adding to the existing state of trepidation and panic, moreover during the event of a new wave of this infection, the public would relive and rethink of the first phase of the peak of this perilous virus and would undoubtedly seek to search for information in order to safeguard their health and that of their loved ones. Fake news and rumours also braced umbrage and resentment with the consequent reaction of the public for an alleged injustice. The deficient, partial and erroneous news reported and published by the various media platforms have centred attention on probable mistakes of certain hospital structures. In simple terms, the aforesaid means that the patients would thereby be reluctant on not approaching healthcare or medical centres in the alarm of being subjected to medical errors or containing the ongoing spread of virus.

Healthcare workers might have to undergo psychological burden since they probably would suffer law suits bought up by relatives of Covid-19 victims, who would accuse the innocent healthcare workers of not having undertaken for the victims therapies that the media portrayed as effective, but which are experimental in practicality. Therefore, it is very evident that the consequences of spreading as well as trusting and relying on rumours and disseminated news or information is highly perilous and grave. It is vital that solely evidence – based information is circulated on public domains and media platforms.

FREE SPEECH VIOLATIONS RELATED TO THE PANDEMIC **ILLUSTRATIONS:**

Although every citizen possesses the right to free speech, this right and freedom should not be taken advantage of, by posting on media platform about someone, inappropriate content. During the pandemic, there have been numerous instances where certain citizens not evaluating the purpose of this right, have crossed boundaries of reasonable restrictions and spread news which is fake in nature, creating a chaotic scenario within the public during such a critical time.



In March 2020, a few pictures of healthcare workers who were wearing raincoats instead of appropriate PPE kits due to the shortage of the same, was posted by an oncologist from Kolkata on various social media platforms. This action caused public disharmony and criminal intimidation. Further, it is significant to be noted that 640 cases pertaining to misinformation have been filed since the time a nationwide lockdown was imposed by the government. The government of Assam filed a case against a reporter and publisher of a Bengali newspaper under Section 188 of IPC. This reporter had published about the first Covid positive patient in Assam without his consent.

25 people in April 2020 were arrested for spreading rumours. Between 25 March, 2020 to 31 May 2020, 55 journalists had to face legal action for wrongfully exercising their freedom of speech and expression. A senior journalist, while exercising his right and freedom to expression, had broadcasted himself on You Tube by criticizing the government's decision as well as implementation of the nationwide lockdown. Furthermore, in February 2021, Twitter had disabled a roundabout of thousand accounts, for allegedly spreading wrong news in such a tense time of the pandemic. This order was given by the Ministry of Electronics and Information Technology under Section 69 A of the Information Technology Act. Furthermore, in April 2021, Twitter, as informed by the Government complied with the order to censor 52 tweets which involved posts depicting the Honourable Prime Minister in the form of cartoons, while making a speech addressed to the public over a burning coffin.

It is required for one to behave within one's reasonable restrictions while exercising their right to freedom of speech and expression. Certain citizens randomly though often spread rumours and false news pertaining to the shortage of oxygen in Uttar Pradesh on social media platforms. Such news leads to additional trepidation among the public, thereby causing nuisance and disharmony. In April 2021, an FIR was lodged by the Uttar Pradesh Police against Sun Hospital's director, who released a notice stating oxygen shortage with the intention to enhance black marketing and to superfluously spread rumours. The director was charged under various sections of the Epidemic Diseases Act 1897, Indian Penal Code and the Disaster Management Act, 2005.



In May 2021, 25 people including a daily wager, also an e – rickshaw driver had posted banners and posters, criticizing the Honourable Prime Minister’s handling during the pandemic. They were ultimately arrested for using their right to speech and expression in a faulty manner. Considering the upsurge in scenarios relating to media manipulation, Twitter has begun labelling certain content as manipulated media or eliminating them from the platform. A lot of social media accounts have been blocked in order to maintain public order even during the crisis of the pandemic.

MEASURES TO CURTAIL SPEECH DURING THE PANDEMIC:

- *Website and Application Blocking:*

Section 69 A of the Information Technology Act, 2000, along with Procedure and Safeguard for Blocking of Access of Information by Public Rules, 2009, also referred to as Blocking Rules 2009 enhances and supports website blocking, used to curtail freedom of speech and expression, when observed crossing reasonable restrictions. However, a barrier to this provision is Rule 16 of the Information Technology Blocking Rules 2009 that requires confidentiality to be reserved pertaining to all blocking requests made by the Government. Opacity or Public inaccessibility of blocking request orders owing to Rule 16 of the Blocking Rules results in all blocking orders being shrouded in a cloak of secrecy thereby rendering any kind of judicial review of such blocking orders in terms of free speech violations impossible⁵.

- By directing for content takedown under Section 79 and Section 69 A of Information Technology Act, 2000:

In advance of the 2021 notification rules namely the IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, content takedown was manageable via two measures – (a) by court order and (b) effacing request to the Central Government solely by an authorised personnel. The new rules undeniably anticipate supplemental measures regarding content takedown. These new rules envisage more measures like diligence, blocking content within a

⁵ “Free Speech Violations related to Covid-19 pandemic”, SLFC, available at: <https://sflc.in/free-speech-violations-related-covid19-pandemic> (last visited on September 11, 2021).



time span of 36 hours and withholding information or content for a time span of 180 days among others

LAWS BROUGHT IN DURING THE PANDEMIC PERTAINING TO FREEDOM OF SPEECH AND EXPRESSION:

Presently, fundamentally a mix of the National Disaster Management Authority Act, 2005, the Epidemic Diseases Act, 1897, close by the contrasted utilization of Section 144 of the Code of Criminal Procedure by the states, are being used as instruments during the lockdown. Thus, a violate down what each law says about constraints on free talk in such a situation is dissected further. Initiating with the NDMA, 2005, there is a great deal of subjectivity that this Act thinks about. While the Act doesn't dig into bits of knowledge about the advantages of talk during public failures, Section 6(1) thinks about the National Authority to put down methodologies, plans and rules for catastrophe the board. This expressing gives it a truly wide degree of power, wherein the National Authority may, as and when required, put down game plans and rules concerning talk and verbalization on a case to case or time to time premise. This may be done through rules and addendums made to upgrade the Act. Section 18(1) gives similar powers to the state specialists.

Likewise, Section 35(1) awards the Centre the ability to take all such means it considers practical for catastrophe the executives. As per the researcher, the aforesaid is the most troubling part of the Act. Without appropriate explanation, it enables the public authority to take clearing measures, which may incorporate bracing down on free discourse, for the sake of calamity the board. According to the researcher this is the one area free discourse may fundamentally succumb to. Section 54 additionally gives punishment to flow of a bogus caution or cautioning as to catastrophe or its seriousness or extent, prompting alarm. The EDA, 1897 awards governments a serious level of ability to take unique measures and endorse guidelines to control upsurge and spread of perilous illnesses. However it makes no particular notice of discourse and articulation, in such a circumstance, it appears to me that the public authority may utilize its forces under this demonstration to forestall circumstances, for example, the Nizammudin Markaz occurrence.



The aforesaid has brought about a fiasco whereby the Nizammudin Markaz has now arisen since the COVID-19 is the focal point of India. It seems right to confine discourse in such circumstances under the aegis of this Act. Notwithstanding, to embroil some different type of discourse as well as demeanour which represents no danger to the flare-up and spread of such a sickness should by no means confront any ramifications under this Act, and ought to be properly suppressed. Proceeding to Section 144, as has been recently examined, the nation is not yet under time limitation, nor is the lockdown a crisis involving the suspension of different Fundamental Rights. Section 144, in any case, permits a District Magistrate, a Sub-divisional Magistrate or some other Executive Magistrate enabled by the state government to guide any individual to avoid a specific demonstration that is probably going to forestall impediments to any individual legitimately utilized, or risk to human existence, wellbeing or security, or an unsettling influence of the public request overall. This again takes into consideration an ill – defined situation where it is surrendered fundamentally to the abstract assessment of the Executive to choose whether a demonstration represents a danger to public request or not. This 'act' might just be deciphered as the discourse and articulation of an individual or enterprise. In this way, Section 144 may wind up being abused to smother discourse and articulation.

THE DOCTRINE OF PROPORTIONALITY, AND ‘REASONABLE RESTRICTIONS’ TO THE RESCUE:

In such a circumstance, where the public force and different specialists have been allowed wide-going forces to check talk and verbalization ensured under Article 19(1)(a) of the Constitution, certified security is given by the Doctrine of Proportionality and the 'reasonable impediments' under Article 19(2). Proportionality and reasonableness are the standards on which such government activities ought to be surveyed. In **Om Kumar v. Union of India**, the Supreme Court expressed that limitations on basic opportunities have reliably been disapproved the anvil of proportionality. The Court checks whether the activities taken by the body are the most un-restrictive plans to achieve the explanation. If they are not, the impediment constrained will be smothered using this rule. In circumstances where the rights gave under Article 19(1) and 21 are restricted by administrative exercises, the courts go



probably as a fundamental analyst and go into the advantages of the case while applying the show of proportionality.

In *KS Puttaswamy*, the Court had observed,

“Proportionality is an essential facet of the guarantee against arbitrary State action because it ensures that the nature and quality of the encroachment on the right is not disproportionate to the purpose of the law”. Despite the fact that Article 19(2) permits the State to force sensible limitations on the activity of the rights given by Article 19(1), here the word 'sensible' turns into the point of convergence of proportionality in such cases.

In *Anuradha Bhasin v. Union of India*, Supreme Court has proclaimed the exigent need to balance proportionality and reasonable restrictions with regard to regulation of speech and expression. It also held that restriction of speech and expression via acts such as indefinite shutdown of the internet, would be considered impermissible. Further, restrictions made under Section 144 cannot be used to suppress legitimate expression of opinion or grievance or exercise of any democratic rights, the Court had held⁶.

FAKE NEWS – A MISUSE TO FREEDOM OF SPEECH & EXPRESSION

Fake news during COVID-19 spread quicker than COVID-19 itself, devouring the attitude of the whole populace into a hallucinating illusion by deluding them by all accounts. Counterfeit news in India existed before the pandemic as well, yet it got escalated during the pandemic as tales, fear inspired notions and strict/position instigates basically in the field of wellbeing beginning from giving wellbeing advices about insusceptibility egotists to security alerts like 'Coronavirus spreads through air, taking hydroxychloroquine will not the infection assault you or Bill Gates is wanting to utilize the COVID-19 antibody to carry out central processor in individuals, inside and out called as 'infodemic.' On one hand India was managing a wellbeing crisis and an inconspicuous deception emergency on the other, the last is pretty much as deadly

⁶ *Id.* at 4



as the previous. Glaring presentation of information in regards to augmentation of 90 days lockdown and just thereafter the transient issue can be settled, it was an occasion of phony news where the travellers had no way to check the realness of the news and had confidence in it, because of which frenzy was caused. The right to speak freely of Speech and Expression when practiced to spread false realities to make hurt others becomes perilous, and that is the point at which it should be limited.

Any individual who makes or flows a bogus admonition concerning any catastrophe or its seriousness, greatness that causes alarm among general society, will be culpable with a detainment that might stretch out to one year or with fine and rebelliousness of the said request given by a local official would bring about discipline under the Indian Penal Code. Indian government's reaction to this supposed 'Infodemia' was by dispatching the application 'Coronavirus', comprising of all the appropriate data with respect to the pandemic and its belongings so that individuals don't succumb to bogus substance. Individuals from various domains of the general public saw that there was insignificant exercise of Article 19(1)(a) during when the pandemic was at its pinnacle and deliberately suffocated the Freedom to communicate by individuals. Coronavirus put an end to the rights that guarantee the food of vote based system and its casualties were each edge of life beginning from the jokesters, preservationists, social specialists, media journalists, presumed legal advisors to a standard man. Of what the Court decides to be an offense is really the most elevated obligation of a resident for example to 'productively criticize' the establishments in a popular government.

The Indian constitution has conceded Right to Freedom of Speech and Expression, yet that doesn't imply that the singular damages other's privileges as blackmail, retribution pornography, sending delicate substance over the online media destinations and for the sake of Freedom of Expression obtrusively encroaching somebody's protection over the web adds up to digital wrongdoing. A portion of the tricks saw during the pandemic arrangement with unseemly medications and clinical instruments sold at an extremely exorbitant cost, publicized on computerized sites made by first class digital programmers and planned in a manner to draw consideration by making counterfeit cases, for example, to mystically fix the Covid, or selling things of most extreme interest and little openness in the market, for example, falsified negative



COVID-19 reports and passes to pull off the forced time limit accessible on the dim web at heavy costs. Aside from that the stage likewise noticed expanding bogus guarantees of occupations or venture openings where online cheats, for example, phishing have been submitted, While kids, for example, are significantly profiting from e-tutoring, they are similarly more presented to dangers coming from the web as record sharing maltreatment, unseemly substance, and the preparing of kids for sexual purposes or sentiment tricks which later lead to sexual dealing internet thinking about the expanding utilization of online erotic entertainment during discouraged occasions of the pandemic.

DEBUNKING MYTHS AND FALSEHOODS:

With COVID cases flooding from one side of the country to the other, numerous simple individuals are progressively succumbing to a rising tide of misdirecting and false content, which is likewise influencing the country's mass vaccine drive by spreading bits of hearsay with regards to the unfavourable impacts of vaccines. There has been false information in regards to immunization security among individuals with previous conditions like diabetes and hypertension and, likewise, among ladies. Furthermore, there have been legends about utilizing nebulizers as a substitution for clinical oxygen tanks, for which there is right now an extreme lack in the country. Moreover, tales advancing the inward breath of steam just as the utilization of garlic, cinnamon and liquorice root, as an avoidance measure or remedy for Covid-19 have been broadly circled. One more hazardous thought that is being engendered via web-based media is that Indians have a higher insusceptibility against the Covid-19. This depended on an incorrect and shallow understanding of a solitary quality examination directed among various ethnic gatherings. Specialists accept that individuals' low confidence in news media and a powerless public assistance media, combined with a divided crowd and high web-based media use, have been answerable for the fast and wide spread of deception. Utilization of web-based media content has expanded hugely since the Indian government forced a severe cross country lockdown in March last year to control the spread of the infection. WhatsApp, which has more than 500 million clients in the nation, is the stage through which most deception is being sold.



The second influx of deception was overflowed with a ton of old recordings and photos of individuals becoming sick, China killing individuals to contain the infection, how Dettol and weed can assist with killing the infection, or how certain races or religions are not getting influenced. During this time (mid-February) India saw a great deal of big names and forces to be reckoned with succumbing to falsehood and sharing it broadly. Notwithstanding, web-based media sites have been speedy in reacting to such posts. We tracked down that the vast majority of the recordings during this time were re-stopped, wrongly inscribed, and coursed frequently with an account of 'desperation' and how to ensure or how not to contract the infection and not really to spread dread. Be that as it may, this at last prompted an environment of dread and frenzy among the overall population. Towards the finish of February, deception began showing terrible outcomes: India revealed its first instance of self-destruction because of dread of Covid-19, there was a significant decrease in poultry and utilization of poultry items, and Iran announced in excess of 700 passings in the wake of being harmed by contraband liquor toward the beginning of March – the casualties had allegedly devoured methanol, reacting to counterfeit news that liquor forestalled the Covid-19 contamination.

The third influx of far and wide deception about fixes acquired stimulus in mid-March in India, despite the fact that it was well known since commencement. These messages and recordings were broadly circled, and earned most extreme offers and like as indicated by the narratives reality checked during that time-frame. Online media including Twitter, Facebook, and Whatsapp are hotbeds of such deception. Over 90% of our accounts on truth checking fixes feature that the data was gotten from one of the web-based media stages. We saw that the names of popular clinics and specialists were added to these messages to loan believability. Some of them even referred to investigate studies to loan validity to these messages. Among the "fixes" featured were advantages of lemon, tea, washing with heated water and salt, to anti-inflammatory medicine, etc. In the course of the last one month, India has been managing messages and claims about conventions of lockdown laid by WHO. One such case was about an order on when not to venture out in light of the fact that the infection allegedly has greatest power and can affect anybody. In India, counterfeit news about the augmentation of lockdown was spread before the authority declaration of each lockdown. This prompted alarm purchasing, storing of family items, and food supplies. Besides, messages and web-based media posts being circled these days are attributing data to government workplaces, strategy



papers, or establishments like WHO to acquire believability while proceeding to misdirect individuals in without a doubt.

KEY FINDINGS:

Media opportunity has been weakening all throughout the world over the previous decade. In the absolute most powerful democracies in the existing country, libertarian pioneers have managed coordinated endeavours to choke the autonomy of the media area. While the dangers to worldwide media opportunity are genuine and worried by their own doing, their effect on the condition of majority rules system is the thing that makes them really perilous. Experience has shown, nonetheless, that press opportunity can bounce back from even extended spells of constraint whenever offered the chance. The essential longing for majority rule freedoms, including admittance to fair and truth based news-casting, can never be quenched. Fake news is voyaging a lot quicker than the Covid in India. Indeed, even before the nation announced its first case on 30 January, India's online media was overflowing with counterfeit posts, wild tales, paranoid notions, doctored recordings about the sickness' starting point, its ensuing spread and potential cures. When the nation began announcing more cases, a deluge of phony messages started populating all significant web-based media stages, especially Facebook, WhatsApp, Twitter, TikTok, etc. The fake news encompassing the beginning of the virus, its ensuing spread and dangers it presents have almost immersed the country, in spite of the fact that with shifted force. The emergency of fake news is significantly more serious in India to a great extent in view of the nation's quickly developing online media base and messy guideline of web-based media stages. With however much 376 million individuals utilizing a wide range of online media stages, India is on the radar of most web-based media organizations with a quickly developing web base. Be that as it may, contrasted with numerous nations, an enormous number of Indians are more helpless to counterfeit news and disinformation crusades. Doctored recordings and phony messages are regularly flowed through famous stages like WhatsApp and TikTok, now and again setting off common pressures, instances of lynching and negative generalizing of people, explicit gatherings and networks. In any case, many would not have envisioned phony news turning into a significant danger in the hour of hazardous pandemic. However, this has become the same old thing in India.



CONCLUSION:

Fundamental and rudimentary Rights are the spirit of the country. The right to Speech and Expression ensured under Article 19 of the Constitution is the rule that keeps the soul of democracy based system in India alive. Execution of laws is fundamental in the pandemic; be that as it may, absolutism is not what is generally anticipated. The Doctrine of Proportionality should be kept up with by maintaining the Freedom of Speech and Expression and exposing the citizens to sensible limitations. In this paper, the researcher has featured the potential damage that the spread of disinformation and falsehood can cause. It has the ability to support existing divisions and to move outlandish apprehensions and frenzy inside social orders. During the COVID-19 wellbeing emergency, disinformation also, deception has been utilized in online disdain discourse against specific gatherings and has essentially added to the manner of speaking of social disgrace.

Inadequate access to objective data about the COVID-19 pandemic creates space for the misleading and inaccurate information that some governments abuse to further their political objectives and push through oppressive measures, while deepening social stigmatization of vulnerable groups based on myths and fabricated stories. Meanwhile hastily crafted responses to disinformation and misinformation, especially those based in the over-broad criminalization of speech, can serve to suppress objective journalism and scientific information, either intentionally or as a by-product of a flawed approach. To protect public health and the health of our democracies moving forward, governments must align approaches for addressing disinformation and misinformation with international human rights obligations and bulwark the rule of law.