14th Justice V.M. Tarkunde Memorial Lecture

Hon'ble Dr Justice Dr DY Chandrachud

Chief Justice of India

Upholding Civil Liberties in the Digital Age: Privacy, Surveillance and Free Speech

1. Good evening, Justice Madan B. Lokur, Mr Ejaz Maqbool, Mr Raju Ramachandran, Mrs. Manik Karanjawala. I extend my warm greetings to each one of you present in the audience. It is my distinct honour to deliver the 14th Justice VM Tarkunde Memorial Lecture. The previous thirteen speakers who graced this platform with their wisdom and insights are eminent public intellectuals – individuals I deeply respect and admire.

2. Justice Tarkunde was a man I had the pleasure of not just interacting with and briefing as a lawyer, but also looking up to as a legal luminary. His dedication to civil liberties inspired me as a young lawyer and continues to inspire me as I serve as a judge of a constitutional court. That Justice Tarkunde is regarded as the 'Father of the Civil Rights Movement' is no surprise. In every role he donned – as a senior advocate, High Court judge, and activist – he was steadfast in his commitment to democracy, radical humanism, and civil liberty.

3. As a member of the bar, I had the unparalleled honour of briefing Justice Tarkunde on a variety of cases, including *Sodan Singh v. New Delhi Municipal Committee*,[1] a dispute about the right of pavement hawkers in New Delhi to carry on their occupation. Each time I briefed this extraordinary man, I left his chamber with new insights and a fresh perspective of the law. His range of legal knowledge, foresight, and ability to ground legal issues in their larger social context was nothing short of remarkable.

4. In addition to his legal acumen and deftness, Justice Tarkunde was an iconoclast - in the true sense of the term. Professor Shamnad Basheer, an illustrious scholar who was an ardent advocate of privacy and digital rights, the theme of today's lecture, described the term 'iconoclasm' as "*A streak that challenges established wisdom time and again; a streak that refuses to stoop to the powers that be; a streak that thinks nothing of being attacked for attacking cherished beliefs!*"[2]

5. Throughout his life, Justice Tarkunde challenged established wisdom about his professional career and refused to stoop to the metaphorical "powers that be". Justice Tarkunde served as a political worker, followed by a legal practitioner, a Judge of the Bombay High Court and finally, went back to legal practice again. Justice Tarkunde was an ardent advocate of M.N.

[1] (1989) 4 SCC 155.
[2] Shamnad Basheer, *Igniting Iconoclasm*, Round the Clock Magazine (2014).

Roy's philosophy of 'radical humanism' that sought a balance between revolutionary change and humanistic values. He founded the Indian Radical Humanist Association and was also an editor of the Radical Humanist – a weekly journal. M. N. Roy conceptualized 'radical humanism' with the belief that "*freedom is the supreme value because the urge for freedom is the essence of human existence*." He aimed to create a society that values individual freedom, social justice and scientific inquiry while recognizing the dignity and potential of every individual. Justice Tarkunde, in no uncertain terms, exemplified this ideology throughout his life and work.

6. In 1974, in collaboration with Mr Jayaprakash Narayan, Justice Tarkunde started an organization called Citizens for Democracy (CFD) to defend and strengthen democracy in India. In 1976, during the period of emergency, he formed one of India's oldest civil liberties organizations called the People's Union of Civil Liberties (PUCL), setting the stage for India's deep traditions of civil liberties activism that continue to date.

7. No book, academic article or chronicle of the internal emergency imposed in the 1970s is complete without a reference to Justice Tarkunde's spirited defence of personal liberty and democracy, both inside and outside the courtroom. Legal luminaries have hailed the courage of Justice Tarkunde, for standing his ground against the internal emergency declared in the country. During this period, Justice Tarkunde played a significant role in defending civil liberties. He took up numerous cases related to punitive

detentions under the Maintenance of Internal Security Act (**MISA**), jail conditions of the detenues, and freedom of the press. At the time, there were very few advocates who were willing to do this work. Importantly, Mr Tarkunde took up these cases without charging any fees. One of the first legal victories during this period was the release of Mr Kuldip Nayyar, a journalist with the Indian Express, who was detained under the MISA. Mr Tarkunde argued the habeas corpus petition before the Delhi High Court and successfully got relief for Mr Nayyar. Even outside the courtroom, Mr Tarkunde was a vociferous critic of the emergency and wrote several articles that inspired the challenge to the emergency.[3]

8. That Justice Tarkunde has been at the cornerstone of India's older traditions of civil liberties activism is uncontested. Justice Tarkunde, unfortunately, passed away in 2004, when the digital age in India was relatively nascent. Today, however, there are emerging initiatives and civil society groups that aim to tackle issues such as online censorship, mass surveillance and internet shutdowns. These initiatives run advocacy campaigns, both inside and outside the courtroom. They represent a contemporary form of protest and activism, which is rooted in Justice Tarkunde's tradition of safeguarding citizens' liberties. In many ways, the 'digital liberties activism' of today's internet age is a way of upholding the pre-existing traditions of civil liberties activism – a new wine in an old bottle.

[3] A.G. Noorani, *The Judiciary and the Bar in India during the Emergency*, Law and Politics in Africa, Asia and Latin America, 1978, Vol. 11, No. 4 (1978), pp. 403-410.

9. The core emphasis of the civil liberties movement that Justice Tarkunde championed is mirrored by digital rights activism today. The aim is to curb the abuse of state power and create a space for dissent and democracy to prosper. Not only are the aims of digital activism similar, but they share a deep-rooted bond on the ground as well.[4] The People's Union for Civil Liberties – PUCL – one of the oldest civil liberties organizations in the country, with whom Justice Tarkunde was closely associated during his lifetime, secured one of the first landmark decisions of the Supreme Court regarding online censorship. PUCL petitioned the court for the repeal of Section 66A of the Information Technology Act, 2000 to safeguard the expression of dissent online. The provision criminalized what was termed as "offensive speech" on the internet and was being widely used by various governments to stifle voices of opposition. Ultimately, the Supreme Court, in ***Shreya Singhal v. Union of India*** authored by Justice Nariman, invalidated the provision and set the stage for legal activism in the digital space.[5]

10. In the movie 'The Social Network,' the character portraying Sean Parker, the first president of the social media platform Facebook, famously said, *'We lived on farms, then we lived in cities, and now we're going to live on the internet!'* As we strive to uphold the legacy of Justice Tarkunde today, it

[4] Ankita Pandey, *Defending Digital Liberties: Changing Contours of an Old New Civic Activism*, Economic and Political Weekly (Engage), Vol. 58, Issue No. 40, 07 Oct, 2023.
[5] *Shreya Singhal v. Union Of India,* AIR 2015 SC 1523.

would be fitting to explore a theme that, while beyond his lifetime, his philosophy continues to steer. Indeed, discussing a theme that contemplates the future aligns with honouring the legacy of a man who was ahead of his times.

11. Today, I will speak on the topic '*Upholding Civil Liberties in the Digital Age: Privacy, Surveillance and Free* Speech'. I will engage with the discussions around privacy, exploring how a society transitioning into the digital age can strike the delicate balance between progress and the right to privacy. To this effect, I will locate privacy in its historical context, lay down an overview of Indian and global jurisprudence on digital privacy, and the interplay between mass surveillance and privacy. Finally, I will address the unique theoretical challenges that the right to free speech and expression poses in the context of the Internet.

12. In this ever-evolving digital era, the preservation of civil liberties has transcended the confines of mere legalities; it has emerged as the very essence of our democratic ethos. This crucial juncture demands a delicate equilibrium between privacy, surveillance, and free speech, especially in the vibrant tapestry of India, where the implications hold profound significance.

13. India's journey through the corridors of the digital realm resonates with the indomitable spirit portrayed in the Bollywood blockbuster "3 Idiots." I would

like to reminisce about the scene where the protagonists find themselves faced with the unexpected challenge of assisting a woman in labour, stranded in a remote location with no immediate access to medical help. In this raw and vulnerable moment, the characters showcase not only wit and ingenuity but also a deep resilience in the face of adversity. This scene serves as a metaphor for India's journey in the digital realm – a nation faced with unforeseen challenges yet exhibiting a collective spirit to adapt, innovate, and triumph. Just as the characters in "3 Idiots" ingeniously work together to bring new life into the world, India, too, is birthing a new era – one defined by technological innovation, connectivity, and an unwavering spirit to overcome hurdles.

14. From the bustling streets of Mumbai to the tranquil landscapes of rural India, we see stories of ordinary individuals from various walks of life embracing UPI for seamless transactions. It is not just street vendors; it is the homemaker in Kanpur purchasing groceries, the small-town artisan selling handmade crafts in Madurai, and the tech-savvy college student ordering a meal online in Pune – all contributing to the democratization of financial access. This adoption of digital payment solutions resonates far beyond a specific demographic; it underscores the pervasive impact of technology in reshaping how we engage in commerce, transcending geographical and socioeconomic boundaries.

15. In witnessing this widespread integration of digital tools into the fabric of everyday life, we find ourselves at the nexus of progress and a critical juncture where the very essence of individual privacy comes into focus. As we navigate this digital landscape, where financial transactions seamlessly traverse our devices, questions arise about the safeguarding of our personal information. The narratives of convenience and accessibility converge but this cannot be detached from the necessity to protect the sanctity of individual privacy. Privacy, in the digital age, is not just a matter of data protection; it's a fundamental right that we must actively champion. The stories of individuals navigating the digital realm, from rural artisans to urban professionals, highlight the myriad ways in which personal data becomes intertwined with our daily interactions.

16. As we delve into the complexities of privacy concerns, it's essential to recognize that the digital era is a realm where information is both currency and vulnerability. The same technology that facilitates seamless transactions and connects us across distances also opens avenues for potential exploitation. It beckons us to reflect on how we can harness the benefits of a digitized society while safeguarding the very essence of what makes us individuals – our autonomy, personal narratives, and the right to control the narrative of our lives.

17. The profound insights of Warren and Brandeis in their article titled "Right to Privacy" in the Harvard Law Review, resonate with the contemporary,

globalized world shaped by the dominance of the internet and information technology. They argue that the principle protecting personal writings and other personal productions is not merely a safeguard against theft and physical appropriation, but an affirmation of an inviolate personality.[6] This embodies a core tenet of freedom and liberty – an assertion of the inviolable nature of the human personality. The technology that initially prompted the need for privacy preservation, photography, served as a catalyst for articulating the right to be free from intrusion. Warren and Brandeis' reflections on the impact of technology remain prescient, especially in an age dominated by the internet, where the boundaries of privacy are continuously redefined.

18. While contemporary accounts often attribute the modern conception of the 'right to privacy' to Warren and Brandeis, history points to Thomas Cooley, who, in his Treatise on the Law of Torts, employed the phrase "the right to be let alone." Cooley, in discussing personal immunity, underscored the right of an individual as one of complete immunity – a right to be alone.[7] This historical context emphasizes the enduring nature of the concept and its evolution over time.

19. Privacy, as understood through this lens, emerges as a natural right – an inherent aspect of an individual's control over their personality. Rooted in

[6] Warren and Brandeis, "*The Right to Privacy*", Harvard Law Review (1890), Vol.4, No. 5.
[7] Thomas Cooley, *Treatise on the Law of Torts*, 2nd Edition (1888).

the belief that certain rights are natural and inseparable from the human personality, privacy becomes a fundamental and inalienable aspect of life. John Locke's observations in the 17th century, asserting that the lives, liberties, and estates of individuals are a private preserve by natural law, set the stage for the concept of a private preserve-creating barrier against external interference. William Blackstone, in 1765, further articulated the concept of "natural liberty," identifying absolute rights vested in the individual by the immutable laws of nature. These absolute rights, categorized into personal security, personal liberty, and property, emphasized the legal and uninterrupted enjoyment of life, limbs, body, health, and reputation – an early acknowledgement of the multifaceted nature of privacy.

20. As we navigate the complexities of a digital age, these historical perspectives on privacy as a natural right remind us that the preservation of individual autonomy and the sanctity of the human personality are enduring principles that transcend time and technological evolution.

21. The intricate interplay between surveillance by the state and an individual's right to privacy has been a subject of compelling debate within Indian jurisprudence. The first case that dealt with privacy was ***R Rajagopal vs State of Tamil Nadu***. The court determined that a magazine possessed the right to publish an autobiography penned by a prisoner, even in the absence of the prisoner's consent or authorization. Despite efforts by prison officials to

hinder the publication by compelling the prisoner to request its non-publication, the court underscored the need to maintain a delicate equilibrium between press freedom and the right to privacy. The Court concluded that the state and its officials lacked the authority to impose prior restraints on materials that could potentially defame the State.

22. In the landmark case of ***People's Union for Civil Liberties v. Union of India***,[8] the court unequivocally held that telephone tapping infringes the guarantee of free speech and expression under Article 19(1)(a) unless authorized by Article 19(2). Drawing from international legal instruments, the judgment emphasized the protection of privacy under Article 17 of the International Covenant on Civil and Political Rights. This protection, the court asserted, must serve as an interpretative tool for construing the provisions of the Indian Constitution. The judgment in ***PUCL*** is significant not only for its stance on telephone tapping but also for its construction of the right to privacy as a constitutionally protected right. This interconnected interpretation recognized that wiretapping infringes privacy and, by extension, other fundamental rights.

23. The evolution of the right to privacy reached a watershed moment in 2017 with the judgment in ***KS Puttaswamy v. Union of India***.[9] The Supreme Court recognized privacy as an expansive right covering not only physical

[8] AIR 1997 SC 568.
[9] (2017) 10 SCC 1.

invasion but also the realm of the mind, decisions, choices, and information. The Court overruled earlier judgments in ***M.P. Sharma*** and ***Kharak Singh***, firmly establishing the right to privacy as a fundamental right. While acknowledging that the right to privacy is not absolute, the judgment delineated a stringent standard of judicial review for cases of state intrusion, emphasizing the principles of legality, need, proportionality, and procedural guarantees against abuse.

24. In navigating the complex terrain of privacy and state surveillance, Indian jurisprudence has continually grappled with striking a balance between individual rights and legitimate state interests. The nuanced approach taken by the courts reflects an evolving understanding of privacy as a dynamic and multifaceted right, adapting to the challenges posed by advancements in technology and the expansive reach of state actions. For instance, India and Sweden, despite their geographical and cultural differences, find themselves grappling with similar privacy concerns in the digital age. In India, the debate around the implementation of Aadhaar, a biometric identification system, raised questions about the balance between individual privacy and the state's interest in ensuring efficient service delivery. Similarly, Sweden's population registry system has raised similar concerns, as it consolidates vast amounts of personal data.

25. In our exploration of the intricate dance between privacy and state surveillance, it's imperative to broaden our lens and glean insights from

international jurisprudence. Three striking cases from the Supreme Court of Estonia, the South African Constitutional Court, and the European Court of Human Rights (ECHR) underscore the global struggle to safeguard individual privacy in the face of advancing surveillance technologies.

26. In a case heard by the Supreme Court of Estonia, the court articulated a crucial principle that as the invasion of privacy intensifies, oversight measures must be correspondingly detailed and effective. The case dealt with the covert surveillance authorized by the codes of criminal procedure in Estonia. The Court, recognizing the intensive violation of fundamental rights with covert surveillance, underscored the need for an oversight mechanism. It deemed the absence of such oversight as rendering a specific provision of the CCPIA unconstitutional.

27. A few years later, the South African Constitutional Court, in the landmark case of ***Amabhungane Centre for Investigative Journalism v. Minister of Justice and Minister of Police***,[10] delivered a judgment against the Regulation of Interception of Communications and Provision of Communication-Related Information Act, 2002 (RICA). This legislation, governing interceptions of communications, faced constitutional scrutiny as it lacked crucial safeguards to protect the right to privacy. A journalist, upon discovering that his communications had been intercepted,

[10] [2021] ZACC 3.

challenged the law alongside an investigative journalism centre. The Court's unequivocal declaration that elements of RICA were unconstitutional emphasized the critical need for oversight and accountability. The court noted that the veil of secrecy shrouding the interception regime hindered any challenge to surveillance orders, escalating the risk of abuse and violating the right to privacy.

28. Turning our gaze to the European Court of Human Rights (ECHR), the case of ***Big Brother Watch and Others v. The United Kingdom***[11] engaged with the intersection of electronic surveillance programs and fundamental human rights. The Grand Chamber of the ECHR found sections of the UK's Regulation of Investigatory Powers Act (RIPA) to be in violation of the European Convention on Human Rights. The case scrutinized electronic surveillance programs operated by the Government Communications Headquarters, highlighting deficiencies in authorization and oversight. The Court's judgment underscored the necessity for robust safeguards, emphasizing that the absence of such safeguards violated the Convention's guarantees of privacy and freedom of expression. These rulings serve as illustrations of nations grappling with the delicate balance between state surveillance and individual rights, asserting the paramount importance of robust legal frameworks with built-in safeguards.

[11] Applications Nos. 58170/13, 62322/14 and 24960/15.

29. In examining various international perspectives on privacy and state intrusion, it becomes evident that the struggle to protect privacy is a global endeavour. Courts worldwide grapple with challenges posed by technological advancements, highlighting the crucial need for legal frameworks prioritizing accountability, transparency, and the fundamental right to privacy. Drawing from this global perspective, I will now explore specific facets of privacy infringement, beginning with Facial Recognition Technology (FRT).

30. Facial Recognition Technology (FRT) represents a marvel of technological innovation, but its application raises significant privacy and discrimination concerns.[12] It is often contended that the right to privacy is "a privilege of the few" and an individual must make a choice between the right to privacy and the welfare entitlements provided by the State. Studies reveal inherent biases within FRT algorithms, especially in identifying darker-skinned women, ethnic minorities, and transgender individuals. For instance, a study by the MIT Media Lab found higher error rates for darker-skinned females in commercial FRT systems. [13] These inaccuracies gain significance when integrated into the criminal justice system, disproportionately affecting vulnerable groups. The COVID-19 pandemic accentuated these concerns with controversies surrounding FRT's use in health data management.

[12] Anushka Jain, *#PrivacyofthePeople: The boom of facial recognition technology in private spaces*, Internet Freedom Foundation (31 August 2022).
[13] Larry Hardesty, Study finds gender and skin-type bias in commercial artificial-intelligence systems, MIT News (11 February 2018).

Therefore, I would like to dispel the claim that economic status and access to welfare entitlements are more important than civil and political rights for socio-economically disadvantaged communities. All individuals, regardless of their socio-economic status are deeply impacted by violations of the right to privacy, autonomy, and intimacy.

31. In the realm of Artificial Intelligence, we find that the unchecked algorithms used by tech giants compound privacy concerns. The movie- "Minority Report," directed by Steven Spielberg envisions a future where a specialized police department apprehends criminals based on foreknowledge provided by three psychics called "precogs." The movie raises ethical questions about the potential misuse of predictive technologies, illustrating a dystopian society where privacy is virtually non-existent. The precognitive nature of AI depicted in the film poses profound dangers to personal privacy, as individuals are targeted for crimes they have not yet committed, challenging the very fabric of autonomy and individual rights.

32. The dual nature of technology is apparent as a catalyst for progress harbouring inherent privacy risks. Surveillance analytics, despite its benefits in healthcare and crime prevention, prompts substantial privacy concerns. Practices such as web cookies and social media data harvesting have raised alarm bells. The GDPR implemented by the European Union sets a global standard, prioritizing individual privacy rights. However, debates persist, exemplified by conflicts between the US government and tech

companies like Apple over encrypted data access, highlighting the security versus privacy conundrum.

33. The ***Puttaswamy*** judgment introduced a stringent proportionality test, yet its operational complexities pose challenges, particularly in evaluating modern surveillance programs. Examining the constitutionality of global surveillance programs reveals significant challenges due to limited information on their operational aspects. The lack of clarity hampers comprehensive evaluations of their adherence to constitutional standards. A collaborative effort between policymakers, technology companies, and informed citizens is imperative. Robust oversight mechanisms, stringent authorization protocols, and increased public awareness, without compromising ongoing investigations, constitute the way forward.[14]

34. A pertinent example is the UK's Investigatory Powers Tribunal, which functions as a judicial body overseeing surveillance activities, ensuring compliance with legal standards, and protecting individual rights. The delicate equilibrium between technological progress and privacy preservation mandates a careful, synergistic approach. It necessitates legislative precision, transparent oversight, and an informed populace to ensure that technological strides do not come at the cost of fundamental rights.

[14] Jhalak Kakkar et al., *The Surveillance Law Landscape in India and the impact of Puttaswamy*, Centre for Communication Governance (2023).

35. Finally, the last aspect of civil liberties in the digital age that I seek to address is upholding the constitutionally protected right of free speech on the internet. Here, the traditional understanding of civil liberties can be distinguished from digital rights activism in two major ways. *Firstly,* the unprecedented proliferation of disinformation and hate speech on the internet has offered a serious challenge to the traditional ways of understanding free speech in a democracy. *Secondly,* in traditional civil rights activism, there was a classic state-activist-corporation relationship which played out in most struggles. Today, however, large social media corporations don't play the stereotypical role of being an entity that needs to be constrained or viewed as complicit with the state.

36. When it comes to content moderation of online speech, there is a complex moral dilemma that arises in attempting to balance two key values: (1) the upholding of freedom of expression and (2) the prevention of harm caused by misinformation. There has been a plethora of discussion in recent times about the consequences of disinformation, the need for a regulatory mechanism and the free-speech concerns raised by such legislation or policies. Most criticisms of global 'anti-fake news' legislation are based on concerns that such legislation is overbroad and prone to misuse, thus, restricting legitimate speech as well. Such issues about how to define disinformation and prevent selective misuse are essential, however, they put the cart before the horse.

37. All liberal democracies purport to protect the right to 'free speech and expression' - however, what remains contested is the application of this principle to concrete situations. The presence of laws against, *inter alia,* defamation, incitement to violence and contempt of court indicate that the free-speech protection does not extend to all acts of communication. In deciding the contours of this protection, therefore, courts and lawmakers are applying a certain theoretical understanding of free speech. Where can disinformation be located in these theories?

38. Before getting into the nitty-gritty details of how to tackle disinformation, we must ask ourselves a more fundamental question - is disinformation protected by traditional free speech theories and constitutional jurisprudence under Article 19 of the Indian Constitution? I believe that demonstrably false facts are not protected by traditional free speech theories.

39. The most oft-quoted theory of free speech is the concept of a 'marketplace of ideas', that has found its way into Indian jurisprudence from the First Amendment in the United States. The Supreme Court has relied on this understanding of free speech in several landmark cases like ***Shreya Singhal*** and ***Bennett Coleman***.[15] This theory of free speech, which can be traced

[15] *Shreya Singhal v. Union of India, Supreme Court of India*, AIR 2015 SC 1523; *Bennett Coleman v. Union of India, Supreme Court of India*, (1973) 2 S.C.R 757.

from Justice Holmes' dissent in ***Abrams v. United States***[16] is based on the frictionless exchange of ideas. It postulates the concept that just like a free market of goods, where consumer demand helps the best products rise to the top, a democratic public sphere with the free exchange of ideas will let the best ideas prevail. The usual presumption, therefore, is that under this theory, disinformation is a part of the marketplace of ideas and the only way to counter it is with more speech.

40. However, several scholars like Ari Waldman argue that false facts are not a part of this 'marketplace of ideas'. The marketplace can only exist when there is agreement on the veracity of basic facts. There is no marketplace of facts. In fact, the goal of fake news is to create one, to erode the stability of foundational elements of society—namely, truth. In this way, tolerating the proliferation of fake news erodes the free and open debate that democracy intends to protect. If we cannot agree on the veracity of basic facts, debate stops, partisanship hardens, and social solidarity breaks down.[17]

41. A study conducted by the Massachusetts Institute of Technology, which studied 126,000 false stories on social media, found that false news spreads faster, deeper, and wider than the truth in all informational categories. These false stories were retweeted from 3 million accounts approximately

[16] 250 U.S. 616.
[17] Waldman, A, *The Marketplace of Fake News*, 20 U. Pa. J. Const. L. 845 (2018).

4.5 million times.[18] Simply by virtue of the scale of dissemination, fake news drowns out true information, replacing the character of discourse from truth-seeking to the loudest voice. Disinformation therefore has the power of impairing democratic discourse forever, pushing a marketplace of free ideas to the point of collapse under the immense weight of fake stories. A cursory glance at the newspaper every day will bring to the fore instances of communal and vigilante violence fueled by fake rumours and targeted disinformation campaigns. Across the globe – be it Libya, the Philippines, Germany, or the United States – elections and civil society have been tarnished by the proliferation of fake news.

42. The purpose of the metaphor a 'marketplace of ideas' was to promote an exchange of ideas premised on the agreement of basic facts. Justice Holmes' dissent was in the context of persecuting anti-war activists for their speech - thus, what was being freely exchanged was radical 'ideas' about existing facts and not the veracity of the facts themselves. For example, whether a religious site was desecrated or not; whether a speech was **actually** delivered; whether COVID-19 is caused by a virus or bacteria are all facts and not ideas or opinions, with many possible answers. I remember that while the country was faced with the tragic COVID-19 pandemic, the internet was rife with the most outrageous fake news and rumours – a source

[18] Vasoughi, S., Roy, D., & Aral, S., *The spread of true and false news online.* MIT Media Lab - Science, 359(63) (2018).

of comic relief in difficult times, but also forcing us to re-think the limits of free speech on the internet.

43. Traditionally, freedom of speech and expression was deemed to be an essential part of civil rights activism because of the fear that the government would prevent certain kinds of speech from entering the marketplace. With the advent of troll armies and organized disinformation campaigns across different social media platforms, the fear is that there is an overwhelming barrage of speech that distorts the truth. This 'epistemological battle' of sorts was explained eloquently in the New York Times, "*the spewing of falsehoods isn't meant to win any battle of ideas. Its goal is to prevent the actual battle from being fought.*"[19] Therefore, we cannot fall back on traditional notions of free speech and must find new theoretical frameworks to locate free speech on the internet.

44. The second point of distinction lies in the rupture of the traditional state-activist-corporation relationship. Civil rights activists no longer place the corporation within the traditional box of an entity whose power is to be restricted. In fact, to the contrary, they rely on social media corporations such as Facebook, Twitter, and YouTube to expand their freedom of speech and expression, often in opposition to the government.

[19] Bazelon, E., *The Problem of Free Speech in an Age of Disinformation*., The New York Times (2020).

45. In her article, *Defending Digital Liberties: The Changing Contours of an Old New Civic Activism,* Ankita Pandey argues that in the past, civil liberties activists had clearly defined battles. They opposed the government-corporate alliance that allowed corporations to breach certain standards in the name of progress. From the perspective of many civil rights activists, the political arena was sharply divided - government and private capital were on one side, while people and activists were on the other. Today, however, digital rights activism is intertwined with private platforms in an unprecedented way. Digital liberties are being fought for in a public space that is privately owned. Those looking for a form of resistance, unsullied by the presence of private capital, chase a nostalgic illusion today more than ever before. The basic principles of liberal and socialist politics remain the same—liberty, equality, and justice—but they are being fought for in a new space and conducted via a new privately owned medium that transforms the character of the activism itself.

46. However, there is a flip side to adopting privately owned platforms as the medium for dissent, activism, and expression of free speech. With corporations wielding such immense power, there is an immense amount of trust placed on them to act as the arbiters of acceptable and unacceptable speech – a role that was earlier played by the state itself. This can have disastrous effects. It has been widely reported and recognized by the United Nations that social media was used as a tool for ethnic cleansing in Myanmar by the military and members of civil society.

Unlike state actors who are held accountable by the Constitution and the electorate, social media platforms are relatively unregulated. This is another novel challenge that digital liberties activists have to find unique solutions to.

47. In conclusion, while digital liberties activism, including the protection of privacy and free speech, has gained currency at an unprecedented pace, we are still in an early period of theorizing on it. The civil liberties movement, led by luminaries like Justice Tarkunde, acted as the precursor to a larger narrative – a narrative of digital rights. The very principles he ardently upheld are the guiding lights that beckon us in this era of digital transformation. This transformation is not just about technology, it is about the people and their rights. The torch that Justice Tarkunde carried for justice now illuminates our path towards safeguarding digital freedoms- ensuring that as we traverse through this landscape, we do so with the commitment to upholding the basic values of justice, equality, and freedom. After all, as the world moves online, our battles to uphold civil liberty must also follow suit.