

JUSTICE MC CHAGLA MEMORIAL LECTURE 2021

“Speaking Truth to Power: Citizens and the Law”

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It is an honour for me to have been invited to speak at this lecture organised in the memory of one of the greatest legal minds India has ever witnessed – Justice Mohammadali Carim Chagla. In no uncertain terms, Justice Chagla has profoundly influenced and impacted the development of law and protection of civil liberties in India. He donned many diverse roles during his lifetime, among them being that of a lawyer, judge, jurist, diplomat, and Cabinet Minister. After studying at the University of Oxford, he joined the Bombay Bar in 1922 and practised as a lawyer for 19 years in the High Court of Bombay before he was appointed as a Judge, and subsequently the Chief Justice of the Bombay High Court. Though he received an offer for appointment as a Judge of the Supreme Court of India, he let the offer pass since he believed that he would be able to initiate more changes as the Chief Justice of a High Court than he ever would be able to as a *puisne* judge of the Supreme Court. After his retirement, he served as an *ad-hoc* judge in the International Court of Justice, India’s ambassador to the United States and United Kingdom, before taking oath as a Cabinet Minister, taking on the portfolio of Education and then External Affairs. Only a few others could possibly come close to the diversity of roles Chief Justice Chagla took on and yet, unsurprisingly, he managed to excel in each of them.

Through all the various roles that he donned during his lifetime, he consistently upheld the rule of law, maintained an unbending faith in democracy and advocated his belief in civil liberties. He staunchly spoke against the discrimination of Indians in South Africa; similarly, his voice was one of the most vocal when the national emergency was imposed in India. Right at the beginning of the Emergency, addressing a gathering at the All India Civil Liberties Conference, he said, "*I would rather have the Constitution abrogated than to pretend that she [referring to Mrs Indira Gandhi] is constitution, she is democratic and all that she has done is permitted by the Constitution. This is Constitutional dictatorship*"¹. In his autobiography, *Roses in December*, he defends the individuality of every citizen and states that he was opposed to the prohibition policy of the Government and that "*it was no business of any Government to tell the people what they should drink and what they should not drink*"².

When the development of constitutional jurisprudence was in its nascent stage in India, Justice Chagla rested his interpretation of the Constitution on the principles of constitutional morality and constitutionalism. He believed that for the survival of a pluralistic society, it was important that the individual, irrespective of their social status or social class, is placed at the core of society. Speaking about Justice Chagla after his retirement from the Bombay High Court, Mr Nani Palkhivala had said "[t]he law was to him no lifeless conglomeration of sections and decisions. He illumined justice and humanised the law"³. Similarly, my father Chief Justice YV Chandrachud, noted his contribution to the development of our young Constitution

¹ MC Chagla, *Roses in December* (1973, K.V Gopalakrishnan Printers) pg 561

² *Ibid*, pg154

³ *Ibid*, pg 548

and stated that his “*innate sense of what is just and fair and the liberality of [his] social outlook enabled [him] to hold the scales of justice even between the rule of law and the liberty of the individual*”⁴.

Justice Chagla believed that even though Judges should not speak about certain political issues, they have a moral obligation to speak on others, as citizens of India⁵. Hence, it is an absolute honour for me to be delivering this lecture today in the memory of Justice Chagla not only as a Judge of the Supreme Court of India but also as a citizen of India.

Coming to the topic I have chosen for today – it is important to first ask ourselves what does “speaking truth to power” even mean? Defined in ancient Greek tradition as *parrhesia*, it refers to an act by a speaker to use truth to criticize someone more powerful than them⁶. In India, it would be akin to Mahatma Gandhi’s philosophy of *satyagraha*, where truth is used as a form of non-violent resistance to those in power⁷. As such, “speaking truth to power” aims to wield the power of “truth” against the powerful, be it an imperial power or even an all-powerful State. Crucially, the assumption is that the act of speaking the “truth” will counter-act power, and obviate a predisposition towards tyranny.

At the outset then, it is important to consider why “truth” is so important to democracy, which is the form of governance adopted in order to prevent the

⁴ *Ibid*, pg 540

⁵ *Ibid*, pgs 153-154

⁶ Michel Foucault, “Discourse and Truth: the Problematization of Parrhesia” 6 lectures at University of California at Berkeley, CA, Oct-Nov 1983 available at <<https://foucault.info/parrhesia/>> accessed on 27 August 2021

⁷ John Kenneth Galbraith, *The Anatomy of Power* (1983, Houghton-Mifflin Trade and Reference) pg 80

tyranny of the few. There is possibly no better way to do this, other than by first comparing the status of “truth” in non-democracies.

In the Enlightenment Era in Europe, philosophers sought to challenge the domination of the Catholic Church and Monarchies in public life because of their control over the “truth”. Hence, the Renaissance was not merely a literary and artistic revolution but was also supposed to usher in an age where superstitions and dogma would give way to reason and evidence based upon actual truth⁸. Similarly, philosopher Hannah Arendt associated totalitarian governments with their constant reliance on falsehood in order to establish dominance. She notes that this was so brazen, that people often lost a bearing of their own self in these States, and living the actual “truth” in itself became a political act⁹.

Even in early republics which served as precursors to democracies, truth was considered crucial in order to ensure the ethos of transparency and openness in the way of functioning¹⁰. Similarly, truth is important in modern democracies which have been described as “spaces of reason”, since any decision must be backed by adequate reasons and because a reason which is based upon a falsehood would be no reason at all¹¹. Truth is also important to instil a sense of public trust in democracies, that the officials in-charge are committed to finding the “truth” and

⁸ Sophia Rosenfeld, *Democracy and the Truth: A Short History*, (2018, University of Pennsylvania Press)

⁹ Hannah Arendt, “Truth and Politics” (17 February 1967, *The New Yorker*) available at <<https://www.newyorker.com/magazine/1967/02/25/truth-and-politics>> accessed on 27 August 2021

¹⁰ *Supra* at note 8

¹¹ Michael P. Lynch, “Democracy as a Space of Reasons” in Jeremy Elkins and Andrew Norris (eds.), *Truth and Democracy* (2012, University of Pennsylvania Press) pg 115

acting in accordance with it¹². Hence, it is no surprise that the national motto of India after its independence has been “*Satyamev Jayate*” or “Truth Shall Prevail”.

Truth also plays an important role in creating a shared “public memory” upon which the foundations of a nation can be built in the future. It is because of this reason that many countries opt to establish Truth Commissions immediately upon gaining independence from a totalitarian regime or after coming out of a period fraught with human rights violations. These Commissions function to document, record and acknowledge the “truth” of earlier regimes and violations for future generations, so as to not only provide catharsis to the survivors but also prevent any possibility of denial in the future¹³. In a different context, this role can also be played by Courts which have the ability to document information from all the parties involved, after due process has been followed. In the *suo motu* cognizance of the COVID-19 pandemic taken by our Supreme Court, we have acknowledged this very role in the context of the pandemic¹⁴.

However, the relationship that truth shares with democracy is that of both a sword and a shield. The scope for extensive deliberation, particularly in the age of social media, exposes multiple “truths” so much so that it seems like we live in an “age of lies”, and that shakes the very foundation of a democracy. The citizens should arrive at a consensus on at least the basic facts that are backed by both science and society to form collective decisions. Hence, if deliberations are censored by

¹² William A. Galston, “Truth and Democracy: Theme and Variations” in Jeremy Elkins and Andrew Norris (eds.), *Truth and Democracy* (2012, University of Pennsylvania Press) pg 130

¹³ Audrey R Chapman and Patrick Ball, 'The Truth of Truth Commissions: Comparative Lessons from Haiti, South Africa, and Guatemala' (2001) 23 Human Rights Quarterly 1

¹⁴ *In Re: Distribution of Essential Supplies and Services During Pandemic*, *Suo Motu Writ Petition (Civil) No 3 of 2021*, Order dated 30 April 2021

the State or if we either subconsciously or deliberately censor them, we would discern just one “truth” – one that is not challenged by us. In contrast, deliberation by multiple groups with differing viewpoints will pave way for correction of errors in this “truth”. Ideas will be aggregated, and the entire process will help in the emergence of a creative solution that no one person could have thought of individually¹⁵.

Pre-Legislative consultative process is an apt instance where deliberation between individuals has brought about impactful change. For instance, the draft Bill for the Kerala Police Act 2011 was published on the website of the State Police inviting feedback and suggestions. When the Bill was introduced in the House, it was referred to the Select Committee and the Select Committee conducted a district-wide meeting. Around 400 to 500 people attended these meetings, and the necessary impact of such an extensive consultative process was the suggestion of 790 amendments to the draft Bill after nearly four hours of extensive debate. Around 240 of those suggested amendments, most of which were centred on the public feedback, were ultimately accepted¹⁶. By contrast, in South Africa, pre-legislative consultation is a constitutional requirement and any law that is enacted without pre-legislative consultation is deemed unconstitutional. In 2005, the Parliament of South Africa had enacted legislation relating to the issue of reproductive healthcare. The Constitutional Court of South Africa, however,

¹⁵ Cass R. Sustein, *Infotopia: How Many Minds Produce Knowledge*, (2006, Oxford University Press)

¹⁶ Anirudha Nagar, “Laws by the people, for the People” (24 February 2014, *The Hindu*) available at <<https://www.thehindu.com/opinion/op-ed/laws-by-the-people-for-the-people/article5719578.ece>> accessed on 27 August 2021

declared these laws as unconstitutional since the National Council of Provinces did not fulfil its obligation of initiating public deliberation on the law¹⁷.

Hence, it is not difficult for one to understand why democracy and truth go hand in hand. Democracy needs the power of truth to survive. As such, one can consider “speaking truth to power” as a right every citizen must have in a democracy, but equally as also the duty of every citizen. However, to understand how we can truly exercise this right of ours, it is important to first ask ourselves what does “truth” even mean?

To many of you, this must indeed be a very strange question to ponder upon since truth is often easily definable, in contrast to obvious falsehoods. For instance, the fact that I am wearing spectacles is the truth while asserting to the contrary would be an abject lie. Hence, it may seem that the difficulty is then not in knowing what is the “truth” but only in identifying it. Indeed, Justice Chagla himself acknowledged that the most challenging part of being a Judge for him was to undertake the nearly impossible task of identifying the truth in the cases before him. According to him, a Judge could get closer to identifying the truth only when contrasting arguments were put forth by the counsel representing the contending parties. He said that these deliberations, arguments, and counter-arguments then aided him in his pursuit of truth¹⁸.

However, I believe that while the identification of truth may be singularly at issue in judicial proceedings, the very nature of “truth” can often be un-determinable in societies. Most commonly, truth is defined in terms of ‘facts’. According to the

¹⁷ *Doctors for Life International v. Speaker of the National Assembly*, [2006] ZACC 11

¹⁸ *Supra* at note 1, pg 70

'correspondence' theory proposed by Plato and Aristotle, a proposition is true if it corresponds to a 'fact'¹⁹. However, it is important to remember that even the most preliminary facts can be disputed. Until this day, we continue to have a section of society which still disputes the phenomenon of global warming. However, a determination of what constitutes a 'true fact' is important since laws are enacted on the indispensable belief that the mischief the State seeks to rectify through them is in reality principally true and an established fact. Hence, if the phenomenon of global warming was to turn out to be a lie, then the basis of many of our environmental laws would be farcical. However, while it may continue to remain in dispute, the phenomenon of global warming is still a question for which we can have a scientifically determinable "truth" through deliberation, thus allowing the State to proceed with its regulation.

A State does not seek to rectify merely mischiefs that are grounded in scientific truths but also those grounded in moral truths. Take, for instance, the Bonded Labour System (Abolition) Act 1976 which was enacted, as the preamble of the statute notes, "*with a view to preventing the economic and political exploitation of the weaker sections of the people*". As such, the Act was enacted on the basis of two premises: *first*, that the bonded labour system exploits people; and *second*, that such exploitation of people is principally wrong. A liberal rights philosopher who believes in the value and quality of life might argue that both these premises are true, while an economist studying the market and the methods to upsurge market output may not agree with them.

¹⁹ Richard L. Kirkham, *Theories of Truth: A Critical Introduction*, (1995, MIT Press)

This then brings us to the ‘pragmatic’ theory of truth, which defines “truth” in terms of ‘opinions’²⁰. It is in this context that Sophia Rosenfeld, an eminent historian, notes that due to the increasing belief of people in the non-existence of impartial ‘facts’ and their legitimate sources, people’s idea of “truth” has become more instinctive, where “truth” is whatever *feels* right to them. In essence, “[t]ruth” *has become personal, a matter of subjective feeling and taste and not much different from an opinion*²¹. However, a quick glance through history will teach that individuals sometimes tend to have opinions that may not be morally justifiable to others.

For instance, Jean-Jacques Rousseau considered women as a class to be naturally cunning and believed that they should be governed by constant fear, and restricted to be gazed as objects of desire. On the other hand, Montesquieu regarded black Africans to be ‘savage and barbarians’ who did not possess ‘normal’ human traits²². While these opinions were held by Rousseau and Montesquieu individually in the Enlightenment Era, they were also sometimes shared by the general public. As such, women and black Africans were not treated as citizens because they were – according to those who held power and could wield words – cunning, manipulative, and weak. Hence, the very fact that these opinions are acknowledged today for their racist and sexist overtones lends credence to argument that “truth” cannot be akin to an opinion, since that would allow for personal prejudices to creep into its determination. It is in this vein, that

²⁰ *Ibid*

²¹ *Supra* at note 8

²² Paul Gordon Lauren, *The Evolution of International Human Rights*, (2011, University of Pennsylvania Press) 33

Daniel Patrick Moynihan, an American politician, sociologist, and diplomat had said that “*everyone is entitled to [their] own opinion, but not [their] own facts*”²³.

However, I often wonder if facts are even considerably different from opinions in a plural society where there are varied lived experiences of different people. For instance, long before the decision of the Supreme Court in **Navtej Singh Johar**²⁴ which decriminalised homosexuality, and long before a miniscule population of our country normalised homosexuality, Denmark had passed the Registered Partnership Act of 1989 which legalised same-sex marriage, subject to very few exceptions. Further, while India is currently transitioning towards normalising same-sex relationships, more than ten countries around the world still prescribe the capital punishment for homosexuality²⁵. In considering another example, we can note that forty years after India legalised abortion in the year 1971, most of the Latin American Countries are yet to legalise it. Hence, while for one part of the world, the “truth” would be that a foetus is regarded to possess a right to life, yet for another, this would be a “false” assertion.

As such, it was argued by philosopher Michel Foucault that different societies are engaged in different “regimes of truth”. Even within such societies, different *sections* are governed by different truths, with often those in dominant positions imposing their version of the truth upon others²⁶. Hence, facts and opinions cannot

²³ “An American Original” (October 2010, *Vanity Fair*), available at <<https://www.vanityfair.com/news/2010/11/moynihan-letters-201011>> accessed on 27 August 2021

²⁴ *Navtej Singh Johar & Ors. v. Union of India*, AIR 2018 SC 4321

²⁵ Max Bearak and Darla Cameron, “Here are the 10 countries where homosexuality may be punished by death” (16 June 2016, *The Washington Post*) available at <<https://www.washingtonpost.com/news/worldviews/wp/2016/06/13/here-are-the-10-countries-where-homosexuality-may-be-punished-by-death-2/>> accessed on 27 August 2021

²⁶ Michel Foucault, “Truth and Power,” in Colin Gordon (ed.), *Power/Knowledge: Selected Interviews and Other Writings, 1972–1977* (1980, Pantheon) pg 133

be confined to water-tight compartments when they overlap in various instances in their relationship with “truth”. The opinion of a person is conferred the status of a ‘fact’ and subsequently “truth” depending upon the power they yield in society. This was also confirmed in a 1994 study by a historian of science named Steven Shapin, when he noted that even at the height of the Scientific Revolution in seventeenth century England, truth was closely linked to an elite culture of honour, wealth, and civilized comportment and was not a universal standard²⁷.

In India, since women, Dalits and others belonging to marginalised communities did not traditionally enjoy power, their opinions were not conferred the status of “truth”. This is because since they did not enjoy the freedom to express their opinions, their thoughts were confined, crippled, and caged. Even after these marginalized groups received the right to vote, their opinions were reckoned to be ‘untrustworthy’ because they were considered to be treacherous ‘by nature’. In India, during the British *Raj*, when power was absolutely in the hands of a few powerful members of the *Raj*, the truth (and by necessary inference the fact) was the opinion of the King or Queen and members of the *Raj*. After the abolition of the *Raj*, the truth then became the belief and opinion of upper caste men. With progress in society and annihilation of the notions of patriarchy and caste supremacy, the opinions of women, Dalits, and other marginalised communities are slowly but gradually starting to be regarded as “truths” in India.

²⁷ Steven Shapin, *The Social History of Truth: Civility and Science in Seventeenth-Century England* (1994, University of Chicago Press)

One way to address this problem is by broadening the scope of “truth” itself, and for doing this we can look at the example of the Truth Commission in South Africa, which defined four different kinds of truth.

The *first* of these was factual or forensic truth, which we would describe as “scientific” truth since it is determined on the basis of facts and is the most commonly understood definition of “truth”. However, it is the other three which were extremely peculiar. The *second* was personal or narrative truth, which was based upon the cathartic benefit of storytelling, where every person who was affected by the apartheid regime could come forward and tell their story in public hearings. The *third* was social or “dialogue” truth, which was defined by Justice Albie Sachs of the Constitutional Court of South African as “*the truth of experience that is established through interaction, discussion and debate*”. The basis of this truth often arose from the dialogue surrounding the work of the Truth Commission, which happened in an entirely public setting. And finally, the *fourth* was healing and restorative truth, where the Truth Commission offered an acknowledgment of the crimes committed against the survivors by putting the facts collected by them in their proper political, social, and ideological context²⁸.

These types of truth acknowledge that truth itself has varying dimensions, and often plays different roles. Hence, when understood broadly, it has the capability to accommodate the worldview of different individuals and also offer them the necessary catharsis. However, even within these broader conceptions of “truth”,

²⁸ *Supra* at note 13

the question of the standards for its identification, verification and validation still remains.

Sophia Rosenfeld notes that there are three very common means for the determination of “truth” in democracies²⁹. The *first* is obviously by the State, since it is the central authority with access to all information that allows it to make decisions. Understandably, the State does not often adjudicate upon scientific truths but it does provide them its tacit approval when it decides to form policies based on them. As such, all policies of the State can be assumed to have been formed on their basis of what the “truth” of our society is. However, this by no means leads to the conclusion that the States cannot indulge in falsehood for political reasons, even in democracies. The role of the United States in the Vietnam War did not see daylight until the *Pentagon Papers* were published. In the context of the COVID-19 pandemic, we see that there is an increasing trend of countries across the world who are trying to manipulate data on the COVID-19 infection rate and deaths. Hence, one cannot only rely on the State to determine the “truth”.

The *second* means of determining the “truth” is by ‘experts’ such as scientists, statisticians, researchers, and economists who can verify knowledge. Because of their expertise in a given area, the citizens are often expected to bow down to their determination of the “truth” since it does not suffer from the malaise of political bias. However, this is not always true because while experts may not have political affiliation, their claims are also subject to manipulation due to reasons such as ideological affinity, receipt of financial aids or personal malice. These ‘experts’ are

²⁹ *Supra* at note 8

also often employed by think-tanks who conduct research to support specific opinions³⁰.

I have mentioned earlier that the “truth” of marginalised communities does not often see the light of the day due to their position in society. Similarly, these communities are often never designated as ‘experts’ due to being prevented from accessing these positions through systemic oppression. As such, that takes away their opportunity to contribute to the determination of “truth”. Since their perspective is never taken into account, the claims of ‘experts’ also suffer from the problem of their inherent biases³¹.

‘Experts’ also claim to base their opinion on concrete facts, which aims to make their conclusion the obvious “truth”. However, postmodernist scholars have correctly noted that while the facts in themselves may be accurate, their selection, arrangement, and the conclusions drawn from them are subject to the individual realities of the person making these determinations³². As such, the opinion of an ‘expert’ cannot really be considered as the objective “truth” even when based upon true facts because it is *one* possible opinion based on those facts, and not the *only* one. Hannah Arendt notes that this cherry-picking of facts in one’s favor has given rise to “spin”, in which the citizens are not technically told a lie but the facts are

³⁰ Eric Lipton and Brooke Williams, “How Think Tanks Amplify Corporate America’s Influence” (7 August 2016, *New York Times*) available at <<https://www.nytimes.com/2016/08/08/us/politics/think-tanks-researchand-corporate-lobbying.html>> accessed on 27 August 2021

³¹ Alfred Moore, *Critical Elitism: Deliberation, Democracy, and the Problem of Expertise* (2017, Cambridge University Press)

³² Stanley J Grenz, *A Primer on Postmodernism* (1996, William B Eerdmans Publishing Company) pgs 7-8

selected in a way to provide only a version of the “truth”³³, which then helps manufacture the consent of the unsuspecting citizens³⁴.

This leaves us with the *third* means of determination of truth, which is through deliberation and discussion by the citizens – by paralleling, combining, and expounding the claims of truth in the public sphere. It is often argued that scientific truth that is dependent on the knowledge of the experts and truth that is out of the reach of the common man due to non-transparency by State actors, cannot be verified by the common man due to the evident lack of expertise in that field of science and lack of information in the public forum. However, as responsible citizens, we should put these ‘truth providers’ through intense scrutiny and questioning, to convince ourselves of the veracity of the claims made by them. For this, it is also equally important for those making truth claims to be transparent and conspicuous. We must together endeavour to create and encourage a culture that is conducive for deliberation of truth, particularly because “truth” dances on a fine balance between facts and opinions. However, this brings us to the question of who should be the citizens to take up this role?

Immanuel Kant expected this role to be taken up by the European intellectual clerisy, the equivalent of modern day “public intellectuals”, where they would mediate between the rest of the population and the State³⁵. However, he took for granted that entry into this class was often barred by one’s gender, access to

³³ Hannah Arendt, “Lying in Politics: Reflections on The Pentagon Papers” (18 November 1971, *NY Review of Books*) available at <<https://www.nybooks.com/articles/1971/11/18/lying-in-politics-reflections-on-the-pentagon-pape/>> accessed on 27 August 2021

³⁴ *Supra* at note 9

³⁵ Immanuel Kant, “An Answer to the Question: What Is Enlightenment?” trans. James Schmidt, in James Schmidt (ed.), *What Is Enlightenment? Eighteenth-Century Answers to Twentieth-Century Questions* (1996, University of California Press) pg 59

education, and wealth³⁶. Similarly, Noam Chomsky, in his celebrated article *The Responsibility of Intellectuals* which was written in the context of the United States' ongoing involvement in the war in Vietnam, noted that it was the duty of the "intellectuals" to speak the truth and expose the lies of the State and its 'experts'. However, in contrast to Kant, he acknowledged that the intellectuals could only perform this function because of the power and privilege that their liberties granted to them, in contrast to other citizens³⁷.

As such, it is important to remember that every person – rich or poor; male or female or belonging to a third gender; Dalit or Brahmin or otherwise; Hindu, Muslim or Christian or belonging to any other religion – has the inherent capacity to identify the truth, and differentiate it from falsehood. This capacity to identify the truth stems from common knowledge, experiences in life, their individual struggles, and much more. However, many of them are unable to participate in this process because of systemic oppression which either does not provide a platform for their voices or works to minimise their actual impact. Hence, while considering the role of citizens in determining the "truth", we must keep in mind that this does not refer only to the elite, privileged class of intellectuals but includes everyone. Therefore, it is imperative upon us to create an environment where this becomes possible.

This is also keeping in line with the ideas of John Stuart Mill, who in his seminal work *Liberty* elucidated on the disadvantage of suppressing opinions and stated³⁸:

"The peculiar evil of silencing the expression of an opinion is, that it is robbing [...] those who dissent from the opinion, still

³⁶ *Supra* at note 8

³⁷ Noam Chomsky, "The Responsibility of Intellectuals" (23 February 1967, *NY Review of Books*) available at <<https://www.nybooks.com/articles/1967/02/23/a-special-supplement-the-responsibility-of-intelle/>> accessed on 27 August 2021

³⁸ John Stuart Mill, *On Liberty*, (1859, JW Parker & Son)

more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error.”

As such, Mill was a firm believer in the “market place of ideas”, where given enough time, the truth would always prevail over falsehood. However, we must test the veracity of this claim in present time, in what is now being called the “post-truth” world.

To test this claim, we must therefore first define what does a “post-truth” world even mean, for it could have two possible meanings: *first*, that it has become exceedingly difficult for citizens to find the “truth” in this time and age; and *second*, which is the more disturbing possibility, is that having found the “truth”, they just do not care about it.

If we go by the first meaning, it is undeniable that the phenomenon of “fake news” is on the rise. A pertinent example of this is that the WHO recently termed the current COVID-19 pandemic as also being an “infodemic”, due to the overabundance of misinformation online³⁹. However, scholars have also noted that “fake news” or false information is not a new phenomenon, having been in existence for as long as print media has existed⁴⁰. But the rapid advancement in technology and the spread of internet access has definitely exacerbated this problem.

³⁹ “Managing the COVID-19 infodemic: Promoting healthy behaviours and mitigating the harm from misinformation and disinformation - Joint statement by WHO, UN, UNICEF, UNDP, UNESCO, UNAIDS, ITU, UN Global Pulse, and IFRC” (23 September 2020, WHO) available at <<https://www.who.int/news/item/23-09-2020-managing-the-covid-19-infodemic-promoting-healthy-behaviours-and-mitigating-the-harm-from-misinformation-and-disinformation>> accessed on 27 August 2021

⁴⁰ *Supra* at note 8

It is often noted that even on the internet, the largest portion of the blame is often laid at the door of large corporations like Facebook and Twitter. Part of the problem is that while these social media platforms allow users to create their own networks and communities, it also leads to a homogeneity within those networks. After all, humans are social animals and have an increasing tendency to associate themselves with fellow humans with shared lived experiences or similar beliefs. This leads to the creation of “echo chambers” or “bubbles”, where people are only exposed to the viewpoint they agree with while never coming into contact with an opposing one⁴¹. There is another issue which also relates to human nature – human beings are simply more attracted to sensational stories, which are often based on falsehood. As such, in a 2018 study it was determined that lies dominated truth in every metric on Twitter, including reaching more people and doing so quickly⁴².

However, another problem is due to what can only be described as our “attention economy” – which is to say that there is just so much information out there, and we can only consume so little of it. Hence, everyone in the marketplace is constantly competing for our attention⁴³. Leading First Amendment Scholar Tim Wu has noted that because of this, the traditional methods of limiting free speech are being changed. He notes that when the First Amendment was introduced in the United States, the State controlled the platforms of speech and the First Amendment was designed to prevent the abuse of this power. However, with the advent of the

⁴¹ Cass R. Sunstein, *#Republic: Divided Democracy in the Age of Social Media* (2017, Princeton University Press)

⁴² Robinson Meyer, “The Grim Conclusions of the Largest-Ever Study of Fake News” (8 March 2018, *The Atlantic*) available at <https://www.theatlantic.com/technology/archive/2018/03/largest-study-ever-fake-news-mit-twitter/555104/> accessed on 27 August 2021

⁴³ Tim Wu, *The Attention Merchants: The Epic Scramble to Get Inside Our Heads* (2016, Knopf)

internet, the platform is no longer an issue but rather it is about grabbing someone's attention. As such, while someone's speech may not be removed from the internet, it can be effectively drowned out by flooding the internet with massive amounts of information to the contrary. This will ensure that many people do not even read the original speech or will be unconvinced of its truth⁴⁴. Hence, it is easy to see why Mill's "market place of ideas" approach to speech in order to uncover the "truth" may no longer be an option. However, the internet and social media corporations are not the only ones to blame for this scenario.

This brings us to the second possible meaning of the "post-truth" world, where "truth" does not matter to people anymore. While the advent of the internet may have played a part in this too, it certainly cannot shoulder all the blame. It is important to acknowledge that we live in a world that is increasingly become divided along social, political, economic, and religious lines. This also leads to increasing polarisation of "truth", where sections of the population contest on "your truth" versus "our truth" even on subjects that are unrelated to the common affinity that the group shares. This is particularly manifest when the political views of an individual interfere with the ability of that person to make an accurate assessment of 'opinion' that is unrelated to their political views. In a very interesting experiment conducted by researchers from the United Kingdom and the United States, a group of participants were tasked with categorization of shapes. However, before the task could start, the participants were given the opportunity to learn the political views and skills on geometric shapes of their fellow participants. When the participants were given a free hand to form groups, it was found that participants grouped

⁴⁴ Tim Wu, "Is the First Amendment Obsolete?" (2018) 117 Michigan Law Review 3

themselves with those whom they share close political affinity, though the task at hand was only to categorize shapes⁴⁵.

This tendency to exhibit ‘epistemic spillovers’ has led to the manifestation of multiple truths. No consensus is reached on the identification of “*the* truth” due to our tendency to not be able to accept or even consider the views of those whom we reflect to be different from us. We subconsciously filter the “truth” that does not align with our interest – we only read the newspapers that align with our beliefs, ignore books written by people who do not belong to our stream, and turn the TV on mute when someone furnishes an opinion contrary to us. In sum, we do not truly care about the “truth” as much as we do about being right. However, who is to blame for this, if at all anyone?

Indeed, social media corporations can be afforded some of the blame because their interface and algorithms help increase existing polarization. But doing so only ignores the deeper underlying issues in our communities. People often have such differing conceptions of the “truths” because their realities are very different to one another. This can be due to the difference in their gender, caste, religion or economic status; even within these, a combination of factors will give rise to differing lived realities. Indeed, if this is true, the question remains as to what can be done?

⁴⁵ David Burkus, “Stop Talking about Politics at Work” (13 August 2019, *Psychology Today*) available at <<https://www.psychologytoday.com/us/blog/creative-leadership/201908/stop-talking-about-politics-work>> accessed on 27 August 2021

Of course, one possible way suggested by many scholars is to regulate the social media corporations. However, being a sitting member of the Judiciary, it is not fit for me to comment upon that. Indeed, then, what can we do as *citizens* of India?

The first thing to do is to strengthen our public institutions. As citizens, we must strive to ensure that we have a press that is free from influence of any kind, political or economic, which will provide us information in an unbiased manner. Similarly, schools and Universities need to be supported to ensure that they create an atmosphere where students can learn to differentiate truth from falsehood, and develop a temperament for questioning those in power. Justice Chagla also sought to achieve these very aims during his tenure as the Education Minister of India⁴⁶. Further, we also need to protect the integrity of our elections, and look upon voting not only as a right but also as a duty. To do this, we need to ensure that all citizens are given a basic education and truly understand the value of their vote.

Secondly, we must not only acknowledge the plurality of opinions in a country as diverse as India, but celebrate it. This allows for more breathing space for all opinions, and leaves room open for actual deliberation. In his autobiography, Justice Chagla states that “*kindness and gentleness are qualities which every human nature is capable of, and which every human nature appreciates and is moved by. These qualities require neither special training nor special equipment. They are present in every man – only they get overlaid by vanity and self-seeking*”⁴⁷. Hence, it is important for each one of us to be kinder to our fellow citizens, and not be quick to judge them for their opinions. At the same time, we

⁴⁶ *Supra* at note 1, pgs 345-346

⁴⁷ *Supra* at note 1, pg 475

must work towards ensuring that barriers based on one's gender, caste, religion, language or economic status are removed, so as to bring everyone's realities as close as possible, in order to allow them to have similar notions about the "truths" of our society.

Finally, as citizens of a democracy that is India, we need to commit ourselves to the search for "truth" as a key aspiration of our society. I had mentioned earlier that our national motto is "*Satyamev Jayate*" or "Truth Shall Prevail". It is crucial that we etch this into all our hearts, and work towards living up to it by developing the right temperament. We can do this by questioning of the State, 'experts' and fellow citizens in order to determine the "truth", and then speaking this truth to them, if they choose to ignore or deny it.

I know that what I may be saying right now may seem too idealistic a vision or may just seem impossible given the scale of democracy in India. To those of you, I wish to remind you of something Justice Chagla had said in his autobiography⁴⁸:

"The democratic ideology is always willing to concede that there may be an element of truth in every belief held by any particular section of the public; it is not prepared to coerce a minority opinion by the brute force of numbers. It is ever ready to discuss and debate, and is more anxious to get the minority to acquiesce in the decision of the majority than coerce the minority into an unwilling submission. The democratic temper is also tolerant towards human frailty. A man may aspire to perfection, but he is made of clay, and more often than not, he deviates from the straight and narrow path. This deviation is partly due to his own weakness and partly to overpowering circumstances created by the society in which he is placed. His errors and his lapses are not always wholly of his making. We need a more sympathetic understanding of human frailty in the sphere of individual relations."

⁴⁸ *Ibid*, pgs 86-87

I will not deny that the challenge before us is tough and requires constant effort from all of us. I hope every single citizen of India does their bit in honouring the memory of the great Justice Chagla by speaking truth to power and working towards bettering our democracy!