

News Broadcasting Standards Authority
Order No. 74 (2020)

Order of NBSA on complaint dated 25.3.2019 received from Ms. Sanjukta Basu against Times Now channel regarding programmes titled “India Upfront” at 8 pm and “News Hour Debate” at 9 pm on 6.4.2018

Not being satisfied with the reply dated 16. 5.2018 received from the broadcaster to the Legal Notice dated 24.4.2018, the complainant escalated the complaint to the NBSA, which is the second level of complaint redressal.

The complainant vide email dated 25.3.2019, stated that she wishes to register a grievance against Times Now for running a defamatory program against her on 6th April 2018, violating the Guidelines on Broadcast of Potentially Defamatory Content, basic Guidelines No. 5, No.8 and others. She also forwarded the two links of the two hour programmes run by Times Now in which she was addressed with derogatory remarks such as "Hindu hater", "vile troll", and it was further insinuated that she was recruited by a certain politician to make politically motivated tweets giving the impression that she was taking money or some other benefits . The complainant stated that she explained to the broadcaster that it was incorrect in attacking her name, reputation and integrity for the TRP's of its political program, and requested for an apology, which was not complied to by the broadcaster. In reply, again she was again called a “vile troll”. She also stated that the channel did not contact her to obtain her version before running the programs which is a violation of Guideline No. 8 and the broadcaster didn't verify all facts which is in violation of Guideline No. 5.

NBSA at its meeting held on 28.3.2019, considered the complaint, response from the broadcaster and also viewed the broadcast. NBSA noted that the photograph of the complainant was shown and the anchor described her as “Hindu hater” and “vile troll” and observed that the complainant was part of Rahul’s “troll army”. NBSA was of the prima facie view that there was absence of neutrality as the complainant was not given an opportunity to rebut or give her version in the said programs, which would amount to a breach of the Specific Guidelines Covering Reportage relating to *Accuracy, Impartiality, Objectivity and Neutrality & Fairness. 2.1 which states that “For balanced reportage, broadcasters should remain neutral and ensure that diverse views are covered in their reporting, especially on a controversial subject, without giving undue prominence to any particular view”* and Guidelines on Broadcast of Potentially Defamatory Content, basic Guidelines No. 5, No.8 and 9.

NBSA therefore, decided to call both parties for a hearing on 1.5.2019. NBSA also decided to convey to the broadcaster that in case it desired to submit any further documents in its defence, it may do so within seven days of receipt of the communication calling both parties for a hearing. However, in view of the difficulty expressed by the broadcaster to attend the hearing on 1.5.2019, which reason was accepted by NBSA, the hearing was postponed to the next meeting of the NBSA.

On being served with notices, the following persons were present at the hearing on 23.9.2019:

Complainant:

Ms. Sanjukta Basu
Mr. P.K. Basu

On behalf of Bennett, Coleman & Co. Ltd. [Channel – Times Now]:

Mr. Kunal Tandon, Advocate
Mr. Amandeep Singh, Advocate
Mr. Vivek Narayan, Executive Editor
Ms. Jyothi S. Kumar, Legal Representative

Complainant's Arguments:

The complainant stated that she is a self-made person, a single independent woman who is a tax paying, honest citizen of the country and that she had worked very hard for past 15-20 years to make a mark for herself, which has been recognized by media and she had been given several awards and accolades. She is one of India's earliest bloggers and social media user with over 30,000 followers on social media, out of which 23k were Twitter followers. She stated that she had used the medium of blog for over 14 years, which got her 700,000 page views till date.

The complainant submitted that on 6.4.2018 Times Now ran two programs titled 'India Upfront' at 8 pm with sub title "*Revealed: #Badla For Kutta Billi Jibe*" and an additional line scrolling through the bottom of the screen, "*Amit Shah sets stage for 2019, but Rahul Plans a Badla; and another program titled 'News Hour Debate' at 9 pm. She submitted that the content of the said programmes were in violation of two specific NBSA Guidelines which were on *Broadcast of Potentially Defamatory Content No. 5 and No.8.* The content telecast was false, baseless, defamatory, unethical, biased, and in violation of her right to freedom of speech. The said programs repeatedly showed her name and photograph attaching labels 'Hindu Hater', 'Army hater', 'Rahul Gandhi's Mega Troll Army' thereby ruining her good name and reputation in the society. The program alleged that she was being recruited and briefed by somebody, insinuating that her opinions were not her own, but that she was working at behest of somebody else, which the complainant stated is completely false and baseless. A legal notice on charges of defamation was sent to the channel.*

The complainant was not satisfied with the reply received from the broadcaster and hence she approached NBSA.

She alleged that in the programmes which were telecast, the following statements were made by the anchor of one of the said programs which were derisive, defamatory, judgmental and derogatory:

Insinuation that some (political leader) "briefed anti BJP Trolls to get ready for the elections"

"recruits a mega troll army"

"he recruits them to counter the BJP"

A voice from the background then said, "Rahul has met known anti BJP Trolls with odious track record"

The words 'Troll Army recruited for 2019' 'BJP baiters briefed by Rahul' in big bold letters ran through the bottom of the screen during the program.

The complainant also submitted that the broadcaster had violated Guideline No.5 which states that *"a news anchor/journalist/presenter should not make any derogatory, derisive or judgmental statements as part of reporting or commentating"*. She submitted that it is derogatory to rob her of her identity, personhood, dignity, respect, and her life's professional achievements. It is derogatory to dehumanize her and refer to her with just a label 'troll'. The complainant stated that she should be introduced by referring to her work as a writer, photographer, social worker, not by a judgmental label.

The complainant quoted that Guideline No. 8 states that *"before reporting any accusation or allegation the version of the person affected must be obtained and aired simultaneously with the accusation or allegation to give a complete picture to the viewer. in the event of inability to obtain the version of the affected person(s) within a reasonable period, the same should be aired simultaneously and authentic contemporaneous records of the effort made should be maintained."*

The complainant submitted that she was not informed about the said programs. She was informed by a family member from Kolkata that they had seen her photo on TV. The broadcaster had not informed her about the show nor had she been invited to participate in it. Furthermore, the broadcaster had not even bothered to do any fact checking with her which was in violation of the above Guideline.

The complainant further submitted that the broadcaster had stated that the said programs in question were done in public interest to inform the public of all sides of the political situation. According to it, Congress leader Rahul Gandhi had met *"known anti-BJP Trolls with odious track record"* which is contradictory to his own political stand. Assuming that the broadcaster's stand is justified, even then it should have blurred her face and not taken the real name in the telecast. The broadcaster should have contacted her to give an opportunity to present her side. The said

programs assume that the meeting with Congress leader was to plan Congress's social media. The complainant stated that if commentary was fair and made in public interest, and the subject of the said programs was the Congress leader, there was no need to use her real names and photos.

The complainant submitted that the said programs were not telecast in good faith, and were not fair and objective as can be deduced from the fact that the very premise of the program was faulty and bereft of logic. By its own admission, the broadcaster stated that the program was a response to certain '*Kutta Billi*' Jibe made by a BJP leader on April 6, 2018 and alleged that the Congress leader had planned a revenge against the remark by meeting '*Known anti-BJP trolls*'. The program's theme hashtag #Badla For Kutta Billi Jibe also referred to a '*badla*' or '*revenge*' which was running through the screen, and the text or voiceovers in the program also unambiguously claimed the presence of "*revenge plan*". But as per its own narrative, the Congress leader met social media influencers on 27th March 2018, while BJP Leader made "*Kutta Billi jibe*" on April 6, 2018.

The complainant stated that the said programmes were based on her publicly available tweets. The broadcaster shared a list of such tweets on basis of which it claims that she can be called "*Anti-Hindu*" and "*Anti-Army*" publicly. The channel was wrong in presuming that there is an objective definition of anti-Hindu or anti-army and that a fair judgement can be made about an individual, based upon few tweets made by her or him. The question raised by the complainant is that is there settled law and precedent in this regard as to who can be objectively labelled as "*Anti Hindu*" "*Anti Army*" and "*Vile creature*" "*Troll*"?

The complainant also submitted that the channel had mis-interpreted her various tweets or selectively edited them to suit a particular narrative or taken them out of context. Some of these tweets were mere criticism of political leaders who neither represent Hinduism or Army. She submitted that legal position on how to interpret Tweets is not clear in India. She relied on the High Court of Justice Queens Bench, *Monroe v Hopkins* [2017] EWHC 433 (QB) judgment, of how to interpret tweets in case they are alleged to be defamatory. The said programs she stated were potentially defamatory, derogatory and it was totally baseless to call her a "*Hindu hater*" when she was born to a practicing Hindu family and has always followed all the Hindu practices and rituals that her family wanted her to be part of. She is publicly known as an atheist, nevertheless she performed rites as per Hindu rituals.

The complainant submitted that the said programmes were an attack on her freedom of speech. Her political opinion expressed on public platforms (Twitter) exercising her right to freedom of speech have been interpreted by the broadcaster in a derogatory manner without even giving her a chance to be heard. By its own

admission, the channel had no other reason to pick her except that Rahul Gandhi met Sanjukta Basu as part of a group of people, which according to its interpretation refutes Rahul Gandhi's stated mission of doing politics of love. The complainant then raised the question that out of the many people who attended the said event why was she handpicked and called derogatory names on the show, and the act of the broadcaster also raises suspicion that she was deliberately targeted. She stated that several people on Twitter have also continuously abused her soon after the said programmes were telecast and till date she is called anti Hindu in reference to the said programmes. The complainant demanded an apology to be broadcast on the channel and that the channel take down the video circulating in social media.

Broadcaster's Arguments:

The Counsel for the broadcaster submitted that the complaint has been filed by the complainant in respect of the programmes aired on 6.4.2018 - 'India Upfront'@8 pm and 'The Newshour Debate'@ 9 pm on Times Now channel. The complaint has been filed stating that the said programmes were (i) defamatory qua the complainant and as such, violated Guideline Nos. 5, 8 and 9 of the Guidelines on Broadcast of Potentially Defamatory Content and (ii) Specific Guidelines Covering Reportage relating to Accuracy, Impartiality, Neutrality and Fairness.

The complaint is based on the following facts:

1. The complaint is primarily based upon the legal notice dated 24.4.2018 issued by the complainant. The notice alleged that the said Programs attacked the complainant in an uncivil and malicious manner, calling her a "Hindu Hater", "gutter sniper", "army basher" and a troll "recruited" by Shri Rahul Gandhi, thus, implying payment for consideration and that all these insinuations were defamatory.
2. Photograph of the complainant was displayed without her consent.
- 3 The programme traumatized the complainant and her father.
- 4.The host of the said programs made false statements such as "look at the image of Sanjukta Basu with Rahul Gandhi" whereas there was no such image.
5. No opportunity of being heard was given to the complainant on the show, neither was any clarification taken from her with respect to the tweets shown on the said programs.

The counsel submitted that the complainant has misunderstood the entire programme. The news debate/programme revolved around Mr. Amit Shah's controversial comments at a public rally and specifically the opposition parties' backlash and criticism of his jibes. This issue was debated on the channel in the backdrop of the digital conclave held by the Indian National Congress on March 27, 2018. The key questions that were raised on the channel and answered by the participants were:

- (i) Doesn't a meeting with abusive social media 'influencers' contradict Rahul's self-professed 'Politics of Love'?
- (ii) Did the fact that Rahul invited known "trolls" for a meet, deprive the Congress of the right to attack Amit Shah for his caustic jibes; and
- (iii) Did Rahul Gandhi meet known Modi and Shah 'baiters' to tilt the scales in his favour in the run up to what will be the super-heated 2019 election campaign?

The said programmes were thus, not about the complainant at all. In the said programmes, reference was made to the attendees of the March 27, 2018 Digital Conclave of the INC. These persons are well known in the social media to have anti BJP and anti- Hindu views (as is evident from several of their tweets). Hence, the question as to what was the agenda behind INC having invited such persons to its digital conclave?

Keeping the context in mind, the reference to social influencers was made, and one of them was the complainant. The channel referred to various tweets of Ms. Sanjukta Basu, to show and prove that it is her image on the social media, through her tweeting and the stand taken by her in the social media, which clarifies and justifies her position as an influencer.

The counsel submitted that, the words '*vile troll*' were not made in reference to the complainant. The reference to a person as a '*troll*', is neither per se nor potentially defamatory as alleged by the complainant. The word '*vile*' means extremely unpleasant, though no reference was made. The meaning, by no stretch of imagination, suggests derogatory or derisive or judgmental statement by the host. The meaning of the word '*troll*' is someone who intentionally leaves annoying messages on the internet either to get attention or to annoy people. It is stated that calling someone a troll is neither derogatory, derisive nor judgmental by any stretch of imagination.

The decision to call the complainant a '*Hindu Hater*' was made keeping all the tweets of the complainant in mind, and further, her stand, opinion and image in the public. Hence, the terminology cannot also be stated to be judgmental. The tweets of the complainant, if seen in this light, are surely intended to be unpleasant and further, can be annoying to certain sections of the society if not the entire society. The tweets indicate a tendency to be promoting Hindu phobia, abuse of rivals using abusive language, and bringing dis-repute to the Indian Army. The tweets and stand taken by the complainant on a public forum reflects and displays her as somebody who has strong views against Hinduism/ Hindutva, as somebody who questions the BJP's intent of Hindutva etc. Thus, the term '*Hindu Hater*' is used to simply depict someone who hates Hinduism/Hindutva, and questions the manner in which Hindus conduct themselves while dealing with minority issues and various other issues involving the general public which is clearly evident from her

innumerable tweets. The words '*gutter sniper*' and '*army basher*' have not been used in the context of the complainant which is evident from the said programmes.

The photograph of the complainant at the conclave was shown during the India Upfront debate specifically stating that she was seen at the conclave on March 27, 2018. The same was referred to in the News Hour Debate, however, on this occasion, the photo was not shown.

The counsel submitted that the popularity of the complainant, as claimed by herself, makes it clear that her acts and conduct are of public importance/public interest. Whatever the public or her followers may do, affects the larger interest of the nation and our society and therefore makes her a public figure. Hence, the criticism of such a public figure and the perception that has been created through her various publicly available stands cannot be treated as derogatory or defamatory as alleged, and as such, must be available before the public for scrutiny, in both forms, i.e. through her followers upholding her views and through her non-followers criticizing her views. There is no private surveillance, there is no private discussion about the complainant, which is not in public domain. Information was obtained through twitter and by fair means, and is reasonably verified and reported accurately. Hence, the complainant, being a public figure ought to be more open to criticism and as the Supreme Court has observed, that persons in public life cannot be thin skinned.

The law pertaining to public figures is not limited to public officials or persons holding a public office. The use of the word public figure clearly indicates that people who have a tendency of acting as social influencers and are persons in public domain, they take stands, and have opinions about societal and political issues, are persons in the public sphere and are able to influence the decisions of persons and society. Hence, such persons have to be considered as public figures. Since the complainant is a public figure, defamatory or derogatory remarks has to be seen in context of malice. The public figure, in addition must prove malice beyond doubt. In the said programmes, there is no malice whatsoever, no personal issues have been raised. Reporting an incident of public importance can never be considered as a defamatory or derogatory remark. Hence, by no stretch of imagination has an act of defamation been committed. If the complainant's allegation is that the broadcast has defamed her name, a prudent and a person of average intelligence would have surely approached a court of law.

The Counsel submitted that it is settled law that people in public life or public figures, especially persons like the complainant, who have a strong stand, for every issue in the country, should not be so thin skinned so as to view this as defaming them or lowering their image in the estimation of others. In this regard the counsel relied on the judgments of *Kartar Singh Vs. State of Punjab*, 1956 SCR 476, R.

Rajagopal Vs. State of Tamil Nadu, (1994) 6 SCC 632 and the Order dated 1.12.2017 passed by Delhi High Court. in Shashi Tharoor Vs. Arnab Goswami.

As an experienced tweeter and embracing public life, the complainant must be open to several responses and negative feedback from the public regarding her tweets. Her tweets have been openly criticized as is evident from her social media accounts. To say that the complainant got threats due to the channel's broadcasts is totally wrong. It is her tweets and opinion that drew reactions from the public and not because of her tweets being showcased on a debate show.

The counsel submitted that there is no privacy violation in the use of the complainant's photograph as it was used in context of her publicly available tweets and to associate her tweets with her identity. The use was contextual and in larger public interest on a news platform. Thus, the said programs were accurate, fair, neutral and impartial.

The counsel stated that the complainant is a public figure. The rule for proving derogation in respect of a public figure is clear that the complainant must prove malice in such publication. As stated, the complainant has neither proved, nor was there any malice in the broadcast of the programme.

The counsel submitted that there was no necessity for taking the version of the complainant, more so, in view of the fact that the factual assertion that she was present at the digital conclave on March 27th, 2019 further demonstrated that no verification was needed. The channel was only required to conduct a reasonable verification, which was done.

NBSA has considered the oral as well as written submissions of both the sides. The detailed submissions of both the parties which have been taken note of above, demonstrate that there are allegations and counter allegations of varied nature. Whereas the complainant alleges that the programmes in question were derisive, defamatory, judgemental and derogatory in nature and had undermined her reputation in the society, broadcaster has denied the same. The broadcaster has also given its own version of the said programme and highlighting the purpose and focus thereof, with specific remarks that the complainants was neither the focal point nor the target of these programmes. The broadcaster has also taken a plea that the complainant has herself accepted that she is a public figure and in that situation, it is open to any person, including the broadcaster to form a bona fide view about her activities/opinions and inform the public about the same. It is their argument that this is permissible in view of the law laid down by the Hon'ble Supreme Court and the Delhi High Court inasmuch as form criticism of a public person is permissible so long as it is not out of malice.

It may be clarified at the outset that NBSA is not supposed to go into the realm of the aforesaid legal issues brought about by either the complainant or the broadcaster.

The entire matter is to be examined in the context of Guideline No. 5 and 8 and so see whether these Guidelines have been violated in the broadcast of the aforesaid programmes inasmuch as the news broadcasters are discharging a public duty which comes with enormous responsibility. Therefore, while performing this public duty for balanced reporting, the principles of *fairness, impartiality, objectivity and neutrality* are to be followed by the broadcaster/s. Further to safeguard the reputation of the person who is being reported upon, the broadcaster should take the version of the complainant.

NBSA was therefore of the view that the broadcaster had violated the principles of self-regulation relating to impartiality and objectivity, ensuring neutrality and fairness in reporting. NBSA decided to issue a warning to the broadcaster and also decided that the broadcaster be directed to air an apology as per the text to be furnished by the NBSA on the date and time indicated by NBSA.

Accordingly, the broadcaster shall **on 27.10.2020 at 9 pm** air the following text **(static)** on full screen in **large font size** with a clearly **audible voice-over (in slow speed)** express an unconditional apology on their channel Times Now by stating the following:

" We regret that in the programmes aired on 6.4.2018 - 'India Upfront' @ 8 pm and 'The Newshour Debate' @ 9 pm on Times Now channel, we had not taken the version of the complainant Ms. Sanjukta Basu, thereby violating the principles relating to impartiality and objectivity and ensuring neutrality and fairness in reporting. We clarify that there was no intention to bring disrepute to Ms. Sanjukta Basu."

NBSA further decided that the video of the said broadcast, if still available on the website of the channel, or YouTube, or any other links, should be removed immediately and confirmed to NBSA in writing within 7 days.

The broadcaster shall submit a CD containing the telecast with particulars of the date and time of the telecast, within one week of telecast, as proof of compliance. After such CD is submitted by the broadcaster, the matter will be closed.

It is clarified that any statement by the both the parties in the proceedings before NBSA while responding to the complaint and putting forth their view points, and any finding or observation by NBSA in regard to the broadcasts, in its proceedings or in this Order, are only in the context of an examination as to whether there are

any violations of any broadcasting standards and guidelines. They are not intended to be 'admissions' by the broadcaster, nor intended to be 'findings' by NBSA in regard to any civil/criminal liability.

NBSA further directs the NBA:

- a) To send a copy of this Order to the broadcaster and the complainant.
- b) To release the Order to media.
- c) To circulate this Order to all Members, Editors & Legal Heads of NBA.
- d) To host this Order on its website and to include it in its next Annual Report.

Sd/-

**Justice A. K. Sikri (Retd.)
Chairperson**

Place: New Delhi

Date: 24.10.2020