

News Broadcasting & Digital Standards Authority

Common Order No. 189(2025)

Complainants: Mr. Indrajeet Ghorpade & Mr. Utkarsh Mishra

Channels: Aaj Tak and India Today

Various Programme:

Show No. 1 titled “Black and White सबसे बड़ी अदालत में समलैंगिकता पर नई बहस

| Same-Sex Marriage” aired on 19.04.2023 on Aaj Tak

Show No. 2 titled “Seedhi Baat”, aired on 22.04.2023 on Aaj Tak

**Show No. 3 titled “India Today Roundtable Karnataka”, aired on
22.04.2023 on India Today**

Complaint in respect of Show No. 1

Complaint dated 24.4.2023 filed by Mr. Indrajeet Ghorpade

The anchor began the impugned programme by saying that “*equal rights of LGBTQIA+ people should not be a priority for India*”, He said that “*depression is a problem of first world countries*”, even though, according to WHO, India has the highest number of people suffering from depression, and 1 in 3 people in India are depressed. However, the anchor said, “*Equal rights for LGBTQIA+ people and depression are issues that first-world countries face*”.

The anchor spread fear in the minds of the viewers by saying that, “*aapko kitna bada sakta lagega agar aapka beta kabhe ki woh ek ladke se shaadi karna chahta hai aur wadhu ke roop mein aapke ghar mein ek ladka lana chahta hai*”. He said the same about lesbian people.

The anchor stated, “*ye toh hai bhavishya ka mudda*”, even though denial and violation of fundamental rights of LGBTQIA+ people is an issue from the past and an issue for the present.

An obnoxious image was created to represent LGBTQIA+ people. With a mocking smile, the anchor said that “*iss tasveer mein hi aapko aapka damad bhi dikhai dega aur putra vadhvi be dikhai degi*.” The image broadcast was not only distasteful but also ridiculed LGBTQIA+ people, contributing towards spreading false notions and stigma against the community.

The anchor further falsely claimed that “*prior to 2018, same-sex relationships were a crime*”. The aforesaid statement was false as Section 377 of the Indian Penal Code, 1860 criminalized voluntarily carnal intercourse against the order of nature with any man, woman or animal and did not criminalize LGBTQIA+ relationships. People have been in LGBTQIA+ relationships since time immemorial, and their relationships were not criminalized by Section 377; instead, sexual acts were criminalized.

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The anchor said, *“Supreme Court keh raha hai ki aap samlaingik sambandh rakh sakte hai toh shaadi karne mein kya pareshani hai”*, which was false as the Supreme Court is currently hearing the case and had made no such written or oral comments. The case is sub judice, and the Supreme Court has made no decision.

The anchor said, *“hamare desh ke bade bade shehron mein rehne wale uchh warg ke kuch khaas logon ne ye mang shuru ki”*, which was also false, as LGBTQIA+ people come from all walks of life. The petitioners in the Marriage Equality case came from diverse backgrounds, from small towns, from economically weak sections and from other marginalized communities. The anchor echoed the false and malicious idea mentioned in the Government affidavit that this is an *“Urban Elite”* issue. Multiple Senior Advocates have discussed who the petitioners are in the Court to refute this claim. However, the anchor intentionally missed that part and chose to be a mouthpiece for the Government.

The anchor falsely stated that *“Supreme Court keh rahi hai ki samlaingik vivah ko kamun banana hai toh ye kaam sansad ka hai, ye adalat ka kaam nahi hai.”*

Later in the show (not available in the YouTube video but broadcast on TV), the anchor brought up an exchange between the Chief Justice of India and the Solicitor General, where the Chief Justice of India rightly stated that biological sex is not absolute and gender is not defined by your genitals. The anchor raised questions about this without noting that what the Chief Justice of India had said is factually accurate, and the 2014 NALSA judgement and the Transgender Persons (Protection of Rights) Act, 2019 also reflect the same.

In closing, the anchor said, *“This is an issue for developed nations and not for a country like India”*.

Throughout the show, images and videos of LGBTQIA+ people were aired without their informed consent. The obnoxious image created by the broadcaster was shown again in the end.

By airing the impugned programme, the broadcaster violated the Code of Ethics and Broadcasting Standards, namely, neutrality, impartiality, objectivity, accuracy, privacy, and Guidelines on the Prevention of Hate Speech, Potentially Defamatory Content and Reporting Court Proceedings.

Complaint dated 26.4.2023 filed by Mr. Utkarsh Mishra

The broadcast aired on 18.4.2023 violated Fundamental Principle Number 4 and Principles Number 1 and 2 of Self-Regulation concerning impartiality and objectivity in reporting and ensuring neutrality, respectively.

As per Fundamental Principle No.4 the following factors have been identified

Controversial Public Issue:- Is same-sex marriage an elitist concern?

Interest Groups:-

IG 1 - Queer communities

IG 2 - Supreme Court of India

IG 3 - Union of India

The opening statements made by the anchor expressly sought to promote the belief that same sex marriage is a big city, upper class, and first world problem, he said that 'किसी भी देश में चरणों में विकास होता है। उसकी सोसाइटी भी अलग अलग फेज में विकसित होती है। वैसे आज भी हम एक तीसरी दुनिया, यानी तीसरी दुनिया का देश माने जाते हैं। क्योंकि हमारी जो समय है वो तीसरी दुनिया देश की समय है जैसे बिजली पानी सड़क, स्वस्थता सौबले, भूख, खाना भोजन रोजगार, ये हमारी समस्या है, क्योंकि विकसित देश की जिन्को हम कहते हैं फर्स्ट वर्ल्ड कंट्रीज, उनकी समस्याएं दूसरी हैं। हरि देश में समय जय भूखा फर्स्ट वर्ल्ड कंट्रीज में समस्या है सेपरेशन। उनकी समस्याएँ हैं समलिंगिक विवाह। लेकिन हमने हमें समस्या को पहले ही ले लिए और जनसंख्य जैसे जो दूसरी समय है उनकी कभी विहार ही नहीं किया। इसलिए आज कल सुप्रीम कोर्ट में सेम सेक्स मैरिज पर व्यवहार चल रही है, सुनचल रही है जो बहुत ही दिलजस्प है।'

This statement amounted to designing the news to promote the opinions and arguments being made by the IG 3 before the Supreme Court regarding this issue, which includes the submission that same-sex marriage petitions represent 'Urban Elitist Views'.

The anchor's failure to maintain neutrality and objectivity while reporting this issue was also evidenced by his failure to report the IG 2's (Supreme Court's) rebuttal to the claim that same-sex marriage is an 'Urban Elitist Issue', wherein the Hon'ble Supreme Court had said "It may be more urban in its manifestations because more people in urban areas are coming out of the closet. There is no data coming out of the government that this is urban or something."

It also amounted to promoting the belief that the queer identity is a lifestyle choice, a claim which is heavily contested by the LGBTQ community. The anchor attempted to trivialize the issue of same-sex marriage by comparing it to the issue of population growth, which he termed as being far more important. The rest of the broadcast, wherein an update on the ongoing Supreme Court case was provided, was thus framed as an interesting anecdotal exercise rather than an issue of the right to life and dignity of the queer community as guaranteed under Article 21.

The anchor's generalized vocabulary was akin to gossip and failed to adequately highlight the relevant developments that informed the beliefs of all interest groups on the issue at hand. The coverage failed to adhere to the journalistic standards laid down by the Standing Committee on Communication and Information Technology,

constituted by the MoI&B for its 27th report titled “*Ethical Standards in Media Coverage*”.

The complainant submitted that the broadcaster must apologize for its biased coverage and remove the impugned broadcast from all platforms.

Reply dated 3.5.2023 and 8.5.2023 of the broadcaster:

The broadcaster stated that the complaints relate to the subject matter of the ongoing PII regarding marriage rights for same-sex couples in India, which is pending adjudication before the Hon’ble Supreme Court. The complainant’s grievance pertains to certain statements spoken/made by the anchor during a news broadcast.

The complaints submitted are without any basis and, therefore, deserve to be rejected. One of the major issues confronting our nation is the discussion on ‘*same-sex marriage*’ and the hearing of the PII concerning this issue before the Hon’ble Supreme Court. The programme in question discussed the consequences of ‘*same-sex marriage*’.

The programme brought out the various issues concerning the legalization of ‘*same-sex marriage*’. At the very outset, the anchor had given a disclaimer to the effect that the Hon’ble Supreme Court of India would decide the issue as various petitions pending before it are on the same issue. He clarified by stating ‘हम ये नहीं कह रहे हैं कि समलैंगिक विवाह की मान्यता मांग करना सही है या गलत है। हम आज ये नहीं कह रहे हैं कि ये होना चाहिए या नहीं होना चाहिए’.

In respect of the alleged statement that ‘*equal rights of LGBTQIA + people should not be a priority of India*’, it would be worth noting that the anchor made no such statement. It vehemently denied the complainant’s allegation of ‘*designing the news to promote the opinions and arguments being made by the IG 3, i.e. Union of India before the SC regarding this issue*’ as wrong and concocted.

The anchor had merely indicated that, factually, India is still seen as a third-world country and what issues typically relate to third-world countries. In this context, it was stated that depression is normally spoken about in developed countries. At no point in time it was said that equal rights for LGBTQIA+ and depression are only relatable to first-world countries. The contents of the complaints give a completely different connotation and flavour. At no point in time did the anchor seek to spread or promote the opinions and arguments

The broadcaster stated that the anchor never made the statement at the time stamp 1:00. Instead, the anchor had only pointed out that “*in case your son came and said to you*

that he was marrying another boy, then initially, there would be some hesitation". The manner in which the words were spoken by the anchor has been given a completely different connotation and flavour by the complainants. The host did not seek to spread fear in the viewers' minds.

The statement made at the time stamp 1:55 has to be contextualized. The statement that "*this is a matter of the future*" was based on the fact that the Hon'ble Supreme Court is hearing the plea and would adjudicate on 'same-sex marriage'. In this context, the anchor pointed out the issues faced by *LGBTQIA+* people. He pointed out that if same-sex marriage is legalized, then the issues would be of so and-so nature. It did not imply that the rights of *LGBTQIA+* people were not an issue for the present. It only indicated that our country is evolving and that if the Hon'ble Supreme Court legalizes same-sex marriage, then society must prepare itself to accept this change.

The broadcaster rejected the allegations made against the image and the statement at 2:15 & 2:55. It stated that there is a complete argument of *LGBTQIA+* people that even in Hindu Mythology, Lord Vishnu had transformed as Mohini and Lord Shiva transformed as Ardhnareshwar. It is in this context that the said image was prepared. This image had been prepared in support of the argument of *LGBTQIA+* people and not against them. The complainant's assertion that the image is obnoxious was wholly misplaced. The assertion that the statements and the image ridicules *LGBTQIA+* people is also without any basis or foundation.

The statement made by the host at 3:22 was correct. It is clear from the decision of the Hon'ble Supreme Court of India in *Navtej Singh Johar Vs. Union of India* 2018 (10) SCC 1, that it decided on the issue of decriminalization of consensual sexual acts between consenting homosexual adults of the *LGBT* community or anyone similarly situated. The complainant's statement does not correctly reflect the factual position. Therefore, the broadcaster stated that it refutes the complainant's claim.

The statement made at 3:50 also has to be contextualized in relation to the judgment of *Navtej Singh Johar*. It is in this context that the statement was made. This was also an argument by the petitioner seeking legalization of same-sex marriage before the Hon'ble Supreme Court.

Concerning the statement made at 4:27 & and 7.11, the broadcaster stated that this was the argument of the Government of India placed in the affidavit before the Hon'ble Supreme Court and the statement made in relation to the said affidavit. The statement was not attributed to the Hon'ble Supreme Court of India.

Therefore, the complaint made by Mr. Ghorpade appears to be without any foundation of any fact. The complaint states and attributes statements to the anchor that he has not spoken. In one or two instances, the statements are alleged to have been made in relation to the Hon'ble Supreme Court of India, but they are again false. In one or two instances, the statements were clearly not understood in the context in which they were being made.

The broadcaster also strongly refuted the complainant, Mr. Mishra's allegations that the host had at any point advocated the viewpoint that same-sex marriage is an *urban elitist issue* or had made any statements or comments which imply that queer identity is a lifestyle choice. These allegations are false and unfounded. Further, the allegation that the programme is in the spirit of gossip is unfounded and inflammatory.

The complaint made by Mr. Mishra is without any foundation. In the complaint, it has been alleged that the broadcast '*fails to adequately highlight the relevant developments that inform the beliefs of all interest groups*', which allegation is wholly misplaced and denied in toto. The host efficiently and in detail discussed the issue at hand by putting forward the arguments of the petitioners and defendants and discussing a precedent of the Hon'ble Supreme Court of India. Hence, the complainant's allegations are again denied as false. Therefore, the broadcaster stated that it believed there was no violation of the Code of Ethics.

Counter reply dated 4.5.2023 from the Complainant, Mr. Indrajeet Ghorpade:

In its response, the broadcaster has claimed that it never meant that equal marriage rights for LGBTQIA+ people and depression were only a first-world problem. However, a quick viewing of the broadcast shows the channel's claim was false.

The channel's claim that the anchor never used any words to scare the viewers about LGBTQIA+ people was also false, as the anchor did indeed try to create a sense of fear amongst viewers against LGBTQIA+ people, especially viewers who are parents.

The justification given by the channel that the dehumanizing and derogatory image was displayed by it with an intent to support the LGBTQIA+ community is laughable. It exposes the channel's poor understanding of NBDSA's Code and lack of commitment to adhere to it or its utter arrogance to assume that it would get away with such blatant violations using flimsy reasoning.

The channel is right in claiming in its response that *Navtej Singh Johar v UoI* decriminalized consensual sexual acts. However, the channel had, during the broadcast, inaccurately claimed that LGBTQIA+ relationships were a crime before

Navtej Singh Johar, which is not true. LGBTQIA+ relationships were never criminalized. Non-peno-vaginal sexual acts were penalized by Section 377.

The anchor attributed a statement to the Supreme Court that it never made. The channel's refusal to acknowledge the same even though the recording of the program proves the same indicates that the channel does not care about corrigendum, one of the principles in the Code of Ethics.

The channel's claim that the statements made by the anchor that only urban elite people want marriage rights are actually statements of the government is valid. But the channel has failed to explain why the anchor was banishing neutrality and echoing the government's baseless, inaccurate claims without refuting them.

Decision of NBDSA at its meeting held on 6.07.2023

NBDSA considered the complaints and response of the broadcaster and, after viewing the footage of the broadcast, decided to call the parties for a hearing

On being served with the Notices, the following persons were present for the hearing on 3.08.2023:

Complainant

1. Mr. Indrajeet Ghorpade
2. Mr. Utkarsh Mishra

Broadcaster

1. Ms. Vrinda Bhandari, Advocate
2. Mr. Aiman Hassaney
3. Mr. Manish, Editorial

Mr. Vishal Pant, Editor Member representing the broadcaster in NBDSA (Aaj Tak), being an interested party, recused himself from the proceedings.

Submissions of the Complainant, Mr. Indrajeet Ghorpade

The complainant submitted that the impugned broadcast started with the anchor stating that the issue of same-sex marriage was an issue of the Western world, of the developed countries and not an issue that India has to deal with at present. He also said that this issue was similar to the issue of depression that was being discussed in the Western world. The statements made by the anchor during the impugned broadcast were not factual, as the issue of same-sex marriage is an issue for every queer person that lives in India right now and not an issue for the future. Even though more than 30% of Indians suffer from depression, the anchor very carelessly spoke about the issue of depression.

The complainant submitted that through the impugned broadcast, the anchor attempted to instill a sense of fear against LGBTQIA+ couples, especially among viewers who are parents. The anchor made a statement that *"aapko kitna bada zaktu lagega agar aapka beta kabe ki woh ek ladke se shaadi karna chahta hai aur wadhu ke roop mein aapke ghar mein ek ladka lana chahta hai"* and repeated the aforesaid statement in respect of lesbian women.

The anchor's statements in the broadcast amounted to fear-mongering, which could have a devastating impact on queer people and their parents, given the stigma they face in society. The complainant submitted that it would not be permissible for the anchor to make such statements concerning other communities as the same would not have been tolerated or allowed by the editors, the viewers, and the larger masses. The complainant disagreed with the anchor's statement, *"ye toh hai bhavishya ka mudda"*. He submitted that the issue of same-sex marriage was an issue for LGBTQIA+ people living in the country at present.

The channel also aired an insensitive photoshopped image of a half woman and a half man to instill fear in the minds of the viewers against the LGBTQIA+ community, and with a mocking grinning smile, the anchor said *"iss tasveer mein hi aapko aapka damad bhi dikhai dega aur putra vadhu be dikhai degi"*. The complainant submitted that the whole purpose of using such imagery was to create a sense of fear, disgust and misinformation. The image perpetuated the stereotype of gay people being half-man and half-woman.

As a news channel, the broadcaster was required to adhere to standards of objectivity and neutrality, and the anchor could not use the news platform to express his views. A distinction must be made between the views expressed by individuals and groups and those expressed on a news channel. In this case, the anchor could not use the news platform to express his bigoted views.

The anchor in the impugned programme acted as a mouthpiece for the government by repeating the assertions made in the government affidavit. At 4 mins 27 seconds in the broadcast, the anchor said, *"hamare desh ke bade bade shebron mein rehne wale uchh warg ke kuch khaas logon ne ye mang shuru ki."*, which was false as the Petitioners in the case came from very diverse backgrounds, from small towns, from economically weak sections and other marginalized communities. The complainant reiterated that in the broadcast, the anchor was acting as the mouthpiece of the government by repeating the views expressed by the government in its affidavit that same-sex marriage was an *"Urban Elite"* issue. The anchor had misused the news platform to amplify further the Government's misinformed and homophobic view against the entire community.

The anchor also, at the end, mentioned that the Chief Justice had said that biological sex is not absolute and gender is not defined by your genitals. In this regard, the complainant submitted that what the Chief Justice had said was a medical fact, not an opinion the anchor could question.

The complainant submitted that the overall purpose of the show, along with the graphics that were displayed and the commentary was to instill a sense of fear amongst the masses, especially the parents of queer children, against queerness, queer people and their rights, which was extremely dangerous and could have a long-term impact.

Further, he submitted that in the impugned broadcast, pictures and videos of private ceremonies were used without obtaining the consent of the individuals featured in the said videos and photos. He stated that even if such videos were available in the public domain, the individuals featured in such videos and photos might not want to be connected with the view the channel was trying to project in the broadcast.

Submissions of the Complainant, Mr. Utkarsh Mishra

In addition to the submission made by Mr. Ghorpade, the complainant submitted that while the anchor had stated at the beginning of the programme that same-sex marriage was an issue for developed countries, however, developed countries also face the same issues as developing countries. Therefore, the statement made by the anchor was inaccurate. He submitted that marriage was a gateway to many socio-economic benefits like food, employment, education, housing, and opening joint accounts, which are issues prevalent in a developing country. The complainant also invited the attention of the NBDSA to another statement made by the anchor, wherein he stated that before addressing the issue of same-sex marriage, the issue of population control should be addressed. He submitted that legalizing same-sex marriage may address these issues, as it may raise the adoption rates. In this regard, he submitted that the Delhi Child Rights Commission had also supported the petition by saying that children not allowed to come out may face development and adjustment issues. As pointed out by the other complainant, he submitted that the issue of same-sex marriage was both a fundamental right and a civil rights issue.

Submissions of the Broadcaster

The broadcaster submitted that by making the following statement "*aapko kitna bada zakta lagega agar aapka beta kahe ki woh ek ladke se shaadi karna chahta hai aur wadhu ke roop mein aapke ghar mein ek ladka lana chahta hai*", the anchor was not mocking LGBTQIA+ people. Instead, he merely expressed what many parents may experience when their children come out of the closet. During the broadcast, the anchor merely laid down the context of the debate, which was the ongoing hearings in the Supreme Court. The complainant Mr. Ghorpade, had asserted in his complaint

that the job of the anchor is to remain neutral, but at the same time, the complainant had also expressed his objection to the anchor expressing the views of the Central Government in its affidavit, which was filed in the matter. Admittedly, the broadcaster submitted that the Central Government had, in its affidavit, stated that same-sex marriage was an *urban elitist issue*. The Solicitor General also expressed this view during the hearings in the matter.

In the impugned broadcast, the anchor merely stated how the Supreme Court responded to this view. Therefore, the complainant's allegation that the anchor was amplifying the Government's biased views was not sustainable. From the submissions made, it is clear that the complainants also did not want the anchor to express a neutral view. Rather, they wanted the anchor to express a particular view. The broadcaster submitted that it was permissible for the anchor to express the government's views, cite examples of things that must be considered and state the objections that exist in Indian society. Merely describing the government's view cannot be considered to be wrong.

NBDSA questioned whether the broadcaster could have projected the other view in the impugned broadcast and whether, as alleged by the complainant, the anchor could use the channel platform to express his personal views.

In response to the questions raised, the broadcaster submitted that neutrality in social issues differs significantly from neutrality in religious and political issues. The issue raised herein was social and cultural. If one were to look at the role of media while reporting social and cultural issues, it would be observed that broadcasters on both sides would argue very liberal and very conservative views. Today, it is impossible for any broadcaster to have a completely neutral debate as this issue itself was not very neutral, as you may either support the issue or oppose it. It reiterated that neutrality in a cultural issue differs significantly from neutrality in a political issue. Liberal channels may have aired pieces only to support the petitioners thrashing the government's views. The impugned broadcast is not a news broadcast but an opinion show.

NBDSA questioned whether the picture used by the broadcaster in the impugned broadcast was being used to educate people or was it being used to offend the LGBTQIA+ community.

In response, the broadcaster submitted that it is the tenor of the views. One may disagree with the manner of projecting it, which some may consider unpalatable; however, the same does not violate the Code of Conduct. The picture cannot be construed to be in bad taste, as it is merely a manner of projecting people's views on both sides and cannot be regarded as violative of *good taste and decency*.

In response to the objection raised by the complainant concerning the videos of private individuals being used in the impugned broadcast, the broadcaster submitted that this issue cannot be raised by the complainant Mr. Ghorpade and if such individuals had any objection, they could file a separate complaint with the channel. The broadcaster submitted that the complainant must tender some evidence showing such objection. In rebuttal, the complainant submitted that the onus of showing such proof was with the broadcaster, who was required to show that consent had been obtained.

Decision of NBDSA at its meeting held on 3.8.2023

Based on the submission of the complainant that the broadcaster had overwhelmingly projected only one point of view in the impugned broadcast, NBDSA decided to defer further hearing in the complaint to consider the broadcaster's response to the queries raised during the hearing, including whether the broadcaster could have also projected the other point of view as well. NBDSA decided to inform the complainant and the broadcaster accordingly.

Rejoinder dated 8.8.2023 on behalf of the Complainants

The issue raised in the hearing was whether there were restrictions upon the broadcaster to air their opinions as per the Code of Ethics, Guidelines and established laws.

In response, the complainants relied on the judgment of the Hon'ble Supreme Court in the case of *Union of India & Cricket Association of Bengal 1995 AIR 1236*, which deliberated upon this question. The complainants stated that they strongly oppose any attempt by the broadcaster to normalize biased news, especially where it can damage the democratic involvement of groups in society and public dialogue through defamation and immoral and indecent behaviour. The advocate's assertions that the news channel is a forum not only for the anchors to promote facts but also opinions run counter to the broadcasters' frequent portrayal of themselves as non-opinionated, objective information brokers. They primarily identify as objective information mediators who convey news without filters or bias, which is touted above all as evidence of their credibility as a journalistic enterprise. They do not notify their viewers that they occasionally include their own assertions, which would be difficult to identify or separate from facts. Without a disclaimer, it is natural for broadcasters' claims to be perceived as factual.

The complainant also relied on the judgment of the Hon'ble Karnataka High Court in the case of *Lok Shikshan Trust & Others And Davalsab S/O Malliksab Nadaf, Criminal Petition No. 100541 OF 2020*.

The broadcasters can consolidate control over determining the narrative for important sociopolitical issues thanks to the viewers' perception that they are receiving information from a supposedly objective, non-opinionated source, as the broadcaster claims.

Given the potential for the viewers to mistake a particular opinion for a fact without a disclaimer, the anchors or editors must identify their opinions clearly and unmistakably. As the rights of viewers are to be prioritized over the rights of the broadcaster, the potential for misinforming viewers is to be prioritized over the right of the anchor to express their opinions.

This restriction upon the right of the broadcaster must be interpreted strictly. There can be no exceptions to the same, particularly given the increasingly diverse new media landscape and platforms that offer viewers a finer level of perspectives and beliefs to adhere to, encouraging them to prioritize affirmation of their opinions over comprehensive facts, which may eventually result in the total erasure of narratives that challenge the dominant narratives. The restrictions on these rights need to be decided on a case-to-case basis. If a viewpoint is to be expressed, it should, at the very least, not seek to restrict the democratic participation of groups formed based on socioeconomic, political, or religious considerations or infringe upon their rights.

The invasion of rights can be identified through the following factors: -

- a) The potential of the unverified charge or claim being promoted as fact to hinder the democratic participation of a community in public life and discourse.

For example, even if the anchor's bigoted intentions were unintentional in this instance, the coverage was still completely ignorant. The matter-of-fact tone of the opinions encouraged ignorance of the demands, demographics, and representation of queer communities. Testimonies and studies show that this ignorance encourages prejudices against the aforementioned community.

The anchor's disrespectful comments on how shocked someone might be if their son showed up at their house with another man undermine the LGBTQ community's right to dignity. Such a comment would be illegal in the context of a Dalit or religious community, as was stated during the hearing.

- b) Putting the communities the anchor disagrees with in a position vulnerable to state prosecution.

Since the advocate, during her attempt to normalize opinionated news, mentioned that other journalists also opine during their shows, it would be useful for them to

provide any instances where the journalists have made specific claims that have the potential to be used by the state to violate life and liberty or prejudice democratic participation of specific communities in public and civic discourse.

Given how the broadcasters promote themselves as objective mediators of information, they must avoid any opinion that can potentially violate the right to life, liberty or dignity of specific communities or make them vulnerable to state prosecution. There cannot be any exceptions to this rule. In the absence of disclaimers, the statements *prima facie* violates neutrality and objectivity.

The complainants reiterated that the impugned broadcast had violated the Code of Ethics and Broadcasting Standards and the Specific Guidelines Covering Reportage concerning 1.6 Accuracy, 2.1 Impartiality, Neutrality & Fairness, 4.1 Good Taste and Decency and 8.1 Children's Interest; Guidelines for Prevention of Hate Speech, Specific Guidelines for Reporting Court Proceedings and the Guidelines on Broadcast of Potentially Defamatory Content.

Additional Written Submissions dated 29.08.2023 of the Broadcaster

During the hearing, *inter alia*, the following specific allegations were made by Mr. Indrajeet Ghorpade ("**Complainant**"):

Allegation A: Airing of an image consisting of a person depicted partly in man's apparel and partly in female's apparel, which is alleged to be distasteful and not neutral in its presentation.

Allegation B: Airing of the images/videos of LGBTQ+ people throughout the impugned broadcast allegedly without their informed consent.

1. The two allegations are bereft of any basis in as much as no violation of the Code or any specific guidelines can be made out by the complainant in their regard. The airing of the impugned images and visuals is protected by the broadcasters' right to disseminate information and opinion on current affairs. It does not, in any manner, infringe upon any individual's right to privacy. In any event, without prejudice to the said submission, the following is submitted:

In re: Allegation A made by the Complainant

2. First, media freedom is an essential pillar of a free democracy, and plurality of views and opinions, however strong and direct they may be, must be allowed to protect this sanctity. The Code of Ethics & Broadcasting Standards has comprehensively defined content deemed to violate the Code. As a matter of principle, the presentation of one's opinions is not *per se* violative of the Code.

3. As per the Guideline 1.6 of NBDSA's *Specific Guidelines Covering Reportage* dated 06.12.2019, in order to ensure accuracy in reportage, "Facts should be clearly distinguishable from, and not be mixed-up with, opinion, analysis and comment". Therefore, by extension, even opinions, analysis and comments cannot be conflated with facts and held against a news channel to prevent it from exercising its freedom to express its opinions in good faith and without threatening the public interest.
4. This view has been upheld in a catena of judgments by several Courts, including the Hon'ble Supreme Court in *Sakal Papers (P) Ltd. v. Union of India, (1962) 3 SCR 842*.
5. Second, the impugned image passes the test of neutrality as laid down under the Code, which provides that "TV News channels must provide for neutrality by offering equality for all affected parties, players and actors in any dispute or conflict to present their point of view. Though neutrality does not always come down to giving equal space to all sides (news channels shall strive to give main view points of the main parties) news channels must strive to ensure that allegations are not portrayed as fact and charges are not conveyed as an act of guilt".
6. Without prejudice to the above, it is submitted that in the context of the present case, neutrality has to be perceived differently from the usual political, social or criminal context. The issue at hand is cultural – regarding the legality of same-sex marriages – hence, the question of neutrality has to be considered, keeping in view the general opinion of the public, or at least the opinion of a section of society. Neutrality cannot always come down to giving equal spaces, but it is factored on whether the facts are presented to imply guilt. The impugned image is neither factual in nature nor accusatory, or even implicative; rather, it was merely an expression of the creative freedom in line with the information being reported by the news anchor surrounding the issue in question. Therefore, the principles of neutrality have to be applied in accordance with the culture and norms of the society and public perception of the subject-matter.
7. Third, as per Guideline 4.1 of the Specific Guidelines, to determine whether the impugned image is *distasteful*, the target audience must be considered. Many amongst the broadcaster's target audience have conservative/religious views and believe that legalization of same-sex marriage is not necessary and should, in any event, be left to Parliament. The issue at hand is a social concept with which they need to be carefully sensitized, and for this purpose, broadcaster took the liberty of approaching the concept in a creative way. Therefore, to determine whether the impugned image is *distasteful*, its reception by the viewer must be the key consideration.

Allegation B made by the Complainant

8. The said allegation is frivolous, baseless, and lacks legal grounds. A bare perusal of the visuals makes it amply evident that the visuals do not violate the right to privacy

of any individual. These visuals are collected from the public domain and do not have a reasonable expectation of privacy. They are being used to provide a visual effect to the educative reportage on the issue of same-sex marriage.

9. Guideline 5 of the Specific guidelines lays down the measures to be exercised by the news channel to protect the privacy of individuals. The disputed visuals are completely in line with the said guidelines in as much as they do not reveal the name, address or other personal details of any of the individuals; nor are they shown in a manner that denigrates or discriminates against them.
10. Even the recently passed *Digital Personal Data Protection Act, 2023* draws a clear exception for the content that is available in the public domain under Section 3(c)(ii), which provides that the said act does not apply to “*personal data that is made or caused to be made publicly available.*” Therefore, it is clear that no violation of the right to privacy can be made out in the disputed visuals.
11. News channels are not obligated or even required to acquire informed consent to broadcast the material which is available in the public domain unless it is specifically covered/prohibited by the Guidelines. Any obligation to the contrary would impose impractical burdens on news broadcasters, particularly 24 x 7 broadcasters, which would be unworkable.
12. Hence, the present complaint is devoid of any merit and is liable to be dismissed.

Additional Written Submissions dated 1.9.2023 of the Complainant, Mr. Indrajeet Ghorpade

In its response, the channel has justified its use of the image. Dehumanizing comparisons, negative stereotyping and inaccurate representation, involve equating a particular group of people, especially oppressed minority groups, with negative, false characteristics, often to demean, discriminate or promote stigma against them. These comparisons are not only harmful but also perpetuate stereotypes and prejudice.

In this case, the anchor spread fear, prejudice and stigma against LGBTQIA+ people in the minds of parents of LGBTQIA+ people and other viewers as well by saying, “*Imagine how shocked you'll be if your son brings home a man as your daughter-in-law or your daughter brings home a woman as a son-in-law. Here is an image we have made for you to imagine. In this you can see your daughter in law and son in law, both.*”

In India, there exists a false notion that the bodies of LGBTQIA+ people are half male and half female, and this notion has caused big sections of the public to look at LGBTQIA+ people as abnormal, weird, defective, disgusting beings for centuries.

The channel has contributed to further spreading this notion at an extraordinary scale.

The homophobic section of society might not see this image as distasteful, as stated by the channel. However, the reception of the image by the targeted party, i.e., LGBTQIA+ people, and the impact on their safety and well-being must be the primary consideration while assessing the image for "taste".

The complainant questioned NBDSA whether it would allow the broadcaster to air demeaning stereotypes that exist in society and allow their pictorial representations under freedom of speech and creativity. The image used by the anchor and his commentary was as harmful to LGBTQIA+ people.

The channel stated that because the videos and images of LGBTQIA+ people used in the broadcast were available in the public domain, they did not require the consent of the owners of these images and videos, nor the consent of the people featured in them. The complainant stated that he writes on behalf of at least two parties to inform NBDSA that they feel violated by the channel for using their images and videos in a homophobic report. By making their imagery available in the public domain, they have extended the opportunity to the public to view their imagery; however, they have not given any party the right to re-use this imagery, especially for promoting homophobia.

Recently, a Canadian Court charged the ruling party of Italy for using the image of a Canadian gay couple and their child in an anti-surrogacy, anti-gay campaign. In this case, although the image was available in the public domain, the couple did not consent to its use for campaigning against gay families.

He urged NBDSA to consider all factors surrounding privacy, informed consent, scope of consent, intent of re-usage, impact on affected communities and other aspects while making a decision.

On being served with Notices, the following persons were present at the hearing on 31.10.2023:

Complainant:

1. Mr. Indrajeet Ghorpade
2. Mr. Utkarsh Mishra

Broadcaster:

1. Ms. Vrinda Bhandari, Advocate
2. Mr. Manish Kumar, Managing Editor, Aaj Tak

3. Ms. Dipali Rai, Legal Counsel

Mr. Vishal Pant, Editor Member representing the broadcaster in NBDSA (Aaj Tak), being an interested party, recused himself from the proceedings.

Submissions of the Complainant, Mr. Utkarsh Mishra

The complainant submitted that in the last hearing of the complaint, a question that had not been deliberated in detail was regarding the extent to which an opinion could be expressed. The complainant relied on Paras 78 and 199 of the judgment of the Hon'ble Supreme Court in *Union of India & Cricket Association of Bengal 1995 AIR 1236* to submit that even if one were to give the benefit of the doubt to the statements made by the anchor, the statements made were ignorant and amounted to misinformation. The complainant submitted that it was this kind of misinformation that furthered the bigotry and discrimination against the LGBTQIA+ community and people with mental health issues. The ignorance is borne out because there is ample research that demonstrates how mental health, social and patriarchal hierarchies have real-world impact, how failure to understand mental health and gender identity issues affects from childhood and undercuts the ability of the country to use its human capital to its full potential. By misrepresenting the demand for same-sex marriage as an elitist lifestyle concern fit only for developed nations, the anchor misinformed the viewers and expressed an ignorant and insular point of view. The coverage effectively prejudices the right of queer couples to access social security that is granted through the institution of marriage in terms of food rations, adoption, life insurance, and bank accounts, all of which are crucial for sustenance in a developing nation.

He submitted that by broadcasting a photo of half-man and half-woman, the broadcaster had reduced the complex issue of sexual identity to cross-dressing, which was also ignorant. The complainant submitted that it was important to penalize the broadcast for its ignorance, which furthered the bigotry and discrimination against the queer community. Further, in the impugned broadcast, the anchor claimed that mental health is a first-world issue even though there is an increase in the number of suicides being committed by students.

He relied on the judgment of the Hon'ble Karnataka High Court in the case of *Lok Shikshan Trust & Others And Davalsab S/O Malliksab Nadaf, CRIMINAL PETITION NO. 100541 OF 2020*, wherein it was observed that "Even today, major section of the society believes that the news item published in the newspaper as gospel truth without even looking for corroboration or verification." Apart from the aforesaid judgment, the complainant submitted that there is a well-established jurisprudence regarding the potency of news media. The same is also reflected in the Code of Ethics and the Guidelines. The complainant submitted that if the anchor is allowed to make statements in a

matter-of-fact manner, as was done in the impugned programme, it was likely to influence the viewers.

Further, he submitted that in the previous hearing, the complainant, Mr. Ghorpade, had submitted that news channels are not platforms for the anchors to express their personal opinions, which is also contrary to how these broadcasts promote themselves, which is as being non-opinionated and objective information focused. They identify as information mediators who convey news without filters or biases. This is promoted as being evidence of their journalistic integrity. They fail to inform the viewers that such programmes occasionally also include their assertions, which would be impossible to distinguish from facts. He submitted that in the absence of a disclaimer, the anchors' claims can be perceived as factual. The broadcaster can thus consolidate control over determining the narrative for important sociopolitical issues thanks to the viewers' perception that they are receiving information from a supposedly objective, non-opinionated source, as claimed by the broadcaster. Therefore, opinions must be identified clearly and unmistakably without exceptions. The restrictions of these rights need to be decided on a case-to-case basis. If a viewpoint is to be expressed, it should, at the very least, not seek to restrict the democratic participation of groups formed based on socioeconomic, political, or religious considerations or infringe upon their rights. He reiterated that not only the bigotry but also the ignorance of the channel should be penalized.

Submissions of the Complainant, Mr. Indrajeet Ghorpade

The complainant stated that the broadcaster had, in its rejoinder stated that the issue concerning the legality of same-sex marriage is cultural and not social, political or criminal, as a justification for the impugned broadcast. The broadcaster's response indicates its understanding of the issue, which is very limited as same-sex marriage, adoption, and other rights that follow are beyond being merely cultural issues.

The complainant refuted the assertion made by the channel that the image aired during the impugned broadcast was neither factual in nature nor accusatory or even implicative, rather, it was merely an expression of its creative freedom. He submitted that the image was accusatory and implicative. To supplement the image, the anchor also questioned how parents of LGBTQIA+ people would feel if their son brought home a man as their daughter-in-law or their daughter brought home a woman as a son-in-law. He reiterated that the image aired during the broadcast was not merely a graphic. Instead, it was aired to depict an entire community in a derogatory and demeaning manner. For decades, the LGBTQIA+ community has been shown as being unnatural and sick. There exists a false notion that the bodies of LGBTQIA+ people are half male and half female, and this notion has caused large sections of the public to look at LGBTQIA+ people as abnormal, weird, defective, disgusting

beings for centuries. The channel has contributed to further spreading this notion at an extraordinary scale.

In response to the broadcaster's assertion that the principles of neutrality have to be applied in accordance with the culture and norms of the society and public perception of the subject matter, it was submitted that, at times, public perception of social matters could be harmful and damaging. He, therefore, questioned whether public perception should influence what neutrality means or whether the channel has a larger responsibility, being professional in this field.

The complainant submitted that the broadcaster, in its response, had stated that to determine whether the impugned image is *distasteful*, the target audience has to be taken into consideration, which in this case was conservative/religious views. The complainant questioned whether having a conservative target audience would give the channel a license to broadcast information that is harmful to other major sections of society. He asked whether creative freedom or public perception would allow the broadcaster to air pictorial representations with inaccurate, negative and dehumanizing stereotypical comparisons.

The complainant questioned the impact such a broadcast would have on the psyche of children watching it. He submitted that the impugned broadcast by reinforcing prejudices had violated the NBDSA Guidelines on Hate Speech. Several members of the LGBTQIA+ community face social and economic exclusion and segregation all the time. Airing broadcasts such as the impugned broadcast would be detrimental to the members of the community as it may further such prejudices.

In addition to violating the Guidelines on Hate Speech, the impugned image and the accompanying commentary by the anchor are also violative of the Guidelines on Broadcast of Potentially Defamatory Content.

Further, he submitted that the Specific Guidelines for Reporting Court Proceedings preclude the broadcaster from sharing their opinion or views on sub judice issues, which has also been violated in the instant case.

Submission of the Broadcaster

The broadcaster submitted that the facts of judgment in *Union of India & Cricket Association of Bengal 1995 AIR 1236* relied upon by the complainant are entirely different, and the judgment does not state that the rights of the broadcasters are subordinate to the rights of the viewers.

In response to one of the contentions raised by the complainants that the views expressed in the broadcast were ignorant and that the same amounted to

misinformation, the broadcaster submitted that it was important to consider the context of the impugned broadcast, which was the affidavit filed by the Union of India, wherein the Government had stated that the demand for same-sex marriage was *"urban elitist"* and *"that they were not representative of the majority of the society"*. Another aspect of the Government's affidavit was the psychological impact on the children of queer relationships. This was the stance taken by the government in its affidavit, and merely because one disagrees with such a stance, the same cannot be construed as misinformation.

The broadcaster reiterated that this was not the stance taken by the anchor but the government. Essentially, the complainants disagreed with the Government's views. Further, it submitted that the views cannot be considered misinformation, which has a higher degree of standards as being patently false.

In respect of the complainant's submission concerning whether news channels can express opinions, the broadcasters submitted that there are certain facts-based programmes in which only the facts are reported, which are usually aired at 8 pm, while there are other shows that carry opinions and analysis based on facts. Therefore, it was important to understand the programming of the channels and the different facts and facets of the programmes aired. In the impugned broadcast, the opinion expressed by the anchor has to be considered in the context of the proceedings, which were a matter of deep debate. Being independent is very different from being opinionated.

In response to the complainant's objection concerning the anchors' analysis of a sub-judice issue, the broadcaster submitted that all news channels were discussing the proceedings in the case and using the same as a basis to launch further discussion on the issues. It is not a standard currently to bar any discussion on sub-judice issues. In fact, such issues of national importance are discussed by the channels. An issue being sub-judice does not bar its reporting. In fact, the broadcaster submitted that one of the complainants had also expressed his grievance regarding the Supreme Court rebuttal not being reported in detail.

The issue of children's interest was not raised by the complainant in the complaint. Therefore, the complainant's rejoinder cannot go beyond the original complaint. Be that as it may, such broadcasts were not meant for children but for a different audience.

In respect of the complainant's objecting regarding the target audience, the broadcaster submitted that under the Code of Ethics & Broadcasting Standards, *"TV News channels must provide for neutrality by offering equality for all affected parties, players and actors in any dispute or conflict to present their point of view. Though neutrality does not always*

come down to giving equal space to all sides (news channels shall strive to give main view points of the main parties) news channels must strive to ensure that allegations are not portrayed as fact and charges are not conveyed as an act of guilt". Further, as per Guideline 4.1 of the Specific Guidelines, *'In selecting content, broadcasters should abide by current norms and mores of decency and taste, in visuals, language and behaviour, keeping in mind the context in which any visuals, language or behaviour occurs, including the broadcast time, type of content, target audience, use of parental advisories, cautions and content classification"*. In this context, reference was made to target audience in its response. Further, it submitted that neutrality has to be perceived differently from the usual political, social or criminal context.

NBDSA asked the broadcaster to explain the statements made by the anchor and the image aired during the impugned broadcast, including the statement that same-sex marriage and depression were first-world problems. In response, the broadcaster submitted that the anchor had made the statement only regarding the issue of depression. The anchor merely stated that these issues, traditionally seen as first-world issues, are now coming to India. In India, issues like food, housing, and clothing are a bigger problem, and now depression is also becoming an issue. It was in the context of depression that the term "first world" was used. The anchor had merely indicated that, factually, India is still seen as a third-world country and what issues normally relate to third-world countries. In this context, it was stated that depression is normally spoken about in developed countries. At no point in time, it was stated that equal rights for *LGBTQIA+* and depression are only relatable to the First World Countries.

That the broadcaster had aired the image exercising its creative freedom. While the image may not have been the best choice, it does not violate the Code of Ethics and/or the Guidelines. That something that may not be desirable must be distinguished from a violation of the Code of Ethics. The image cannot be seen independently and has to be seen in the context of the debate.

In rejoinder, the complainant, Mr. Ghorpade, questioned the broadcaster what was the purpose behind using the impugned image. In response, the broadcaster submitted that only the effect of the image can be considered and not the intent. The broadcaster reiterated that it did not intend to target the *LGBTQIA+* community in the broadcast.

In response, the complainant, Mr. Mishra, submitted that one cannot ascribe intention to somebody. However, their grievance was that the image was ignorant in nature, especially when a complex issue of sexual identity is reduced to cross-dressing.

NBDSA questioned whether the broadcaster had also presented the views of the LGBTQIA+ community. The broadcaster submitted that at the time of the impugned broadcast, the Union had filed its affidavit, and the Government was making its arguments in the Court; therefore, it had discussed the Government's views in the broadcast. When the petitioner's arguments were made, they would only discuss the petitioner's arguments and so forth. In the impugned broadcast, the broadcaster discussed the Chief Justice's disagreement with the stance taken by the Government and the Supreme Court's criticism of the Union's view.

Complaint in respect of Show No. 2

Since the complainant did not receive a response from the broadcaster within the time stipulated under the Regulations, on 30.04.2023 the complaint was escalated to the second level of redressal i.e., NBDSA.

Complaint dated 23.4.2023

The complainant stated that the anchor in the impugned broadcast falsely and inaccurately claimed that the Chief Justice of India had, in the LGBTQIA+ marriage equality case, said that "*yahan wahi boga jo mai chahunga*".

Further, the anchor inaccurately and baselessly claimed that "*Solicitor General ki Supreme Court mein abhi chal nahi rahi hai. Aisa lagta hai Supreme Court mann bana chuka hai ki woh chahta hai aisa.*" He also maliciously said that "*Ye desh kisi ke baap ka nahi hai aur kuch log isse chalane ki koshish kar rahe hai*", referring to the Chief Justice of India.

The complainant invited the broadcaster's attention to the following facts:

- So far, only 4 out of the 14 lawyers representing the petitioners who plan to argue the case have had a chance to present their arguments. The remaining are yet to argue.
- The respondents, including the Solicitor General (SG), Attorney General (AG) and other parties who have opposed the petitions, are yet to be heard.

Despite the above, the broadcaster had, in the impugned broadcast, drawn incorrect conclusions on a constitutional matter that was sub judice.

The broadcaster had attempted to paint the Chief Justice as an unreasonable person behaving like a dictator and the SG as a helpless figure with no voice or importance in the Supreme Court, which was not the case.

The broadcaster had baselessly claimed that the Supreme Court seemed to have already made up its decision, even though the hearing had just begun, which violated the Code of Ethics & Broadcasting Standards, specifically relating to impartiality, objectivity and neutrality. Further, it violated the Specific Guidelines on defamatory content, reporting court proceedings, and good taste and decency.

Complaint dated 23.4.2023 to NBDSA

The complainant requested urgent intervention from NBDSA. He stated that by broadcasting the impugned broadcast, the broadcaster had violated not only the Code of Ethics and Guidelines but also the Contempt of Court Act, 1971, specifically Section 2 (c), in an important matter that was sub judice and was being heard by a 5-judge Constitutional Bench headed by the Hon'ble Chief Justice himself.

Therefore, he stated that the violating sections of the show must be removed immediately from the recordings uploaded online by the channel, and an apology and correction must be issued on air and online where the recordings were uploaded and shared at the earliest.

Reply dated 3.5.2023 from the channel:

The broadcaster stated that the complaint related to the subject matter of the ongoing PII regarding marriage rights for same-sex couples in India, which is pending adjudication before the Hon'ble Supreme Court of India. The complainant's grievance pertained to certain statements spoken/ questions raised by the host in the course of an interview hosted by him.

The said interview was broadcast under the banner '*Seedhi Baat*'. The said interview was with the Minister of Law and Justice, Government of India, Shri. Kiren Rijiju and was broadcast on 22.04.2023. In the opening lines of the interview, it was pointed out that '*same-sex*' issue is pending before the Hon'ble Supreme Court, and there is some difference of opinion in relation to the said issue.

In the interview, the host raised various questions in relation to the stand of the Central Government on various issues. One of the issues which were pointed out was in relation to the issue of '*same-sex marriage*'. It was pointed out by the host that the Central Government had submitted an affidavit wherein it was stated that '*same sex marriage*' is an urban elitist concept. However, this position was negated by the Hon'ble Supreme Court. In this context, the host pointed out that the Hon'ble Chief Justice of India had indicated that the Government cannot decide what will be heard and what will not be heard. Therefore, in this context, the host pointed out as a preliminary remark that the Hon'ble Chief Justice had stated that he will decide what will be heard.

In an interview, the interviewer normally puts the interviewee in a difficult position so as to ascertain the various viewpoints on an issue. It is in this context the host made the statement that was extracted in the 2nd paragraph of the complaint. There was nothing inaccurate or false about the claim made in these statements, which is a normal process of interviewing a person.

In relation to the 3rd paragraph, wherein the complainant had stated that the said statement was referring to the Hon'ble Chief Justice of India, was completely incorrect. In fact, a perusal of the broadcast shows that the host was referring to an earlier statement made by Shri Kiren Rijju himself, wherein he had stated *'that this country is not owned by any one person, and the people of the country are supreme, and will ultimately decide the issue'*. Shri. Kiren Rijju had been accepted this statement as having been spoken by him. Therefore, the broadcaster stated that it was not able to understand the complainant's grievance in relation to the said statement being made by the host.

Finally, it stated that there was no violation of the Code of Ethics & Broadcasting Standards. It reiterated that the interview was objective, impartial and completely neutral.

Counter reply dated 4.5.2023 from the complainant:

The complainant stated that in its response, the broadcaster had not accepted the violations it committed in the impugned broadcast. Rather, the broadcaster had stated that this was a normal way of interviewing.

The complainant stated that he was not satisfied with the response, as he does not think this was a normal interviewing practice wherein false statements are made about a sub judice constitutional matter, as explained in the complaint.

Decision of NBDSA at its meeting held on 6.7.2023

NBDSA considered the complaint, response of the broadcaster and after viewing the footage of the broadcast, decided to call both parties for a hearing.

On being served with Notices, the following persons were present at the hearing on 6.10.2023:

Complainant:

1. Mr. Indrajeet Ghorpade
2. Mr. Utkarsh Mishra

Broadcaster:

1. Ms. Vrinda Bhandari, Advocate
2. Mr. Manish Kumar, Managing Editor, Aaj Tak

3. Ms. Dipali Rai, Legal Counsel

Mr. Vishal Pant, Editor Member representing the broadcaster in NBDSA (Aaj Tak), being an interested party, recused himself from the proceedings.

Submission of the Complainant

The complainant submitted that in the impugned broadcaster, the anchor falsely claimed that the Chief Justice of India had stated “*yaha wohi hoga joh main chahunga*” in the marriage equality case. He further baselessly claimed that “*Solicitor General ki Supreme Court main chal nhi rhi hai aisa lagta hai Supreme Court mann bana chuka hai ki woh kya chahita hai*” and that “*Ye desh kisi ke baap ka nahi hai aur kuch log isse chalane ki koshish kar rahe hai*”. The complainant submitted that even if one were to assume that the anchor made the statements in the context of queer people, the statements were malicious. The complainant submitted that these conclusions were drawn by the channel very early on in the case based solely on the arguments made by four of the fourteen lawyers arguing on behalf of the petitioners. He stated that at this juncture in the hearings, the respondents, including the Solicitor General, did not have the opportunity to present their arguments. Therefore, the complainant questioned what editorial freedom the broadcaster exercised to draw such conclusions while conversing with the Law Minister.

Submission of the Broadcaster

The broadcaster submitted that while at the time of the broadcast, the respondents (i.e. the Government) had not yet argued their case. However, they had filed an affidavit wherein they had opposed the reliefs sought and stated that those seeking marriage equality in India merely represent “*urban elitist views for the purpose of social acceptance*”. In response to the government’s affidavit, the host made the following observations: “*Same sex marriage ko lekar Supreme Courts mai iss samay sunwayi chal rahi ha , badi dilchasp sunwayi hai. Dono taraf se bade logic diye jaa rahe hai. Sarkar iske paksh main nahi hai. Chief justice of India ne kaha ye toh, sarkar ne jab jaha ye toh elitist vichaar dhara hai, aur unhone ne kaha ki aisa nahi hai, aur yaaha vahi hoga jo mai chahunga. Same sex marriage pe unke kya appatti kya hai?*” The broadcaster submitted that the anchor had merely summarized the Chief Justice’s observations colloquially through the aforesaid statement.

The primary purpose of the host’s introductory statement was to provide the requisite context within which he was trying to understand from the Law Minister what the government’s objection to the legal recognition of same-sex marriages was, and the anchor’s comment must be seen in this context. The broadcaster submitted that it had been widely reported that during the proceedings, the Hon’ble Chief Justice of India seemed to have questioned the government on its stand – as is the norm in oral arguments – and commented that the government had failed to provide

any data to back its claim regarding urban elitist nature of the petitioners/their prayers. Further, the arguments of the respondents/intervenors that children of a queer relationship would suffer psychological impact were also questioned.

The broadcaster reiterated that the purpose of making the aforesaid statement was merely to elicit a response during the interview from the Law Minister. In no way was the host trying to insinuate any malice on the part of the Chief Justice. Instead, the anchor was trying to understand the Home Minister's views on the government's stand and the court's response. The comments "*yabaan wohi boga jo main chabunga*" or that "*Solicitor General ki Supreme Court mein abhi chal nabin rahi hai...*" were used colloquially to explain the CJI's response and his widely reported disagreement with the government's affidavit. The host was not making any final determination ("*aisa lagta hai Supreme Court mann bana chuka hai...*") about the Court's conclusions, given that the matter was sub judice.

The purpose of the interview was to solicit the views of the interviewee, and it was not in the nature of a factual report. For instance, the host pressed Mr. Rijju on what the government would do if the Court ruled against them. In this context, the Hon'ble Minister spoke about the importance of the sovereignty of the people, prompting the host's impugned comment that "*yeh desh kisi ke baap ka nabin hai*".

NBDSA asked the broadcaster what the host meant by the statement "*yeh desh kisi ke baap ka nabin hai*" and whether it was appropriate for the broadcaster to have attributed statements made during the programme to the Chief Justice. In response, the broadcaster submitted that the anchor had colloquially summarized the Chief Justice's observation during the programme. The statements must be considered in context and totality.

NBDSA questioned the broadcaster whether it had run any programme on the petitions being filed and regarding the views of the petitioners. In response, the broadcaster submitted that the petitioner's views were mentioned by it in bulletins and not run as an entire programme.

Further, the broadcaster submitted that the interview with the law minister was not only in the context of the marriage equality case but was a one-hour-long discussion on several other aspects.

Complaint in respect of Show No. 3

Since the complainant did not receive a response from the broadcaster within the time stipulated under the News Broadcasting & Digital Standards Regulations, the complaint on 30.04.2023 was escalated to the second level of redressal, i.e. NBDSA.

Complaint dated 23.4.2023

The anchor inaccurately, baselessly and maliciously stated that “*Supreme Court ka jo bench hai woh kaafi naye naye logics leke aa raha hai ki kyun ye hamare desh mein hona chahiye*”. The 5-judge Constitutional bench headed by the Chief Justice of India had not brought any “*naye naye logics*” in the sub judice case on LGBTQIA+ Marriage Rights, nor had the bench stated at any point in time that “*ye hamare desh mein hona chahiye*”.

By making these claims, the broadcaster violated the Code of Ethics and Guidelines on objectivity, fairness, and reporting court proceedings and Section 2 (c) of the Contempt of Court Act.

Further, the anchor asked the Home Minister a leading question about the government’s baseless submission in the Supreme Court that this matter is an urban elite issue and that it must be discussed in Parliament.

The anchor failed to honor neutrality by not stating that a Private Member Bill was already introduced in the Lok Sabha by Member of the Parliament Ms Supriya Sule, more than a year ago on April 1st 2022, to amend the Special Marriage Act in order to allow LGBTQIA+ Marriage legal recognition but the bill was never discussed.

The anchor also failed to honor neutrality and fairness by not stating that the government’s stance to call this case an urban elitist matter was insensitive and inaccurate because LGBTQIA+ people belong to all castes, classes, sects, religions, regions, professions and walks of life. Instead, the anchor acted as the mouthpiece of the government by giving them a platform to amplify their ill-informed, insensitive anti-LGBTQIA+, anti-equality mindset and approach.

Reply dated 3.5.2023 from the Broadcaster:

The broadcaster stated that the said complaint related to the subject matter of the ongoing PIL regarding marriage rights for same-sex couples in India, which was pending adjudication before the Hon’ble Supreme Court of India. The complainant’s grievance pertains to certain statements spoken/ questions raised by the host during an interview he hosted.

1. The complaint was in relation to an interview with the Hon’ble Minister of Home Affairs, Government of India, at the India Today Roundtable at Karnataka, which was broadcast on 22.04.2023. The aforesaid roundtable event was only relating to issues pertaining to Karnataka. During this round table, several persons from both aisles of the political spectrum were interviewed. This programme was in relation to the interview of the Home Minister.

2. That one of the major issues confronting our nation is the discourse on '*same sex marriage*'. In this context, it is important to point out that the Government of India has taken a specific stand not to legalize '*same sex marriage*'. To contextualize further, the arguments are continuing on a day-to-day basis before the Hon'ble Supreme Court of India, and during the said programme, the host had questioned the Hon'ble Home Minister about the stand taken by the Government of India.
3. In the interview, the host pointed out that the Hon'ble Supreme Court of India is hearing and considering the issue of legalizing '*same-sex marriage*'. It was also pointed out that the Government of India has a different point of view. In this context, it was further pointed out that '*it seems*' that the Hon'ble Supreme Court is bringing to the fore, various issues as to why should there be legalization of '*same sex marriage*'.
4. In the complaint, the phrase '*Government's baseless submission in the Supreme Court*' has been used, which the broadcaster stated it was not able to subscribe to at this stage that the government's viewpoint is baseless. According to the Government of India, the issue has to be debated in Parliament, and an amendment (if agreed to) can be brought about. The said issue as to the correctness or otherwise of the said opinion is pending adjudication before the Hon'ble Supreme Court and will be decided accordingly.
5. The complaint stated that the host had not addressed certain important points and, therefore, had failed to '*honour neutrality and fairness*'. The broadcaster stated that it would like to point out that the programme constituted an interview. The purpose of the interview was to elicit a response from the interviewee. In this context, there was no occasion or reason for the interviewer to inform about various steps.
6. The complaint had specifically targeted the host and his manner of conducting the interview, which is a person specific and subjective aspect, and the complaint lacks objectivity.
7. The broadcaster stated that it could not understand how the programme in question violated the Code of Ethics. The interview was objective and fair, and there was no violation of the Contempt of Courts Act, 1971.

Counter reply dated 4.5.2023 from the complainant:

In the response, the broadcaster had failed to clarify and justify the "naye naye logics" that it claims the Supreme Court is putting forward. The broadcaster has failed to see the lack of neutrality and how it is contributing towards amplifying the government's prejudice against LGBTQIA+ persons through its platform. The broadcaster, in its response, has stated that "*it seems*" like the Supreme Court is

putting forth reasons why LGBTQIA+ marriages must be legally recognized, which is a concern. A news channel must not speculate a Supreme Court bench's decision/inclination on an ongoing constitutional sub judice matter and must stick to the facts of the matter.

Decision of NBDSA at its meeting held on 6.7.2023

NBDSA considered the complaint, response of the broadcaster and after viewing the footage of the broadcast, decided to call both the parties for a hearing.

On being served with Notices, the following persons were present at the hearing on 6.10.2023:

Complainant:

1. Mr. Indrajeet Ghorpade
2. Mr. Utkarsh Mishra

Broadcaster:

1. Ms. Vrinda Bhandari, Advocate
2. Mr. Manish Kumar, Managing Editor, Aaj Tak
3. Ms. Dipali Rai, Legal Counsel

Mr. Vishal Pant, Editor Member representing the broadcaster in NBDSA (Aaj Tak), being an interested party, recused himself from the proceedings.

Submissions of the Complainant

The complainant submitted that in the impugned programme, the anchor inaccurately, baselessly and maliciously stated, "*Supreme Court ka jo bench hai woh kaafi naye naye logics leke aa raha hai ki kyun ye hamare desh mein hona chahiye*". The Hon'ble Supreme Court brought no new logics in the marriage equality case. Further, during the hearing, the Hon'ble Court did not say that same-sex marriage has to be legalized in the country. In the impugned broadcast, the anchor had drawn a conclusion on a sub judice matter and made false statements claiming that the Bench was bringing new logics.

By asking the Home Minister a leading question about the government's baseless submission in the Supreme Court that this matter is an urban elite issue and that it must be discussed in the Parliament, the anchor was acting as a mouthpiece of the government and provided the Home Minister with a platform to further promote the views that the government had mentioned in the affidavit to a larger audience.

The anchor failed to question the Home Minister why the two Private Member Bills that proposed to grant legal recognition to LGBTQIA+ marriage were never tabled in Parliament. He further failed to question the government's stance that this was an urban elitist matter as being inaccurate as people from the LGBTQIA+ community belong to all castes, classes, sects, religions, regions, professions and walks of life.

Instead, the complainant reiterated that the anchor gave the government a platform to amplify its ill-informed, insensitivity, homophobic and transphobic views. He submitted that broadcast had violated the principles of neutrality and fairness in the impugned broadcast.

Submission of the Broadcaster

The broadcaster submitted that in a programme, it is permissible for the broadcaster to project only one view, which, in this case, was the government's view, as the petitioners themselves had given several interviews to project their story.

NBDSA questioned the broadcaster whether the anchor could not have asked the Home Minister regarding the views expressed by the LGBTQIA community on the subject, which could have brought a semblance of impartiality, neutrality and objectivity to the programme.

In a debate programme, the broadcaster submitted that the broadcaster must project different views. The broadcaster submitted that whether the impugned programme was good or bad journalism differed from ascertaining whether it violated the Code of Ethics & Broadcasting Standards. Not questioning the interviewer regarding the other side's version may not be good journalism; however, the same does not imply a violation of the Code of Ethics.

Further, the broadcaster submitted that attributing statements to judges may not be appropriate; however, the practice would continue unless the same is prohibited. Furthermore, today, Court proceedings are reported live on social media platforms and are even live-streamed.

In the programme, the anchor put the Supreme Court's view before the Home Minister, which at the time favoured the petitioner. The programme complied with the Specific Guidelines for Anchors conducting Programmes, including Debates.

The complainant questioned the broadcaster about what "naye naye logics" meant. In response, the broadcaster submitted that the context of the host's comment was the government affidavit, which had been filed only a few days ago before the Constitution Bench.

The Government of India had opposed the reliefs sought and stated that those seeking marriage equality in India merely represent “urban elitist views for the purpose of social acceptance”. In response to the government’s affidavit, the anchor noted that it appears (“*aisa lag raha hai?*”) that the Court was responding to the Union’s stand through “*naye naye logics?*”. This comment must be seen in context. It had been widely reported that during the proceedings, the Hon’ble Chief Justice of India seemed to have questioned the government on its stand – as is the norm in oral arguments – and commented that the government had failed to provide any data to back its claim regarding urban elitist nature of the petitioners/their prayers. It further questioned the arguments of the respondents/intervenors that children of a queer relationship will suffer psychological impact.

It is clear from the above commentary that the host in no way had insinuated any malice on the part of the Court. Instead, the anchor was simply trying to understand the Hon’ble Home Minister’s views on the government’s stand and the court’s response.

Second, the host himself noted that the issue regarding the legal recognition of same-sex marriages was subject to vigorous debate (“*dilchasp charcha?*”) throughout the country). Merely because the complainant disagrees with the government’s stand does not render the view “*baseless?*”, nor can it be used to characterize the host’s question as violating the principle of neutrality.

Third, the complaint ignores that a host must always ask “leading questions” in an interview. The purpose of the interview is to solicit the views of the interviewee, and it is not in the nature of a factual report. Hence, there was no occasion for the host to delve into the legislative history of the regulation of same-sex marriage in India, as has been alleged.

Fourth, the legal recognition of same-sex marriages is a matter of constitutional and national importance, and the Supreme Court’s daily proceedings were subject to daily commentary by academics, lawyers, public intellectuals, activists, politicians, and news channels – whether on social media or in the news channels. The petitioners themselves were giving interviews to the press, given the importance of the case. Thus, mere commentary did not violate the Code of Ethics.

Decision

NBDSA considered the complaints filed by Mr. Indrajit Ghorpade and Mr. Utkarsh Mishra, the responses of the broadcaster and reviewed the footage of the broadcasts.

NBDSA is issuing a common order in respect of the four complaints pertaining to the broadcasts on issues relating to the rights claimed by the LGBTQIA+ community, which includes same-sex marriage.

Complaint filed by Mr. Indrajeet Ghorpade in respect of Show No. 2 broadcast on Aaj Tak

At the outset, NBDSA would like to mention that on many occasions, the issues which come before the courts are social issues with significant implications that concern the entire society or humanity. Therefore, public debates are bound to happen even when they are pending consideration before the courts. Issues relating to the rights claimed by the LGBTQIA+ community, which includes same-sex marriage, fall in this category. Thus, a debate/interview on this issue by the broadcaster was understandable. At the same time, it is also desirable that debates/interviews are objective, balanced and in a congenial environment. Moreover, the law on the subject as laid down by the Hon'ble High Courts as well as the Hon'ble Apex Court, in conducting such debates on the issues which are being considered by the courts, have also to be kept in mind, and in particular the guidelines laid down by the Hon'ble Bombay High Court in *Nilesh Navalakha & Anr. vs. Union of India & Ors (2021) SCC Online BOM 56*.

In other words, though views can be expressed but it should not result in media utterance. Eschewing the discussion as to whether the scope of the interview by the anchor with the guest falls in this category or not (as that is not even the objection of the complainant), the NBDSA would like to advert to the contents of the utterances made by the anchor during the said interview.

It is a matter of general knowledge that during the hearings before the courts, the courts make some oral observations for varied reasons. The primary reason is to express certain doubts which are coming in the mind of the court in order to enable the counsel for the Parties to respond thereto. It is also a matter of common knowledge that such observations of the court during the hearing are in no way a reflection of the final view which the court is going to take in a particular matter as the court decides the case after due application of mind, after giving objective consideration to the arguments advanced by both the sides as well as the material placed before the court by the Parties in that matter. It may not be known to a common person in the street/society. However, a person like the anchor, who is an experienced person, is supposed to know this. When seen in this light, the NBDSA finds that some of the utterances/remarks of the anchor during the said interview were not in good taste and could have been easily avoided. Had the discussion been confined to the issue at hand viz., "same-sex marriage", etc. which were the subject matter of the case which was being heard by the Hon'ble Supreme Court at that time and had the anchor limited the discussion to eliciting the view of the guest thereon,

there would have been no question of any objection thereto. However, in the process of the interview, attributing some statements to the Hon'ble Chief Justice of India during oral hearing, such as, "yaha wohi hoga joh main chahunga" appears to be not only incorrect but questionable as well. Going further, it is a matter of record that the learned Solicitor General of India was arguing the said case before the court. Even if it is assumed that some arguments of the learned Solicitor General, prima facie, were not acceptable to the court and the court had made some remarks, that can again be only prima facie observations. From this, the anchor could not conclude that "Solicitor General ki Supreme Court mein abhi chal nahi rahi hai. Aisa lagta hai Supreme Court mann bana chuka hai ki woh chahta hai aisa." ". Above all, most objectionable statement of the anchor, in this context is to utter "Ye desh kisi ke baap ka nahi hai aur kuch log isse chalane ki koshish kar rabe hai". This is clearly a derogatory remark. It is stated at the cost of repetition that the courts make certain observations at the time of hearing, which may not be their final view. Even if that is the final view, the view/decision of the court has to be respected and if it is not palatable to the anchor, he should not have used the afore-quoted "foul" language. It would be significant to mention that in the present case itself the anchor is ultimately proved wrong, inasmuch as in its judgment, the court did not legitimize or give its imprimatur to same-sex marriage. Likewise, even the so-called imputation of the anchor to the Hon'ble Chief Justice i.e., "yaha wohi hoga joh main chahunga" has been proved as wrong, as in this particular judgment on one issue, the Chief Justice was in minority as three Judges out of the five Hon'ble Judges on the Bench took a view contrary to the view of the Chief Justice.

It may be noted that the Hon'ble Supreme Court in *Narmada Bachao Andolan vs Union Of India And Ors. AIR 1999 SC 3345* had observed that "While I record my disapproval of the statements that are complained of, the Court's shoulders are broad enough to shrug off their comment..."

However, at the cost of repetition that the aforesaid utterances are not by a commoner on the street but by an experienced and well-knowledgeable anchor in a programme on a national channel which were, to say the least, not in good taste and the Specific Guidelines for Reporting Court Proceedings, in particular Guidelines 4(i) and (ii), 5 and 7 and the Guideline 5 of the Guidelines on Broadcast of Potentially Defamatory Content are not kept in mind.

In view of the above, the NBDSA closes this complaint with an advisory to the anchor to show more maturity in future while conducting such programmes.

NBDSA further directs the broadcaster to edit the video of the said broadcast by removing the aforesaid portions within 7 days of the Order.

Complaint filed by Mr. Indrajeet Ghorpade in respect of Show No. 3 broadcast on India Today

While conducting an interview with the Home Minister in the third impugned broadcast, the anchor also raised the issue of same-sex marriage and during the programme, went on to state “*Supreme Court ka jo bench hai woh kaafi naye naye logics leke aa raha hai ki kyun ye hamare desh mein hona chahiye*”.

Since the irregularities in the broadcast 3 are substantially the same as those in broadcast 2, for the reasons given in its decision in the complaint against Show No.2, NBDSA decided to close the complaint in respect of Show No.3 by issuing an advisory to the anchor to show more maturity in future while conducting such programmes.

NBDSA further directs the broadcaster to edit the video of the said broadcast, by removing the aforesaid portions within 7 days of the Order.

Complaints filed by Mr. Indrajeet Ghorpade and Mr. Utkarsh Mishra in respect of Show No. 1 aired on Aaj Tak

Adverting to Complaints in respect of Show No.1, here again the debates centered around the issues of same-sex marriage before the Supreme Court, NBDSA finds that many utterances of the anchor condemning LBGQTQIA+ community are not in good taste. Undoubtedly, it is a harsh, and also sad reality that there is no unequivocal acceptance by the society insofar as persons of this community are concerned. It is again a hard fact that in order to get recognition and enforce their rights, there is continuous struggle by the people of this community. In this background, NBDSA is conscious of the fact that there may be persons who denounce them and look towards them as indulging in those acts which in their own perception are “ignorant” notwithstanding the fact that insofar as the legal position is concerned, they have been given due recognition. Thus, a well-informed person like the anchor, that too of a national channel, is supposed to respect those rights which even the law recognises. In this context, it has to be emphasised that even the persons belonging to this community are to be treated as normal human beings and, more importantly, with due dignity. This value is duly recognised by the apex court in various judgments, including in the case of *Justice K.S. Puttaswamy (Retd.) & Anr. vs. Union of India & Ors. (2017) 10 SCC 1* (right to privacy), *Navej Singh Johar and Ors. vs. Union of India AIR 2018 SC 4321* (Section 377 IPC). It would be apt to extract the following observations in the case of *Justice K.S. Puttaswamy (Retd.) & Anr. vs. Union of India & Ors. (2017) 10 SCC 1* “...Discrimination against an individual on the basis of sexual orientation is deeply offensive to the dignity and self-worth of the individual. Equality demands that the sexual orientation of each individual in society must be protected on an even platform. The right to privacy and the protection of sexual orientation lie at the core of the fundamental rights guaranteed by Articles 14, 15 and 21 of the Constitution.”

The manner in which the anchor portrayed the community in the impugned programme violates the dignity of the LGBTQIA+ people to say the least.

In view of the above, NBDSA notes that the above broadcast did not keep in mind the Guidelines for Prevention of Hate Speech and the principles of Neutrality and Impartiality as enshrined in the Code of Ethics and Broadcasting Standards, by not giving the views of any person belonging to LGBTQIA+ community.

Consequently, in view of the violations of the Guidelines aforementioned, NBDSA decided to admonish the broadcaster.

NBDSA further directs the broadcaster to remove the video of the said broadcast, on the website of the channel, or YouTube, and remove all hyperlinks including access, if still available, which should be confirmed to NBDSA in writing within 7 days of the Order.

NBDSA decided to close the complaints with the above observations and inform the complainant and the broadcaster accordingly.

NBDSA directs NBDA to send:

- (a) A copy of this Order to the complainant and the broadcaster;
- (b) Circulate this Order to all Members, Editors & Legal Heads of NBDA;
- (c) Host this Order on its website and include it in its next Annual Report and
- (d) Release the Order to media.

It is clarified that any statement made by the parties in the proceedings before NBDSA while responding to the complaint and putting forth their view points, and any finding or observation by NBDSA 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 NBDSA in regard to any civil/criminal liability.


Justice A.K Sikri (Retd.)
Chairperson

Place: New Delhi

Date: 24.01.2025