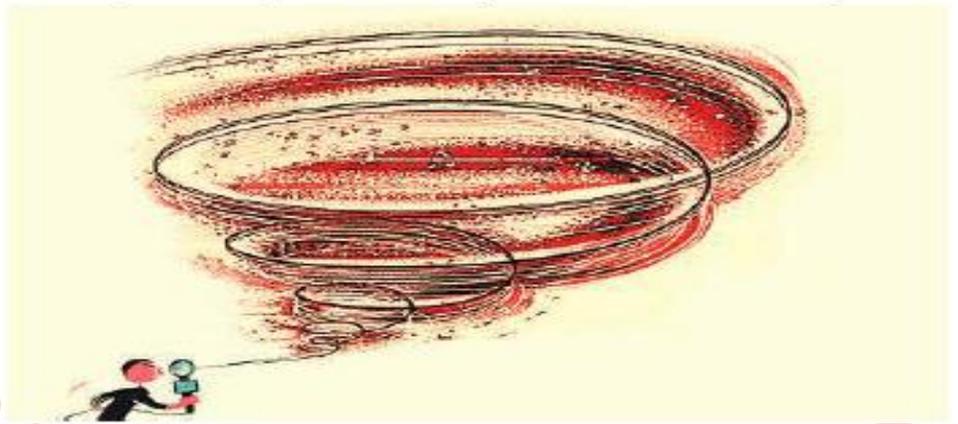


## *DRAWING A RED LINE*

To both preserve the independence of the media, whose role in a democracy is indispensable, as well as to regulate it, there are several possible indigenous models. Supreme Court must tread wisely.



**S.Y. QUARAISH**



**THE SUREME COURT** last week came down heavily on a TV channel that was intent on broadcasting hate-filled programmes. The Court underlined the need for laying down clear guidelines, and their effective implementation, for the media against hate speech. This has brought to the centre-stage, once again, the debate about the need, scope and extent of media regulation.

The government has made several attempts in the past to regulate the media but all such attempts came crashing down in the wake of public outcry. The last such attempt Broadcasting Ministry issued a circular stipulating that the accreditation of a journalist found to have "created and/or propagated" fake news will be suspended or permanently cancelled. The next 15 hours witnessed a huge furore against the circular, culminating the I&B ministry revoking the circular.

It is undeniable that television has become the most powerful media with unprecedented influence over the minds of the people. TV channels have the power to set the country afire with their hateful discourse, for which some of them have become notorious. Everyone can see freedom of speech being blatantly abused on a daily basis.

Unbridled power is always dangerous. Some checks and regulation are obviously required. What are the possible forms of such regulation? They are government regulation, self-regulation and independent regulation.

Government regulations are, of course, not desirable as these could interfere with the freedom of speech and expression enshrined in the Constitution (Article 19), though it is pertinent to remember that the same Article also provides for "reasonable restriction" on this freedom.

Currently, the government is not without its own regulation policies: Provisions within the Cable Television Network Rules of 1994, the Cable Television Networks (Regulation) Act of 1995, and the Policy Guidelines for Uplinking of Television Channels from India of 2000, give it the power to block the transmission and retransmission of any channel in the country. How effective or fair this is, is a matter for critical examination.

The second alternative-self-regulation-though ideal, is easier said than done and continues to be a pipedream, at least in India.

That brings us to the third and most desirable option- independent regulation. Who will set it up? If the government does it, the whole world is ready to pounce on it. A great responsibility has fallen on the Supreme Court, an opportunity that it must not miss.

Incidentally, a forth model has accidentally evolved- self-cum-independent regulation.

The News Broadcasters Association (NBA), which was set up in 2008, in turn, set up the National Broadcasting Standards Authority (NBSA), with the legendary former Chief Justice of India, Justice J.S.Verma, as its chairman. He agreed to chair this body on the express condition that this will be an independent body and that he would brook no interference from the parent body- the NBA- a condition which the Association has always honoured. The NBSA consists of four representatives from among media editors and an equal number of independent members of eminence, besides the chairman. I was an independent member for nearly seven years and can vouch for the total non-interference of the parent body, despite several orders going against the members. It imposed heavy cash fines on recalcitrant channels and, more significantly, forced them to telecast a public apology at prime time, often for several days. The channels seemed more scared of this humiliation than the cash fines.

There was only one occasion when, upset with a series of hostile orders, the fuming Association came calling. It took just five minutes of tough speak from us for them to back off.

The NBA is a private of news broadcaster (25 in number comprising 65 news and current affairs channels, when I left a year ago) formed with the object to "foster high standards, ethics and practices in news broadcasting" and take action defaulters.

In the first 10 years, the NBSA has considered and dealt with 2,669 complaints and issued 74 judgments/orders. It's role has already been acknowledged by the Ministry of information and Broadcasting and the Election Commission- by the way, they have been referring complaints to them. However, I must admit we often felt exasperated that despite our best efforts, we could not discipline some of the channels spewing venom day in and day out.

The NBSA did suffer from some serious shortcomings. First, its writ extended only to its member, which was limited due to its voluntary membership. Those who were unhappy with a verdict found it easy to walk out. I always thought that the government should step in to provide this unique model with statutory backing, extending its jurisdiction to nonmembers as well, besides empowering it to take punitive action like suspending and cancelling licences.

Here, the UK offers a good example in the form of OfCom (Office of Communications)- the government-approved regulatory and competition authority for the broadcasting, telecommunications and postal industries. Like the NBA, OfCom functions through fees from the industry itself. However, unlike the NBA, and this is what makes a substantial difference, it is created by an Act of Parliament. This implies that the OfCOM is given authority by the British parliament, is answerable to it and has been given legitimacy. Not long ago in February 2020, the UK government announced that it intended Ofcom to have a greater role in internet regulation to protect users from "harmful and illegal" content.

The government has pointed out to the SC the disastrous role social media is playing in tearing the social fabric and the need to tackle it before television. This seems to be a red herring to divert the SC's attention. I do not think it is an either/or situation. Both forms of media are destroying the country's social harmony of the country, often in tandem. Both need to be dealt with decisively and urgently.

To both preserve the independence of the media, whose role in a democracy is indispensable, as well as to regulate it, there are several possible indigenous models. One model is empowering the NBSA with statutory backing more stringent powers and extending its writ to all news channels. The other model could be an SC-appointed monitoring panel- like the one it set up in 1998 to monitor encroachments in Delhi which worked very effectively till the members became too old and the Court just forgot about them after appointing them. The press Council model is an equal failure, spineless and toothless, despite a retired SC judge heading it. The fourth model is like the Election Commission- a constitutionally- appointed body which was empowered by the SC in 2002 as regulator to enforce the model code of conduct evolved by the political parties voluntarily for self discipline.

Whichever model it chooses, the Supreme Court must not fall prey to the diversionary tactics of vested interests. It should also see this case as an opportunity to change the image of inaction and insensitivity it has unfortunately acquired during the last couple of years.

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***The writer is former Chief Election Commissioner of India and a former member of National Broadcasting Standards Authority***

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