

ADJUDICATION PANEL RULING

15 FEBRUARY 2021

Complaint	
Independent Media Publication	The Post
Journalist/s	Yogin Devan, who is also a member of the Adjudication Panel and Independent Media Press Council
Photographer	
Complaint lodged by	The Ombud Office felt it was appropriate to deliberate on the article, in a proactive and fair manner, despite there being no complaint formally lodged as yet
Date complaint lodged	N/A
Type of complaint	The Ombud Office was tasked to adjudicate on whether the language and tone used in the article contravened the Press Code in any manner shape or form
Ruling	
Date Ruling delivered	15 February 2021

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Applicable clauses of Independent Media Press Code	Clause 9
Related complaints considered	N/A
Sanction/ Remedy	
Is this report notable?	Yes
Summary of notability	Discrimination based on racial stereotypes

1. Background and Complaint:

1.1 Yogin Devan, a regular columnist for the Post Newspaper, published a feature titled: “Kamala Harris, far from being Indian”; an article that has been largely criticised. The feature first makes comparison of the Indian-myna bird to the recently appointed US Vice President Kamala Harris, who is said to be of Indian heritage (from her maternal grandfather’s -PV Gopalan side). The duty of this office was to adjudicate on whether the overall tone and language, choice of words reveal a derogatory, condescending, racial superiority and great religious intolerance in comparison between the bird and the human stature. The Ombud has gone into detail to highlight these undertones as sighted from the article below: The columnist goes at length describing the **“invasive myna birds”** which were allegedly brought to South Africa by the Indentured labourers that came between 1888 and 1900.... hence they’re referred to as Indian-myna’ birds.

1.2 He describes how these birds were sold to **“unwary” citizens with a promise that they could talk**. The birds **could make quite a high pitched chatter, a raucous “radio, radio, radio” and a jarring “kharr, kharr, kharr” noises** but largely do not talk any comprehensible language....**“let alone in the Indian vernacular”**.

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- 1.3 From the eloquent description, these birds were quite unlikeable, hence **“declared the myna an avian enemy”**.
- 1.4 ***Their droppings foul buildings and vehicles; they do not tolerate other similar sized birds; and they can cause house fires when old wiring in the roof short circuits and sets alight dry nesting material.***
- 1.5 ***Pity the householders who were tricked*** into parting with their shillings in exchange for a talking bird - ***the myna cannot talk any language***, “let alone in the Indian vernacular”.
- 1.6 I got thinking of the myna ***at the height of my irritation with the outpouring of expectation from many in the community*** that the newly sworn-in vice president of the United States, Kamala Harris, ***would display vestiges of Indianness*** at the presidential inauguration ceremony.
- 1.7 ***Local Tamils also celebrated - as if the booze ban had been lifted*** - when Harris was nominated as Joe Biden's Choice for Vice President in August 2020.
- 1.8 Let's get one thing straight - ***Harris is no more Indian than an Indian myna. Both cannot speak an Indian language, let alone tongue-twisting Tamil.***
- 1.9 many people I know expected to see Harris ***decked out in an alluring pure silk Kanjeevaram saree or a designer salwar suit*** at the inauguration ceremony...
- 1.10 The young Kamala (a Sanskrit word for “lotus flower”) ***lacked the typical features of an Indian child. Instead of shiny, straight black hair, her Jamaican genes dominated*** and she had ***a mop of curly hair***. In early photos she can pass off for a ***so-called Coloured girl from Eldorado Park in Johannesburg, Mitchells Plain in Cape Town or Wentworth in Durban.***

- 1.11 little reference to anything strongly Indian in Harris' upbringing. But for a few words, Harris is unable to speak in Tamil – or any other Indian language for that matter.**
- 1.12 Yet, the Tamil world went gaga when she used just one Tamil word** when she spoke while accepting her historic nomination for vice president last year.
- 1.13 In the run-up to the elections, the village of Thulasendrapuram was turned into a veritable shrine venerating Harris.** Hundreds of posters appeared all over the village, **emblazoned with Harris's face.**
- 1.14 Did it matter to these mainly Hindu villagers that Harris was brought up as a Baptist? She used two Bibles to be sworn in** - one Bible belonged to the late civil rights icon and Supreme Court Justice Thurgood Marshall.
- 1.15 If she felt strongly about her Indianness, she could have placed her hand on the Bhagavad Gita. like so many Indians have done in western parliaments.**
- 1.16 Harris is effusive in making mention of her mother being her abiding link to India.** Perhaps, **she should take some lessons in cooking Indian food to sustain the bond.** She still can't **make a dosa**, as she confessed to Vera "Mindy Kaling." Harris **is not a bunny-hugger - she loves roast chicken and tuna sandwiches.**
- 1.17 Indians throughout the world will do well to remember that Harris is only partly of Indian descent, not wholly.** Hence, she cannot be blamed for **not embracing her Indian heritage** more.
- 1.18 She is not going to wear a traditional Punjabi dress to work** at her office in the West Wing of the White House. She prefers pantsuits and blazers.
- 1.19 She is not going to wear a "bottu" or red dot on her forehead,** the Tamil symbol of marriage. After all, she is married to Doug Emhoff, a **white American of Jewish descent, who has two children from a previous marriage.**

1.20 We should remember that one swallow does not summer make. *Having an Indian grandfather and uttering one Tamil word cannot define you as a pukka Indian or Tamil.*

2. Deliberations by Each Panel Member

2.1 Z Mkhize (Adjudication Panel Member)

- 2.1.1 Such public discourse does not occur in a vacuum... there's a reality of our South African context and that of the global world to be always considered! What is the bigger picture that such an article leaves in the mind of the reader? How would the subject react to such annihilation of character? How do we foster human dignity and tolerance across the globe when dealing with human character, traits; language; religion; culinary preferences and dress codes?
- 2.1.2 One had to go paragraph by paragraph to show that the article is very negative, hateful (even self-hate) and insulting; oozes racism of the highest order; bigotry; self-righteousness and cultural superiority. The columnist alludes that the "column became part of a hate campaign on social media because "bits" were taken out of context". The columnist needs to find a balance and a tool if "its [column] by nature is critical and challenging and often engages public conversations."
- 2.1.3 Further assertion by the columnist that the article "was intended to remind the local Indian community to stop pandering and claiming Harris as their own when in fact she is devoid of Indianness...." This is racist, condescending rhetoric and inexcusable, just because he's from the same race! Imagine if someone from another race had said the same words! The community will be up in arms.
- 2.1.4 It is illogical and sad that the columnist claims : "I have critically examined the piece within various press codes and do not believe it contravenes any guidelines and, by extension therefore, the Constitution... "
- 2.1.5 The public response on social media and to the publication should be a revelation, a "mirror" of where society, the readership sits! Spewing a tirade of hurtful words does not necessarily create a platform for dialogue; but might fuel racial tensions and social

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anarchy which may be difficult to bring down and control. The Post Newspaper may be taken to the S.A. Human Rights body and this article will not be condoned... not in South Africa!

2.1.6 The article is no doubt in contravention against the key tenets of the bill of human rights underpinning the South African Constitution. Human dignity is the cornerstone upon which our founding fathers lay down the terms of the Constitution. The Preamble of the Press Code of Ethics and Conduct for South African Print and Online Media in Section 16 of the Bill of Rights sets out that: *Everyone has the right to freedom of expression...but this right in subsection (1) does not extend to:*

c) Advocacy of hatred that is based on race, ethnicity, gender, or religion, and that constitutes incitement to cause harm. The media strives to hold these rights in trust for the country's citizens; and they are subject to the same rights and duties as the individual. Everyone has the duty to defend and further these rights, in recognition of the struggles that created them: the media, the public and government, who all make up the democratic state.

2.1.7 Section 7 on Protected Comment stipulates: *“Comment or criticism is protected even if it is extreme, unjust, unbalanced, exaggerated and prejudiced, as long as it is without malice, is on a matter of public interest, has taken fair account of all material facts that are either true or reasonably true, and is presented in a manner that it appears clearly to be comment.”*

2.1.8 In the Press Code of Ethics and Conduct for South African Print and Online Media Section 5. deals with Discrimination and Hate Speech and stipulates as follows: *The media shall: “avoid discriminatory or denigratory references to people’s race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth or other status, and not refer to such status in a prejudicial or pejorative context – and shall refer to the above only where it is strictly relevant to the matter reported, and if it is in the public interest;”*

2.1.9 Further in The Independent Press Code Section 9 deals with Discrimination; Racism and Hate speech, as follows: *No disparaging*

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remarks referring to someone's race, colour, Religion, gender, sexual orientation, physical and mental illness or disability shall be published. Reference to someone's race, colour, religion, gender, sexual orientation, physical or mental illness or disability shall be avoided unless relevant.

2.1.10 Despite these facts, the columnist has blamed criticism on others even as he accepts that the description of Kamala Harris hair as a 'mop' insinuates a derogatory image of hair worthy to be used as a floor-mop... such imageries have sparked outrage. I recommend the following;

- o An in-depth discussion with the Columnist and suspension of the column which in depth research is conducted amongst the core readership to gauge interest in continuing with the column and;
- o Public interest is always a useful guide in evaluating when making decisions;
- o The Editor may find a way to apologize generically for this highly offensive article;
- o That no further discussion of the article be permitted in your publications;

3. B Ramguthee (Appeals Panel Chair)

3.1 *"I DISAPPROVE of what you say, but I will defend to the death your right to say it"* – Evelyn Beatrice Hall in 1906 (a quote sometimes misattributed to Voltaire).

3.2 After Yogin Devan's column, 'Kamala Harris, far from being Indian', was published in the February 3-7, 2021, edition of POST, and in IOL, it raised a typical hornet's nest. Critical tweets followed. The tweeters and letter writers (none to the newspaper as far as could be established) were annoyed. Angry, too. More so at the descriptive terminology used to colourfully describe Kamala Harris. Of course, it was their right to express their annoyance - freedom of the written word.

3.3 But did Devan cross the line? Was his take on Harris, offensive? Did he denigrate her? Or was his take balanced and fair comment? Some may have found the use of the words "curly hair" disparaging, but, the columnist also looked at Kamala Harris as an achiever, a black woman who was now the Deputy President of the USA, and who should indeed be celebrated.

- 3.4 There have been some calls, both internally and externally, as we understand it, for Devan to be removed as a member of the newly-announced Ombud's office, led by Yogas Nair, in light of this column. Doing so, in my view, would be setting a dangerous precedent, just because some readers did not like the contents of the Kamala Harris piece. It is a given that readers who are aggrieved about a particular story, or even a column, can contact the Editor's office for a right to reply. This forum is always available for such communication, be it for brickbats, or bouquets, which, of course, is rare.
- 3.5 However, if Devan, a seasoned and respected columnist, with a full-time job as a specialist communicator, decides to get out of the kitchen, that must be his choice, albeit a loss of expertise.

4. V Boje (Adjudication Panel Member)

- 4.1 It is in public knowledge that she is the daughter of immigrants and that her mother's family is Indian, and her father Jamaican. She has acknowledged her heritage, although she identifies herself foremost as American rather than as Indian.
- 4.2 Her race and ethnicity have come up for scrutiny by those who would claim her as Indian and the writer - who is Indian and was writing initially for a local Indian audience (in The Post) - points out the absurdity of their expectations. He draws a comparison with a mynah bird and stereotypes associated with being an Indian woman.
- 4.3 The article was also published on IOL - a platform with a much wider reach - and is identified as "opinion". While this affords certain leeway in the Press Code, where it fails to satisfy the standards set out in (5.1) are comments associated with Harris's physical appearance.
- 4.4 The writer says that in early photos she (Harris) can pass off for a "so-called Coloured girl" from Eldorado Park, Mitchells Plain or Wentworth, noting that "instead of shiny, straight black hair, her Jamaican genes dominated, and she had a mop of curly hair".
- 4.5 The reference to skin colour and hair texture, and implicit ranking of shiny, straight black hair compared to a "mop" of curly hair brings to

mind the 2020 TRESemme hair advertisement which was found to be racist.

- 4.6 Similarly, this aspect of the article is discriminatory in terms of (5.1) and should be regarded as offensive and racist.

5. M Williams (Appeals Panel Member)

- 5.1 It is my view and conclusion that the column did not in the narrow and broader sense breach clauses 9.1. And 9.2. of Independent Media's Press Code.
- 5.2 The references to race, ethnicity and gender in the column were pertinent to the theme pursued and conveyed by the columnist.
- 5.3 A phrase that seemed to have caused offence to some online readers of the column was Devan's description of Harris' "mop of curly hair" as a child. While there is an understandable sensitivity among South Africans about descriptions of hair that had been used as a tool of oppression by the Apartheid regime, a "mop of hair" is a recognized as an acceptable description and phrase by Merriam-Webster and virtually all other dictionaries as a "a large amount of tangled or untidy hair on a person's head".
- 5.4 Devan's submission that this is how he was schooled and understood the phrase (in the correct dictionary interpretation) could not be disputed nor could its use in the column be objectively understood in any other way.
- 5.5 On the caveat at the end of the column? After reading all the tweets, not a single reference, positive or negative, was made to Devan's plea that Harris should be celebrated for her achievements as a black woman and not for her part-Indian roots. It is therefore impossible to come to any conclusion or finding whether those who had accessed the column online had read it in its entirety or not (therefore missed the columnist's main "kicker" point and hence the overall misinterpretation of the column).
- 5.6 The most important consideration after everything is weighed is Devan's right to free speech in terms of Article 16 (1) of the Bill of Rights in the

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South African Constitution and which underpins Independent's and all other press/media codes. If ever a doubt or an error did occur in an adjudication such as this, it must be to err on the side or in favour of freedom of expression. While some phrases, postulations and arguments in the column could be deemed provocative, especially on the issue of race and ethnicity, and might have offended some online readers, the column viewed in its entirety amounted to fair comment.

- 5.7 I recommend that no sanction be taken against Yogin Devan considering my deliberations. The Twitter response to the column could be described as fairly robust and vehement. Apart from the fact that the editor Bramdeo referred to an open letter that was published, I suggest that in the next edition of The Post a summarized/storified version of all the tweets be published with an explanatory response/rebuttal by Devan or Bramdeo. It would make for good reader interaction and could serve to close off further debate on the column.

6. Y Devan's Stance

- 6.1 I respond to your request to provide background to my latest column which became part of a hate campaign on social media because bits were taken out of context and circulated. More on this later.
- 6.2 I have been a journalist for 22 years. I am the former News Editor of the Sunday Tribune. Since 1998, I have been in corporate communications as a media relations specialist. I have a good understanding of the roles and responsibilities of journalists and the media.
- 6.3 Since April 2014, I have been writing a regular column for POST newspaper. It comments on Indian culture and facets of the Indian community, especially locally, and occasionally abroad. Its nature is critical and challenging and often engages public conversations.
- 6.4 The latest column published in POST titled "Kamala Harris, far from being Indian" was intended to remind the local Indian community to stop pandering and claiming Harris as their own when in fact she is devoid of Indianness. My intention was to jerk the local Indian community to look beyond their noses. In short, they must stop sucking up or behaving obsequiously.

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- 6.5 Some excerpts from the article - especially description of Harris' hair as a child - were taken out of context and circulated on social media. It resulted in allegations of racism against me. Since then, I have critically examined the piece within various press codes and do not believe it contravenes any guidelines and, by extension therefore, the Constitution (see website).
- 6.6 I must apologize if I caused any pain with the use of the word "mop". However, I must also state quite categorically that no slight, insult, or offence was intended in the choice of the word. In using the word "mop", the thought never crossed my mind of a floor mop. Otherwise, I would have immediately realized that it would be an unsavory word to use. I had been schooled decades back to understand that a thick mass of disordered hair is described as a "mop of hair".
- 6.7 That said, I must state that the column is intended to be read in its entirety, from beginning to end. You will see that my caveat at the end of the column is that while Harris is devoid of Indianness as expressed by her lifestyle (dress, cooking etc.), she must be celebrated for her achievement as a black woman.
- 6.8 Personally, I have a track record for not condoning racism in any form and will not resort to being derogatory against another human being. I trust I have explained that no malice was intended. The column was fair comment. There was no intention to be discriminatory or denigratory. Thank you.

7. A Bramdeo (Editor)

- 7.1 To date, we have not received any complaints from our print readers. However, the piece was published on IOL and I am aware that it was criticized by some for being "racist" and "offensive". Late on Saturday night Riana Howa forwarded me an open letter she had received in response to Devan's column. I immediately made contact with the writer and undertook to publish her opinion. Like all media organizations, POST is a platform where people can express their opinion and we actively seek out a variety of different views.
- 7.2 I initially read the column when it was emailed to us by Devan. I did not find anything unnecessarily offensive and asked that it be assigned to our

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opinion page. I subsequently read it on the page and once again did not find it offensive. Devan is an Indian South African, Indian describing the type of South African he is from a race-perspective. His mother tongue is Tamil. The Indian population in South Africa is made up of a large number of people who come from a Tamil-speaking background. Kamala Harris can trace her maternal roots to Tamil Nadu, a Tamil-speaking state in India.

- 7.3 Devan makes the point that many in the Tamil-speaking community in South Africa and India have found affinity for Harris because of these maternal roots. He makes the point that we should not celebrate her for something she is not, that is, a Tamil speaker or an Indian. Instead, we should celebrate her as a Black woman who is now the deputy president of America. He makes this point at the end of his column. It is therefore important to read the column in its entirety and not focus on a few words, sentences or paragraphs.
- 7.4 Our code of conduct is clear when it comes to discrimination, racism and hate speech. I would argue that none of Devan's comments were disparaging. In other words, I do not read into his argument any attempt to belittle or denigrate Indian or black people. I would further argue that Devan's reference to race, colour, religion and gender in this context was relevant for the point that he was making.
- 7.5 Under Section 16 (1) of our Constitution everyone has the right to freedom of expression. However, this right does not extend to; *“propaganda for war, Incitement of imminent violence, or, the advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.”*
- 7.6 I would argue that Devan's piece does not incite anyone to do anything illegal and as a result, he enjoys the right to freedom of expression.
- 7.7 In conclusion I do not believe that Devan's opinion seeks to undermine anyone or any group of people. All that he asks is that Harris be “celebrated” for who she is rather than who she is not. Based on the above, I would request that you rule that his column was fair comment.

8. Final Ruling

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- 8.1 Last week, a twitter storm erupted over a column by regular *Post* contributor, Yogin Devan, headlined “Kamala Harris, far from being Indian”. It appeared in the February 3-7 2021 edition of the newspaper and was published online on February 6.
- 8.2 Soon after it appeared online, Twitter followers labelled the column as “racist and offensive”. Devan’s appointment to the adjudication panel of the Ombud Office also came under fire.
- 8.3 To date no formal complaints have been lodged with the title or the Ombud Office. However, in the interest of fairness and scrupulous self scrutiny, I opted for adjudication.
- 8.4 The four panellists included Moegsien Williams, Zama Mkhize, Val Boje and Brijlall Ramguthie. The panel split 2-2 in its response to online reaction to the Devan.
- 8.5 I have read the column in question, the online criticism that followed, Devan’s response, the opinion of *Post*’s editor, Aakash Bramdeo, and the individual findings of the panellists.
- 8.6 In my view, Mr Williams’ summary of the facts usefully covers the package of material we perused.
- 8.7 Section 9 of the Independent Media Press Code, headlined “Discrimination, racism and hate speech”, requires reflection on the term “disparaging”. In my view, there was no suggestion of this.
- 8.8 Neither discrimination, racism or hate speech shone through in Devan’s column. Here was a columnist voicing an opinion, the thrust of it cautioning against euphoria and expectation hinged on Harris’ election and her supposed “Indianness”.
- 8.9 The column might have contained generalisations, might even have nudged stereotypes. Critics, ranging in ferocity, rasped Devan for his observations on Harris’ uncharacteristic mop of curly hair - a reaction that was perhaps his due in the light of poet William Blake’s wisdom about generalisations and folly.
- 8.10 But there was no suggestion of malice or contempt contemplated in Section 9. Section 9.2 requires avoidance of reference to race, colour, religion, gender, sexual orientation, physical or mental illness or disability -- unless relevant.
- 8.11 There was no question that commentary on the background and expected role and priorities of the Vice-President of the United States, just a heartbeat away from the most powerful office in the world, was current and legitimate.
- 8.12 Harris’ ascension to the office, her ancestry and background, and the hopes her inauguration had inspired, had received exhaustive public scrutiny.

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- 8.13 There could have been no mistaking that “Kamala Harris, far from being Indian” was comment, the views of a by-lined writer - even in the online presentation, which may not reflect the same traditional presentation, weighting and placement of articles as a newspaper.
- 8.14 A columnist should provoke thought and discussion, and in so doing will naturally find agreement and a following, or disagreement and disapproval. But in this instance, there was no sign of racism or hate speech in Devan’s column. From the tone of some of his critics on this column, his conclusory paragraphs may well have been missed.
- 8.15 It was an opinion. Whether his reference to Indian Mynas (now Common Mynas) is effective, or his thoughts on hair and genes were advisable in the present climate of sensitivity, Devan has no case to answer in terms of the Independent Media Press Code, in my view.
- 8.16 However, extra vigilance of such matters of sensitivity would be advisable at all levels of production.

9. Panel Members

Brijlall Ramguthee, Zamambo Mkhize, Moegsien Williams, Val Boje.

Because this was a first for the Ombud Office, in that we decided to make a fair ruling, we have included both the Adjudication and Appeals Panel Chairpersons on the panel.