

Of Privileges, Contempt & Democracy

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The punishment imposed by the Tamil Nadu Legislative Assembly on *The Hindu* has evoked justifiable indignation in the country. It is true that the indignation probably owes less to the principle of the matter than the kind of paper that *The Hindu* is believed to be and the kind of people our legislators are held to be. But then it is the unkind fate of all principles that while they are supposed to be defended as such, they are in fact more often than not defended for extraneous reasons.

But the more interesting part of the story lies ahead.

The Hindu has taken the matter to the Supreme Court, on the ground that freedom of expression has been violated. One does not know what exactly it has pleaded in its petition, but going by the editorial stand that paper has taken, its complaint is not just that its freedom of expression has been violated by this particular action of the Tamil Nadu Legislative Assembly, but that freedom of expression as such has been violated by the very presence in the law of such privileges of Legislatures. It no doubt has a good case, at least politically, if not in terms of the Constitution of India as it is. But in deciding the case of *The Hindu* the Court will be treading on certain archaic elements of our Constitution, knowing fully well that the decision is liable to rebound on the Courts themselves. The Court lives in a glass house, and is aware of that fact.

The power of the legislatures to punish breach of their privileges is matched only by the power of the Courts to punish contempt of themselves, and if legislators have been jealous of any interference in the former, the Courts have been equally adamant in holding on to the latter. In the hearing of *The Hindu's* grievance, one archaic power will be scrutinised by the holder of another equally archaic power who knows fully well that any diminution of the one will impinge upon the other. When the Supreme Court looks at Art 194 of the Constitution, it is not the limitation imposed on it by Art 212 so much as the effect the decision sought from it may have on Art 215 that will be looming large in its mind's eye.

Both these powers are of English vintage. And they continue to govern us for no reason other than sheer inertia. Both are, as they stand, unacceptable limitations on democratic expression of dissent, differences and disagreement. The public at large has no reason to distinguish the two. If *The Hindu* had been punished by the High Court of Madras for contempt of its august self rather than the Legislative Assembly of Tamil Nadu for breach of its precious privileges, the public response would have been the same, though perhaps its expression would have been less impolite in that case because people do not (as yet) view judges and MLAs in the same terms.

But will the Court find itself in agreement with the public outrage? And will it, thereby, set a trend that will threaten the shroud of secrecy that covers happenings in the Courts? It will be interesting to watch.

If I have called these provisions archaic, I do not mean that they never had any rationale. They appear to have originated – in at least one interpretation of English history – in the fight put up by the institutions of a fledgeling democracy against the powerful remnants of medieval power: the autocracy of the divine right of kings and the nobility in general. A Parliamentarian who thundered in the Commons against the king could be quartered by kingly displeasure the next day, and the Judge who held any action of the king wrong could be in the dungeon the next day. This, it is said, necessitated building the walls of privilege and immunity around these newly germinating institutions of secular democracy. There are other and less complimentary ways of interpreting the origins of these provisions, but that need not detain us. Granting the rationale behind the origin of these powers, is it not obvious that they have long outlived that moment of necessity? That provisions meant to protect nascent institutions of democracy against autocracy have stayed on to become autocratic weapons against democracy?

It is obvious that they have. But neither the Legislators nor the Courts are going to say so. It is for us, the People of India, to say so and devise means of ridding us of these restrictions on our freedom to speak out about what is good and what is bad for us. It will be said that such unbridled freedom runs the risk of irresponsible denigration of legislative and judicial tasks, which can make the execution of those tasks difficult. But if the Executive, the third limb, has learnt to put up with free

public criticism of its functioning without being rendered immobile thereby, why should the tasks of legislation and adjudication be put on a different footing?