

Great and the Good

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All men and women are created equal, but some will be more equal than others – a recent order of the Madras High Court by the Hon'ble Justices Huluvadi G Ramesh and M V Muralidharan seems to confirm. The order, passed on August 29 by a division bench comprising the two judges, directed the National Highway Authorities of India (NHAI) to issue circulars to toll plazas on all National Highways to create exclusive separate lanes for VIPs and sitting judges so that their vehicles can pass through the toll gates unhindered. The judges had warned the NHAI of show-cause notice if the circular was not issued and cautioned that once issued, any violation of the circular will be viewed seriously. As a result, the *aam admi's* queue and wait at toll plazas will get a little longer, since one of the existing toll lanes would now have to be dedicated to serve the "VIPs and sitting judges" to the exclusion of lesser mortals who shall patiently have to wait their turns to pay the toll, while the judges and VIPs they can pass the toll gates in a jiffy without having to pay. Implied perhaps is the assumption that their time is more valuable, which can be put to better use than in waiting at the toll gates and being obligated to show their IDs before being allowed to pass without paying the toll.

The order passed by the Hon'ble judges said that it was "embarrassing" for VIPs and sitting judges to have to wait at toll plazas and display identity documents: "It is disheartening to note that the vehicles of VIPs and sitting judges are stopped at toll plazas... It is very unfortunate that sitting judges are also compelled to wait at the toll plazas for 10 to 15 minutes," they rued. "Serious note should be taken throughout the country to provide separate lanes (at toll plazas) for vehicles of VIPs including sitting judges," they cautioned in no uncertain terms, "A circular may be issued to each toll collector to provide a separate lane for VIPs' and sitting judges' vehicles. Toll collectors should ensure that no vehicle other than those of VIPs and sitting judges should be allowed to use these special lanes. Any violation of the order by NHAI will be viewed seriously." Possibly anticipating some defiance to their order, they further warned, "People maintaining toll plazas shall not indulge in controversy (regarding) VIPs and sitting judges' vehicles without understanding the ramifications."

The order raises several disturbing questions. First, the Hon'ble judges had passed an order that conferred some special privileges to themselves and furthered their own interest, which is against a sacrosanct principle of Natural Justice, "*Nemo in propria causa judex, esse debet*"- nobody should be a judge in his own cause. Second, the two Justices did not seem to reckon the principle of "equality before law" for all citizens as embedded in the Constitution they had sworn allegiance to, which has promised to secure to all citizens "equality of status and of opportunity", besides "justice" which it is their duty to deliver. Constitution may be ultimately what Judges say it is, but by no stretch of imagination can the connotation of "equality" be extended to confer special privileges for a select group of people, like "VIPs and sitting judges". It is also unclear what is meant by term "sitting judges" – would it include High Court judges only, or the judges of District and Sessions courts, Lok Adalat and Family Courts as well? It is also

equally unclear who will be included in the category of VIPs and how their status would be confirmed and validated by the toll plaza employees without exercising some sort of identity checks.

The Hon'ble judges in their order had found it "embarrassing to wait for 15 minutes". They have not considered the embarrassment faced by common citizens, and the humiliation that they have to endure silently every time they are forced to make way for those who enjoy special privileges, conferred by the State, society or ill-gotten wealth. The common man looks up to the judiciary as the saviour of the last resort – to remind the mighty and powerful that all are equal before the law and should be equally treated by the law, as guaranteed under article 14 of the Constitution. Any order passed by a Judge must have the authority of law behind it – one is left wondering where is the law that allows special privileges to "sitting judges and VIPs"? By the same standard, one may even justify administration of justice in different ways to VIPs and others – on the same logic of avoiding "embarrassment" of the former. Besides, a procedure established by law should be reasonable, fair and just, as asserted by many a judgment, e.g. Maneka Gandhi Vs Union of India (AIR 1978 SC 597: (1978)1 SCC 248: (1978) 2 SCR 621), and many other judgments as well. The order of the learned justices in this case is neither reasonable, nor fair nor just by any standard.

Of course, unruly behaviour, high-handedness or misuse of authority by some members are common in every profession, and do not in any way indict the judiciary, which, by and large, has successfully protected our democratic rights and liberties throughout. The instances when the bullying behaviour of some judges had attracted nationwide indignation are far fewer than their defiance of the powerful and mighty to uphold the rights of citizens which have earned them nationwide admiration and reinforced our faith in the judiciary.

In his book "The State of the Nation", eminent lawyer and constitutional scholar Fali S. Nariman, while arguing for the essentiality of transparency and accountability to ensure a corruption-free judiciary, proposed a system of judicial self-regulation like the one prevailing in the US, which would allow for monitoring of the conduct of the judges by their own peers in order to check bad behaviour on their part. No such system is ever likely to be instituted in India that threatens to dilute the privileges enjoyed not only by the judges, but also anyone occupying a powerful position in the Government. It is the Privilege Raj, synonymous with VIP culture, in place of the earlier License-Permit Raj that continues to rule the roost and holds the common citizen to contempt. Privy purses have been abolished only in name, but they have resurrected themselves in the form of huge privileges and state largess at the cost of the taxpayers being extended to former prime ministers and presidents for the rest of their lives, which is an anathema in any developed democracy.

Privileges and preferential treatments have always been the defining characteristics of Indian society. Constitution had abolished those privileges by making everyone equal in the eye of law, but seven decades of its working has not succeeded in establishing an equal society shorn of privileges. The toxic Lal Batti that defined the VIP culture refuses to die, and it is indeed sad and disappointing to see judges sworn to constitutional equality pass an imprimatur to ensure its survival. This reflects a mindset that is completely out of sync with modern times and modern values.