

Law at Large: Notes on the Public Mediation of Community in the Juridical Field

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Introduction

It began with fictionalized sex and ended with a resurrection. In between, the Tamil novelist, Perumal Murugan declared himself dead as a writer. His award-winning novel, *Māthorubāgan* had already been published for years and translated into English as *One Part Woman* when some Hindu nationalist and caste-affiliated groups objected violently to the book. This tale of a childless couple's difficult search for the social recognition that comes only with progeny draws on deeply researched oral lore and it is set during the colonial period. *Māthorubāgan*—a local name for Lord Siva as half-man and half-woman—drew the ire of some readers because it depicts consensual, extramarital, and inter-caste sexual relations that were known to have once taken place on the eighteenth day of the festival of the Arthenareeswarar Temple in Thiruchengode. In the book, the loving wife reluctantly takes part in this celebration where the gods mingled with humans for one night in hopes of ending her isolation by giving birth to a *sāmi kodutha pillai* ('god-given child'), the name given to those conceived in this manner. But memories of the ritually sanctioned mésalliances enabling these divine blessings are now largely ignored, or purposefully repressed in a contemporary imagination more focused on the problem of women's chastity in maintaining religious and caste boundaries.

The author, Perumal Murugan hails from the western part of Tamil country known as Kongu Nadu, where the story is set. The rough, dry landscape of this region is brought to life vividly in the prose of *Māthoru-*

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bāgan, as it is in all of his books. Apart from his established fame in literary circles, the author was also a Tamil professor and critic of caste hierarchy as well as abuses in the factory-style poultry farms that now dominate the landscape. Perumal Murugan's novel thus provided the pretext for an orchestrated campaign of pious outrage against him and his book, on the grounds that he had tarnished the reputation of women belonging to the dominant Gounder, or Kongu Vellalar Caste. Gounder associations organized book burnings and threatened the author and his family with the aid of the Hindu Munnani, a religious nationalist group keen to strengthen their presence in a region where they saw political opportunity. Fearing a "law and order problem," a local District Revenue Officer took the unusual step of forcing Perumal Murugan to sign an official document promising to withdraw the book, even after he had already issued an apology and agreed to remove offending passages. Already a major news event in India, people were even more shocked by what came next: the distraught author wrote a message on his Facebook page declaring his demise as a writer, who "is no god, so will not rise from the dead." This was followed by the declaration that "hereafter only the humble teacher P. Murugan will live." His post went on to ask that his publishers no longer sell any of his books and that he be left alone. This violent assault on creativity was covered across the globe, in *The New York Times*, *The Guardian*, and countless other news outlets as a sign of growing intolerance in India.

Life was returned to Perumal Murugan, however unexpectedly, through the magical words of a judge. Responding to a criminal case against the author that was brought to the Madras High Court, Chief Justice Sanjay Kaul wrote a 150-page judgement that many consider to be a piece of literature in its own right.¹ In defending Perumal Murugan's creative expression and chastising the administration for its failure to protect the Constitution, the judgement begins by delving into the history of censorship from the days of *Lady Chatterley's Lover*. After going through the specific merits of the case before the Court and dismissing any crime that is alleged to have occurred, the judgment then moves back into the domain of broader socio-historical commentary, noting the "rising phenomenon of extrajudicial, casteist and religious forces dictating the creativity of authors and writers." The judgement also contrasts contemporary popular morality with the more flexible norms of sex outside of wedlock in the classical Indian religious traditions, that "truly reflect the liberal ethos, uncorrupted by the Victorian English philosophy, which

came to dominate post the British invasion of India.” This lengthy and erudite meditation on art, sex, and religion then ends with the most quotable piece of legal prose in recent memory. The final line of the judgement exhorts in bold letters, “**Let the author be resurrected to do what he is best at. Write.**” It was reproduced in all news media the following day, and quickly prompted a public reply from a grateful Perumal Murugan, who wrote that the judge’s words had given him great happiness, comforting “a heart that had shrunk itself and had wilted. I am trying to prop up myself holding on to the light of the last lines of the judgment.” The author’s name had become part of the free speech movement in India.

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The story of Perumal Murugan, his death as a writer, and his resurrection through the words of Chief Justice Kaul presents the law in the image of a benevolent authority, sitting above the narrow mindedness of those who refuse to grant creativity its space of free play or who fail to understand the truly “liberal ethos” of Indian religions prior colonialism. In sharp contrast to the instrumentalized abuse of legal statutes and institutions in defamation cases, the law appears transcendent here. Judges themselves might be thought to epitomize the ethics of enlightened distance that are required for the law to apply impartially to all. And yet, the social force of the Perumal Murugan judgement made itself felt through publicly circulating parts of the text that have no legal binding. The frequently quoted extracts consist wholly of what those in the legal professions would call *obiter dicta*, things said by way of argument, as opposed to the *ratio decidendi*, the reason for the decision that sets a compulsory standard for other courts to follow within a jurisdiction. What freed the author to write was not simply a decision in a criminal case, but more importantly, Justice Kaul speaking to the world by means of a legal judgement that was itself already deeply enmeshed with the world it was addressing. We can see furthermore how the public life of law is sustained not only by the judgement itself, which relatively few will read, but also by the way in which the law is invoked, portrayed, and narrativized in print journalism, and on television.² When “jurisprudence steps off its elitist pedestal,” to borrow an evocative figuration from Peter Goodrich (2017:3), it enters the domain of the popular ethical and political imagination. The law is

addressed to and frequently cited in the world at large well beyond the obligatory chain of the *ratio decidendi* in arguing cases, to support or contest various ethical and political projects, exerting force in, and mediated by, wider social fields defined by dynamics of mass publicity.³

Thinking with and beyond Weber's (1978) well-known argument about inherent incongruities between the substance of popular justice and the rationalized form of legal procedure, this paper extends our analysis of this broader force of law by examining judicial address and its mediation by news-consuming publics. While the Indian higher judiciary aspires to a self-image as a unified power sitting above a deeply fractured postcolonial society, the news media, in particular, have ensured that the law's tentacles spread deeply into the recesses of everyday life and considerations of justice through the circulation of its discourse. Adopting a stance that addresses the public from afar, judicial discourse employs what Pierre Bourdieu (1987:820) noted as "a rhetoric of autonomy, neutrality, and universality" delineating a juridical field that nevertheless seeks to intervene in the society from which it stands aloof as an idealized set of representations and norms. In considering the role of the court as a political actor, then, my interest is in the tension at play between the ethics and aesthetics of distance required to maintain this institution's appearance of majesty and impartiality, on one hand, and the pull of public address and narrative from which the judiciary draws its language and exerts its broader force well beyond the letter of the law, on the other.

In a brilliant anthropological reading of what Veena Das (1995:109) once called the "semiotic excess" of judicial discourse beyond the narrow confines of the immediate decision, for example, Das demonstrates how judgements can serve as a gambit for establishing a juridical-state monopoly, not only on legitimate violence, but on authorizing legitimate forms of collective identity and behavior. Extending these insights into the narrative and event-making quality of the law, I ask how the very mediation of judicial discourse by publics that constitutes the court's authority in society at large beyond the strict letter of the law also opens the judiciary to vulnerabilities on the very same grounds of mass publicity. To the degree that judges are concerned with maintaining their image of distance that is both "ascetic and aristocratic" (Bourdieu 1987:830), they are indeed radically dependent on a form of public recognition that must be assiduously maintained. Not unlike political leaders, judges are deeply concerned with maintaining their reputations and prestige. In the words

of senior lawyer and scholar Rajeev Dhavan (2008:78), “the majesty of the law is very much bound up in how it is perceived If this is taken away, the law and its custodians will be de-mythologized. Their mask would disappear. Court proceedings would be like any other meeting—and all the less convincing for being so.” The law as embodied in the judiciary must appear to stand above the mundane world if it is to maintain its “mystical foundation” (Derrida 1990). This is a symbolic order that is furthermore subject to the vagaries of a sometimes-raucous news media, eliciting accusations of contempt of court when breached. In this respect, the law of contempt which criminalizes “scandalizing a judge” before the public is to the judiciary what criminal defamation is to political leaders. And the law can similarly blur the line between the reputation of a particular judge and broader concerns about the prestige of the court and of the law itself.

Judges must take into account quite seriously the wider effects and uptake of their arguments in such a context, as their counterparts in the field of mass politics clearly do. As the former Delhi High Court Justice A. P. Shah once remarked when I told him about my research, “I know many judges who can’t have their morning coffee without first reading about themselves in the newspaper.” How this reading feeds back into their judgements and observations is a worthwhile question to ask. Such a study of judicial reflections on publicity in the more intimate sphere would wield great insight into the dynamics of calculation and maneuver in legal performativity, but it is beyond the scope of this paper. What follows is a set of interpretations of public records in the form of higher court judgements and news media representations, read through the lens of those legal reporters who did the work of mediating the law for public consumption and interpretation.

Distributions of Law

A prominent statue stands in the center of the graceful Indo-Saracenic buildings that make up the Madras High Court complex. It depicts the law giver and model judge, Manu Needhi Cholan, popularly known as *Ellālan*, or ‘Ruler of the Boundary.’ Sculpted from dark stone in the neo-Dravidian style of the late twentieth century, the statue stakes claim to a Tamil vision of justice amid its colonial-era institutional surroundings. Unlike his

Roman counterpart Justitia, who is found in many courts with her eyes blindfolded holding a scale in one hand and a sword in the other, this great Chola king's eyes are large and wide open. He carries a scepter. The legend depicted by the sculpture has it that the king kept a giant bell for anyone to ring and be heard to report an injustice. One day, a cow rang the bell, demanding action against the king's only son, the Prince Veedhivandagan, who was said to have crushed her calf under the wheel of his chariot. Upon hearing the cow's complaint, the sovereign demanded that his own heir be put to death in the very same manner. The prince's body is thus shown at the base of the sculpture being crushed under a chariot wheel, opposite another wheel which sits upon the dead calf.

Manu Needhi's parable of justice differs from the abstract principle of distanced impartiality imagined in the form of sightless Justitia. His justice is transcendent because it spares no one, including royal kin. But it is also profoundly entangled with what is seen and heard in the world. This administration of law draws ethical force precisely from the recognition that princes and cows are otherwise differentially placed in the hierarchical order of things. The functions of law-maker and law-preserver are not clearly delineated here, as the sovereign Manu Needhi rules on behalf of all people and animals, not blindly or according to a procedure set from without. In proceedings at the Madras High Court, where I would regularly spend time with reporters, justice was certainly not always as equitable as the legend of Manu Needhi would demand. His image nevertheless provides an apt entry point into some of the conflicting tensions at play in the often-dramatic cases that are decided in this complex, where worldly considerations of representing and safeguarding the diverse populace of Tamil Nadu vie with more abstract claims made on behalf of the universal principles of law. As in other higher courts in India, this bench of over fifty justices carries a great deal of political weight as agents of what is often termed an "activist judiciary." I had seen the statue before beginning my work on journalism and written about the story it depicts in some earlier work I had done on petitioning. It began to take on new meaning, however, when I realized just how much events at the Madras High Court dominated the news cycle—and how political this judiciary can be, acting as sovereigns at times.

Producing the Body for Public Consumption

One story looming large in talk among reporters at the High Court when I arrived that summer began when a young man named Shameel Ahmed died shortly after being admitted to the Rajiv Gandhi Government General Hospital, just down the road from us. I first heard about this from the journalists I was following in court. His death was recorded as a small item in the newspapers because Shameel had been taken into custody for questioning a few hundred kilometers away the Pallikonda police station near the Andhra Pradesh border, ten days earlier. After four days of interrogation in the police station, Shameel was released and returned home but immediately admitted to the hospital in nearby Vellore for severe internal injuries, before being transferred to Chennai where he died. Most news reports left it at that, and television largely ignored the story.

What later became clear is that the married Muslim youth, the father of a young child, was alleged to have run away with a twenty-three-year-old woman named P. Pavithra, who was also married and a mother. The two had worked together in a shoe-leather factory away from their respective homes and they had known each other for about one year. When Pavithra left home after a quarrel with her husband, a man by the name of Palani, he proceeded to file a petition for a writ of *habeas corpus*, a recourse demanding the production of her body in court normally associated with the tradition of civil liberties to be used against unlawful detention. Here, as in many cases when women choose to leave home in pursuit relationships deemed undesirable by their family, the writ was used to demand that the police find someone who was said to be “missing.” This use of *habeas corpus* effectively turns a civil right protecting people from the police into a search warrant empowering the police to apprehend the body.⁴ In the words of Giorgio Agamben, “*Corpus is a two-faced being, the bearer both of subjection to sovereign power and of individual liberties*” (1998:125; emphasis in the original). As he notes, *corpus* is the means by which a body is “detained and exhibited” before a public (ibid.). That Pavithra belonged to a Dalit community—thus doubly reduced to her body both as woman and as Dalit—was never mentioned in the mainstream news but was widely known and discussed among reporters and many others I talked to about the story.

What appeared to everyone as a case of death resulting from police torture would have remained a relatively minor news event to be handled

city reporters under normal circumstances. Custodial deaths are unfortunately fairly common, the journalists I was chatting with at court agreed, and media houses rarely have the appetite for public confrontation with a police force they rely on a great deal for their news gathering. But the story gained traction because Pavithra could still not be located by the police, and violence had begun to erupt in Shameel's hometown of Ambur, known for its large Muslim population. It turns out that Shameel was not the first young man to have been tortured to death by law enforcement in this manner and people had lost patience with an unresponsive police force and government. Leaders of the Ambur community led by Shameel's father-in-law—who was the district head of the Indian Thouheed Jamaat, a Muslim social service organization—had already been protesting his disappearance after they failed in their attempts to contact the inspector of police responsible his detention. After news of his death circulated, first through WhatsApp and Facebook, and then through the mainstream Tamil media, protest turned into riot. Most of the crowd's anger was directed at the police and their vehicles, but a state-run liquor-shop, public buses, and a few other stores were also severely damaged. A number of policemen and women were injured, and around two hundred Muslims in the town were picked up for questioning. Many were allowed home after investigations, but ninety-five people remained in prison for over a week after the violence. Martin Premraj, the police inspector responsible for Shameel's torture, was suspended in absentia after the riot. Common local knowledge in Ambur had it that the same inspector was also in charge during the killing of another Muslim youth in police custody two years before. He had been missing since June 27th, the day after Shameel died in Chennai. It was only because of his suspension that the English language media started to cover the story more closely.

Meanwhile, Pavithra, who was last seen by her family in late May, was still in hiding. Although she had visited Shameel in the town of Erode after leaving her husband, according to a documentary later aired on *Thanthi TV* news, he asked her to return to Ambur, knowing the potentials for violence that he would face should they be seen, a Muslim man and Hindu woman together out of wedlock.⁵ No one knew where she was. All the while, Ambur was still simmering with tension under the application of section 144 of the colonial-era Indian Penal Code, prohibiting public gatherings of any sort. Hindu nationalists, led by the BJP politician Vanathi Srinivasan, had worked hard to emphasize the communal aspects of the Ambur

violence. The Hindu right had accused the Indian Thouheed Jamaat of systematically organizing violence against the state, using Shameel's death as a pretext, as part of a general strategy to mobilize Hindu support in this region against the sizable minority Muslim community. General media coverage of the violence involving thousands and the massive police repression that followed appeared distant from the perspective of readers in metropolitan Chennai, however. Stories were somewhat limited in the city's newspapers and television with the exception of the daily newspaper *Dinamalar*, known to be more sympathetic to Hindu nationalist politics. By that point, I was following events very closely and clipping everything I could find in the newspapers. But several news editors I spoke with that week played down the importance of the story by explaining to me that it was the BJP that was trying to make it larger than it was for political gain. The editor at the *Tamil Muracu* evening daily went on to tell me more specifically that it was his job not to play into majoritarian hands by overplaying the story of the riots and their aftermath.

Then, on a Saturday night over one week after Shameel had passed away, I received a phone call from a legal reporter named Shekhar I had become friendly with: "Frank. Did you hear? They found Pavithra by tracing her friend's cell [phone]. She's been living in a women's hostel here in Chennai all along! Look at your Chennai High Court Reporters Group WhatsApp. Come to court on Monday." While Pavithra had gone to Erode to meet with Shameel after leaving home and shortly before he was tortured, police discovered that instead of returning to her village near Ambur as he had asked her to, she had moved to Chennai in an effort to escape from her family. A photograph of Pavithra being escorted to the police station was on the front cover of every paper the following morning. She had been remanded to the Vellore police who had been charged with finding her, and they were told by the local judge to produce Pavithra before the Madras High Court. Already commanding the center of the usually slow Sunday news cycle, the stage was set for an even bigger media event. All attention would be focused on Pavithra's hearing at the Madras High Court that Monday, where she would be produced before the judges, the media, and her family, having broken no law whatsoever, but as a body summoned before the public by writ of *habeas corpus*.

The court grounds were full of onlookers when I arrived, as if some sort of festival were taking place. Amid the dust and crowds, most could barely see the police van carrying Pavithra when it rolled up to the building. A

throng of camerapersons and photojournalists descended upon the scene, chasing the police as they escorted her up the stairs for the hearing. I made my way to the press room where older print journalists were sitting checking their emails and updating their editors on their cellphones. 'Did you see the crowds (*gumbal*)?' Subramani asked in a flat tone without even bothering to look up from his phone. Senior legal reporters like him had seen occasions like this before and were unimpressed compared to the younger television journalists. Most journalists made their way upstairs to the packed courtroom, nevertheless, to witness the encounter with the judges themselves, although some stayed behind waiting for reports from junior colleagues who didn't mind getting caught in the scrum.

In court, Pavithra was told to stand next to an appointed government lawyer before the justices S. Tamilvanan and C. T. Selvam while her husband, Palani looked on holding their five-year-old daughter. They were surrounded by her parents and a sea of spectators. The proceedings began when the judges asked, speaking in Tamil throughout, whether Palani was in fact her lawful husband and about the facts of the case.⁶

'Did anyone take you away from home unlawfully against your will?'

To which Pavithra responded, 'No.' After answering a few initial questions, Pavithra told them simply that she would accept returning to her parent's house, and expressed her desire to leave her husband. In the course of this rather routine line of questioning that Paul Kanagaraj, who was standing in the front row of onlookers despite having no official role in the proceedings interjected, to the surprise of many: 'The Ambur riot arose only as a result of the ongoing investigation into this woman's disappearance!'

The judges responded they had read the news, and then proceeded to aggressively question Pavithra:

'Shameel Ahmed was married. You were also married. You had a husband and a child. Then what? Now this youth has died and his family has been harmed as well. It's only because of these problems that religious and caste riots are breaking out. Even unmarried men and women, if they belong to different religions, can only be married under the special marriages act. But here, both are married and with children. When this is the case, how can they get married?'

Then Pavithra tried to assert her rights by simply stating, 'I want a divorce from my husband.'

This statement of intent prompted a reply by the judge that would come to define the courtroom encounter. The judge replied tersely, 'Is divorce something that is available for sale at the corner shop? Something that can be bought with cash? A divorce is something you must file for in another court, you think you can get one just like that?'

The Government lawyer, Thambidurai then added, '50 lakhs worth of property and vehicles were destroyed in the Ambur riot. The investigations about the riot are still ongoing.' To which Paul Kanagaraj elaborated what he took to be a legal dilemma: 'The high court should not consider this as an ordinary habeas corpus case. This is because there are no clear laws to deal with problems connected to a man and a woman who are already married living together. Therefore, in light of the unusual problems that have arisen in this rare case it is important to develop some guidelines about how police should proceed under such conditions.'

The judges inquired about where Pavithra was currently living and asked again whether she would return to her parents' house, when Kanagaraj again emphasized the danger of the situation and recommended that she be given police protection as more untoward incidents might occur. After consultations among the judges, Pavithra was eventually told to return to the women's hostel in Ambattur, where she would be under police security, until the case was to be finally adjourned three weeks later, on July 23rd, at which point she would return home to her parents. The "homology between masculinist and state power," to borrow from Wendy Brown's (1995:178) apt phrasing, could not be clearer. Pavithra was finally escorted to a room in the courthouse to fill out some paperwork, before she was to be returned to the hostel by the police.

Later in the day, once the hearing was over, I walked outside the court corridors and saw Paul Kanagaraj, surrounded by other lawyers wearing their black robes, giving a press statement to a large group of television journalists, repeating what he had said and what had occurred in the courtroom. Because video cameras and other mechanical recording devices were not allowed inside the court, this impromptu press conference by the President of the Advocates Association, along with an interview with the government lawyer involved were the primary materials presented on the evening news shows to provide an account of what happened. It was only that evening that I saw, along with the wider

television viewership, how Pavithra had covered her head and face with a purple *dupatta* (scarf) while being brought in and escorted out of the courtroom by her handlers.

The image of the young woman bent over on a desk following the proceeding with her face covered, reduced to a body without visage, became the predominant visual impression of the events that unfolded that day. But greater indignity was yet to come in print. The following day, the *Times of India's* headline read, "Woman, whose disappearance caused Ambur violence, produced before Madras HC." *Dinathanthi* had the same, in Tamil, reveling in the details of the judicial encounter in its reporting. *The Deccan Chronicle* went with "Divorce not sold in shops: Judge," a headline that was repeated in *Dinakaran* and many other Tamil dailies and weeklies, also proving to be attractive ticker material for the 24-hour news stations. *Dinamalar* had provided the most detailed line-by-line transcript of the courtroom interaction, upon which I have based the passages above. The former newspaper added a twist by coupling the story of Pavithra's public shaming and the ersatz legal problems her behavior was accused of raising with an article about how police were also investigating whether she had converted to Islam, once again playing to fears among Hindu chauvinists. *The Hindu* alone avoided the sensationalism of other papers and television, focusing instead on tensions in Ambur itself and refraining from focusing on the judges' statements.

In addition to the lack of respect accorded to Pavithra, which we will return to in a moment, what is remarkable about the judges' comments as these were solidified and circulated through this news coverage is the absolute lack of concern with the custodial murder of Shameel Ahmed at the hands of the police inspector, Martin Premraj. The apparently much more serious problem of a woman's compromised marital chastity across religious lines took center stage, obscuring what everyone privately knew to be the social violence against Muslims that Shameel's demise was symptomatic of. When hierarchies within hierarchies are transgressed in this manner, however, violence appears as a quasi-natural occurrence to many, thereby obscuring its political character. Pavithra's unapologetic consent in breaking the "sexual contract" took center stage of a scandal without legal basis, demanding supplementary action.⁷ With some exceptions, notably the popular weekly *Ananda Vikatan* which was more critical of the role of the police, the mainstream of the press found this to be a perfectly sensible exercise in publicly shaming Pavithra for the

violence she had been accused of causing in the narrative that had been built. It was, in fact, the Hindu-right Twitter-sphere and online media that lauded *Dinamalar* for how they had been covering the whole story, perversely recognizing the problem of communal violence at the center of events other papers ignored. While sharing in the misogyny that formed a common ground between Hindu nationalism and the mainstream of news reporting, they derided these other media for being “soft” on minorities. News coverage of the words and images from court, on the whole, appears to have appealed to what editors construed as a popular sense of substantive justice that the law itself could not provide for a number of news consumers.⁸

Returning to events in the courtroom, Pavithra’s *habeas corpus* hearing, like all of the judgements and proceedings described in this paper can be read as an assertion of juridical sovereignty, as Agamben’s analysis of the logic of *habeas corpus* already indicates. From a formal legal perspective, the hearing should have closed with her negative answer to the question of whether she had been abducted against her will. But this was, in fact, only the beginning of an exemplary pedagogical performance delineating “margins within the state” beyond the strict contents of the law, where Pavithra was “taught the difference between membership and belonging” (Das and Poole 2004:17). Her purported misdeed had become a problem for the law, raising questions about her capacity to belong and inciting discourse in lieu of a non-existent legal remedy. The assertion of sovereign power, backed by the might of the law, was maintained although the claim made by the judges was that they have no jurisdiction over her demand for a divorce and, as the advocate Paul Kanagaraj argued in court, that there is no law to deal with the wider problems allegedly raised by Pavithra’s disappearance. As Justin Richland (2013:14) notes in his analysis of language and jurisdiction, “even when legal actors decide that the legal institution they enact (through language) has no authority to act, the force, authority, and legitimacy of that legal institution is nonetheless being enacted.” If Justice Kaul’s Perumal Murugan judgement addressed a wider societal struggle over creative expression in terms of transcendent rights, in this otherwise mundane case judicial address spoke to the world through the very words renouncing its jurisdiction over Pavithra’s demand for a divorce. The former case performed expansions of the court’s reach, while later enacted a sort of punitive constriction by Justices S. Tamilvanan and C. T. Selvam. This “speaking the law” (the Anglicization

of the Latin *juris-diction*, as noted by Richland) enacts the sovereignty of the court and the state it represents while making available textual materials for social sanction well outside the purview of the law in the very same gesture.

All of the cases I have described here asserted and grounded legal authority in large measure through the mediation of normative news-consuming publics beyond the courtroom. Unlike the judgement in the Perumal Murugan case described above, however, where the written statements of the High Court Justices were widely cited in the news coverage of events, here it was spoken interaction with Pavithra herself that provided the content of most reporting. Whereas written judgements are explicitly addressed, not only to the parties directly concerned with a case but to the wider world, in Pavithra's hearing the widely quoted words of the judges were directed at her. The press and her family were what Erving Goffman (1979) would identify in his decomposition of participant roles as unaddressed "overhearers" who were "ratified" insofar as they had a right to be there and observe the proceedings. And so, while the judicial address was directed at the person standing before the judges in the strict linguistic sense, in the wider social sense the juridical text was there to be picked up by all who were in the courtroom, and furthermore disseminated as news for public consumption through the media of print, digital circulation, and television. These absent and unratified addressees would then act as citational vectors in the distribution of legal power beyond the law in a narrative that framed Pavithra as a voiceless but deadly agent in provoking a communal riot. A number of news websites continued to discuss this widely publicized encounter between Pavithra and the force of law embodied in the harsh words spoken in court in the following days and weeks. Her final hearing made for a small item in some newspapers, as a sort of coda to the drama that had culminated in her *habeus* hearing. For some in the press, however, the story was not quite finished.

"Mischief Committed by the Newspaper"?

Selvakumar looked worried when I entered the pressroom at court that afternoon. It was a few weeks after Pavithra's *habeus corpus* hearing. This legal reporter for the Tamil daily newspaper that had recently been started by *The Hindu* was consulting with his colleagues when he glanced up at

me with the unmistakable expression of fear in his eyes. He and his fellow journalists were gathered around a piece of paper. It was legal notice issued from the High Court judges who had heard Pavithra's case, threatening Selvakumar's newspaper with charges of contempt of court. Unlike other civil proceedings, where advocates might be found guilty of "willful disobedience to any judgment, decree, direction, order, writ or other process of a court," as per Section 2(b) of the Contempt of Courts Act of 1971, this notice concerned a different kind of offence. Section 2(c) of the same act defines criminal contempt "as the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court." The alleged infraction was not a matter of simply obeying the word of the court as the subject of a judgement. Instead, this was an order concerning the court's public image and how judges' words had been depicted in the press. In effect, this accusation of contempt is a special kind of criminal defamation charge.

When I joined the huddle of journalists to ask what was the matter, they explained that it was not Selvakumar's reporting on the case that had landed the paper in trouble; it was rather a special supplement in the Tamil *Hindu* newspaper containing opinions about observations made in court and the language used by judges in Pavithra's hearing.⁹ Noting the debate that had emerged on social media in the days following the courtroom drama, the Tamil *Hindu* opinion pages had asked five women, writers and intellectuals, to comment on the proceedings. Apart from the oft-quoted judicial response about commodities and corner-shops to Pavithra's demand for a divorce, the paper also took up a related issue that was being discussed in the left-liberal end of the social media world: in the transcripts of the proceedings published in newspapers the judges were reported to have been using the informal, singular (*orumai*) second-person pronoun in Tamil (*nī*) when addressing Pavithra in court, as opposed to the respectful plural 'you' (*nīngal*) that would have been expected in an official public interaction. Commonly used to assert gender and caste hierarchies in everyday speech—both of which were at play in the context of the court hearing—this pronoun usage was argued to be offensive by a number of the respondents writing in the Tamil *Hindu*. For example, Rajini, a lawyer commenting in the paper asked, 'is addressing someone in using the disrespectful "*nī*" ('you' singular) or "*un*" ('your' singular) appropriate?

First of all, at age twenty-three, Pavithra is a major. During a *habeus corpus* hearing, no one has the right to tell her “you (singular) go there, you (singular) come here.” It’s against Pavithra’s basic human rights.’ Similar opinions were shared by the celebrated writer Salma, who argued that Pavithra knew very well that she would not be granted a divorce on the spot. Other women lawyers and activists complimented these criticisms in the same article.

The contempt of court notice given to Selvakumar was taken up *suo moto* by the bench, that is, by the judges themselves upon reading the newspaper. It was addressed to N. Ram, the Publisher, and his brother N. Ravi as Editor-in Chief of the newspaper, requiring a response within four weeks. It read:

“Having gone through the report and the interview published in ‘The Hindu-Tamil edition’ dated 13/07/2015, we are of the view that there are prima facie material [*sic*] to treat the same as contempt committed by the newspaper. We are of the view that it is the mischief committed by the newspaper misguiding the people. We are respecting all the persons, especially woman [*sic*] attending the Court. It is seen that the interview given by certain persons would show, as if the Courts are not respecting woman, which is totally false and irresponsible statement against Courts.”

I accompanied Selvakumar to the photocopying stand across the street from the court complex, where he made copies for his colleagues and one for me, after I had assured him that I would not be publishing about the notice until years later. The legal journalists at court that day were also asked to refrain from publishing news about this notice in an effort to avoid further confrontation with the judges by amplifying their accusations and drawing more attention to the criticisms published by the Tamil *Hindu*.

In this particular case, it appeared to be in no one’s interest to allow this attempt to silence the press to itself be made into a news event by the newspaper. The Tamil edition of *The Hindu* was a relatively new paper, and most reporters and their editors cherished good relations with High Court judges too much to jeopardize them over what many nevertheless considered to be an abusive accusation meant to keep them in line. After discussing the issue with his colleagues and photocopying the notice of contempt, Selvakumar then went to *The Hindu* offices on Mount Road to

inform is bosses. In the end, based on advice from their legal team, the paper printed a small apology that very few readers would have noticed. But this gesture appears to have satisfied the bench enough for them to drop the charge of contempt against the paper. Like many criminal defamation cases, this threat by the court to pursue charges of contempt against a newspaper drew little if any public attention. It was best dealt with silently, as a non-event.

To Maintain a “Top Most Image of the Judiciary”

Charges of contempt of court can also become big media events, such as those comprising the distressing case of Justice C. S. Karnan: a judge who threatened fellow Madras High Court Judges with contempt of court charges, and who was eventually jailed himself on the same charges which were brought against him by the Supreme Court of India in Delhi. Already in 2011, shortly after being called to join the Madras High Court, Justice Karnan, who is a Dalit, made news by writing to the National Commission for Scheduled Castes (NCSC), accusing his fellow judges of treating him poorly because of his caste background, specifically saying that he had been touched inappropriately by the shoes of another judge as a sign of disrespect while other judges smiled. The already noteworthy allegation became big news as a result of a press conference the judge held. Justice Karnan had broken with the tradition strict public separation between sitting justices and news media, even if many are aware that judges sometimes give quotes to the press in more private settings. The accusations of casteism were made in public and *for* the mass public. Journalists I talked to following the press conference were enthusiastic about its event-making capacity that would put their legal reporting on the front page, while also expressing a hint of worry that things appeared to be going too far. “I don’t think he should have spoken like that about respected judges,” was an opinion that several in the legal reporters’ group shared with me in conversation. The press also appears to have an investment in maintaining a majestic image of the court.

Accusing judges of the Madras High Court of systematic discrimination against Dalit judges, Justice Karnan called these incidents “a black mark on Indian judiciary,” before the gathering of journalists he had invited to his chambers for the purpose.¹⁰ The press conference itself had

become an historic event in the annals of legal reporting. But it was only the beginning of a larger campaign to direct mass attention to the problems of inequality and inside-dealing plaguing the higher judiciary in India, according to Justice Karnan. Public condemnations of caste prejudice where then followed by complaints about the cases that were brought before his bench, eventually leading to unspecified charges of corruption against the highest level of the judiciary. At one point, the judge burst uninvited into an ongoing hearing being overseen by other judges concerning a piece of public interest litigation about how judges were appointed to cases. In the one of the great halls of the Madras High Court, Justice Karnan claimed before the court and before the press that he was being belittled by being assigned cases that were not commensurate to his status and skills, despite that fact that the High Court is supposed to assign cases to its judges based on a rotating roster system.

Justice Karnan then continued to appeal directly to the public through news media, initiating *suo moto* stay orders, to halt the Chief Justice's attempt to interview new judges for possible assignment to the court. He would eventually go on to threaten the Chief Justice of the Madras High Court with contempt of court hearings when Justice Karnan's stay was reversed by the Chief Justice. Seeking a way out of a difficult and very public legal battle with a judge from an oppressed community whose accusations were plausible but not substantiated, the Supreme Court of India eventually transferred Justice Karnan to another bench on the Calcutta High Court. This transfer order too was stayed by Justice Karnan, who wished to remain in Chennai to pursue his allegations in the Madras High Court. But his attempt to use his powers as a judge to stop his own transfer was dismissed under the principle of "*nemo iudex in causa sua*" ('no one shall judge in their own case') as his story was taking up more and more space as a national news event across media outlets. "You have insulted me in the general public consisting of a population of 120 crores in India due to lack of legal knowledge," declared the rebel judge in his response to the Supreme Court.¹¹ This is a serious accusation that invokes precisely the image of the judiciary before the eyes of the nation, reiterating his earlier argument that it was the court that was *in contempt of itself*. Karnan was situated both within the judiciary, as a sitting judge claiming contempt of court, and without, as one whose powers are curtailed by the same law of contempt as interpreted by peers he had deemed "corrupt," thus motivating his appeal to public opinion. In

insulting him, the justice argued that the court was lowering its own image on the national stage, and it was on this very stage that he was determined to take the battle forward.

What was termed Justice Karnan's "populist sensationalism" (Chakraburttty 2017) had engendered a wide debate in the legal world and beyond, as experts and audiences worked to understand the entanglements of caste and the paradoxes of legal bureaucratic structure. A widely recognized problem in a field long dominated by upper castes, especially Brahmins, had taken on new dimensions as the judge leading the charge against discrimination appeared to have little respect for the basic standards of legal bureaucracy and procedure, even if he was zealous in his use of the law. For example, Justice Karnan wrote a letter directly to the Prime Minister of India in which he detailed his charges of corruption and even sexual assault on the premises of the Madras High Court. He urged the leader to take action in an effort to "save the Top Most image of the judiciary," and went further to call on "all political parties of India to extend their fullest cooperation in maintaining an impeccable image at all times."¹² Writing to the Prime Minister and addressing the public as he also pursued legal avenues that were performed as much for their display value as they were in hope of seeking official remedy, the rebel judge had clearly instrumentalized the law as a medium for news-making. He had done so against the judiciary itself, and not as a pure outsider, giving the news-reading public the impression of the Indian higher judiciary exploding from within before their very eyes. Many newspaper readers I discussed this case with as it was unfolding took the Justice to be unsound of mind and interpreted his direct appeals to the public and unusual legal acrobatics to have made a mockery of an otherwise respected if imperfect judiciary.

This public attack on the courts, in turn, attracted the charge of contempt of court against Justice Karnan himself, this time, levelled by a bench of seven senior Justices of the Supreme Court of India. When he initially failed to attend the Supreme Court, the judge was issued a bailable arrest warrant. Justice Karnan responded by filing a legal notice demanding legal compensation from the Supreme Court for not letting him work and for distress, at which point the judge was apprehended by the police. In the contempt hearings that followed, he stood accused of "scandalizing" the judiciary and was found to be guilty. The Supreme Court judgement frequently makes reference to the breach of having spoken directly to the

public by means of the news media in his attempts to bypass what he alleged was a corrupt higher court system. In the words of the authors of the judgement on contempt of court against Justice Karnan, "His public utterances, turned the judicial system into a laughingstock. The local media, unmindful of the damage it was causing to the judicial institution, merrily rode the Karnan wave. Even the foreign media, had its dig at the Indian judiciary." The accusation of producing a scandal here extends beyond Justice Karnan's actions to include those reporting on his statements and legal tactics, even if no media outlet was specifically charged with a similar crime in this case. That the Justice's accusations had become an international news story, however, was particularly troubling: "The BBC also reported on the issue." The wave that they collectively "rode" is what had caused real damage to the authority of the court, but it was Justice Karnan who would face the most direct repercussions. He was sentenced to six months of imprisonment for levelling "obnoxious allegations" that were also "malicious and defamatory" against thirty-three of his colleagues while he "shielded himself from actions, by trumpeting his position, as belonging to an under-privileged caste." In the judgement, Justice Karnan was furthermore restrained from speaking in public until he had served his time in prison. Within an hour of being sentenced, however, he publicly issued a judicial order negating the Supreme Court's ruling, handwritten on a notepad from his guesthouse, before the Supreme Court issued a gag order restraining news media also from reporting Justice Karnan's statements. The news trail concerning the rebel judge grew cold while he was incarcerated, until he was released and claimed that he planned to start a new political party and contest elections. Karnan had finally turned from the realm of law as sovereign justice, from which he had been banished, to that of politics proper.

Justice Karnan's case appeared as a catastrophe that had spun out of control, as several commentators argued in the press. For example, Kaleeswaram Raj writing in *The Week*, notes, "Karnan in Mahabharata, after all, is a tragic character. The modern episode of Justice Karnan also is a judicial tragedy."¹³ Part of terming this escalation of events a tragedy is to acknowledge the degree to which the agency of the actors involved in this drama was deeply mediated by publics and institutions well outside of the law's official purview, even if overdetermined by the law's public presence. Many saw the judge as a sharp mind who was destroyed in the public eye by his own thirst for public recognition and as someone who was

treated differently than he would have been otherwise, because of his caste. Some noted that when retired Justice Markanday Kautju was charged with contempt of court for a social media post around the same time, he was treated with a great deal more respect both among judges and in news reporting. And as Suraj Yengde argues in his important book, *Caste Matters* (2019), the contrast between the treatment of Justice Karnan meted out by the press and the high public regard for four justices from the Supreme Courts who held the first-ever such press conference in front of the court denouncing irregularities in their own court just months later is impossible to understand without an analysis of casteism both within the judiciary and in the public sphere.

On a fundamental level, we are faced with a social drama unfolding around discrimination and a higher judiciary that is either unwilling or unable to address it. A long-standing silence had been broken. But because of the manner in which the rebel judge's accusations of caste-based malice were publicized and the cloud of suspicion hanging over the judge's motivations and his sanity, serious allegations of casteism were never seriously investigated. The Supreme Court issued orders for a psychiatric evaluation of Justice Karnan, instead of looking into the charges he made against his fellow High Court Judges when he claimed to be distressed. The evaluation was taken by Justice Karnan as "an illegal insult to a Dalit judge," when he issued a legal travel ban on the Supreme Court judges from a make-shift court he had established in his home office before his arrest. At another level, then, there is the tragedy of deep personal attachment to something claiming universality that is perhaps ultimately harmful to the socially vulnerable (see Berlant 2011). While pursuing justice in the face of perceived caste discrimination, Justice Karnan was seemingly obsessed with the law, with using the law against its official guardians even if he had to do so outside of the court, and with legal remedy more broadly as a response to injustice. But he was ultimately rejected by the law and the state it represents. In Begoña Aretxaga's (2003:405) insightful formulation, insofar as "law ... has come to represent the sovereign power of the state ... the intense affect of this power ... has the capacity to drive people mad, madness that comes from being 'oversaturated with law'" [citing Berlant 1991]. Justice Karnan's passionate, reckless recourse to the court of public opinion through his own legal actions must be understood in the context of this awesome power that appears everywhere, structuring the very field of public opinion itself

while claiming to stand aloof. Appeal to the public had failed the judge too. In these events, we can see more clearly how the judges' desire to read about themselves in the morning paper before coffee is part of a media dynamic of feedback loops that can take unexpected, devastating, even maddening turns.

Conclusion: Hazards of Juridical Publicity

We have travelled a long way from the majestic image of transcendent law invoked in the opening of this paper in the Perumal Murugan judgement. In the very same courtroom halls where right-wing publicity stunts like banning books set the stage for liberal triumph, a judge might publicly shame a young woman who had broken no law or bear the social embarrassment of having a fellow judge barge into proceedings, every move happening before the public eye. All newsworthy and spectacular in their own ways, the cases discussed in this paper have been grouped together through the contingent fact of their having taken place while I was conducting fieldwork among journalists at the Madras High Court. It was, perhaps, a relatively unruly and eventful time in the long history of this august institution. And yet, these stories all point to some underlying forces structuring the dynamics of juridical publicity while, at the same time, opening themselves to a broader set of questions having to do problems of sovereignty and vicissitudes of public representation.

First, the normative fantasy of the hermit judge, whose lonely interpretation of the law locates itself outside of politics or broader social pressures so as to ensure impartiality, appears more difficult to sustain than ever. As the language of law continues to dominate the news cycle, the pressures of mass mediation on legal reasoning are becoming more apparent. We need only read the numerous discussions of news media in legal judgements and observations as evidence of how judges are reflexive about the fact of mass circulation of juridical discourse. While there is a long tradition of the higher judiciary using its uniquely authoritative position to comment on and intervene in the world at large from the courtroom pulpit in India, the proliferation of news media technologies and formats are also changing the quality of judicial address. If judges had addressed the world largely through their written judgements, which are often adorned with a rich literary textuality as in the Perumal Murugan

judgement, contemporary media logics demand more contained, easily circulatable texts and sensationalist affect. The moralist denouncement of Pavithra through comparing her request for a divorce to shopping provided just such a textual form. Even Justice Kaul's thoughtful prose in defense of the liberalism inherent in Indian traditions was easily reduced to a soundbite demanding that the author be resurrected. It was written in bold as if to call out to less diligent reporters that this was the "take-home" point. To be a successful judge in such an environment is to be media savvy, it appears, and to pay attention to one's public image.

The second, more abstract point to draw from these cases of legal spectacle has to do with what Webb Keane (1997) once called "the hazards of representation" and the question of law as the public face of state sovereignty. That the law and juridical discourse are frequently cited across contexts far from official origins would appear, on the surface, to present a problem for state power as understood through the lens of unified sovereignty. Lack of control over representations of the law might seem to be a weakness. However, we owe to Veena Das the insight that, in the life of the state, this very "iterability becomes a sign not of vulnerability, but a mode of circulation through which power is produced," such that the legal discourse can penetrate into people's lives "and yet remain distant and elusive" (2007:178). We might recall in this context how Justice Kaul's words served not only to liberate Perumal Murugan but also to project an image of legal authority over "Indian tradition" from afar. It is the same pervasiveness of judicial discourse and its citation across contexts that allowed the casual observations made to Pavithra concretize and legitimate a narrative that pins communal harmony back to the problem of a woman's chastity. Shameel's death at the hands of police was rendered irrelevant in the public circulation of this case, as if the state bore no responsibility for the riot. So, it is not because of the iterability of law that the state is made weak or vulnerable.

The vulnerability of the power of the judiciary that results from its dependence on mass publicity has to do with an aspect of circulation not examined in Das's work. Taking a perspective that the brings questions of interaction and popular sovereignty to the fore, we can better appreciate how the quasi-sacred majesty of the law requires recognition from the very people in whose name the law acts. When such recognition is not properly put on display, public representations of the law, and of judges in particular, are subject to accusations of contempt, as when the Tamil *Hindu*

published observations that a judge had been disrespectful or when Justice Karnan accused his fellow judges in public, precisely in order to “save the Top Most image of the judiciary,” as he put it. Charges of contempt and “scandalizing” the judiciary can themselves lower the estimation of the court in the eyes of the public when carried out with excessive force or when proving that the much-vaunted majesty of the court is in fact fragile. Legal sovereignty is thus vulnerable, not simply because it is on display in public but because it demands from the very media of publicity a form of acknowledgement and forum for displaying its power that can easily be withheld. To the degree that legal journalism owes allegiance both to logics of print or televisual capitalism and to the people it is addressing as a public, the requirement that the majesty of the judiciary be formally recognized might not always be met to the satisfaction of the judges who also form a small and separate segment of this otherwise amorphous mass.

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Notes

- 1 *Murugan vs. Tamil Nadu*, 2015 (WP nos. 1215 and 20375) bundled a number of criminal claims against the author, who was defended by his publisher, *Kalachuvadu*, the People’s Union for Civil Liberties (PUCL) and the Tamil Nadu Progressive Writers Association (Ta. Mu. Es. Sa.).
- 2 My argument owes much to conversations with Lawrence Liang, whose work on the intersections of law and film remain a cornerstone of this approach (e.g., Liang 2011).
- 3 Justice Kaul had, in fact, already contributed to the latter discourse as a judge in Bombay in a well-known judgement where he defended the great modernist M. F. Hussein against threats from Hindu fundamentalists who objected to his paintings of goddesses. Several writers sympathetic to Murugan raised worries about the degree to which the rhetoric of the judgement in his case rested on the Chief Justice’s own cultivated capacity to discern the merit of a piece of literature.
- 4 Scholars such as Pratiksha Baxi (2006) as well as Ponni Arasu and Priya Thangarajah (2012) have demonstrated how the protection of habeas has been used to track down women in marriages of choice and queer relationships. This extensive use of habeas to detain is now increasingly questioned by the court. While most news reports claimed that Pavithra’s husband had also filed a complaint against Shameel with the Vellore police, later human rights investigations show that he had, in fact, first suspected someone else of kidnapping her and that Shameel had voluntarily turned himself in for questioning.
- 5 *Thanti TV, Ambur Kalavaram Uruvana Kathai* (‘Story of the Origins of the Ambur Riots’). See also Human Rights Advocacy and Research Foundation, “Fact Finding Investigation

into the Death of Shameel Basha Due to Illegal detention and Torture by Pallikonda Police Station Officials," Vellore District on 26th June 2015. <http://hrf.net.in/fact-finding-investigation-into-the-death-of-shameel-basha-due-to-illegal-detention-and-torture-by-pallikonda-police/>

6 My rendering is based on a verbatim transcript reported many papers, but most fully in *Dinamalar's* article from 5 July 2015, "Ambur Kalavaratukku Karanamana Pavithra Chennai-yil Thangi Irukka Uttaravu" ('Pavithra, the Cause of the Ambur Riots Ordered to Stay in Chennai').

7 The idea of the sexual contract is derived from Carole Pateman's (1988) classic text.

8 When I later confronted Subramani about his headline in the *Times of India*, he admitted that the headline itself was misleading insofar as it followed the narrative line of making Pavithra the cause of the Ambur riots; but he defended the rest of his article and the fact that the judge's words about divorce were in the main text and did not serve as a headline as it did in other papers.

9 *Thi Inthu*, 24 July 2015, "Kathambam: Vivakarattukku Enge Kidaikkum?" ('Mixed Up: Where to Get a Divorce?').

10 See <https://timesofindia.indiatimes.com/india/c-s-karnan-moves-supreme-court-for-recall-of-illegal-jail-order/articleshow/58635854.cms>.

11 Quoted in Supreme Court of India Suo Moto Contempt Petition no. 1 of 2017, against Hon'ble Shree Justice C. S. Karan. See <https://judicialreforms.org/justice-karnan-contempt-detailed-judgement/>.

12 Quoted on page 17 of Contempt petition: <https://judicialreforms.org/justice-karnan-contempt-detailed-judgement/>.

13 *The Week*, 7 May 2017, "Justice Karnan: A Strange Case." <https://www.theweek.in/content/archival/news/india/curious-case-of-justice-karnan.html>. Like the mythical son of Surya, whom he is named after, Justice Karnan "'burns' from the karma' of his harsh words," despite being recognized as "a good man" (Hiltebeitel 2011:458).

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