

# The Resurgent India

A Monthly National Review

July 2022



*“Let us all work for the Greatness of India.”*  
– The Mother

Year 13

Issue 4

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# THE RESURGENT INDIA

A Monthly National Review

July 2022



## SUCCESSFUL FUTURE

(Full of Promise and Joyful Surprises)

*Botanical name: Gaillardia Pulchella*

*Common name: Indian blanket, Blanket flower, Fire-wheels*

Year 13

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## **A Declaration**

We do not fight against any creed, any religion.

We do not fight against any form of government.

We do not fight against any social class.

We do not fight against any nation or civilisation.

We are fighting division, unconsciousness, ignorance, inertia and falsehood.

We are endeavouring to establish upon earth union, knowledge, consciousness, Truth, and we fight whatever opposes the advent of this new creation of Light, Peace, Truth and Love.

– The Mother

(Collected works of the Mother, Vol. 13, pp. 124-25)

# PLUMBING THE DEPTHS: INDIAN JUDICIARY AND THE NUPUR SHARMA SAGA

Justice is a wide-ranging and universal idea, one of the foremost attributes of a society, and one which emerges out of the outer culture and traditions, and the inner governing spirit of that society. It cannot be restricted by the rigidities of any institution or imposed externally and in contravention of the national *dharma* and *swabhava*. Across the centuries, philosophers, saints and thinkers have spoken about what justice means – both, in an inner or spiritual and an outer or material sense. In the modern world, the idea of justice has been narrowed down to the cold, logical preservation of systems and material principles through the medium of the institution of judiciary. The institution of judiciary to which the dispensation of justice mainly falls has, in the present times, become perhaps the most debased of all.

In India, the land where the yoke of *dharma* reigned in ancient times, this debasement and fall is perhaps amongst the worst out of all major democracies, where the judiciary is presently undergoing a great crisis of trust and national alienation. While the rot has been churning for decades, it has become more apparent now when the awakening in our national consciousness stands in stark contrast and conflict with the steeped and rigid intellectuality of the courts. This is especially visible in the Supreme Court's recent observations in the Nupur Sharma case when it was first brought before it.

## A TRAJECTORY OF FALL

The institution of judiciary in democracies has been, predominantly, a product of the modern constitutional

philosophy of the West, whose ideas of justice were shaped by narrow liberalism and gross materialistic utilitarianism. Indian judiciary, shaped during colonialism, has retained much of its westernized and rigid intellectual character, unsuitable to the Indian context which was never rigidly mentalized like the West. As a result, the evolution of the Indian judiciary since Independence has been determined less by the imperative of serving justice and more by the changing politics from time-to-time. Like any other judicial system in the democratic world, the Indian judiciary too has been shaped by its relationship with the government and the legislature – a relationship wherein the judiciary has been seen to sometimes bend to the government unquestioningly and sometimes confront the government mindlessly, thereby overstepping its boundaries. Despite being mired in such politics, the judiciary has remained unhindered. Its regard of itself as the sole custodian and interpreter of the Constitution, meant to keep a check on the powers of the government, has lent it immeasurable and unwarranted powers over time.

### **Indian Judiciary vis-à-vis the Executive:**

**First Phase** – 1947-1965 – A relationship of complete subordination and acquiescence towards the Parliament and the government.

**Second Phase** – 1966-1980 – Also known as the Indira Gandhi phase, where the judiciary assumed a confrontationist posture towards the government and passed some landmark judgments which changed the course of jurisprudence. Major constitutional changes were cemented.

**Third Phase** – 1980 onwards – An “activist” judiciary empowered by the rise of instruments like Public Interest Litigation. This activism corresponded with a weakening coalition-based executive and a judiciary that frequently began transgressing in the legislative domain under the garb of PIL.

These powers stand in contrast to the judiciary's chequered history, mired in the mud of politics, suffering allegations of compromised independence and accountability, and, above all, over-stepping its boundaries and concentrating power within itself. *Despite attempts at various judicial reforms, not much could be done to actually reform the judiciary. Indeed, in the present conditions, the institution's working has worsened, since the actors in the judicial arena are able to learn new tricks to circumvent or bypass the obstructions created by the new rules and reforms which soon end up making the judicial system even more cumbersome without making any substantial improvement in its actual functioning. This is more so in the present context when since 2014, the judiciary has come into increasing conflict with the drastic changes in the national character and the great collective revival taking place across the country.*

Under such conditions of people-led revival, the greatest irony of the Indian judiciary is that of an institution which assumes to itself the role of protecting people's democracy but is itself amongst the most opaque and unaccountable of all institutions of the system, utterly beyond the approach of the common man who does not possess the money, education, or the power to penetrate the legal system. A common man wanting to take recourse to the judiciary would have to go through several intermediaries, depending on them blindly, and even then, not be sure about whether he will succeed. At every stage of the complex legal process, much money and mental energy must be expended, and much manipulation has to be undertaken. For the common man seeking justice, this process will likely last many years if not decades, while the holier-than-thou judges deliberate on futile matters. The likelihood of success – unless there is some active divine

intervention – lies with those who can master the art of weaving a web of lies and manipulation through the shrewd use of logic and intellect.

*In essence, the judiciary has ended up making justice no more than a tradeable, commercialized commodity in a utilitarian world of survival, where fairness is perhaps the least of the criteria in dispensing justice.* As B.R. Ambedkar – the father of our Constitution – had remarked in his 1949 ‘Grammar of Anarchy’ speech, *“I feel, however good a Constitution may be, it is sure to turn out bad because those who are called to work it happens to be a bad lot. The working of a Constitution does not depend wholly on the nature of the Constitution.”* (Outlook, 2022). These lines may be extended to well apply to the present-day Indian judiciary whose debatable interpretations of the Constitution as well as biased contravention of it have caused much rightful outrage in the nation.

## **THE NUPUR SHARMA CASE: JUDICIARY VERSUS CONSTITUTION**

This attitude of the judiciary was most recently brought out in the Nupur Sharma plea presented before a two-judge bench of the Supreme Court. As discussed previously in the last issue of this magazine, former BJP spokesperson, Ms Nupur Sharma, had been under a massive national and international controversy for making ‘blasphemous’ remarks against Prophet Mohammad. In the remarks she said that the Prophet had married Aisha when she was six years old and consummated the marriage when she turned nine years old. These remarks were made on a television debate in a heated response to the disgraceful and base fun being made of the Shivalinga found at the Gyanvapi mosque in Kashi.

In response to her comments, there was international pressure from Muslim countries to act as well as national chaos that followed. She was eventually suspended, and she apologized and withdrew her remarks, but the radicalized domestic Muslim sentiment could not be assuaged. What followed were a series of death and rape threats issued to her and her children and family and gruesome terrorist attacks on common Hindus merely expressing support for her. Riots broke out in various places over her comments. In particular, the brutal beheading of a Udaipur-based tailor by two Muslims, merely for a social media post supporting Ms Sharma, caused national shock and outrage. The terrorist killing was justified on the basis of hurt religious sentiments of the Muslim community. Various prominent Muslim clerics – such as those belonging to the trust of the Ajmer dargah – also issued threats against Ms. Sharma. The Rajasthan government – in all these episodes – became infamous for manipulating evidence and delaying action.

First Information Reports (FIRs) were registered against her in various states, including Opposition-ruled ones for her comments on the Prophet. The Delhi Police also registered an FIR against her, but also provided her security in the light of the extreme threat to her life from Islamists. She was being summoned for investigation by police from various states, such as West Bengal and Maharashtra.

It was in this context, in the light of the continuous harassment and threats faced by her that Ms. Sharma approached the Supreme Court, in the exercise of her Fundamental Right under Article 32 which enables the guaranteed seeking of constitutional remedies in case Fundamental Rights are violated, to plead for the quashing or clubbing of almost identical

criminal complaints filed against her across the country. In her petition presented before the Court, she wanted all the impending multiple FIRs against her to be clubbed into a single FIR under the jurisdiction of the Delhi Police. The petition was heard by a vacation bench of the Supreme Court headed by Justices Surya Kant and JB Pardiwala. The bench gave its verdict, accompanied by a series of oral observations in the form of outbursts, on July 1<sup>st</sup>.

In what has shocked the nation, the Court acted in a completely inexplicable manner. It not only turned down the petition to club the FIRs, but also gave oral observations that have seriously brought the credibility of the Court under shadow. In both cases, the Court acted without any valid legal reasoning and also ended up giving mighty ammunition to the Islamist lobbies baying for Ms. Sharma's blood. The entire episode rightly earned the Supreme Court the label of 'Sharia Court' which has no place in a country like India. Perhaps, even a Sharia Court might have behaved more responsibly.

The questionable verdict and observations of the Court are discussed as follows:

First is the question of whether the Court was justified in refusing the petition to club the multiple FIRs against Ms. Sharma into a single FIR, considering that there was a grave threat to her Fundamental Right to life. The Court, in its refusal to club FIRs, not only gave a verdict that violated Ms. Sharma's basic Fundamental Rights, but also violated its own past precedents in such cases without any logical justification. The Court asked Ms. Sharma to instead approach the respective High Courts to fight the cases against her, completely disregarding the fact that her going to various states to do so would seriously endanger her life.

The Court's position was completely unjustified in this case. Legally, a person cannot be prosecuted more than once for the same offence. The citizens have Fundamental Rights against such 'double jeopardy.' Article 20(2) of the Constitution guarantees this right. In such cases, filing multiple FIRs on the same incident would mean facing multiple trials. Approaching the Supreme Court in such situations is a procedural safeguard against excessive litigation.

The Court's own precedents state so. In 'T Anthony v State of Kerala (2001)', the Court held that there cannot be a "second FIR" on the same issue. Such an FIR will violate Fundamental Rights under Article 20 (2) and Article 21 as well as section 300 of Code of Criminal Procedure (CrPC). Yet again in 'Awadesh Kumar Jha v State of Bihar (2016)', the Court held that there can be no other FIR where the information concerns the same offence. A second FIR in such a case is not only impermissible but it violates Article 21 of the Constitution. Further, the Court expanded this ruling in 2020 in the 'Arnab Goswami v Union of India' case when it held that filing multiple similar FIRs in different jurisdictions violates the fundamental rights of individuals and that the petitioner can, under such petitions circumstances, approach the Court to club the FIRs against them.

Despite this constitutional Fundamental Right under Article 20(2) and the Court's past precedents on the issue, the Court refused to grant relief to Nupur Sharma on an astounding ground viz. while Arnab Goswami was a journalist and therefore the FIRs against him could be clubbed, the same cannot be extended to Nupur Sharma who was a party spokesperson. To justify its biased stand the only way it could, the Court went on to make the absurd oral observation that "if the conscience of the Court is not satisfied, the law can be moulded".

These stunning views fail to reveal on the basis of what reasoning the bench arrived at such a conclusion. The Court's dicta imply as if journalists are more deserving citizens than the common man or a party spokesperson and that they have more rights, disregarding the fact that Fundamental Rights are guaranteed under the Constitution to all citizens equally regardless of their social or economic status or any other criteria. Yet the bench's obvious bias led to such irrational observations and made a written Constitution incumbent upon the whims of an individual judge's "conscience."

Second is the question of how far the Court was justified in its oral outburst against Ms. Sharma's conduct, in the process viciously setting her up as a valid target for further threats to her life. In the scathing observations made by the Court, the judges commented on Ms. Sharma's comments on the television and blamed her for the communal incidents happening all over the country, including, absurdly, holding her responsible for the brutal beheading of the tailor in Udaipur by two Muslims.

Below is the transcript of the oral observations made by the Supreme Court and their absurdity:

### **A. Selected Oral Observations of the Court**

Bench: Why has she filed with a *deceptive name*? She wants to hide her identity that people might be watching?

Advocate: Seems to have a serious security threat

Bench: She has a security threat or she has become a *threat to the security of the nation*?

Bench: The way *she has ignited the whole country* and *she has the cheek and courage to come to the court to ask for discretionary relief*?

Bench: *This lady is singlehandedly responsible for the burnings in the country.*

Bench: *This lady [has a] completely loose tongue* that she keeps on making all irresponsible statements and she claims that she is a lawyer with 10 years standing? This is shameful

Bench: What do you want from us?

Advocate : The FIRs should be clubbed at one place. That's all.

Bench: *This is not the way to withdraw.* She should *have gone on air and apologised* to the whole country.

Advocate: My lords have laid down that in case of registration of FIRs in multiple jurisdictions, only the first FIR stands. The first FIR is registered in Delhi.

Bench: And what the *Delhi Police has done? Please don't compel us to open our mouths.* When she makes a complaint, the person is arrested. And *when there is an FIR against her, she is not even touched.*

Advocate: The content of the transcript, does not make a case [points to relevant part]. A particular insinuation is made towards the Shivling as a phavvara [fountain]

Bench: *What is her business or what is the business of this TV channel to discuss a matter which is sub-judice before the Supreme Court?* Except that they are promoting a particular agenda.

Bench: [Refers to relevant part] It is so disturbing. *This*

*is the outcome of what happened unfortunately at Udaipur.*

Advocate: These are matters of debate within society.

Advocate: My lords have laid down the law that multiple FIRs on same incident cannot stand.

Bench: *Even if we have laid down that law, this is a fit case that we refuse to apply that law.*

Bench: *These are the people who are not religious at all. They have no respect for any religion.* A religious person will have respect for other religions also. *It is all to gain cheap popularity and just to achieve some political or nefarious agenda that all these statements are made.*

Bench: This petition also *shows her obstinate character and her arrogance* that she thinks that the Courts of the Magistrate are too small for her.

Bench: If you are a spokesperson, it is not a license. *Sometimes powers goes to your head, people think that yes I have a backup therefore I can make any kind of statement and go scot-free.*

Advocate: My lords even within the same religion, there are serious debates on these issues. Citizens have been granted rights.

Bench: [sarcastically] *Yes everyone has a right to speak, in a democracy, the grass has the right to grow and a donkey has the right to eat.*

Bench: *The case of a journalist is at a different pedestal as compared to a citizen or spokesperson who goes on the*

channel and starts *lambasting others making irresponsible statements without even an inkling of the ramifications and serious consequences* that how seriously it will disturb the fabric of the society.

Advocate: Let me assume that proposition is correct, citizens have fundamental rights and fact remains that there is one incident. And all I am asking is the clubbing of that FIR. TT Antony says that there cannot be a second FIR on the same incident.

Advocate: If your Lordships have laid down that every citizen, not just journalists can approach your Lordship for clubbing in one place. The laid down is for all citizens and there cannot be different standards. Kindly see the judgment in Satinder Singh Bhasin case [case of a business concerning multiple FIRs] He is not a journalist. He is a businessman. My submission is that every citizen is entitled to such an indulgence. Being put to multiple FIRs on one incident is contrary to basic tents of law, contrary to Cr.P.C. and contrary to Article 20(3) [protection against double jeopardy]. Even if a person is not a journalist, your Lordships have applied the same yardstick.

Bench: *When you get the FIR registered against XYZ [referring to one Mr Zubair] he is arrested immediately*

Bench: *Nobody has dared to touch you. It shows your clout.*

Bench: *When the conscience of the Court is not satisfied. We must mould the law accordingly.* Starts dictating order – “No case to ...”

Advocate: Then my Lords may permit me to withdraw the case.

Source: Sharma (2022)

The observations by the Court are a mixture of defamatory personal attacks and a display of bias by the Court, inexplicably failing to go by the lawful code in clubbing the FIRs against the petitioner. The Court's observations – even if oral – further ensured that even if Ms. Sharma were to approach lower courts to seek redress, the Supreme Court's oral observations would ensure that the case against her would remain prejudiced since these observations would factor in any further litigation, thereby automatically condemning her without a fair hearing. Thus, without any trial or following any process of law, the Court, through its oral outburst, effectively pronounced Ms. Sharma guilty of an unproven crime in front of the whole nation. Further by outrageously linking the Udaipur terrorist attack to Ms. Sharma's comments, the Court was also, in the process, absolving the barbaric Islamic killers who executed the Udaipur tailor, and justified the murder of the tailor who had supported Nupur Sharma.

Third is the question of what is repeatedly being referred to – in the media and public domain – as Ms. Sharma's 'blasphemous' conduct and how the Court has given in to such an Islamist theological imposition. The casual justification of terms like 'blasphemy' – used in the legal codes of Muslim countries to brutally convict or execute those seen to be saying or doing something against Islam – to condemn Nupur Sharma shows just how far the secularist ecosystem has succeeded in infecting the country's entire public and institutional edifice with hardcore Islamic theological ideas. Blasphemy has no place

in a country like India, and yet, the Court has given in to this idea by condemning Ms. Sharma for making comments that are plainly in the public domain and have been uttered several times before.

Indeed, Islamic religious clerics themselves have said what Ms. Sharma said about the Prophet. There are videos of Zakir Naik of Peace TV and other Islamic clerics confirming such facts about the Prophet. Ms. Sharma was merely repeating on a TV debate what has always been common public knowledge, considered quite innocuous. As such, the question arises whether the mere reference to such common knowledge by a person can even be considered to be a malicious insult or an attempt to incite violence attracting severe provisions of the Indian law.

## ***B. National Outrage Against the Court***

The oral observations of the Court in this case are not novel. Our judiciary has given in to such outbursts in the past as well. For instance, during the pandemic, a judge of the Madras High Court bizarrely blamed the Election Commission of India for the rise in Covid cases and declared that the Election Commission should be tried for murder. These ‘oral observations’ did not make it to the final order, but it is well-known how the judiciary has often overstepped its boundaries regularly, both in its written orders as well as in its oral observations.

In an even more bizarre and outrageous case in recent times, the Telangana High Court granted bail to five accused – including the son of Owaisi-led AIMIM’s MLA – accused of raping a 16-year-old girl in Hyderabad. While granting bail to the son of the AIMIM MLA, the Telangana High Court said that

the mother of the accused shall furnish an undertaking that the accused will not repeat the offence. Similarly, recently, in Madhya Pradesh a rape accused released on bail once again raped the victim and blackmailed her into withdrawing her complaint. This state of affairs reflects a complete and thorough travesty of justice. While the judiciary routinely allows serious accused to go scot-free if they have money or power, the common man is harassed endlessly. Therefore, the national outrage at the judiciary in the Nupur Sharma case has come as a much needed awakening.

It once again reflected that personal bias – often in line with entrenched notions of secularism – and thoughtlessness masquerading as logic often determines the judiciary’s attitude. More than anything else in the present times, this entire episode has thoroughly exposed the judicial system and made it suspect in common citizens eyes. The widespread perception that has emerged is that the judiciary is also ensconced in the pseudo-secular ecosystem that has controlled the country over the last fifty years.

As a result, the Court’s observations invited a barrage of condemnations from various public figures as well as petitions seeking redress. There were also calls for initiating the impeachment of the two judges. Several retired judges, bureaucrats and armed forces’ veterans had released a statement seeking recall of the remarks made by a Supreme Court bench on the Nupur Sharma case. A separate plea was also made seeking that the oral observations by the bench be withdrawn so that Nupur Sharma gets a chance at a fair trial.

Surprised at the level of national anger, one of the judges of the Supreme Court bench that had delivered the order on July 1<sup>st</sup> even went on a backfoot and said that there should be no social

media trials of the judiciary. Eventually, when Ms. Sharma again filed a petition in the Supreme Court, it was adjudicated by the same two judge bench on July 19<sup>th</sup>. This time, the bench expressed concern and admitted that life threats to Ms. Sharma had indeed increased since its previous July 1<sup>st</sup> order. The Court also said it never intended for Ms. Sharma to visit every court for relief in the hate speech cases against her and held that its main concern is to ensure protection for Sharma so that she can avail herself of the alternative remedies. The Court also issued notice to the Centre and states (where FIRs have been registered) to explore the process of giving her security from life threats. The Bench, also as an interim measure, directed that “no coercive action shall be taken against the petitioner” till the next date of hearing in connection with the complaints filed against her in several states.

The entire episode highlights the dubious present state of our judiciary. The bias and whitewashing of Islamic terrorism undertaken by the Court in the Nupur Sharma case has exposed how intellectualized and removed from reality, the judiciary has become. Over time, the judiciary has become such an insular, isolated and unaccountable institution that it has come to stand at odds with the democracy of India. This is visible through the way it has arrogated powers to itself and its rising inefficiency.

## **CONTINUOUS DETERIORATION IN JUDICIARY**

The present condition of the judiciary has been marked by constant deterioration and nepotism. This is visible, both, in the way it has arrogated powers to itself, and, in its inability to manage itself.

### ***A. Arrogation of Powers and Lack of Accountability:***

The judiciary's concentration of powers has taken place over a period of the recent decades, when it decided to create a system of its own appointments through the collegium system created because of the various Supreme Court judgments, and, arbitrarily exempted itself from the purview of the Right to Information Act, 2002.

In case of RTI exemption for itself, the judiciary managed to successfully abort the 'Declaration of Assets and Liabilities by Supreme Court, High Court and Subordinate Court Judges Bill' of 2009. Instead, it followed its own non-transparent system here also. In this system, in 1997, the Supreme Court adopted a resolution making asset disclosure mandatory for Supreme Court judges. Some High Courts also adopted this practice. The resolution itself was so insincere and superficial that it was never meant to succeed. Initially, after its adoption, there were no clear deadlines about disclosing such information, wherein "a reasonable time" after assuming office would suffice. Thereafter, disclosure needed to be done only if acquisition was of "a substantial nature". Later, in 2009, the Supreme Court completely watered down this system and made the disclosure voluntary and not mandatory. The High Courts did the same. The in-effectivity of this system is borne out by the fact that, currently, disclosure information on only four Supreme Court judges (including CJI) is available.

In case of collegium system, an even worse concentration of power was visible and happened throughout the decade of the 1990s, when the Court ensured that it became insulated from outside influence by making its own appointments. The arbitrary judgements of the Court leading to its opacity also furthered judicial corruption and scandals, but the political

class of the time – divided by coalition politics and struggling to keep successive governments from fragmenting – did not have the political will to tackle judicial corruption. This led to further negative empowerment of the judiciary. It was only in 2014, when Modi government ascended to power, that judicial lack of accountability was first challenged.

## **B. The Collegium System and Judicial Opacity:**

The Constitution of India stipules the appointment of judges in accordance with Articles 124 and 217. Article 124 (2) of the Constitution clearly states that, “Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years.” Similarly, Article 217 deals with appointment of High Court judges. Both these Articles make the appointment of judges a consultative process between the executive and the judiciary. In the initial years after Independence, while executive held complete control over selection of the Chief Justice of India, an unwritten norm of seniority began to be followed.

However, due to the conflict between the executive and the judiciary during the Indira Gandhi period of 1970s – marked by supersession and bulk transfers of judges by the government and unfavourable judgements authored by the Court – the issue of appointment of judges became highly politicized. As a result, the Supreme Court, after the decline of the Indira Gandhi era, attempted to establish its sway over the issue of appointment

of judges over a period of time.

This was done through its judgements given in the Four Judges Cases. The First Judges Case was *S.P Gupta v Union of India (1981)*. It related to appointment of judges to the High Court. In this case, the Court favoured the government. It upheld the power of the executive to decide on the appointment of judges, in consultation with the judiciary. Where there was a conflict between executive and the judiciary, the judgement held that the executive decision should be final, as excessive judicial discretion may lead to an “ivory tower attitude” of the judiciary.

*Supreme Court Advocates-on-Record Association vs. Union of India (1993)* or the Second Judges Case partially overruled its predecessor and held that the Chief Justice of India had primacy in the consultative process between executive and judiciary over appointments of judges in terms of both Articles 124 and 217. Thus, no judge could be appointed to the Supreme Court or high courts unless such appointment was in conformity with the opinion of the Chief Justice of India. Such an opinion was characterized as plural in nature, being reflective of the opinions of two brother judges as well. Thus, this judgement gave rise to the birth of a nascent collegium system (Dev V. , 2022).

The *Third Judges Case (1998)* saw the President of India, K.R. Narayanan, raise a reference regarding the expansion of the existing collegium system. In response to that, the Supreme Court expanded the Collegium to a five-member body, comprising the Chief Justice of India and four of his senior-most colleagues.

In the *Fourth Judges Case (2015)* or the *Supreme Court Advocates on Record Association v. Union of India (2015)*, the Supreme Court upheld

the collegium system and struck down the 99<sup>th</sup> Constitutional Amendment Act which proposed to scrap the collegium system and appoint a National Judicial Appointments Commission (NJAC) to appoint judges. The Commission was to consist of members from the executive and judiciary and be tasked with the appointment and transfer of judges. In its judgement, the Court declared that NJAC is an executive interference with the autonomy of the judiciary which amounts to tampering of the basic structure of the constitution, wherein the Parliament is not empowered to amend the basic structure.<sup>1</sup> However, the Supreme Court also acknowledged that the collegium system of judges appointing judges is lacking transparency and credibility which would be rectified by the judiciary.

Thus, the Supreme Court consolidated its powers of making its own judicial appointments – without any external accountability – through its judgments. These powers are neither constitutionally derived nor are they derived from any Act of the Parliament. Under the present operation of the collegium system, judges of the higher judiciary are appointed only through the collegium system and the government has a limited role after names have been decided by the collegium to get an inquiry conducted by the Intelligence Bureau (IB). The government can also raise objections and seek clarifications

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<sup>1</sup> The Basic Structure doctrine was promulgated by the Supreme Court in 1973 in the *Kesavananda Bharti v State of Kerala* case. Here the Court held that the Constitution is defined by a certain ‘basic structure’ which is its inalienable part and cannot be changed by Parliamentary amendments. This basic structure could include anything from principles like rule of law to secularism to judicial independence and could be interpreted from time-to-time due to its flexibility. Thus, craftily, the Court did not specify what the basic structure really means. The doctrine has been an area of contention between the judiciary and the constitutional amending powers of the Parliament.

regarding the collegium's choices, but if the collegium reiterates the same names, the government is bound, under Constitution Bench judgments, to appoint them as judges. The Court has also, in one of its judgments, said that the names that are reiterated by the collegium should be approved by the Centre within three to four weeks. (M/s. PLR Projects Pvt. Ltd. Versus Mahanadi Coalfields Ltd. & Ors., 2019).

Modi government's attempts to scrap the collegium system through the establishment of the NJAC have failed. However, the government has tried, in its own way, to navigate the mire of judicial opacity. This includes – on multiple occasions – the government deliberately sitting on the file containing recommendations made by the collegium, thereby indefinitely postponing appointments and causing much consternation within the judiciary. This has, more or less, reduced the role of the collegium to merely a 'search and selection committee' instead of the one exercising actual power. In this, two trends have emerged:

First, the Centre appears to be "splitting" recommendations sent in a single batch. It clears some names in a batch while withholding approval of others. The frequency of this practice has increased under the Modi government.

Second, names are not cleared despite having been reiterated by the collegium several times. In September 2021, for instance, the collegium recommended 68 names, out of which 12 were reiterations. Ignoring the Court's reiterations has left the Centre open to charges of contempt of court, but till now nothing has come out of it. (Poddar, 2021).

Besides obstructing the working of the collegium system, other indirect methods by the executive to confront the judiciary also

includes rough – but necessary – political methods like indirectly exposing the corruption and immorality at highest levels of judiciary, thereby tarnishing its public image, or even, creating fissures within the highest levels of judiciary, as reflected in their judgements. Additionally, judges are mostly susceptible to the power of money and post-retirement benefits. Thus, these extra-constitutional political means have become a viable way to trap the judiciary within the web spun by itself.

### **C. General Lack of Accountability:**

Besides the disgraced and unconstitutional collegium system, there have been several disparate cases which bring home the judicial lack of accountability. In recent times, it is clearly brought out by the Centre’s information to the Parliament that over 1,600 complaints were received in the Centralised Public Grievance Redress and Monitoring System (CPGRAMS) on the functioning of the judiciary, including judicial corruption, between 2016 and 2021 (PTI, 2021). The mechanism of addressing these complaints against the judiciary is also highly vague. Such complaints are addressed by the judiciary itself through an “in-house mechanism” where the complaints are forwarded to the respective Chief Justices of the High Courts or the Supreme Court. This ‘in-house mechanism’ was created in 1997, wherein the assumption is that the Chief Justice of India or of the respective High Courts are competent to receive complaints against the conduct of judges of the Supreme Court, the Chief Justices of the High Courts and judges of the High Courts.

The lack of judicial accountability is also visible in the rampant nepotism in the institution. Within the legal community, it is well-known that first and second-generation legal professionals cannot advance in the field unless they have the necessary connections,

power and money, as well as a propensity to compromise. In its 230<sup>th</sup> report, the Law Commission of India had suggested that the ‘Uncle Judges Syndrome’ – where every 3rd judge was an ‘uncle’ of another judge – should be dealt with.

### **D. Mismanagement:**

The penchant of the judiciary to meddle in the affairs of the government is belied by its own increasing workload, with nearly 5 crore cases pending in various courts across different levels of judiciary in the country. Nearly 2 lakh cases have been pending for 30 years, and there is a rising trend of litigation which has sharply increased the caseload in recent times (Sumeda, 2022).

Court	Pendency in 2019	Pendency in 2020	Pendency in 2021	Pendency in 2022
<b>Supreme Court</b>	59,535 (as on December 2019)	64,426 (as on December 2020)	69,855 (as on December 2021)	70,154 (as on March 2022)
<b>High Courts</b>	46,84,354 (as on December 2019)	56,42,567 (as on December 2020)	56,49,068 (as on December 2021)	58,90,726 (as on March 2022)
<b>District &amp; Subordinate Courts</b>	3,22,96,224 (as on December 2019)	3,66,39,436 (as on December 2020)	4,05,79,062 (as on December 2020)	4,09,85,490 (as on March 2022)

The number of pending cases from 2019 to 2022, as presented by the Minister of Law and Justice in the Lok Sabha. | Photo Credit: Source: Department of Justice

### **E. Loss of Popular Trust:**

In the last several years, the institution of judiciary has become rife with allegations of bribery and corruption. The trend has been in evidence since the days of the Congress-led government of the United Progressive Alliance (UPA). The level of corruption was such that according to a non-profit organization, Transparency International, 45% of people who had come in contact with the judiciary between 2009 and 2010 had paid a bribe to the judiciary, with the most common reason for paying the bribes being to

“speed things up.” There were “fixed” rates for a quick divorce, bail, and other procedures, with the Asian Human Rights Commission estimating, in 2013, that for every Rs. 2 in official court fees, at least Rs. 1,000 is spent in bribes in bringing a petition to the court (Kulkarni et al., 2022). This cycle of corruption continues even now.

A Freedom House’s 2016 report and the GAN Business Anti-Corruption Portal concur that the lower levels of the Indian judiciary have been rife with corruption, with bribes and irregular payments often exchanged to ensure favourable court decisions (Kulkarni et al., 2022). In April 2018, three judges of lower courts in Telangana were arrested for possessing assets disproportionate to their known sources of income. Similarly, in Gujarat, two judges of the lower judiciary were arrested for allegedly taking money to settle cases during their posting at Vapi court in 2014.

These trends of corruption are visible not only at the levels of lower judiciary – where it is more widespread and directly affects the common citizen – but also, in a more sophisticated and white-washed form at the level of the higher judiciary. In recent months, Mr. Prashant Bhushan has battled contempt proceedings for stating in an interview that out of the past sixteen Chief Justices of India, half were definitely corrupt (Outlook, 2022). Further, in 2017, for the first time in India, a sitting High Court judge Justice C S Karnan was sentenced to six months in prison for making allegations of corruption against Supreme Court judges after an SC panel held him guilty of contempt of the court. In yet another instance, the Central Bureau of Investigations (CBI) made direct allegations of corruption against a sitting judge of the Lucknow bench of the Allahabad High Court when it booked Justice Narain Shukla for receiving illegal gratification for allegedly favouring a medical college in a case, also naming IM Quddusi, a retired

judge of the Chhattisgarh High Court, and others in the case.

## **F. Trajectory of Judicial Corruption in India:**

- Justice Sinha:

Only Judge impeached; In 1949, justice S.P. Sinha of Allahabad High Court was removed under the Government of India Act, 1935, on the basis of his judgment.

- Ajit Sengupta:

In 1996 the Calcutta High Court judge made it a routine to issue ex parte, ad interim stay orders on anticipatory bail pleas from smugglers having links with the Mumbai underworld. He was arrested in 1996 for FERA violations after retirement.

- A.M. Ahmad:

When he was Chief Justice of India (1994-1997), his daughter, a lawyer in the Delhi High Court, raised eyebrows for getting “special” treatment from certain judges. When some members of the bar sought a resolution banning lawyer relatives of judges from staying in the same house, the CJI got members to defeat the motion.

- Cash-for-job:

Three judges of the Punjab and Haryana High Court sought the help of disgraced PPSC chief R.P. Sidhu to ensure that their daughters and other kin topped examinations conducted by the commission. Judges were M.L. Singh, Mehtab Singh Gill & Amarbir Singh Status in this case.

- Three Judges Mysore Sex Scandal alleged:

In 2002, three judges of the Karnataka High Court, along with two women advocates, allegedly got involved in a brawl with a woman guest at a resort. The police arrived but reportedly didn't take action. Judges are N.S. Veerabhadraiah V. Gopalagowda & Chandrashekaraiiah.

- Justice Karnan case:

In 2017 Supreme Court, in a rare move, has initiated contempt proceedings against Justice C S Karnan, a sitting judge of the Calcutta High Court, and has restrained him from hearing cases. Contempt proceedings were initiated because he had levelled allegations of corruption against several judges of the Supreme Court and high courts without substantiating his claim with any evidence. He had written letters to the chief justice of India and even to the Prime Minister with a series of allegations against 20 high court judges. He also alleged that illegal money was recovered from some high court judges after the government announced demonetization.

- Justice A.K. Ganguly:

Stella James, who graduated from NUJS Kolkata and works at the NGO Natural Justice, Lawyers for Communities and the Environment, wrote about an alleged incident of physical, sexual assault by an unnamed, retired Supreme Court judge, A.K. Ganguly, in late 2012. However, Ganguly got clean chit in intern case.

In 2017, a suicide note written by a former chief minister of the northeastern state of Arunachal Pradesh was recovered. It

claimed that the sons of two sitting Supreme Court judges, Chief Justice Jagdish Singh Khehar and Justice Dipak Misra, were seeking bribes to predetermine cases their fathers presided over (Dev A. , 2019).

The weed of corruption has, in the recent times, only increased in the judiciary, and its opaque nature, due to the collegium system and unbridled power, has given it rampant play.

## **THE ROOT OF THE PROBLEM**

The trajectory of the Indian judiciary – especially its most recent mindless observations in the Nupur Sharma case, which amounted to condoning Islamic terrorism – has laid bare the deteriorating condition of our institutions. This institutional deterioration is even more ironical in the context of the judiciary which is tasked with the service of rendering justice. Out of the all the institutions, judiciary is, perhaps, amongst the worst performing of the lot on nearly all counts. It is the spirit which determines the outer body, and the judiciary's spirit – more so than others – is shaped by a culture of extreme westernized and rigid intellectualism, moral decadence and lack of character and severe culture of patronized entrenchment that even the most brutal blows cannot break. If the outer shell is so hard and gross, it leaves little scope for any hope of change. Even other institutions – however gross – such as media, business and politicians are compelled to respect the changing times and change accordingly. But judiciary and intellectual fields are immune to such change.

This is all the more reason why against the rising nationalist spirit sweeping all fields of life across the country, the judiciary and intellectuals particularly stand out as an isolated den of gross resistance. The present state of the judiciary is related – not to any dearth of reforms which can only change the outer machinery

and be rigged again – directly to the low level to which the national character has sunk, especially during the last few decades. The core of our character and psychology – just behind the veil of our acts and deeds and professions – has been pervaded with selfishness, greed and lust leading to an unrepentant pursuit of personal interest and desire by the individuals and the groups. The present condition of our national character is at the root of the malfunctioning of all our systems and institutions and groups. This is a canker eating at the core of our national life. We must realise, once and for all, that in such a scenario no outer machinery, however ingenious and supported by “all-powerful” Science and its progeny – Technology – can in the end prevail against the craftiness of human nature which can be controlled and overcome only by an appeal to something deeper (soul or spirit) in it than the surface mentality, never otherwise.

As Sri Aurobindo points out, *“This erring race of human beings dreams always of perfecting their environment by the machinery of government and society; but it is only by the perfection of the soul within that the outer environment can be perfected. What thou art within, that outside thee thou shalt enjoy; no machinery can rescue thee from the law of thy being”* (CWSA 12, 1997, p. 468).

Thus, without an upliftment of character or consciousness no outer machinery can really deliver the goods in the long-run. Outer machinery can sometimes be a useful instrument of consciousness, but never its substitute.

## **MOVING TOWARDS THE IDEAL**

The most harmonious and desirable condition of a society would be that in which there is no need of a judicial system at all. Such a state of affairs did exist in our ancient past, when a higher level of consciousness did not merit the need of an

elaborate outer machinery to control societies. A more and more elaborate judicial system becomes necessary as disharmony grows in a society. The only way to transcend the present state of affairs is by transitioning to a higher level of consciousness, through which societies will move towards an increasing simplification and eventual disappearance of the punitive judicial system. In the words of Sri Aurobindo, “*Governments, societies, kings, police, judges, institutions, churches, laws, customs, armies are temporary necessities imposed on us for a few groups of centuries because God has concealed His face from us. When it appears to us again in its truth and beauty, then in that light they will vanish.*” (CWSA 12, 1997, p. 465).

This ideal state of affairs and eventual decline is reflected in the cycle of evolution of humanity through the four ‘yugas’ viz. Satya, Treta, Dwapar and Kali Yuga.

## **A. Judicial System through the Four Yugas**

The Satya or Krita Yuga is the Golden Age when men are full of might and wisdom. In this Yuga Vishnu incarnates as *Yajña*, as the divine Master in man to whom men offer up all their actions as a sacrifice, reserving nothing for an egoistic satisfaction. This is possible because people in this age, live in their inmost being in full harmony with Truth. This age of harmony and a condition of human freedom and natural and spontaneous coordination may have resulted in an entire absence of government. The question of a judicial system does not even arise in such an age.

The next age – the Silver Age – is called Treta, the age of Dharma where Vishnu descends as the *Chakravarti Raja* – the sustainer of society’s righteousness, its sword of justice and defence and preserver of dharma. He gathers a number of human communities under his unifying sway. This age is known for its righteousness and is popularly characterized as *Rama*

*Rajya*. In this age, the Raja's officials sleeplessly look after the good of the people and no elaborate judicial system is needed because there is hardly ever any occasion for disputes. The Raj Darbar itself may serve as the court because – as one can gather from the description of Sri Rama's Darabar in Valmiki Ramayana – the petitions before it are so rare that the king's ministers and officials are always looking for, but are rarely able to come across a petitioner or an aggrieved person.

In Dwapara – the Bronze Age, the age of doubt – there is a further decline in man's character, powers and capacities. Intellectual regulation substitutes for the rule of Dharma. Ideas, thoughts and emotions assume much greater prominence, and doubt sets in man's heart and mind and he has to seek the aid of written word or *Shashtra* to properly direct his actions. Vishnu takes the form of King or Ruler who begins to take the help of written word – but only help, there is no mechanical subjection to it like in the present, rather he uses his understanding and intelligence freely along with the highest available recorded wisdom of the race – the Shastra, to guide his actions.

In the Kaliyuga or the Iron Age, there is a further diminution in man's capacities and powers which begin to be increasingly subject to his instincts, impulses and desires. Written word is not sufficient to maintain order in collective life and subjection to some kind of outward machinery or system necessary. While in the oriental societies it remained very simple, in the European culture during the Middle Ages, the task of serving justice and maintaining control was taken up by the Church orthodoxy and was marked by cruelty, barbarism and inquisition. The principle was that outward control or system – whatever its form – is needed to maintain the collective life. This principle – though in a changed form – is what regulates our modern societies at present.

It is this nature of the present modern Western materialistic cultures which India is at present trying hard to emulate. The form of modern outer control may have changed, but the spirit is still tainted. In the present age, system, organisation and machinery have seemingly attained their perfection. Bondage to these has been carried to its highest expression and man's inner spiritual freedom is getting increasingly slain in modern societies because of their passion for organising external liberty or/and equality. When the inner freedom is gone, the external liberty follows it, and a social tyranny more terrible, inquisitorial and relentless than any that caste ever organised in India, begins to take its place.

## ***B. Perversion at the Heart of Modern Judicial System***

This is reflected in the present judicial system which is nothing but an intellectualized application of human Reason to the field of Justice. It is based on certain broad rules, procedures and principles of justice. These are meant to serve the purpose of ensuring that the service of rendering justice remains rational and neutral. Yet, what it has ended up achieving is simply masking in rational façade the continuing medieval perversion.

This toxic marriage between intellectual rationality and serving justice has ended up making the Truth its casualty. This is reflected in the English justice system which is regarded as a de facto parent of jurisprudence, the one which gave birth to lofty ideas like the rule of law. As Sri Aurobindo wrote of the early modern English justice system, *“Under a civilised disguise these Courts are really the mediaeval ordeal by battle; only in place of the swords and lances of military combatants we have the*

*tongues and technicalities of lawyers and the mutually tilting imaginations of witnesses. The victory is to the skilfullest liar and the most plausible workman in falsehoods and insincerities. It is largely an elaborate pitch and toss, an exhilarating gamble, a very Monte Carlo of surprising chances. But there is skill in it, too; it satisfies the intellect as well as the sensations. One should rather call it a game of human Bridge which admirably combines luck and skill, or consider it as an intellectual gladiatorial show. In big cases the stake is worthy of the play and the excitement, a man's property or his life.*

*But woe to the beaten! In a criminal case, the tortures of the jail or the terrifying drop from the gallows are in prospect, and it is rather the hardihood of guilt than the trembling consciousness of innocence that shall best help him. Woe to him if he is innocent! As he stands there, – for to add to the pleasurable of his condition, the physical ache of hours of standing is considerably added to the cruel strain on his emotions, – he looks eagerly not to the truth or falsehood of the evidence for or against him, but to the skill with which this or that counsel handles the web of skilfully mixed truth and lies and the impression he is making on the judge or the jury. A true witness breaking down under a confusing cross-examination or a false witness mended by a judicious reexamination may be of much better service to him than the Truth, which, our Scriptures tell us, shall prevail and not falsehood, – eventually perhaps and in the things of the truth, but not in the things of falsehood, not in a court of Justice, not in the witness box. There the last thing the innocent man against whom circumstances have turned, dare tell is the truth; it would either damn him completely by fatally helping the prosecution or it is so simple and innocent as to convince the infallible human reason of its pitiful falsity. The truth! Has not the Law expressly built up a hedge of technicalities to keep out*

*the truth?”* (CWSA 12, 1997, pp. 47-48).

The above description summarizes the true face of the modern judicial system, which has only worsened in recent times. In India – and across the world – the present working of the judicial system is aptly summed up by the popular saying that **the Law is blind and has to be led by others to the truth**. In the present-day Indian Courts where even the integrity of the crucial participants who are supposed to lead the Law to truth – the lawyers and the judges and the witnesses – has become highly questionable, the relative capacity and eagerness of the contestants has become the single most important deciding factor. Obviously, with this kind of dilution in the character of the participants or actors in the drama, the truth or right has little chance of prevailing in our Courts. The outrageous judgements – as well as the depths which the character-devoid judiciary is plumbing in all other respects – bear this reality.

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# HIGHLIGHTS

## DEVELOPMENTS IN RUSSIA AND UKRAINE

In recent weeks, Russia's attack on Ukraine has lost momentum. This was reflected in the Russian announcement of an "operational pause" in Donbas after the hard battles for Severodonetsk and Lysychansk. This pause was an implicit admission that a regrouping of battalions, which have not been rotated in four months of fighting, is necessary before the further push into Ukraine. It clearly reflects an inability to sustain offensive operations on Russia's part regardless of the bravado they may display to the world. These failures on the battlefield continue alongside the continuous mobilization of unprecedented funds packages being received by Ukraine from the United States.

While unprecedented indeed, the assistance thus far has helped Ukraine merely conduct defensive operations. NATO, both collectively and at the member-country level, has thus far ruled out delivery of combat aircraft to Ukraine, a no-fly zone over Ukraine or an Allied naval presence in the Black Sea. Nor is Ukraine allowed to hit military targets in Russia's territory, even as the Russian military strikes Ukraine with long-range artillery, missiles and tactical aircraft from Russian territory. NATO Allies had already withdrawn their military instructors from Ukraine and their naval presence from the Black Sea in the run-up to Russia's February 24 invasion of Ukraine.

Some of the most influential NATO Allies – like Germany and France – seem to contemplate an inconclusive war that would end in a compromise settlement, entailing some

Ukrainian territorial sacrifices to Russia. Meanwhile, the United States remains by far the largest donor of military assistance to Ukraine. Nevertheless, in the run-up to the NATO summit in Madrid and during it, President Joe Biden has suggested merely avoiding a Ukrainian defeat, rather than helping Ukraine win. Britain is allied with central and eastern European countries in its world-view and considers it possible for Ukraine if properly armed, to turn the tide this year and drive Russian troops from Ukraine within a limited period.

Thus, behind the larger unity of the western world, these calculations are simply serving to prolong a war that could easily have been won by Ukraine. In a war that is also becoming unwinnable for Russia, the latter appears to be adopting a new strategy, which has been conveyed by the United States intelligence. This hinges on Russia's plans to attempt the annexation of additional Ukrainian territories, which the White House anticipates that Russia will attempt to stage, possibly as early as September, through pseudo-referendums leading to the annexation of Russian-occupied territories in Ukraine. These would likely include Donetsk, Luhansk, Kherson and Zaporizhzhia. Russia would, in that case, be expected to follow the model of the 2014 Crimean "referendum," when Russia wrested Crimea away from Ukraine.

This strategy needs to be undermined by the western world by consolidating even more behind Ukraine. Winning the war would be especially easy considering the fact that Russia faces massive internal problems and discords of its own. These are discussed below:

First, there is a rise of anti-Russian activism in Russia's North Caucasus region on the part of ethnic minorities, amongst

whom there was, from the beginning, very little support for the war in Ukraine. In this regard, arrests of ethnic minorities continue, as does the repression of “minority nationalism”, reminiscent of the Stalinist era. North Caucasian activists are increasingly realizing that Russia’s purported policies of de-Ukrainization in Ukraine were previously applied to other ethnic groups closer to home. This rising awakening is making them re-evaluate their choices.

Second, Russia’s problems are mounting further as it struggles to exercise control over bordering territories of small neighbours like Ukraine and Belarus through various means, in the absence of funds. This was brought out by Putin in his video message to the Forum of Russian and Belarusian Regions, which took place in Grodno on June 30 and July 1 and attracted representatives from 47 Russian regions, including 11 governors. In the message, Putin highlighted that the meeting of regional leaders from Russia and Belarus would increase “inter-regional cooperation so as to deepen the integration processes of the Union State” between the two countries. The meeting saw the conclusion of more than 60 new accords between businesses and governments in Russian regions and their counterparts in Belarus. The outcome in Grodno suggests that, in Belarus, where there has not been any use of Russian force, the strategy of using regions to advance Moscow’s agenda may be working in contrast to Ukraine.

Putin, in this regard, sought to revive the Soviet-era ‘patronage system’, wherein regions within the Russian Federation have played a key role in promoting Kremlin policies in neighbouring countries. In Soviet times, Russia regularly employed regions and republics along the USSR’s Western border as agents to integrate Soviet bloc countries; similarly, it

used better-off regions within the country to promote growth in less well-off areas. Now, Putin has assigned Russian regions in general and those bordering Ukraine and Belarus, in particular, an equally important role in providing assistance to parts of both countries.

However, this is unlikely to work in the present times. For, on the one hand, unlike Soviet leaders, Putin is using this strategy to shift the burden of his foreign policy away from Moscow and to wholly hide the true costs of his expansionist plans from the Russian people. And on the other, Russian regions in many cases are resisting pressure from the centre and doing little or nothing to carry out Moscow's plans. Thus, what worked more or less smoothly in Soviet times may not work as Putin intends now. If Moscow cannot convince the regions to do its bidding, it will likely be compelled to increase repression at home and finance more of the reconstruction of Ukraine from the centre's budget and reserves, thereby simultaneously angering people in the regions and highlighting just how expensive Putin's war continues to be for Russians.

Third, Moscow's incoherent strategy regarding its regions is also reflected in its stilted recruitment efforts. Faced with mounting combat losses in Ukraine and Russian President Vladimir Putin's threat to expand the size of Russian forces there, Moscow is now turning to the regions and republics to procure more volunteers for the Russian army and to form regionally based battalions similar to what Ramzan Kadyrov has done in Chechnya. However, the recruitment effort outside Moscow and other major cities has not attracted volunteers, forcing Moscow to offer ever more generous pay packages and to extend the age range of those who can sign up. Furthermore, the new push for regions and republics to form

their own military units, while popular in some quarters, is sparking concerns that such units could allow some federal subjects to become more independent in their actions as Chechnya has, or even lead to the transformation of a foreign war into a civil one.

Fourth, the great toll taken by the Russian economy due to the war is now being sought to be addressed by Putin through the introduction of even more disastrous economic policies. Russia is hoping to cope with the impending crisis by replacing vestiges of its market economy with command-style administrative regulations and a planned economy through economic mobilization and centralization. In this regard, a proposal was approved, in early July, by both the chambers of the Russian Duma and the Federation Council, and now awaits the signature by Putin. If introduced, it will spell the death knell of businesses in Russia and re-allocate economic resources towards areas (such as the military) prioritized by the government.

## **THE PRESIDENTIAL AND VICE-PRESIDENTIAL ELECTIONS**

The second woman after Pratibha Patil and the first tribal person to become the head of the Indian state, Droupadi Murmu was sworn in as the President of India on 25 July 2022. She is also the youngest President so far. She won the election defeating Yashwant Sinha, the candidate of the opposition, by a margin of 296,626 votes. Her victory holds great civilizational significance for the country. It sends out a message of integrating the tribal people into the mainstream Indian society and is in line with the Hindutva movement's goal to politically empower the poor and deprived vanvasi

community that has always been a target of evangelical conversions.

The results of the Vice-Presidential election also saw BJP nominee – and former West Bengal Governor – Jagdeep Dhankhar being elected as the Vice-President, beating Opposition candidate Margaret Alva. He secured 528 votes out of the 710 valid votes, while Ms Alva scored 182 votes. Mr Dhankhar, hailing from the Jat community of Rajasthan and belonging to the farming community, has had a staunch track record of keeping a check on the Mamata government in West Bengal. Mamata's TMC abstained from voting in this election, alleging that the Opposition candidate was chosen without consulting them. Regional parties like Janta Dal (United), YSRCP, BSP, AIADMK and Shiv Sena supported the BJP candidate.

## **SUPREME COURT ORDER ON PMLA**

The Supreme Court's recent ruling, on July 27th, validating the government's amendments to the Prevention of Money Laundering Act (PMLA), 2002, comes in the wake of a series of crackdowns by the Enforcement Directorate (ED) on corrupt politicians and businessmen. In the most recent times, these include prominent Opposition faces from regional parties, like Partha Chatterjee from TMC in West Bengal and politicians from Maharashtra.

Money laundering has been a global concern since the mid-1980s, with laundered proceeds going into financing terrorism. India's PMLA was enacted in response to a series of global declarations on this issue, in 2002 and came into force in 2005. The Union government argued that PMLA provisions as well as subsequent amendments were valid and necessary to fulfil

the country's obligations to combat the menace of money-laundering. In its verdict, the Supreme Court agreed with the government's contention. The offence under this law is mainly the laundering of money made through a crime. Money-laundering has been treated akin to terrorism and, therefore, considered a stringent offence.

A major issue raised by the anti-PMLA petitioners arose from an explanation added in 2019 to clarify the scope of the definition of money-laundering under Section 3. The petitioners said the original wording meant that only the projection of tainted money as untainted, and its integration into the economy would constitute the offence. The ED, they argued, was registering money-laundering cases solely on the basis of the original crimes without any proof that their proceeds were laundered. As a result, even transactions that date back years before the PMLA came into force were being probed for laundering.

The court rejected the challenge, holding that the explanation does not expand the scope of the original definition, and it is only clarificatory. The ruling also validates the powers of the ED. The ED works on the basis of an internal manual. It registers an 'Enforcement Case Information Report' (ECIR), the equivalent of an FIR in ordinary cases. The manual is not a public document, and the ED does not share the ECIR with the accused. Therefore, why and how a money-laundering probe is initiated is unknown. When a summons is issued to a person, he is unaware of the reason, but must, nevertheless, attend and answer all questions and submit the documents asked for. Unlike in other criminal cases, there is no judicial oversight of the process, and the accused are forced to seek bail after arrest without knowing the exact nature of the charges against them.

The tough conditions on getting bail were also upheld by the Court.

The SC ruling, in dismissing nearly 200 petitions challenging the PMLA, has ushered in an era of the rise of powers of the executive. Such powers can always be politicized, but one of the main issues is that the law relates strictly to money laundering and proceedings can be initiated only if there has actually been a case of money laundering. Interestingly, the politicians in trouble with ED in recent times have been publicly known to be corrupt and gang masters of scams. The law may go a long way in keeping corrupt politicians in check.

“Sri Aurobindo always loved deeply his Motherland. But he wished her to be great, noble, pure and worthy of her big mission in the world. He refused to let her sink to the sordid and vulgar level of blind self-interests and ignorant prejudices. This is why, in full conformity to his will, we lift high the standard of truth, progress and transformation of mankind, without caring for those who, through ignorance, stupidity, envy or bad will, seek to soil it and drag it down into the mud. We carry it very high so that all who have a soul may see it and gather round it.” (CWM 13: 123)