

## SC ALLOWS PALANISWAMI TO REMAIN AT AIADMK HELM

*Jubilant team: AIADMK functionaries presenting a silver sceptre to Edappadi K. Palaniswami in Madurai on Thursday. G. Moorthy.*

*Court affirms Madras HC order upholding conduct of a Special General Council meeting in July that chose him as interim general secretary and expelled rival Panneerselvam from the party*



The Supreme Court on Thursday affirmed a decision of the Division Bench of the Madras High Court upholding the conduct of a Special General Council meeting of the AIADMK on July 11, 2022, which appointed former Tamil Nadu Chief Minister Edappadi K. Palaniswami interim general secretary of the party and expelled rival O. Panneerselvam from its primary membership.

“A workable solution was to be found; and when the solution as found and applied, does not otherwise appear offending the spirit of by-laws as also the norms of functioning of an association or a party, it cannot be said that declaration of the Presidium Chairman for the meeting of the General Council on July 11, 2022, and the follow-up notice by the office-bearers had been wholly unauthorised,” a Bench of Justices Dinesh Maheshwari and Hrishikesh Roy observed.

Justice Maheshwari, who authored the 80-page verdict, directed that an interim order of the top court on July

6, 2022, in the case was “absolute”.

The interim order had permitted the July 11 meeting to be held. It had further directed that no restrictions should be placed on the agenda of an earlier General Council meeting held on June 23, 2022.

The court’s judgment would effectively allow Mr. Palaniswami, represented by senior advocate Aryama Sundaram and advocates Balaji Srinivasan and Rohini Musa, to continue as the party’s interim general secretary for now.

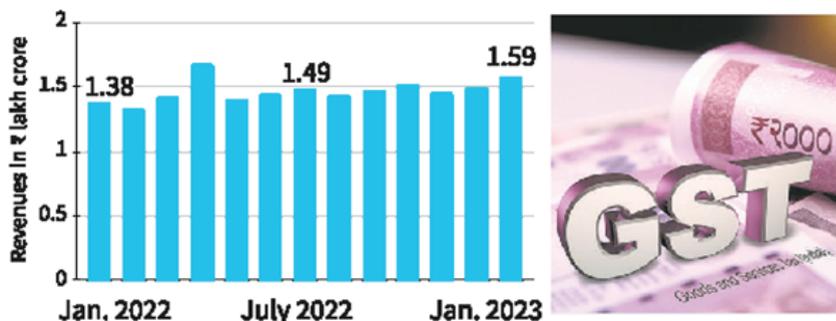
Mr. Panneerselvam was represented by senior advocates Ranjit Kumar and Guru Krishnakumar.

The July 7 meeting saw the General Council pass several decisions/resolutions by amending the party bylaws. These resolutions included the creation of the post of “interim general secretary” to be elected by the general council, abolishment of the posts of Coordinator and Joint Coordinator, reinstatement of the post of party general secretary to be elected by the primary members of the party, removal of Mr. Panneerselvam from the primary membership and holding of elections to the post of general secretary within four months. Mr. Palaniswami last year assured the Supreme Court that the polls to the post of general secretary would be kept on hold for the time being when the dispute was on. Mr. Srinivasan said that Thursday’s judgment would allow the resolution to be “operationalised”. A Single Judge of the High Court had ordered status quo ante on August 17, saying that the General Council meeting could not have been held on July 11 without the joint consent of the then coordinator, Mr. Panneerselvam, and then joint coordinator, Mr. Palaniswami. Mr. Panneerselvam had contended that the General Council meeting was held “clandestinely and undemocratically to take decisions to alter the structure of the party”. In a subsequent intra-court appeal filed by Mr. Palaniswami, the Division Bench of the High Court, on September 2, set aside the August 17 status quo order of the Single Judge. The Bench had justified that the Single Judge’s decision would cause the party to undergo “irreparable hardship” as the two leaders were at “loggerheads” with each other and their rivalry should not affect the party.

## GST REVENUES HIT A RECORD ₹1.59 LAKH CRORE IN JANUARY

### Revenue check

India's Goods and Services Tax (GST) revenues for January 2023 was revised from ₹1.56 lakh crore to ₹1.59 lakh crore, the second highest monthly collections on record.



India's Goods and Services Tax (GST) revenues grew 12.7% in January to hit almost ₹1.59 lakh crore, the second highest monthly collections on record, as per revised figures from the Finance Ministry.

Earlier estimates of GST revenues for January had pegged

collections at about ₹1.56 lakh crore till the evening of January 31 — 10.6% higher than the GST receipts in January 2022.

Based on the updated GST collections, the Finance Ministry's monthly economic review released on Thursday said the total GST revenues between April 2022 and January 2023 now stand at ₹14.9 lakh crore, 23.1% higher than the corresponding period of 2021-22.

**Robust scenario**

"Domestic economic activity remains robust even as a global economic slowdown materialises, as evident in the second highest-ever GST collections of ₹1.6 lakh crore in January 2023. GST collections have now remained above the ₹1.4 lakh crore mark for 11 successive months," the review noted.

The review shows year-on-year growth in January's GST collections at 12.7%, which translates into about ₹1,58,891 crore, compared to collections of ₹1,40,986 crore in January last year.

## BIDEN, PUTIN DISPLAY THEIR ALLIANCES AS UKRAINE WAR ENTERS SECOND YEAR



*Standing ground: Joe Biden arrives at the Presidential Palace in Warsaw for the NATO B9 Summit. REUTERS*  
*In Warsaw, Biden, who met East European leaders, says U.S. 'will defend literally every inch of NATO'; Russian leader meets China's Wang Yi in Moscow; Putin says his country will continue to pay increased attention to boosting its nuclear forces.*

U.S. President Joe Biden and Russian President Vladimir Putin bolstered their respective alliances with NATO and China, ahead of the first anniversary of Moscow's invasion of Ukraine.

Global tensions between superpowers were highlighted on a day of diplomacy in Warsaw and Moscow on Wednesday. Mr. Biden promised that the U.S. "will defend literally every

inch of NATO", the military alliance that includes some Eastern European countries bordering Russia.

Mr. Putin said Chinese leader Xi Jinping would visit Russia, saying relations had reached "new frontiers." Washington is concerned Beijing could provide material support for Moscow's war in Ukraine, which began on February 24 last year and has become the biggest land conflict in Europe since the Second World War.

Mr. Putin, in an address to mark Thursday's Defender of the Fatherland public holiday, said Russia will continue to pay increased attention to boosting its nuclear forces and will begin mass deliveries of Zircon sea-launched hypersonic missiles. Russia is due to begin military exercises with China in South Africa on Friday and has sent a frigate equipped with the hypersonic missiles.

On Wednesday, Mr. Putin welcomed China's top diplomat, Wang Yi, to the Kremlin, and Mr. Wang also met separately with Foreign Minister Sergei Lavrov. TASS news agency quoted Mr. Wang as saying China would "firmly adhere to an objective and impartial position and play a constructive role in the political settlement of the crisis".

In Warsaw, Mr. Biden met with leaders of nine Eastern European countries that during the Cold War were either aligned with Moscow or part of the former Soviet Union. Some of them now are among the strongest supporters of military aid to Ukraine.

"As NATO's eastern flank, you are the front line of our collective defence. You know better than anyone what is at stake in this conflict. Not just for Ukraine, but for the freedom of democracies around the world," Mr. Biden said.

# THE PAST AND PRESENT OF RUSSIA'S WAR IN UKRAINE

## Ukraine invasion – day 362



**1 Ukraine:** Only around 50 Western-provided tanks, out of pledged 320, expected to reach frontline by April, reports say

**2 Kharkiv:** Russia claims to have captured village of Hrianykivka

**3 Luhansk:** Russia lacks reserves to dramatically increase scale of offensive, U.S. intelligence says

**4 Bakhmut:** Russian forces secure small gains in northern suburbs and on eastern outskirts

**5 Vuhledar:** Two Russian “elite” infantry brigades likely combat ineffective after sustaining very high losses, U.K. intelligence says

**6 Kherson:** Russian shelling kills three people in village of Burgunka

Sources: Institute for the Study of War, Reuters

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### What's the current status of the war?

Russia is expected to launch a new offensive in the coming days. Right now, focused fighting has been going on in some flashpoints along the frontline. For over seven months, PMC Wagner, a private Russian security force with close ties to the Kremlin, has been fighting to take Bakhmut, a city at the cross junction of several key arteries in Donetsk, one of the four Ukrainian regions annexed by Mr. Putin in September. Last month, Wagner took Soledar, a salt mine town in the outskirts of Bakhmut, and several settlements around the city thereafter. As of now, Russians control all major highways into Bakhmut, except one (Chasiv Yar), which Ukrainian troops are using for reinforcement and resupply.

Russians have opened two more fronts, one in Iziurm, northwest of Bakhmut in Kharkiv Oblast, and the other in Vuhledar, south of Bakhmut in Donetsk. They are also pushing the frontline in Zaporizhzhia and positional fighting is continuing in Kherson. Ukraine is trying to hold on to the territories until more weapons and trained fighters arrive from the West. It would take a few more weeks before the main battle tanks pledged by Western countries, including Leopard 2 (German), M1 Abrams (American) and Challenger 2 (British), arrive at the battlefield.

### The story so far:

A year after Russia launched its invasion of Ukraine, there are signs of escalation everywhere. The West has recently announced the supply of more advanced weapons to Ukraine, deepening its involvement in the conflict. In response, Russian President Vladimir Putin, who has already reinforced Russian positions along the 1,000-km long frontline in Ukraine with hundreds of thousands of troops, announced the suspension of his country's participation in the New Start treaty, which could trigger a nuclear arms race. Ukraine, with the free flow of weapons from the West, hopes to arrest the Russian advances and begin its own offensive to regain lost land. As the war is extended, risks of a direct confrontation between Russia and the North Atlantic Treaty Organisation (NATO), both nuclear powers, are also on the rise.

### Is Russia losing the war?

The answer depends on how you look at the conflict. Given the power asymmetry between Russia and Ukraine, Russian troops' performance in the battlefield was underwhelming. If one looks at Russia's declared goals and what they have achieved in the 12 months of fighting, it's not difficult to see that they are still far from meeting those objectives. Some say Mr. Putin wanted to take Kyiv and install a pro-Kremlin regime. Mr. Putin had said that demilitarisation and de-Nazification were his main goals. His commanders had said, on record, that Russia wanted to take the whole of Ukraine's east and south, which means an arc of territories stretching from Kharkiv in the northeast through the Donbas in the east (which comprises Luhansk and Donetsk) to Odesa, the Black Sea port city in the south-

west, turning the country into a land-locked rump. Russia failed to meet any of these objectives.

But at the same time, the war is taking place inside Ukraine, and Russia has taken substantial portions of Ukrainian territories, including Mariupol, the port city that was defended by the Azov Brigade, a neo-Nazi outfit that has been integrated into the regular Ukrainian army. Russia's territorial gains in Ukraine peaked in March 2022, when it controlled some 22% of pre-2014 Ukraine. Since then, Ukraine recaptured some land in Kharkiv and Kherson. But still, Russia controls some 17% of Ukraine and Mr. Putin also managed to secure a land bridge between mainland Russia to Crimea, which Moscow annexed in 2014, that runs through the Donbas and Zaporizhzhia. And with a new offensive, Russia plans to mount more pressure on Ukrainian troops, which also explains why the West is now rushing more weapons to the battlefield.

### Was the West's strategy effective?

The West's approach has been two-fold: punish Russia's economy through sanctions and thereby weaken its war machine, while arming Ukraine to counter the Russian offensive. The Western support has played a critical part in Ukraine's resistance and counter-offensive. The U.S. is Ukraine's biggest aid provider — it has pledged military and financial assistance worth over \$70 billion. The EU has pledged \$37 billion and among the EU countries, the U.K. and Germany top the list. Last year, after Ukraine suffered a series of setbacks in Mariupol, Severodonetsk and Lysychansk, the U.S. promised the delivery of its mid-range rocket systems such as HIMARS. The new weapons helped Ukraine turn around the momentum, but Ukrainian gains froze in December. Now, when Russia is preparing for another offensive, the West is coming to Ukraine's rescue once again, with more advanced weapons, including missile defence systems, armoured vehicles, tank killers, battle tanks and precision bombs. While the approach of arming Ukraine has been effective in at least halting the Russian advances, hurting Russia economically has been a double-edged sword.

Sanctions on Russia, one of the top global producers of oil and gas, hit the global economy hard, worsening an inflationary crisis across the West, particularly in Europe. Russia also took a hit, but it found alternative markets for its energy exports in Asia, redrawing the global energy export landscape. Last year, despite sanctions, Russia raised its oil output by 2% and boosted oil export earnings by 20%, to \$218 billion. Russia also raked in \$138 billion from natural gas, a nearly 80% rise over 2021 — and this was in spite of the European push to cut gas imports from Russia. The Russian economy was estimated to have contracted by 2% in 2022, but, according to the IMF, it is expected to grow 0.3% this year and 2.1% next year. In comparison, Germany,

Europe's largest economy, is expected to grow 0.1% this year, while the U.K., Ukraine's second biggest backer, is projected to contract by 0.6%.

### What's happening inside Ukraine?

The Russian invasion turned President Volodymyr Zelensky into the face of the Ukrainian resistance. Mr. Zelensky, a former television comedian, was grappling with a host of political challenges when the war began. His approval rating had fallen to 28% and his regime was accused of persecuting the former President, Petro Poroshenko, on treason charges. Corruption was rampant. In Donbas, a civil war between Russian-speaking separatists and the Ukraine army, including the neo-Nazi brigades, had been raging since 2014. But when Ukraine survived the initial Russian thrust and continued to resist the invasion, Mr. Zelensky emerged as a hero for many. He rallied western opinion and aid. He also seized the moment to bolster his grip on power at home. Eleven opposition parties, including the Platform for Life which had 44 seats in the 450-member Ukrainian Parliament, were banned. Presidential decrees were issued mandating the country's main TV channels to broadcast identical content cleared by government officials. Even churches with links to the Russian Orthodox Church were not spared. Mr. Zelensky emerged politically stronger at home as the war dragged on and the West stood solidly behind him, irrespective of his crackdown on political rivals. But scandals began surfacing recently that maligned the regime. Mr. Zelensky fired a dozen senior officials, including Deputy Defence Minister Vyacheslav Shapovalov, last month over corruption. He now promises that he will clean up the administration. He should also make sure that the pipeline of aid from the West, which is existential for his regime, is not disrupted as the war goes on.

### Is there a possibility for a negotiated settlement?

Immediately after the war began, Russian and Ukrainian officials had started talks. According to former Israeli Prime Minister Naftali Bennett, both sides had exchanged several drafts about a potential peace plan in March 2022, but the U.S. and the U.K. staunchly opposed Ukraine reaching any agreement with Russia. Talks collapsed in March. In July, Turkey brokered a deal on taking out Russian and Ukrainian food grains through the Black Sea. Warring parties had also reached some prisoner exchange agreements. But barring these, talks between the two sides are non-existent. Russia, despite the slow progress of its "special military operation", remains adamant. Mr. Zelensky recently stated that he would not reach any agreement with Russia making territorial compromises. There is absolutely no push from the West for talks. As the crisis continues, China has stepped in with its own peace initiative, the details of which are not known to the public yet.

Any peace plan to succeed, two complex issues should be addressed: Ukraine's territories and Russia's security concerns. Right now, Russia controls swathes of Ukraine's land and the NATO keeps arming Kyiv, sharpening the existing contradictions. Ukraine, given its dependence on the West,

would require clearance from western capitals for any final settlement, which also means that for a lasting solution, Washington and Moscow should reach some kind of understanding. The war enters its second year, the possibility for such an understanding is very low. The war is set to grind on.

## 'GLOBAL ECONOMY IN A BETTER PLACE THAN MANY HAD PREDICTED A FEW MONTHS AGO'



The global economy is in a better place today than many had predicted just a few months ago, although there were still significant headwinds, U.S. Treasury Secretary Janet Yellen said at a press conference in Bengaluru on Thursday.

"It's fair to say that the global economy is in a better place today," she said, adding that in the

fall, many had been worried about a sharp economic slowdown across the world. "The challenges we face are real, and the future is always uncertain. But the outlook has improved since we gathered in the fall," she elaborated. In its most recent estimates, the IMF had raised its forecast for global growth in 2023 to 3.2%, a notable upgrade from October, she stated.

Ms. Yellen said the U.S. economy remained resilient with year-on-year headline inflation having moderated over the past few months as supply chain pressures had eased and global imbalances had subsided. "At the same time, our labour market remains strong. In January, U.S. unemployment hit a low not seen in over a half-century," she added.

Ms. Yellen said forums like the G20 were important venues for macro-economic cooperation.

"During our meetings last fall, there was a shared view... that we must take decisive action on the challenges that we face in our own countries, that includes combating high inflation," she said.

It was also important to be attentive to the spillovers of monetary tightening from major economies to the rest of the world, she noted. "While there's much more work to do, we are beginning to see lower headline inflation around the globe. In emerging markets, financial conditions remain relatively tight, but have begun to show signs of easing."

However, Ms. Yellen acknowledged that a number of vulnerable countries continued to face acute distress. "We are not out of the woods yet," she added.

## 'CONSUMER DEMAND TO SPUR GROWTH'

### Cautiously optimistic

**Notwithstanding inflationary pressures, Finance Ministry sees consumer demand staying strong enough to spur growth**



- Cites high frequency indicators from Dec., Jan. to posit that economy is on track for 7% growth in FY23

- Flags prediction of El Nino returning this year, warns that this could lead to a rainfall deficit, hitting farm output and fanning prices

- Ministry says decline in inflation often does not occur in a straight line as prices are usually 'downward sticky'

*cautions that delay in global commodity prices returning to pre-pandemic levels could keep inflation elevated for longer*

Even though a downward 'adjustment' in inflation may take longer to occur, especially if global commodity prices don't revert to pre-pandemic levels, consumer demand remains strong despite inflationary pressures and the proposed revision in personal income tax slabs should boost consumption and spur growth, the Finance Ministry said on Thursday.

Citing high frequency indicators from December and January, the Ministry averred in its monthly economic review that the economy was on track to grow 7% in 2022-23, with overall demand conditions remaining conducive to economic activity. On growth prospects for 2023-24, the Ministry cited the Economic Survey's estimate of 6.5% growth "with more downside than upside risks" and

*Finance Ministry sees revision in personal income tax slabs helping boost consumption; flags concerns about El Nino,*

stressed that the geopolitical environment remained “fraught”, which could spur more economic dislocation and supply chain disruptions. Predictions of El Nino conditions returning to India this year, if accurate, could lead to deficient monsoon rains, hit farm output and stoke prices, it cautioned. “The most recent consumer confidence survey for January... suggests a tentative recovery in consumer confidence,” it pointed out, adding that inflation risks were likely to be lower in 2023-24 but would not have vanished. Asserting that the second half of FY23 had seen a “downward trend” in

headline inflation due to steps taken by the government, the RBI and a downswing in global commodity prices, the Ministry acknowledged the decline had been at “less than desired pace for some commodities”. With retail inflation resurging to 6.5% in January, the Ministry asserted that a decline in inflation often does not occur in a straight line “as prices are usually downward sticky”. “The adjustment may prolong... This could happen with consumption demand staying robust in the U.S., and reopening of the Chinese economy refuelling global demand,” it added.

## RIGHTS AT THE CENTRE

*Interest of the child must be the focus always, not just in custody disputes*

In 1959, the United Nations General Assembly adopted the Declaration of the Rights of the Child, the first charter of its kind ensuring basic rights to all children below 18 years, with these words: “Mankind owes to the child the best it can give.” Yet, as is well-documented, children, because of their vulnerability, often become victims of abuse of power by the very people who are entrusted with their protection. The advancements in digital technologies have helped on many fronts, from registration of births, creating a legal identity to health care, but in its forward march, it should not trample on the rights integral to a harmonious upbringing of a child. Leaning on a child’s fundamental right to privacy, the Supreme Court of India has ruled that children cannot be mechanically subjected to DNA tests in each and every case between warring parents as a shortcut to establishing infidelity. In a petition filed by a man who questioned his second child’s paternity, Justices V. Ramasubramanian and B.V. Nagarathna observed that genetic information sheds light on a person’s essence, going to the very heart of who she or he is. This “intimate, personal information” is part of a child’s

fundamental right, the Court said. Children have the right, it pointed out, not to have their legitimacy questioned frivolously before a court of law. Directing courts to acknowledge that children must not be regarded as material objects, and that they be subjected to forensic/DNA testing only as a last resort particularly when they are not parties to a divorce proceeding, Justice Nagarathna observed that it is imperative that children do not become the focal point of the battle between spouses. While this is a welcome move, a reading of the 1989 United Nations’ Convention on the Rights of the Child shows that there are miles to go before every child in India is guaranteed “special care and assistance”. Too many childhoods are cut short, and the maxim ‘every child has every right’ often forgotten. India ratified the Convention in 1992 and over the years several laws have been enacted to protect the rights of children though their implementation has often been dodgy, failing to shield them from abuse, violence, exploitation or neglect. The principle of best interest of the child must be at the centre of every aspect of social behaviour and not just in custody disputes.

## SAFE ACROSS BORDERS

*Interest of the child must be the focus always, not just in custody disputes*

Transferring money to a relative studying or living in Singapore or receiving remittances from a family member working in the Southeast Asian city-state just got a whole lot simpler. On February 21, the Reserve Bank of India Governor, Shaktikanta Das, and the Monetary Authority of Singapore’s Managing Director, Ravi Menon, made token instantaneous cross-border remittances to each other using the Unified Payments Interface (UPI) and PayNow mobile applications on their phones in India and Singapore, respectively. The transactions marked the start of a cross-border link for real-time person-to-person money transfers between South Asia’s largest economy and its littoral neighbour across the Malacca Strait, which is home to a sizeable Indian diaspora as well as tens of thousands of migrant workers employed in Singapore’s humming construction, marine shipyard and services sectors. The link now enables individuals wishing to

remit either Singapore dollar (SGD) or Indian rupee funds for the ‘maintenance of a relative’ or as a ‘gift’ to transfer the money seamlessly using the UPI at the Indian end and the PayNow app at the Singapore end. To start with, six banks in India including three state-run, two private and the Indian unit of Singapore’s DBS Bank will be facilitating inbound remittances to their account holders, while one private lender and the three public sector banks would enable their Indian customers to send money using the link. In Singapore, customers of DBS Bank and the non-bank lender Liquid Group can avail of the transfer facility.

Though a small start, given that the daily transaction limit is set at ₹60,000 or about SGD 1,000, the link is significant in that it enables individuals to quickly and safely remit money to their loved ones without the hassles of having to go to a bank branch or a wire transfer facility’s outlet or having to

rely on the higher-cost and riskier 'hawala' channels. The tie-up is also part of a wider regional effort to facilitate cross-border real-time money transfers in a manner that reduces operational costs for individuals and merchants, while at the same time reducing the reliance on an external settlement currency, which hitherto has predominantly been the U.S. dollar. Singapore, which had established a similar payment link with Thailand in 2021, is part of a larger five-member initiative among the central banks of Southeast

Asian economies including Malaysia, Indonesia and the Philippines that aims to interconnect their domestic digital payment systems. India too could build on the springboard it has gained in Singapore to further its cross-border digital payment linkages and extend the partnership to the city-state's other Association of Southeast Asian Nations partners. Besides a sure-shot boost to regional trade and tourism, such a network would help India to further formalise the flow of inbound remittances.

## A CASE THAT SCANS THE WORKING OF THE ANTI-DEFECTION LAW

*Gautam Bhatia is a Delhi-based lawyer*

A five-judge Bench of the Supreme Court of India is presently hearing a set of cases popularly known as the "Maharashtra political controversy cases". These cases arose out of the events in June last year, when the ruling Maha Vikas Aghadi (MVA) coalition (the Shiv Sena, the Nationalist Congress Party and Congress) lost power after an internal splintering of the Shiv Sena party. A faction led by Eknath Shinde then joined hands with the Bharatiya Janata Party (BJP) to form the new ruling coalition. The disputes between the various parties have been continuing since then, with the most recent development being an Election Commission of India (ECI) order declaring that Eknath Shinde's faction is entitled to the party name and symbol.

While questions have been raised about whether the situation is now fait accompli, and whether the Court can "turn the clock back" if it wanted to, the judgment of this case will have consequences not merely for State politics in Maharashtra but far beyond as well. This is because the case raises certain fundamental issues about the working of India's "anti-defection law".

### The Tenth Schedule, past and present

The anti-defection law was introduced into the Constitution via the Tenth Schedule, in 1985. Its purpose was to check increasingly frequent floor-crossing; lured by money, ministerial berths, threats, or a combination of the three, legislators were regularly switching party affiliations in the house (and bringing down governments with them). The Tenth Schedule sought to put a stop to this by stipulating that if any legislator voted against the party whip, he or she would be disqualified from the house. While on the one hand this empowered party leadership against the legislative backbench, and weakened the prospect of intra-party dissent, the Tenth Schedule viewed this as an acceptable compromise in the interests of checking unprincipled floor-crossing.

Fast-forwarding 40 years to the present day, we find that the working of the Tenth Schedule has been patchy, at best. In the last few years, there have been innumerable instances of governments being "toppled" mid-term after a set

of the ruling party or coalition's own members turn against it. That this is power-politics and no high-minded expression of intra-party dissent is evident from the well-documented rise of "resort-politics", where party leaders hold their "flock" more or less captive within expensive holiday resorts, so as to prevent the other side from getting at them.

Indeed, politicians have adopted various stratagems to do an end-run around the anti-defection law. Recent examples involve mass resignations (instead of defections) to force a fresh election, partisan actions by State Governors (who are nominees of the central government) with respect to swearing-in ceremonies and the timing of floor tests, and equally partisan actions by Speakers (in refusing to decide disqualification petitions, or acting in undue haste to do so). The upshot of this is that, in effect, the Tenth Schedule has been reduced to a nullity: governments that do not have clear majorities are vulnerable, at any point, to being "toppled" in this fashion.

### The Court has a challenging task

This is where the role of the Supreme Court becomes crucial. Disputes over government formation and government toppling invariably end up before the highest court. It must immediately be acknowledged that such cases place the Court in an unenviable position: the Court has to adjudicate the actions of a number of constitutional functionaries: Governors, Speakers, legislative party leaders, elected representatives, many (if not all) of whom, to put it charitably, have acted dubiously. But the Court does not have the liberty of presuming dishonesty: it must maintain an institutional arm's-length from the political actors, and adjudicate according to legalities, even as political actors in anti-defection cases do their best to undermine legality. This is a challenging task.

But it is a challenge that the Court has, with due respect, not always risen to. This is one of those situations where the proof of the pudding is in the eating: despite the fact that the Court's intervention has been sought in every one of these cases, and despite the fact that in recent years

the Supreme Court has handed down multiple substantive judgments on anti-defection, the toppling of governments remains as frequent as ever. While one may (partially) put this down to wily politicians finding loopholes in Supreme Court judgments, much like they find loopholes in the Tenth Schedule, this is not all there is to the situation: some of these loopholes were easily foreseeable at the time, but were, unfortunately, not addressed by the Court.

An example of this is the Court's judgment in the Karnataka political controversy, which effectively sanctified resignations as an end-run around the anti-defection clause. But it is the present case (the Maharashtra political controversy) that presents an interesting case study. One will recall that the crisis, so to say, began when a set of legislators from the Shiv Sena rebelled against Uddhav Thackeray, and were soon ensconced in a resort on Guwahati (with allegations of State political intervention). The Deputy Speaker (there was no Speaker at the time) moved to disqualify the "rebels" who in turn moved the Court, arguing that there was a pending no-confidence motion against the Deputy Speaker, and therefore, as per the Supreme Court's judgment in Nabam Rebia, he was disqualified from deciding on the disqualifications while it was pending.

The Supreme Court's vacation Bench stayed the Deputy Speaker's hand, but in what can only be described as a very curious set of orders, also directed a floor test. The upshot of this was that the "rebel MLAs" (who may or may not have subjected themselves to disqualification) were able to vote in this floor test, and voted to bring the government down (in turn altering a fluid political situation and skewing the balance of power). The new government was swiftly sworn in (by the Governor), and appointed its own Speaker, thus effec-

tively creating a *fait accompli* with respect to the pending disqualification petitions. To top it all, the Supreme Court's orders were "interim" in nature, and therefore, no reasons were provided.

### In perspective

These orders, the correctness of which is now being considered by the five-judge Bench, albeit in the context of a changed political situation that itself is the consequence of those very orders, reflect how judicial interventions, if not carefully thought through, can hasten the toppling of a government and contribute to turning the Tenth Schedule into a dead letter. If, for example, it is held that a Speaker cannot decide a disqualification petition while under a notice for removal themselves, and that a floor test can be ordered in the interim (by the Governor or the court), the consequences are obvious: a "rebel MLA" can move a notice for removal, incapacitate the Speaker from taking action, and leave rebel MLAs free to bring down the government without consequence.

How the Supreme Court will untangle or cut this Gordian knot in the Maharashtra political controversy is anyone's guess. But ultimately, the Court will be subject to the verdict of history: the use of money and indeed threats and inducements of prosecution or immunities therefrom to "turn" MLAs is a truth that is evident to all with the eyes to see. The Court's judgment can act as a counterweight to political power, and infuse a dose of constitutionalism into the politics of government formation and toppling. But equally, the Court's judgment could make toppling governments even easier for those with the means to do so. Only time will tell which of the two it will be.

## A CASE THAT SCANS THE WORKING OF THE ANTI-DEFECTION LAW

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India's research and development (R&D) expenditure-GDP ratio of 0.7% is very low when compared to major economies and is much below the world average of 1.8%. The main reason is the low investment in R&D by the corporate sector. While the corporate sector accounts for about two-thirds of gross domestic expenditure on R&D (GERD) in leading economies, its share in India is just 37%. There is evidence, however, suggesting that India's GERD data are an underestimate.

A 2022 info-brief of the National Science Foundation (NSF) of the United States on Foreign R&D by U.S.-based multinational corporations (MNCs) shows a spend of \$9.5 billion (₹649.7 billion) on R&D in India in 2018, which increased to \$9.8 billion (₹690.2 billion) in the following year. There are MNCs from other leading countries also spending on R&D in India. But the latest Research and Development Statistics, published by the Department of Science and Tech-

nology (DST) in 2020, has provided an estimate of ₹60.9 billion R&D spending in 2017-18 by foreign MNCs, which is only about 10% of what U.S. firms have reported to have spent in India on R&D.

### Issues with the current system

The National Science and Technology Management Information System (NSTMIS) of the DST is the agency that compiles GERD statistics in India. It is easier to gather the information on R&D by the government sector, the higher education sector and public sector enterprises. The challenge lies in collecting data from the private corporate sector. There are two key factors that make the official R&D estimates grossly inadequate.

The method used for identification of R&D performing firms does not capture all the R&D performing firms. The NSTMIS relies on the Department of Scientific and Industrial Research (DSIR) list of recognised R&D units and the

Prowess database of the Centre For Monitoring Indian Economy Pvt. Ltd. for this purpose. The DSIR list may not have many of the actual R&D performers for two reasons: firms which consider government incentives as not attractive enough or that are sensitive about sharing critical information with the DSIR may not be inclined to register themselves with the DSIR. Second, it may be difficult for R&D firms in services such as software and R&D services to meet the requirement of having separate infrastructure for R&D to distinguish it from their usual business. In fact, many of the R&D performing enterprises in new technology areas may come under the services category.

A study at the Institute for Studies in Industrial Development that looked at 298 firms receiving foreign investment (2004-16) for R&D purposes found that only 11% had been registered with DSIR. The Prowess database, on the other hand, covers only 3.5% of the currently active registered enterprises in India. A quick search in both the DSIR directory of recognised R&D units (2021) and Prowess shows that some of the leading Indian enterprises in new technology areas and foreign R&D centres are not covered. For example, SigTuple Technologies, which is a leading start-up in India focusing on artificial intelligence-based HealthTech and has filed 19 patents as in 2021, is unlisted in both databases. Two, the survey conducted by the NSTMIS is the key source of R&D statistics of India. For those firms which do not respond to the survey, the data is collected from secondary sources such as annual reports and Prowess. This method will work only if firms disclose their R&D spending. A review of the documents submitted to the Ministry of Corporate Affairs

(MCA) by some R&D-oriented firms shows that there are firms which do not report any spending on R&D in spite of their declarations that suggest that they are engaged in activities of technology development, adoption and adaptation. Interestingly, some of the firms which do not report spending on R&D do have patents granted in India, or their personnel are mentioned as innovators in patents granted by the U.S. Patent and Trademark Office. They may not feel the compulsion of disclosing accurate data to the Indian regulatory authorities.

### What is to be done

Transforming India's R&D statistics to truly reflect the R&D ecosystem calls for short-term and medium-term measures. In the short term, the NSTMIS should use the patents granted data, both in India and the U.S., in addition to its current method to identify R&D performing enterprises.

While surveys can collect much more information related to innovation activities, R&D statistics should not be confined to the responses to the surveys. Instead, annual R&D estimates can be prepared from mandatory disclosures that the enterprises are required to make to the MCA. In order to ensure compliance and proper reporting, technologies can be used like in the case of revamped income-tax return forms where various sections are interlinked. Additionally, proper disclosure of information to regulatory agencies, including R&D spending data, should be made an essential component of the environmental, social and governance (ESG) ranking of enterprises.

### NSE GETS FINAL NOD FROM SEBI FOR SOCIAL STOCK EXCHANGE

NSE said on Thursday it had received the final approval from markets regulator SEBI to set up social stock exchange (SSE) as a separate segment on its platform. The SSE segment will provide a new avenue for social enterprises to finance social initiatives, provide them visibility and bring in increased transparency in fund mobilisation and utilisation by social enterprises.

Under the rules, any social enterprise, non-profit organisation or for-profit social enterprise that establishes its primacy of social intent can get listed on the SSE segment.

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