

## SILICON VALLEY BANK 'CONTAGION' MAY LEAVE INDIA UNSCATHED, SAY FINANCE MINISTRY OFFICIALS



*Officials say there will be no systemic issues for India from the bank's troubles.*

The failure of the U.S.-based Silicon Valley Bank may only hit some Indian tech start-ups and IT firms for now, while any broader "contagion" effects that may arise will neither reach Indian shores in a hurry nor are they likely to trigger "systemic risks", according to top Finance Ministry officials.

However, the Centre is cognisant of the fact that the key underlying trigger for the bank's woes — rapidly rising U.S. interest rates that have rendered past government bond holdings "underwater", or loss-making securities — could impinge on the operational health of other financial institutions as well.

If these troubles spread, a resultant flight to safety among global investors could hit capital flows into emerging markets such as India and impact the rupee, said a Ministry official tracking developments.

'Keeping close tabs'

"We don't know if it will rain, but we will keep an umbrella handy," the official said, signalling that the government and financial sector regulators are keeping close tabs on the situation and the likely impact on the Indian economy. "At this point, it is not yet clear if there will be ripple or contagion effects on more banks in the U.S. following this bank's woes. So we don't expect any major effects to spill over on our economy for a while... There may only be some impact on individual start-ups and tech companies who get some funding from there," another official said.

The official quoted earlier also asserted that there should be no systemic issues from the bank's troubles for India. "It may affect specific companies that have investments from SVB or IT firms that have deposited some of their US operations' income there."

However, the official noted that the underlying issue could hit other banks too, citing veteran banker Uday Kotak's remark on the SVB impasse that this was an accident waiting to happen.

"It could happen elsewhere too as government bond holdings of

past have lost value owing to the rise in yields and need to be marked to market and the losses provided for," the official averred.

### Future triggers

Officials don't expect similar challenges for Indian banks or financial institutions as the cumulative rate hike of 250 basis points effected by the Reserve Bank of India (RBI) over the past year, have still only taken interest rates "back to pre-Covid levels, while the surge in the U.S. [rates] has been much sharper". One basis point (bp) equals 0.01%.

### U.K. pension funds

"Some U.K. pension funds have also faced challenges. India can only brace itself. We know it may rain but don't know where and when, so it is best to carry an umbrella," he reiterated.

If the U.S. Federal Reserve — which is now increasingly expected to hike rates by another 50 bps this month — remains hawkish, and there is a whiff of trouble in any other global bank or shadow lender, this could trigger a flight to safety, translating into concerns for capital flows into Indian markets and may hurt the rupee, the official cautioned.

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## INDIA'S SILENCE ON BEIJING'S ROLE IN SAUDI ARABIA-IRAN DEAL IS DISQUIETING



Chinese leader Wang Yi with Iranian leader Ali Shamkhani and Saudi Arabia's National Security Adviser Mousa bin Mohammed. REUTERS

The Saudi Arabia-Iran agreement signed in Beijing on Friday, if successful, will have a far-reaching impact worldwide. The result of negotiations that were kept secret till they reached agreement could signal an easing of tensions between Riyadh and Tehran after many years; peace in Yemen, where the two countries have carried out proxy battles; and a boost for China's efforts to project itself as a peacemaker.

### Disquieting for Delhi

Though New Delhi has not formally reacted to the announcement so far, the fact that two close partners such as Saudi Arabia and Iran have reached a deal with Beijing's influence is disquieting, given India's current tensions with China, experts say. Previous attempts brokered by Iraq and Oman had not succeeded in any breakthrough. "While Saudi-Iranian normalisation is good news, China being the midwife is bad news for South Block," said P.R. Kumaraswamy, Professor of Contemporary

Middle Eastern Studies at Jawaharlal Nehru University (JNU). "However, it is an opportunity for India to rework its priorities and pay serious attention to regional developments" rather than be "surprised" by the development, he added.

Other analysts have pointed to India's focus on the I2U2 quadrilateral along with Israel, the U.S. and UAE, which may have taken the spotlight away from its ties with Iran and Saudi Arabia. In November, Saudi Crown Prince and Prime Minister Mohammad Bin Salman cancelled a visit to India, which is expected to be rescheduled this year. Iranian Foreign Minister Hossein Amirabdollahian cancelled his participation in this year's Raisina Dialogue, run by the Ministry of External Affairs (MEA) and the Observer Research Foundation, reportedly after protesting a promotional video for the event that appeared critical of Iranian President Ebrahim Raisi.

### Strained U.S.-Saudi ties

While the U.S.-Iran tensions are high given the recent breakdown in talks over the Joint Comprehensive Plan of Action, more commonly known as the Iran nuclear deal, the Beijing agreement also shows up the strain in Washington's ties with Saudi Arabia. Despite U.S. President Joe Biden's visit to

Riyadh last year, Saudi Arabia refused to heed his request to cap oil prices by the Organization of Petroleum Exporting Countries to reduce demand for Russian oil in the wake of the Ukraine conflict. Chinese President Xi Jinping's visit to Riyadh in December was a stark contrast, in terms of more than a dozen agreements on energy and infrastructure that were signed. Iranian President Mr. Raisi visited Beijing in February, and Mr. Xi is expected to travel to Tehran later to take forward talks on the Belt and Road Initiative and an MoU worth an estimated \$400 billion for oil and infrastructure projects.

Diplomats, however, point out that Riyadh's agreement with Tehran does not signify a rejection of the U.S., so much as it shows that new global players are exerting their influence. "While the balance of power remains with the U.S., its influence and commitment in the region have definitely reduced, given an absence of strategic vision in conflicts in Iraq, Syria, Yemen and so on. The past decade has shown many Middle Eastern countries losing faith in the U.S., and broadening their options to players like Russia for energy matters, and China for economic and political matters," said Talmiz Ahmad, a former Ambassador and author of *West Asia at War*.

## INS SAHYADRI JOINS MARITIME EXERCISE WITH FRENCH NAVY

The Navy's guided missile frigate INS Sahyadri joined two frontline warships of France in carrying out a two-day maritime partnership exercise in the Arabian Sea.

The exercise on Saturday and Sunday witnessed a wide spectrum of drills at sea including cross deck landings, boarding exercises and seamanship evolutions, the officials said.

The French Navy deployed Mistral class amphibious assault ship FS

Dixmude and La Fayette class frigate FS La Fayette in the exercise. "The seamless conduct of the exercise reaffirmed the interoperability and high level of cooperation between the two navies," the Indian Navy said in a brief statement.

INS Sahyadri is fitted with state-of-the-art weapons and sensors, which makes her capable of detecting and neutralising air, surface and sub-surface threats.

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## INDIA, AUSTRALIA FOR EARLY CONCLUSION OF PACT ON MARKET ACCESS



*Piyush Goyal and Australian Minister Don Farrell at a press meeting after the 18th joint ministerial meeting. Twitter/@PiyushGoyal*

**Piyush Goyal and Don Farrell pleased with progress in negotiations; CECA will create new jobs, raise living standards, says joint statement**

Commerce and Industry Minister Piyush Goyal and his Australian counterpart Don Farrell convened the India-Australia Joint Ministerial Commission on Saturday and discussed negotiations for a full-scale free trade pact and steps to spur investment flows into both countries.

In a joint communique issued on Sunday, Mr. Goyal and Mr. Farrell, Australia's Trade and Tourism Minister, said they were pleased with the progress in resolving various bilateral technical market access issues and "look forward to concluding" the India-Australia Comprehensive Economic Cooperation Agreement (CECA) soon.

"Prime Minister Narendra Modi and Prime Minister Anthony Albanese look forward to an early conclusion of an ambitious CECA, which will build on the foundation laid by the Economic Cooperation and Trade Agreement [signed last year], including new areas of trade, investment and cooperation. CECA will create new employment opportunities, raise living standards and improve the general welfare in both countries," the statement said.

The Ministers also discussed engagements in the G-20, the Indo-Pacific Economic Framework (IPEF) and the World Trade Organization (WTO).

On the IPEF, the Ministers said the two countries would continue to work together on areas of mutual interest, including the clean economy and resilient supply chains.

## SUNAK, BIDEN AND ALBANESE TO MEET IN SAN DIEGO TO FINALISE AUKUS DEAL

U.K. Prime Minister Rishi Sunak is heading to San Diego on March 12, 2023 to finalise the AUKUS deal — a trilateral security partnership between Australia, the U.K. and the U.S. that will provide nuclear-powered submarines to Australia.

The partnership was announced in September 2021 as part of these countries' strategies to engage more deeply with the Indo-Pacific, largely to counter Beijing's assertiveness in the region, including what Canberra has described as Beijing's "economic coercion".

"I am travelling to the United States today to launch the next stage of the AUKUS nuclear submarine programme, a project which is binding ties to our closest allies and delivering security, new technology and economic advantage at home," Mr. Sunak said in a statement, prior to his departure.

### Back-to-back meetings

Mr. Sunak will have meetings on Sunday and Monday with Australian Prime Minister Anthony Albanese and U.S. President Joe Biden.

Mr. Albanese, who has just wrapped up a visit to India, announced on Twitter that he had arrived in the U.S. along with Australia's Navy chief, Mark Hammond.

The White House said Mr. Biden will fly to San Diego on Monday and

will hold bilateral talks with Mr. Albanese and Mr. Sunak, in addition to AUKUS discussions.

Currently, only six countries have nuclear-fuelled submarines — India, the U.S., the U.K, France, Russia and China.

Australia, whose fleet consists of six diesel-powered Collins-class submarines, will be the seventh, once the AUKUS fleet is deployed.

Canberra could acquire up to five Virginia-class submarines from the U.S., in the 2030s, under AUKUS, according to a Reuters report.

It would also work with the U.K. to design a new generation of submarines, using American technology. These would likely not be ready until the 2040s.

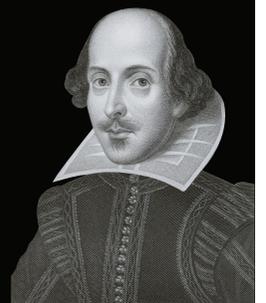
### Integrated Review

Mr. Sunak's trip to the west coast of the U.S. comes as the U.K. prepares to release its updated Integrated Review, a comprehensive statement about its security and foreign policy, which will be released on March 13, 2023.

"The Integrated Review Refresh will address the grave risks from Putin's Russia, the increasingly concerning behaviour of the Chinese Communist Party and hybrid threats to our economy and energy security," Downing Street said on Sunday.

*"Be not afraid of greatness. Some are born great, some achieve greatness, and others have greatness thrust upon them."*

- WILLIAM SHAKESPEARE



**The institution of marriage has a sanctity attached to it, and in major parts of the country, it is regarded as a sacrament, a holy union, and a sanskar**

**In our country, despite statutory recognition of the relationship of marriage between a biological man and a biological woman, marriage necessarily depends upon age-old customs, rituals, practices, cultural ethos and societal values**

**UNION GOVERNMENT AFFIDAVIT**



*Any change in human relationship should come from legislature, not court, Centre says in its affidavit in response to a Supreme Court decision to examine petitions on same-sex marriage*

The Centre, in an affidavit in the Supreme Court, has frowned upon same-sex marriage while invoking the “accepted view” that a marriage between a biological man and woman is a “holy union, a sacrament and a sanskar” in India.

“The institution of marriage has a sanctity attached to it and in major parts of the country, it is regarded as a sacrament, a holy union, and a sanskar. In our country, despite statutory recognition of the relationship of marriage between a biological man and a biological woman, marriage necessarily depends upon age-old customs, rituals, practices, cultural ethos and societal values,” said the 56-page affidavit filed on Sunday. Any “deviation” from this “statutorily, religiously and socially” accepted norm in “human relationship” can only happen through the legislature and not the Supreme Court, the government said.

The affidavit came in response to the court’s decision to examine petitions to allow solemnisation of same-sex marriage under the Special Marriage Act, 1954, which provides a civil form of marriage for couples who cannot marry under their personal law.

“Parliament has designed and framed the marriage laws in the country, which are governed by the personal laws

and codified laws relatable to customs of various religious communities, to recognise only the union of a man and a woman to be capable of legal sanction, and thereby claim legal and statutory rights and consequences. Any interference with the same would cause a complete havoc with the delicate balance of personal laws in the country and in accepted societal values,” the government said.

The government said the court had only decriminalised sexual intercourse between same-sex persons in its 2018 judgment in Navtej Singh Johar, and not legitimised this “conduct”.

The court, while decriminalising homosexuality, had never accepted same-sex marriage as part of the fundamental right to life and dignity under Article 21 of the Constitution.

It said statutory recognition of heterosexual marriage was the norm throughout history and is “foundational to both the existence and continuance of the state”.

#### ‘Cannot be compared’

The government said a same-sex marriage cannot be compared to a man and woman living as a family with children born out of the union. “Living together as partners and having sexual relationship by same-sex individuals [which is decriminalised now] is not comparable with the Indian family unit

concept of a husband, a wife and children...” the government contended.

Registration of marriage of same-sex persons would also result in violation of existing personal as well as codified law provisions.

The government said there was a “compelling interest” for the society and the state to limit recognition to heterosexual marriages only.

#### Several petitions

Several petitions, including ones by partners Supriyo @ Supriya Chakraborty and Abhay Dang, have been filed. They argued that the non-recognition of same-sex marriage amounted to discrimination that struck at the root of the dignity and self-fulfillment of LGBTQ+ couples. A separate petition was also filed by Parth Phiroze Mehrotra and Uday Raj Anand.

The court had issued separate notices to the Union of India and the Attorney General of India. It had transferred various pending issues before various High Courts, including in Kerala and Delhi, to itself.

Senior advocates Mukul Rohatgi, Neeraj Kishan Kaul, Menaka Guruswamy, and advocate Arundhati Katju had argued that this was a sequel to the Navtej Johar case.

The petitioners had said the 1954 Act should grant same-sex couples the same protection it allowed inter-caste and inter-faith couples who want to marry.

## SAFE HARBOUR AT RISK

#### *Regulation of Net intermediaries must not involve unreasonable requirements*

In formally outlining the crux of the proposed Digital India Act, 2023, the Minister of State, IT, Rajeev Chandrasekhar, made a case for a robust replacement of the IT Act, 2000, which is somewhat obsolete now. He ominously added a question that the government sought to revisit: “should there be a ‘safe harbour’ at all for all intermediaries?” This acquires significance as the government has been working towards increasing the compliance burden on Internet intermediaries, in particular in the IT Rules 2021 and its later amendments. These Rules themselves had put the onus on social media intermediaries to arbitrate on content on their platforms with regulations that were weighted in favour of the government of the day, and had invited legal appeals as digital news media platforms among others questioned the constitutionality of the Rules. Meanwhile, an amendment in October 2022 provided for government-appointed committees that will adjudicate on an individual user’s appeals against moderation decisions of these intermediaries. In January 2023, the IT Ministry proposed an amendment on the take down of

social media/news content that has been marked as “fake” or “false” by the Press Information Bureau or any other government agency. These, in sum, had already put the safe harbour protections for intermediaries at much risk.

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## NEW REALITY

*Saudi Arabia, Iran should be mindful of pitfalls ahead while seeking a cold peace*

The Saudi-Iran reconciliation in a China-brokered agreement reflects the new reality in West Asia where old rivals are warming up to each other and Beijing is increasingly willing to play a bigger role at a time when the U.S., the region's traditional great power, is preoccupied with challenges elsewhere. The enmity between Iran, a Shia-majority theocracy, and Saudi Arabia, a Sunni-majority absolute monarchy, has been one of the dominant drivers of conflicts in the region. While the details are yet to be unveiled, officials say Iran has agreed to prevent attacks against Saudi Arabia, including those from the Houthi-controlled parts of Yemen, and both countries would restore full diplomatic relations, which were severed in 2016. In recent years, West Asia has seen similar realignments. In 2020, the UAE was among the first Arab countries to normalise ties with Israel in a quarter century. The following years saw the Arab world and Israel, faced with the common Iran challenge, deepening their cooperation, despite Israel's brutal occupation of Palestine territory. As the U.S. has deprioritised West Asia — it is now heavily focused on Ukraine and countering China's Indo-Pacific influence — its allies in West Asia have started looking out for solutions for

what they see as America's diminishing security guarantees.

The agreement also marks China's arrival in West Asia as a power broker. China has been involved in multilateral peace talks such as the 2015 Iran nuclear deal (from which the U.S. unilaterally withdrew in 2018), but this is the first time Beijing is using its leverage directly to bring conflicting parties to reconciliation. Stability in West Asia, a major energy source, is essential for China, which is the world's largest oil importer. And unlike the U.S., which has hostile ties with Iran, Beijing enjoys good ties with Tehran and Riyadh, as a leading oil buyer and trading partner, respectively. This has put China in a unique position to bring two of the region's most significant powers closer. Saudi Arabia, which is undergoing rapid changes, wants peace in its neighbourhood, while Iran, which is under the U.S.-imposed sanctions, wants more diplomatic and economic openings. If the détente holds, it will have far-reaching implications on regional geopolitics, from peace in Yemen to stability in Lebanon. But it is too early to say whether peace would hold between the two, given their multi-layered enmity. Saudi Arabia, Iran and China should be mindful of the pitfalls ahead and continue to build on the momentum created now to achieve a cold peace between the two regional powers.

## USING UKRAINE AS A BELLWETHER IS A PATH TO TRAGEDY

There is much sound and fury around Ukraine these days, but it is becoming difficult to decipher the truth. What is not disputed is that Ukraine is indeed engaged in a 'struggle for existence'. Notwithstanding its heroic struggle, there is a slow realisation that the Ukraine war is approaching a stalemate. In current reckoning, it would seem that matters can only go downhill from here as Russia appears intent on employing enhanced aerial attacks, which includes the latest hypersonic missiles to subdue Ukraine.

Consequently, and while applauding the heroism of the Ukraine people, serious attempts are being made across Europe, — this includes France, Germany and the United Kingdom — on how to bring about an end to the war. Neither side is likely to be able to claim a decisive victory, and any expectations that Russia can be compelled to withdraw from areas where it made initial gains are considered extremely remote. The initial euphoria seems to have been replaced by 'battle fatigue', and with the Ukraine imbroglio beginning to be viewed as a 'US backed NATO proxy war' against Russia, European leaders are at present engaged in finding ways and means to bring about a ceasefire, than in perpetuating the conflict.

### Impact on Europe

Several other reasons can also be adduced for Europe's current mind-set. First, notwithstanding the generous supply of state-of-the-art weapons from the United States, Europe is painfully aware that it remains entirely at the mercy of the North Atlantic Treaty Organization (NATO) and the U.S. today. Europe's defence industry continues to remain extremely fragile, and prospects that this would change appear remote, thus perpetuating Europe's dependence on the U.S. and NATO. Second, in the realm of economics, Europe is hurting, and the prospect of a prolonged stalemate and a war without end appears highly daunting. European leaders, including Germany's Chancellor Olaf Scholz, are now engaging in quiet diplomacy to end the war, without making it appear that Europe has had to make major compromises.

What has become all too evident, meanwhile, to not only Europe but also to much of the world is that the Ukraine conflict has convincingly demonstrated that the U.S. was the true defender of Europe, and in a manner not seen after World War II. Firmly entrenched in the peoples' psyche is that without the U.S., Europe would neither have come together nor provided Ukraine with whatever support it needed to resist Russia's invasion of Ukraine.

The convincing demonstration of U.S. superiority over Russian weaponry in regard to shoulder-fired surface to air missiles, anti-tank weapons such as the Javelin, and launchers such as HIMARS (High Mobility

Artillery Mobility Rocket System), has since given the U.S. additional confidence to take on all comers. In turn, this kind of thinking might well lead them to the next stage of convincing the world that the U.S. today can stave-off any challenge to its supremacy.

The situation is pregnant with many possibilities. The Ukraine adventure or misadventure is, however, helping the U.S. to erase images of its retreat from Afghanistan which had greatly hollowed out the reputation of the U.S. as a world power. This has since fuelled new ambitions in U.S. and western minds.

Both the right and wrong lessons could well be derived from this. It could encourage a U.S., flush with its recent success in Europe, to believe that the momentum now lies with it, and that if there is a tide in the affairs of a nation which if exploited at the right time can lead to success, then this is, perhaps, the best time and opportunity for such experimentation.

Such reasoning could also prove dangerous. Ukraine and the war in Europe is hardly a laboratory for similar experiments elsewhere. U.S. 'triumphalism' or what it might have achieved in Ukraine without the loss of a single American life, as also the demonstration of the superiority of its weaponry, could also lead to misadventures. China is clearly not Ukraine, or for that matter Russia, and Asia is not Europe. What has taken place in Ukraine and Europe cannot be a bellwether for what might happen if a conflict with China in the Indo-Pacific were to take place.

### China's strong stance

For its part, China is preparing for all eventualities. The language being used by China today is among the harshest and most direct in recent times. Alleging that the U.S. is engaged in the suppression and containment of China, it has warned that "if the US does not hit the brakes and continue to speed down the wrong path, no amount of guardrails can prevent derailment, leading to conflict and confrontation". Chinese President Xi Jinping for his part, has directly accused the U.S. and western countries of the all-round containment, encirclement and suppression of China.

Many of these statements were made on the sidelines of the National People's Congress (NPC) held earlier this month, with China's newly appointed Foreign Minister, Qin Gang, openly accusing the U.S. of attempting to encircle China through its Indo-Pacific strategy (which, according to him, was an Asia-Pacific version of NATO) and whose real purpose was to encircle China.

Chinese criticism tends to be usually obtuse and seldom direct, but it has been unusually forthright this time, prompting concerns that China may be getting ready for a direct confrontation with the U.S., so as to effectively thwart a U.S. effort to restore its dominant position in world affairs.

Adding grist to such concerns is the Chinese leader Xi Jinping's call to delegates attending the recent NPC, viz., to maximise its 'national strategic capabilities' in a bid to "systematically upgrade the country's overall strength and safeguard its strategic interests and realise its strategic objectives".

While Taiwan may remain the flashpoint in the Indo-Pacific, further aggravated by the repeated visits in recent weeks of top U.S. military leaders to Taiwan, newer tensions are adding fresh grist to possibilities of a conflict in other regions in the Indo-Pacific. U.S. claims in the wake of the Ukraine conflict, of defeating all-comers, could instigate more tensions that lead on to a conflict which comes perilously close to an open confrontation culminating in a war.

## ADULTERY AS MISCONDUCT AND JUDICIAL MUSINGS

More than four years ago, the Supreme Court of India decriminalised adultery in its landmark judgment, *Joseph Shine versus Union of India* (September 2018). It held Section 497 of the Indian Penal Code (on adultery) along with Section 198 of the Criminal Procedure Code to be unconstitutional on the premise that these provisions were violative of Articles 14, 15 and 21 of the Constitution of India.

Aggrieved by the order concerning its implementation in the armed forces, the Union of India sought clarification from the Court saying that any promiscuous or adulterous acts should be allowed to be governed by the relevant sections of the Army Act, the Air Force Act and the Navy Act being special legislations by the virtue of Article 33 of the Constitution. Under Article 33, Parliament has powers to restrict or abrogate the fundamental rights of certain categories of persons, including members of the armed forces to ensure the proper discharge of their duties and the maintenance of discipline among them. The Court, recently, without going into the nuances of relevant sections of the special legislations (i.e., the Army Act and similar special Acts) said that in *Joseph Shine* it 'was not at all concerned with the effect and operation of the relevant provisions' and 'it is not as if this Court approved of adultery'. The Court further added that it found adultery as a moral (and civil) wrong and a ground for securing dissolution of marriage. With these observations, the case was disposed of.

### Issue of discharge of duties

The moot question is whether these observations by the Court give an impression that the armed forces may go ahead with disciplinary action for the misconduct of adulterous acts (as understood in common parlance without reference to Section 497 of the IPC) under their special legislations?

Consequent to the *Joseph Shine* case, the Rajasthan High Court, in *Mahesh Chand Sharma versus State of Rajasthan and Others* (2019), set aside the departmental proceedings against the petitioner who was serving as an inspector in the Rajasthan Police (after having served for 18 years in the Indian Air Force) and allegedly had illicit relations with one woman constable and had also 'begotten a child from illicit relations'. The High Court held that no employer can be allowed to do moral policing on its employees which go beyond the domain of his public life and personal choices and selections (to have sexual intercourse) cannot be a subject matter of departmental proceedings under the Service Conduct Rules.

More recently, in *Maheshbhai Bhurjibhai Damor versus State of Gujarat and 3 other(s)* (2022), the Gujarat High Court quashed and set aside the dismissal order of an armed police constable arising from allegations that he had

### The danger of provoking a world war

All wars start with a misreading, or misunderstanding, of the intentions of the other side. The U.S.'s success in assisting Ukraine to withstand the Russian offensive and, incidentally undermining Russia's image of being a kind of super power in Europe, appears to be encouraging the U.S. and certain other western powers to redefine the global power equation and seek a return to the post-1945 period in world affairs. After Europe, the target appears to be China.

It would, however, be a gross misreading of the situation if the U.S. were to attempt the containment of China at this time, flush with its success in Europe and provoking retaliation elsewhere, thus paving the way for a new world conflict. It could turn out to be a tragedy of gigantic proportions.

developed illicit relations with a widow which amounted to misconduct. The departmental inquiry revealed that the relations between the two were voluntary and mutual, and there was no exploitation of the woman. The Court held that in order to prove misconduct, allegations must have some nexus, direct or indirect, with the duties to be performed by the government servant. As the alleged act was a private affair, and not a result of any coercive pressure, the act of the petitioner at the most could be considered as an immoral act; however, to term it as misconduct as per Conduct Rules would be too far-fetched.

A corollary may also be drawn with the conduct of an army personnel who consumes alcohol. Unless, the drinking habits or any such act of an officer affects the discharge of his duties or discipline of the force, no departmental action is initiated. It is nobody's secret that army canteens officially provide alcohol to their men and officers at subsidised rates at all locations. A section of society may consider drinking alcohol as an immoral act, but this does not authorise the employer to initiate disciplinary action. In other words, some private space is given even to army personnel where moral policing is not allowed.

### A caveat that cannot be overlooked

Though Article 33 of the Constitution empowers Parliament to restrict the fundamental rights of the members of the armed forces, the caveat of 'so as to ensure the proper discharge of their duties and the maintenance of discipline among them' cannot be overlooked. The same principle will also apply to members of the forces charged with the maintenance of public order, i.e., the police personnel of all States and Union Territories, intelligence and counter-intelligence agencies including their communication sections as provided in Article 33 of the Constitution.

Therefore, neither did the *Joseph Shine* verdict of 2018 inhibit the parameters of departmental proceedings nor has the clarification sought enlarged them. It is true that many acts and omissions which are not necessarily criminal in nature may amount to acts unbecoming of a government servant. A common thread running through all relevant judgments is that if the conduct interferes directly or indirectly with the honest discharge of duties; such conduct may be considered as unbecoming of a government servant. The legislative intent of Article 33 of the Constitution is also similar. Therefore, the sacrosanct right to privacy available to the members of the armed forces (and the policemen engaged in the maintenance of public order) cannot be taken away under the guise of the special legislations unless it has some nexus with their duties.



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## THE RISE OF THE ESG REGULATIONS



*What are environment, social and governance regulations and how do they differ from corporate social responsibility rules? Why are the regulations important for the Indian economy? Will ESG compliance help Indian companies play a more prominent role in global supply chains?*

### The story so far:

Over the last decade, regulators and corporations around the world have embraced the idea that businesses should be measured not just on traditional economic metrics such as shareholder return, but also by their environmental impact, commitment to social issues and the soundness of their corporate governance and protection of shareholder rights. While this development is partially due to the belief that companies have a distinct responsibility as corporate citizens, the main driver is the realisation that environmental, social and governance (“ESG”) considerations need to be

included by investors in a company’s risk profile in order to accurately assess the enterprise. The evolution of ESG laws and regulations is, however, still at a nascent stage in India, where the focus is often on providing protections regarding the environment or workplace conditions without also incorporating the controls and disclosure that are a hallmark of contemporary ESG regulation.

### How ESG differs from CSR?

India has a robust corporate social responsibility (CSR) policy that mandates that corporations engage in initiatives that contribute to the welfare of society. This mandate was codified into law with the passage of the 2014 and 2021 amendments to the Companies Act of 2013.

The amendments require companies with a net worth of ₹500 crore (approximately \$60 million) or a minimum turnover of ₹1,000 crore (approximately \$120 million) or a net profit of ₹5 crore (approximately \$6,05,800) in any given financial year spend at least 2% of their net profit over the preceding three years on CSR activities.

The list of qualifying CSR activities is intentionally broad, ranging from supporting the protection of historically important sites to promoting safe drinking water.

ESG regulations, on the other hand, differ in process and impact. The U.K. Modern Slavery Act, for example, requires companies with business in the U.K. and with annual sales of more than £36 million to publish the efforts they have taken to identify and analyse the risks of human trafficking, child labour and debt bondage in their supply chain; establish internal accountability procedures; evaluate supplier compliance and to train supply chain managers regarding these issues.

### Why is ESG relevant in India?

India has long had a number of laws and bodies regarding environmental, social and governance issues, including the Environment Protection Act of 1986, quasi-judicial organisations such as the National Green Tribunal, a range of labour codes and laws governing employee engagement and corporate governance practices. The penalty for violations can be substantial.

While these laws and bodies provide important environmental and social safeguards, new initiatives in India go further, establishing guidelines that emphasise monitoring, quantification and disclosure, akin to ESG requirements

found in other parts of the world.

The Securities and Exchange Board of India (SEBI), responding to the increase in ESG investing and the demand by investors for information on ESG risks, substantially revised the annual Business Responsibility and Sustainability Report (BRSR) required by the 1,000 largest listed companies in India.

SEBI describes the current report format as a “notable departure” from previous disclosure requirements, which are aligned with evolving global standards and place “considerable emphasis on quantifiable metrics” to allow companies to engage meaningfully with stakeholders and to enhance investor decision making. Disclosures range from greenhouse gas emissions to the company’s gender and social diversity.

Further legislation regarding ESG are likely, given the increased emphasis by the Indian government on ESG issues, which can be seen in India’s more active role in global climate forums as well as in specific policy developments, such as the announcement in January by the Reserve Bank of India that it would be auctioning ₹80 billion (\$981 million) in green bonds.

### What are the implications for Indian companies?

Compliance with ESG regulations — both originating in India and elsewhere around the world — thus, pose a significantly different challenge than India’s CSR regulations.

In particular, compliance by Indian companies with the ESG regulations of the U.S., the U.K., the European Union and elsewhere will be critical if India is to take full advantage of the growing decoupling from China and play a more prominent role in global supply chains and the global marketplace overall.

As Indian companies look to expand their ESG risk management, thorough due diligence will play a key role. However, this requires more than having sub-suppliers fill out a questionnaire. Due diligence that can stand up to scrutiny means going deeper. Depending on the situation, this can include looking at company records, interviewing former employees and making discreet visits to observe operations to ensure that the measures to comply with international ESG standards are in effect.

Companies that wish to maximise their opportunities in the global economy need to embrace these new requirements and adjust their organisations accordingly.

## WHAT IS RAJASTHAN’S RIGHT TO HEALTH BILL?

*What services will residents be entitled to if passed? Does the Constitution guarantee the right to health? Why are private hospitals opposing it?*

The story so far:

The recently concluded Budget session of the Rajasthan Assembly revived the debate around the Right to Health Bill. The legislation, if passed, will provide mandatory free and affordable medical services in hospitals, clinics and laboratories — both public and privately owned. Private hospital doctors object to the Bill citing it is hastily drafted, ignores ground realities and may tighten norms in

an already over-regulated field.

What does the Bill say?

The Congress-led government tabled the Right to Healthcare Bill, 2022 in the Rajasthan State Assembly in September 2022. The Bill provides rights to patients and healthcare providers, places the obligation on the government to protect these legal rights and mandates the setting up of grievance redressal mechanisms. Rajasthan residents will be entitled to free check-ups, drugs, diagnostics, emergency transport and care at all public

health institutes, along with affordable surgeries. The Bill frames medical services as a public service rather than a vehicle for making money. If enacted, the Act will have a recurring annual expenditure of ₹14.5 crore.

Clause 3 of the Bill lays down 20 rights a State resident will be entitled to — including the right to informed consent, to seek information (in the form of medical records and documents) regarding diagnosis and treatment, and to receive treatment without discrimination based on caste, class, age, gender, etc.

Clause 4 of the Bill shifts the burden of responsibility in providing adequate medical services to the government. The government is “obligated” to provide funds, set up institutions and constitute grievance redressal systems.

Clause 4 mandates that the government develop a Human Resource Policy for health ensuring equitable distribution of doctors, nurses and healthcare workers at all levels of the system across regions.

Does the Constitution guarantee a right to health?

The Indian Constitution does not explicitly talk about a right to health. A “right to health”, in theory, is derived from the right to life and liberty as guaranteed under Article 21 of the Constitution.

Previously, courts have highlighted the State’s obligation to protect and promote the health of citizens, pointing to Constitutional provisions such as Article 38 (promoting the welfare of people) and Article 47 (which directs the government

to meet the nutrition and health requirements of the population).

Why are people opposed to it?

The staunchest resistance to the Bill has come from private healthcare providers, owing to the ambiguity around who will pay for the mandatory free-of-cost emergency treatment. A pamphlet in circulation across the States, published by a “Joint Action Committee”, lists the Bill’s other alleged shortcomings: that it abdicates the State’s responsibility in providing health protection and puts a larger patient load on the private sector.

After protests, the government has agreed to create a fund to reimburse any emergency care offered by the private sector.

Further, doctors argue the Bill is both futile and an exercise in over-regulation. Clinics and hospitals are required to abide by State regulations and norms.

Health activists and civil society members agree the Bill, in its current form, is a “diluted” version of the draft which activists and Jan Swasthya Abhiyaan submitted to the government in 2019.

Moreover, there’s no mention of a designated time frame within which the rules must be framed and the Bill loosely mentions the term “guarantee” — which makes the actual execution of an Act ambiguous.



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