# SC GIVES TIME TILL AUG. 14 TO SEBI TO PROBE HINDENBURG CHARGES

**KRISHNADAS RAJAGOPAL**

NEW DELHI

The Supreme Court on Wednesday gave the Securities and Exchange Board of India (SEBI) time till August 14 to complete its investigation into the Hindenburg-Adani Group allegations.

The market regulator clarified that the "investigation" referred to by Minister Pankaj Chaudhary in Parliament in July 2021 concerns an October 2020 probe into "minimum public shareholding norms and consequential violations", which happens to be a part of the U.S.-based short-seller's damning report against the group.

SEBI was responding to submissions by petitioners that it had been probing Adani since 2016.

Congress leader Jairam Ramesh had joined in with a tweet that the "Minister of State for Finance, Pankaj Chaudhary, told the Lok Sabha on July 19, 2021 that SEBI had been investigating the Adani Group. Now SEBI tells the Supreme Court they have not been investigating any of the serious allegations against Adani!"

Solicitor-General Tushar Mehta, for SEBI, said it had not begun any probe against Adani in 2016."The Minister, in his reply to Parliament on July 19, 2021, confirmed that SEBI is investigating companies with regard to SEBI regulations. It may be noted that the 'investigation' referred to is with regard to non-compliance with minimum public shareholding (MPS) norms and consequential violations. This investigation commenced in October 2020. It was this investigation which the Minister referred to in the Parliament. It is confirmed that the investigation referred to by the Minister had not commenced in 2016," Mr. Mehta submitted.

He said "one of the allegations in the Hindenburg report was related to the non-compliance of minimum price shareholding norms and violations". The SEBI was already investigating it.

The court said the updated status report of SEBI should cover issues "directly related" with the Hindenburg report. "One of the aspects which will have a bearing on what is disclosed in the Hindenburg report is the non-compliance with MPS norms," the Bench noted.

The Solicitor-General said the 2016 "investigation", brought up time and again, concerned an order of the SEBI regarding the issuance of Global Depository Receipts (GDR) by 51 Indian listed companies. "No listed entity of this company (Adani) was part of the 51 companies," he maintained.

"You can't pick up something in 2016 and 2020 and connect it with the allegations from the Hindenburg report… The 2016 issue was totally different," he said.

Mr. Mehta said the petitioners could not use the court proceedings to go on a "roving enquiry".

The Bench observed that the ambit of the court proceedings was limited to the Hindenburg report. "The purpose of these proceedings is not for us or for a PIL petitioner to conduct a roving enquiry… On whatever is directly related to the Hindenburg report, the Solicitor-General said he is filing an affidavit… What is now related to the Hindenburg report is about compliance with MPS norms," Chief Justice Chandrachud addressed Prashant Bhushan, appearing for one of the petitioners.

# KEY CLIMATE THRESHOLD LIKELY TO BE BREACHED IN 5 YEARS: UN

*Parched living: Women carrying jerrycans of water towards a makeshift camp on the outskirts of Baidoa in Somalia. AFP*

*There is two-thirds chance of global temperatures exceeding the 1.5 degrees Celsius warming limit, warns World Meteorological Organization; 2023-2027 set to be hottest five-year period ever*

**AGENCE FRANCE-PRESSE**

GENEVA

It is near-certain that 2023-2027 will be the warmest five-year period ever recorded, the United Nations warned on Wednesday as greenhouse gases and El Nino combine to send temperatures soaring.

There is a two-thirds chance that at least one of the next five years will see global temperatures exceed the more ambitious target set out in the Paris accords on limiting climate change, the UN's World Meteorological Organization (WMO) said.

The hottest eight years ever recorded were all between 2015 and 2022, with 2016 the warmest — but temperatures are forecast to increase further as climate change accelerates.

"There is a 98% likelihood that at least one of the next five years, and the five-year period as a whole, will be the warmest on record," the WMO said.

The 2015 Paris Agreement saw countries agree to cap global warming at "well below" two degrees Celsius above average levels measured between 1850 and 1900 — and 1.5 degrees Celsius if possible.

The global mean temperature in 2022 was 1.15 degrees Celsius above the 1850-1900 average.

The WMO said there was a 66% chance that annual global surface temperatures will exceed 1.5 degrees Celsius above pre-industrial levels for at least one of the years 2023-2027, with a range of 1.1 degrees Celsius to 1.8 degrees Celsius forecasted for each of those five years.

"WMO is sounding the alarm that we will breach the 1.5C level on a temporary basis with increasing frequency," said the agency's chief Petteri Taalas.

"A warming El Nino is expected to develop in the coming months and this will combine with human-induced climate change to push global temperatures into uncharted territory.

"This will have far-reaching repercussions for health, food security, water management and the environment. We need to be prepared."

El Nino is the large-scale warming of surface temperatures in the central and eastern equatorial Pacific Ocean. The weather phenomenon normally occurs every two to seven years.

Typically, El Nino increases global temperatures in the year after it develops — which in this cycle would be 2024.

Heat gets trapped in the atmosphere by so-called greenhouse gases, which are at a record high.

The major greenhouses gases are carbon dioxide, plus methane and nitrous oxide.

"The return to normal level might take even thousands of years because we already have such a high concentration of carbon dioxide, and we have lost the melting of glaciers and sea level game," said Mr. Taalas.

"There's no return to the climate which persisted during the last century."

# 'THREE CAPITALS' IN ANDHRA PRADESH

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**STATE OF PLAY**

The Andhra Pradesh government's decision to have three capitals — Visakhapatnam as an executive capital, while Amaravati and Kurnool as legislative and judicial capitals, respectively — brought the development of Amaravati to a grinding halt three years ago.

Farmers who gave lands for it allege that Chief Minister Y.S. Jagan Mohan Reddy has been desperate to shift to Visakhapatnam just because he is loath to continue what his predecessor N. Chandrababu Naidu had initiated in Amaravati. They insist that the three capitals are a failed experiment.

As a consequence of the decentralisation move which is intended to achieve balanced development of all regions, the infrastructure created at a huge cost in Amaravati, including villas for High Court judges and senior IAS officers, most of which neared completion during the Telugu Desam Party (TDP) regime, is now lying in the dumps.

What happens to this massive investment in the event of the government getting the clearance by courts to shift to the port city and the impact of such a shift on future land acquisitions are questions that are difficult to answer. Given the government's refusal to budge from its stand on the three capitals, the fate of Amaravati appears to be all but sealed.

The story of 'three capitals' started in 2019 when Mr. Reddy made the proposal in the Legislative Assembly much to the chagrin of about 25,000 farmers who gave 34,400 acres under the land pooling scheme (LPS) for the development of Amaravati. Before this, in 2014, the stage for Amaravati was set by Mr. Naidu, who wasted no time in shifting from the common capital of Hyderabad to Andhra Pradesh soon after the bifurcation of the unified State.

By choosing the Vijayawada-Guntur region as the location of State capital, Mr. Naidu went on to create infrastructure on a large-scale, starting with the laying of arterial roads and the construction of the Interim Government Complex (IGC). Within no time, Amaravati caught global attention due to some hard-selling by Mr. Naidu, who got the master planning done by U.K.- based Foster + Partners.

The Amaravati project was going on full steam till the 2019 elections when Mr. Reddy's Yuvajana Shramika Rythu (YSR) Congress Party stormed to power and soon after the change of guard came the idea of three capitals. It came as a shocker to the multitude of farmers who approached the High Court for justice.

The HC delivered its verdict in their favour in March 2022. However, the farmers' joy was shortlived as instead of implementing the writ of mandamus passed by the HC, the State government sought at least five years to complete the development of Amaravati by citing various excuses and went on to challenge the HC's judgment in the Supreme Court. The case is posted for a fresh hearing on July 11.

This is where the development of Amaravati is stuck as there is no change in the government's stand in favour of decentralisation, while the legal battle continues to rage in the top court.

If the government gets to move to Visakhapatnam, it has to put the infrastructure in Amaravati to use to not waste the money spent on it and may also have to pay a massive compensation to farmers for violating the agreements entered with them. Against this backdrop, Mr. Reddy keeps making statements that he will start functioning from Visakhapatnam in a few months.


*The government's decision has brought the development of Amaravati to a halt*

Even as the whole project is entangled in the Supreme Court and the High Court, the government is providing house sites to economically weaker sections (EWS) in about 1,200 acres in the proposed R-5 zone in Amaravati. This is notwithstanding the High Court judgment dated March 3, 2022 in the three capitals case that no third-party interest can be created on lands given for development of the capital city.

After the High Court refused to impose a stay on the EWS housing scheme in Amaravati, the farmers filed a special leave petition (SLP) in the apex court, challenging the allotment of house sites to beneficiaries from the EWS hailing from across the State.

The government is going by its hunch that the people will reward it for taking up decentralisation in the form of votes next year.

Clearly, garnering votes is the underlying objective of the 'three capitals' plan and the government is sounding pretty confident about it. Will it actually pay off remains a million-dollar question.

# WHY ARE FINANCIAL REGULATORS TRANSITIONING FROM LIBOR?

*What is LIBOR? What is the controversial story surrounding the global benchmark interest rate? What happened during the 2008 global financial crisis?*

**SAPTAPARNO GHOSH**

The story so far:

On May 12, the RBI stated that some banks and financial institutions were yet to facilitate an absolute transition away from the London Interbank Offered Rate (LIBOR) benchmark. They had not inserted fallback clauses into all their financial contracts that reference U.S.$ LIBOR or the corresponding domestic Mumbai Interbank Forward Outright Rate (MIFOR). Both LIBOR and MIFOR would cease to be a representative benchmark from June 30 this year.

**What is LIBOR?**

LIBOR is a global benchmark interest rate that combines individual rates at which banks opine they may borrow from each other (for a particular period of time) at the London interbank market. It is used as a benchmark to

settle trades in futures, options, swaps and other derivative financial instruments in over-the-counter markets (participants engaging directly without using an exchange) and on exchanges globally. Further, consumer lending products including mortgages, credit cards and student loans, among others, too use it as a benchmark rate.

Every business day before 11 a.m. (London time), banks on the LIBOR panel make their submissions to news and financial data company, Thomson Reuters. The panel consists of commercial bankers such as J.P. Morgan Chase (London branch), Lloyds Bank, Bank of America (London branch), Royal Bank of Canada and UBS AG, among others. Following the submission, the contributed rates are ranked. Extreme quartiles, on the top and bottom, are excluded and the middle quartiles are averaged to derive the LIBOR. The idea is to be as close to the median as possible.

**What was the controversy around it?**

The central flaw in the mechanism was that it relied heavily on banks to be honest with their reporting disregarding their commercial interests.

It must be noted that the rates were made public. Therefore, it would not be particularly useful to impress upon potential and current customers the various disadvantages in obtaining funds. The phenomenon was particularly on display during the 2008 financial crisis when submissions were artificially lowered (amid the crisis). In 2012, Barclays admitted to the misconduct and agreed to pay $160 million in penalties to the U.S. Dept of Justice. The Wall Street Journal too had studied in May 2008 that several panelists were paying "significantly lower borrowing costs" than what other market measures were suggesting. Another observed phenomenon was the tendency to alter (higher or lower) the submission as per the entities' trading units' derivative positions to acquire more profits.

**Do we have an alternative in place?**

Yes, in 2017, the U.S. Federal Reserve announced the Secured Overnight Financing Rate (SOFR) as a preferred alternative. Accordingly, in India, new transactions were to be undertaken using the SOFR and the Modified Mumbai Interbank Forward Outright Rate (MMIFOR), replacing MIFOR.

As stated by the International Finance Corporation (IFC), it is based on observable repo rates, or the cost of borrowing cash overnight, which is collateralised by U.S. Treasury securities. Thus, making it a prevailing transaction-based rate and drifting away from the requirement of an expertise judgement as in LIBOR. This would make it potentially less prone to market manipulation.

**How are we responding to the regime change?**

The RBI had stated in its November 2020 bulletin that, in India, exposures to LIBOR are from loan contracts linked to it and Foreign Currency Non-Resident Accounts (FCNR-B) deposits with floating rates of interest and derivatives. In August the same year, the banking regulator had asked banks to assess their LIBOR exposures and prepare for the adoption of alternative references rates. Contracts entered after (or before, if possible) December 31, 2021, were not to use the LIBOR as reference rate. More importantly, contracts entered before the date were to have fallback clauses, that is, an agreement for revised considerations when the reference rate is no more published — important for transparency and consistency. One may draw some succour from the trade deficit easing to a 20-month low. But managing the trade deficit cannot be the goal for policymakers. Falling imports also indicate that domestic demand, India's proclaimed insulation against global headwinds, is ebbing. Moreover, when imports of petroleum (down 14%), and gems and jewellery plummet, they also affect exports of value-added end products. Petroleum exports shrank 17.5% in April, while jewellery shipments slipped at 30%, marking the seventh contraction in 10 months even as other job creators such as textiles have been hit hard. That commodity prices have cooled from last year is only one reason for the shrinking trade basket. Officials concede there does not seem to be any immediate respite likely from faltering global demand. China's opening up of the economy may have prompted a global trade growth forecast hike (from 1% to 1.7%) for 2023 from the WTO, but recent Chinese data have been underwhelming about the recovery momentum. Reluctant European and North American markets are only expected to speed up goods orders by September for the festive season, while services exports that have held up through the recent trade turmoil, may slow too. India must use this slack period to review its overall trade stance, the reliance on a few large markets, and pursue greater integration with global value chains and multilateral trading arrangements. These would yield better outcomes than fresh measures to hold down the import bill.

# THE LATEST CHINA-CANADA KERFUFFLE

**SUMEDA**

EXPLAINER

The story so far:

On May 8, the Canadian government declared Chinese diplomat Zhao Wei "persona non grata," for allegedly targeting a Canadian lawmaker critical of China's human rights record. Hours later, China announced a "reciprocal countermeasure" by asking Jennnifer Lynn Lalonde, a top diplomat in the Canadian consulate in Shanghai, to leave the country by May 13. Tensions soared with China saying it holds the "right to take further actions in response", while Prime Minister Justin Trudeau put out a strongly worded statement, reiterating that Canada will not be intimidated.

**What started the feud?**

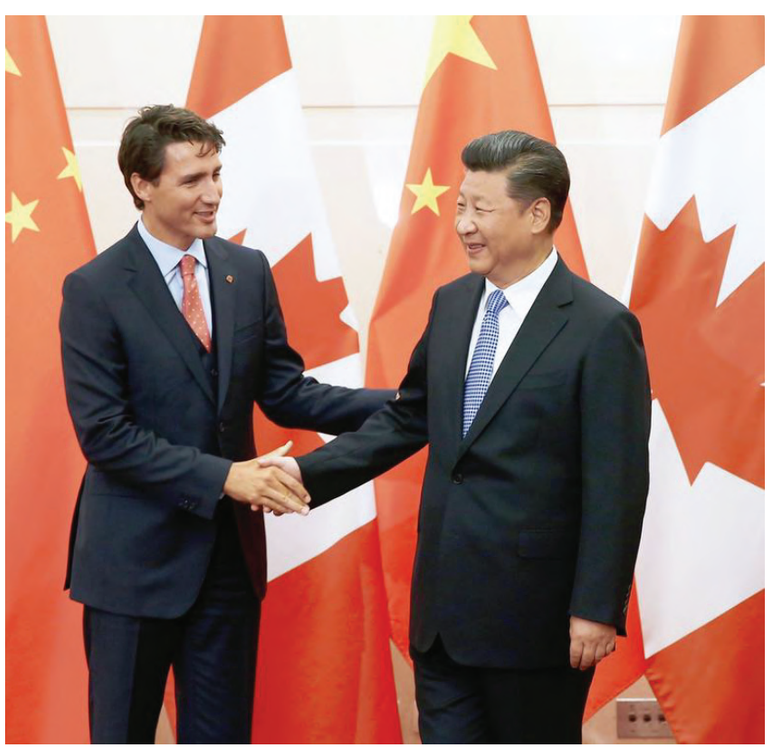
At the centre of the latest spat is a report from the Canadian Security Intelligence Service (CSIS). Earlier this month, The Globe and Mail added, to a series of media reports about growing Chinese interference in Canada, a report on an intel document from 2021 which detailed potential threats to opposition lawmaker Michael Chong and his family in Hong Kong over the latter's criticism of Beijing. Citing an anonymous national security official as its source, the newspaper reported that Chinese consul Zhao Wei was involved in gathering information about Mr. Chong and his family in Hong Kong to target him over his anti-Chinese sentiments and for further sanctions — to "make an example" of him and "deter others from taking an anti-PRC position."

In 2021, Mr. Chong led legislative efforts in Canada's House of Commons to declare China's treatment of Uyghurs and other minorities in Xinjiang as "genocide". In response, Beijing barred his entry into China.

**How did Canada react to the report?**

After details of the CSIS report were revealed, the Canadian government was heavily criticised for its inaction against China. While Mr. Chong said that he was disappointed to find out about the risk to his family's life from a newspaper, Mr. Trudeau claimed he was not made aware of the intel by the spy agency. Internal deliberations followed about the future course of action, seemingly to prepare for any economic repercussions since China is Canada's second-biggest trade partner.

On May 8, Canada declared diplomat Zhao Wei "persona non grata" (Latin for an



*Tense relations: Chinese President Xi Jinping with Canadian Prime Minister Justin Trudeau in 2016. AFP*

*Why did the Canadian government declare Chinese diplomat Zhao Wei "persona non grata"? How did the Chinese government react? How is Michael Chong, an opposition lawmaker implicated in this row? Why were relations between China and Canada already strained?*

unwelcome person). In a statement, Foreign Affairs Minister Mélanie Joly said that Canada would "not tolerate any form of foreign interference in our internal affairs." The Minister added that, "diplomats in Canada have been warned that if they engage in this type of behaviour, they will be sent home."

China responded strongly, warning of retaliatory measures. In a statement, the Chinese Embassy in Ottawa said Zhao's expulsion was "based on rumours of the so-called 'China interference' hyped up by some politicians and the media." Terming the move a violation of international law which had sabotaged China-Canada relations, the Embassy maintained that China never interferes in other countries' internal affairs.

Later, Chinese Foreign Ministry spokesperson Wang Wenbin urged Canada to stop "unreasonable provocations". "If Canada does not listen to the advice and acts recklessly, China will fight back resolutely and forcefully, and the Canadian side must bear all the consequences arising from this," Mr. Wang said. Hours later, China issued an order asking Ms. Lalonde to leave the country by May 13.

What has led to strained Canada-China ties?

Diplomatic ties between China and Canada have been unsteady for the past few years, especially after Canadian police arrested Huawei Technologies executive Meng Wanzhou on charges of fraud in 2018. A few days after her arrest, China detained two Canadians on spying charges — a move then called "hostage diplomacy". After years of a stand-off, all three were freed by their respective nations in 2021 after a deal was reached to release Ms. Meng.

During that period, China suspended imports of canola from Canada, alleging pests in the shipment. The ban was, however, lifted last year amid a global shortage of food in the wake of the Russia-Ukraine war. Since then, the rift has widened.

Canada alleged that the Chinese government attempted to interfere in the 2019 and 2021 federal elections — a charge Beijing vehemently denies. The two countries are also engaged in a technology battle. While Canada has limited the presence of Chinese firms in its communications infrastructure, Beijing believes the restrictions were imposed without any solid evidence.

The tension between the leadership was also visible at the G-20 summit in Indonesia last year, when Chinese President Xi Jinping and the Canadian PM exchanged barbs over leaked details of their meeting about Chinese interference in domestic affairs.

# AUSTRALIA CANCELS QUAD MEETING IN SYDNEY AFTER U.S. PRESIDENT PULLS OUT

*Four pillars: From left, Anthony Albanese, Joe Biden, Narendra Modi and Fumio Kishida at a summit in Tokyo in 2022. File Photo*

**ASSOCIATED PRESS**

CANBERRA

Australian Prime Minister Anthony Albanese has ruled out a Quad summit taking place in Sydney without President Joe Biden, saying the four leaders will talk at the Group of Seven meeting this weekend in Japan.

Mr. Albanese said on Wednesday he understands why Mr. Biden pulled out of the summit to focus on debt limit talks in Washington since they are crucial to the economy.

The summit including Indian Prime Minister Narendra Modi and Japanese Prime Minister Fumio Kishida had been scheduled for May 24.

"The blocking and the disruption that's occurring in domestic politics in the United States, with the debt ceiling issue, means that, because that has to be solved prior to June 1 — otherwise there are quite drastic consequences for the U.S. economy, which will flow on to the global economy — he understandably has had to make that decision," Mr. Albanese said.

Mr. Biden "expressed very much his disappointment" at being unable to come to the Sydney summit and to the national capital Canberra a day earlier to address Parliament, Mr. Albanese said.

The four leaders will soon be together in Hiroshima, Japan, for the Group of Seven summit and are planning to meet there, he said.

Modi to visit

He said Mr. Modi will visit Sydney next week, noting the Indian leader was scheduled to give an address to the Indian diaspora at a sold-out 20,000-seat stadium on Tuesday. But Mr. Kishida will not visit.

"Prime Minister Modi will be here next week for a bilateral meeting with myself. He will also have business meetings, he'll hold a very public event ... in Sydney," Mr. Albanese told Australian Broadcasting Corp.

Mr. Albanese said it was "disappointing" that Mr. Biden decided he could not come.

"The decision of President Biden meant that you can't have a Quad leaders' meeting when there are only three out of the four there," Mr. Albanese told the reporters.

# CENTRE MORE THAN DOUBLES OUTLAY ON PLI FOR IT HARDWARE TO ₹17,000 CRORE

*Announcement comes on the back of 17% CAGR in electronics manufacturing, says government; improvements to scheme based on feedback from industry on the earlier version, says Minister for Communications, Electronics and IT Vaishnaw*

**THE HINDU BUREAU**

NEW DELHI

The Union Cabinet on Wednesday approved an updated Production Linked Incentive (PLI) scheme for IT hardware manufacturing, with the total budgetary outlay more than doubled to ₹17,000 crore, Minister of Electronics and Information Technology Ashwini Vaishnaw announced.

"Electronics manufacturing in India has witnessed consistent growth with 17% CAGR in [the] last 8 years," the government said in a statement. "This year it crossed a major benchmark in production – $105 billion." India crossed $11 billion in mobile phone exports, and was now the second-largest mobile handset maker behind China, the government said.

The PLI scheme for IT hardware, first notified in March 2021, provides upwards of 4% in incentives for incremental investment in domestic manufacturing for eligible firms, which include companies like Dell and Flextronics.

## Bulking up

**Union Cabinet approves updated Production Linked Incentive (PLI) scheme for IT hardware based on feedback from firms**

- The scheme provides upwards of 4% in incentives for incremental investment in domestic manufacturing for eligible firms like Dell, Flextronics
- The incentive has been raised to 5%, with an 'optional incentive' added for using domestically produced components
- Including the optional incentive, total incentive may amount to 8-9%

"Based on industry feedback on improving... the scheme, the Cabinet has approved the changes," Mr. Vaishnaw said. For instance, he said, the incentive had been increased to 5%. An "additional optional incentive" has also been introduced for using domestically produced components. While Mr. Vaishnaw did not specify the rates of these optional incentives, he said that if they were availed as "envisioned," the total incentive would amount to 8–9%.

Telecom hardware manufacturing had exceeded the projected ₹900 crore and reached ₹1,600 crore. "Two of those companies have become very important exporters in the world for complex radio equipment," the Minister added.

# INDIA, EU EXPLORE WAYS TO RESOLVE 'CARBON BORDER TAX'

SRIRAM LAKSHMAN
LONDON

India and the EU are working to resolve a looming hurdle in their trade relationship, the EU's Carbon Border Adjustment Mechanism (CBAM), with the two sides discussing it during a Minister-level meeting in Brussels this week. The EU is India's second-largest trading partner as well as its second-largest export market.

The EU describes the CBAM as a 'landmark tool' that places a "fair price" on carbon emitted during the production of goods that are entering the EU and a mechanism to "encourage cleaner industrial production" outside the EU.
The CBAM regulations came into effect on May 16 and will begin their transitional phase of implementation on October 1.

An Indian delegation led by Commerce Minister Piyush Goyal and External Affairs Minister S. Jaishankar discussed the tax during a visit to Brussels for bilateral meetings and the first edition of the EU-India Trade and Technology Council (TTC).

The TTC said in a statement that the two parties would "intensify their engagement to address the issues that emerge in implementation" of the CBAM. The two sides "remain engaged" and are discussing the issue, Mr. Goyal said following the meeting on Tuesday.

"And we have a long time ahead of us within which we'll be working together to find the right solutions to this," he said, during a press conference of the ministers and their EU counterparts — EU Competition Commissioner Margrethe Vestager and Trade Commissioner Valdis Dombrovskis.

"I am sure the intention is not to create a barrier to trade," Mr. Goyal said, emphasising that the measure was about sustainability.
For their part, the EU officials asserted that the mechanism did not run afoul of WTO rules.

"We were of course very careful to ensure WTO compatibility of the initiative," Mr. Dombrovskis said. "And a key word for this is 'non-discrimination'. So we apply the same price of carbon to imported goods that we are going to apply also on our domestic producers," the EU official added.
'Steel, aluminium'

"There are about six-seven commodities on which the EU has proposed carbon taxes, of which the two sectors where India is likely to feel some impact is steel and aluminium," a senior Commerce Ministry official said in New Delhi. "In the rest of the areas, we don't export much to Europe," he added.

The ministry is still calculating the likely monetary impact as the EU has prescribed different mechanisms of imposing carbon tax. "For example, in steel manufacturing through electric arc furnace and blast furnace, the carbon border tax will be different. So an assessment of how much of steel is going out of which furnace – that segregation has to be done. That will take some time. It will definitely impact to some degree," the official said.

While the move will likely impact less than 2% of India's exports, the government is examining the extent to which the overall carbon tax and the differential tax treatment proposed for instance, for steel using different furnace technologies, is compatible with WTO (World Trade Organisation) norms, said another official. "The verification process could be very complex and tedious and mutual recognition agreements will be vital," the second official noted.

*Union Minister Piyush Goyal with Thierry Breton, EU Commissioner for Internal Market, in Brussels. ANI*

The first meeting of the TTC included working groups covering Strategic Technologies, Digital Governance and Digital Connectivity; Green and Clean Energy Technologies; and Trade, Investment and Resilient Value Chains.

In a joint statement, the two sides listed the progress made and said that an MoU on semiconductors would be concluded by September 2023. Mr. Goyal said the TTC would supplement trade deal talks between India and the EU and that it would help make the relationship "the defining partnership of the 21st Century". The Working Group on trade discussed resilient value chains, market access issues, screening of FDI and multilateral trade issues.

# TWO JUDGMENTS AND THE PRINCIPLE OF ACCOUNTABILITY

*M.R. Madhavan is with PRS Legislative Research, New Delhi*

Two Constitution Benches of the Supreme Court of India delivered important judgments last week. The first case decided that the Delhi government headed by the Chief Minister — and not the Lieutenant Governor appointed by the central government — will control civil services working for the Delhi government. The second case involved the formation of the current government in Maharashtra following the "split" in the Shiv Sena party.
Contradiction of a core principle
Both judgments, which were unanimous, were authored by the Chief Justice of India; they explain the constitutional position clearly. However, the Maharashtra judgment contradicts the core principle applied in the Delhi case. The problem arises from the fact that the Maharashtra judgment adheres to the Tenth Schedule of the Constitution (the anti-defection law), which, at its heart, is incompatible with the structure underlying parliamentary democracy.

The issue in the Delhi case was to determine whether the civil services in the Delhi government would be accountable to the Delhi cabinet or to the Union government. Delhi is a Union Territory with a legislature, and the demarcation of powers is spelt out in Article 239AA. The Supreme Court stated that parliamentary democracy implied a government accountable to the people. The judgment explains that this entails a triple chain of command: civil service officers are accountable to Ministers; Ministers are accountable to the legisla-

ture; and the legislature is accountable to the electorate. Severance of any link of this triple chain would be antithetical to parliamentary democracy. Therefore, the civil services will have to report to the Delhi Cabinet.

The Maharashtra judgment dealt with a sequence of events that included several petitions under the anti-defection law. Two factions of the Shiv Sena had issued contradictory whips, and the Maharashtra Speaker had recognised the whip of one of the factions (which claimed more Members of the Legislative Assembly) as representing the party. One of the questions considered by the Court was to determine which faction had the right to appoint the leader and whip of the legislature party — and, therefore, have the power to issue binding directions on every member of the party in the Assembly.

The Court ruled that the Tenth Schedule makes a differentiation between the legislature party and the political party. The legislature party includes all MLAs/Members of Parliament belonging to the political party. It determined that the power to issue directions was with the political party, and not the legislature party. Therefore, the person in charge of the political party (who may not be a member of the legislature) would control every vote of the MLAs/MPs of that party. Failure to adhere to such direction by any MLA/MP would lead to disqualification.

Thus, this judgment further entrenches the power of the party leadership over the legislature. It reinforces the idea that the MP/MLA is not accountable to the electorate but only to the party that fielded them in the election. In doing so, it breaks the triple chain of accountability, which is an underlying principle of the Delhi judgment.

Indeed, the judgment decries the possibility of legislators being elected on the basis of their affiliation to a party, later disconnecting with that party. It goes on to say that the Tenth Schedule guards precisely against this outcome. Again, this position is different from that taken in the Delhi judgment. There, the Court states that the government is assessed daily in the legislature through debates on Bills, questions raised during Question Hour, resolutions, debates and no-confidence motions. If the legislators of the party with a majority in the House have to abide by the directions of the political party, the very idea of a daily assessment by the legislature becomes meaningless. The party leadership controls the vote of its legislators on each issue, and, therefore, the government is guaranteed to win every vote, including a no-confidence motion, unless any legislator is willing to forgo their membership in the House.

**The problem lies here**

The judges had no choice but to make such contradictory conclusions. In the Delhi judgment, they were clarifying the gaps in the Constitution by using standard interpretation methods. In the Maharashtra judgment, they were bound in their interpretation by the clear language of the Tenth Schedule. The problem lies in the very idea of the anti-defection law, which contradicts the democratic principle of accountability of legislators to their voters.

The anti-defection law is based on the assumption that any vote by an MP/MLA against the party direction is a betrayal of the electoral mandate. This is an incorrect interpretation of representative democracy. While party affiliation is an important element in elections, it is not the sole criterion for voters. The Supreme Court has recognised this principle in the case where it mandated that all candidates must disclose information related to their criminal record, assets and liabilities, and educational qualifications in order to allow voters to take an informed decision. If voters only cared about party affiliation, why should the other characteristics of candidates matter? Indeed, election results also contradict the assumption that voters look only at the party affiliation of candidates.

For example, in Karnataka, by-elections were triggered due to the defection of several Congress and Janata Dal (Secular) MLAs in 2019, just months after the general election; 13 of the defectors contested on a Bharatiya Janata Party ticket, and 11 of them were re-elected. Similarly, in Madhya Pradesh, 15 of the 22 MLAs who defected won the ensuing by-elections. The electorate thus endorsed the candidate and not the original party that had won a couple of years earlier.

**Need for a relook**

The constitutional design of a parliamentary democracy envisages a chain of accountability. The accountability of the government to the legislature is on a daily basis, and legislators have to justify their actions to their voters in every election. The anti-defection law upends this design by breaking both links of the chain. Legislators have to obey the party diktat even if that comes in the way of holding the government accountable. In turn, they can easily take refuge in their lack of freedom to make decisions if their constituents question them. This is clearly a violation of the central principle of parliamentary democracy, which is part of the basic structure of the Constitution.

In 1992, a five-judge Bench of the Supreme Court ruled that the anti-defection law did not violate the basic structure. A re-examination of this issue would require a larger Bench.

The Maharashtra judgment has referred one aspect to a seven-judge Bench. The question is whether a Speaker facing a notice of removal can decide on disqualification petitions. Two five-judge Benches have reached opposite conclusions on the Speaker's ability to make independent and impartial decisions. The seven-judge Bench, while hearing that case, must expand the question to examine whether the anti-defection law violates the basic structure. It is time to reclaim the accountability of governments to the people.

# A DESPERATE ISRAELI LEADER PLAYS THE SECURITY CARD

*Talmiz Ahmad is a former diplomat*

The five-day Israeli-Palestinian conflict in Gaza ended in a truce on May 13. In this war, the Israelis had carried out targeted assassinations of six commanders of the radical Palestinian group, Islamic Jihad. The latter had responded with several hundred rocket attacks, which led to 250 Israeli air strikes in which 33 Palestinians were killed and several more injured; one Israeli was killed and 45 people injured. There were skirmishes in the West Bank as well.

Over the last four months, Israel has been in the grip of demonstrations against the government of Prime Minister Benjamin Netanyahu that is seeking wide-ranging changes in the country's judicial system. The need to restore Mr. Netanyahu's authority and credibility is linked with the escalation of confrontations in the occupied territories.

Israel's extreme right in power

Israel's elections last November, the fifth since 2019, showed a significant shift in favour of the country's ultra-orthodox and ultra-nationalist parties. Mr. Netanyahu, Israel's longest-serving Prime Minister, facing criminal charges for fraud, bribery and breach of trust, had no choice but to form a coalition that included Israel's extreme right-wing parties (the Religious Zionism party of Bezalel Smotrich and the Otzma Yehudit of Itamar Ben-Gvir) and include their leaders in his cabinet.

The extreme right has a clear-cut agenda: besides pursuing tough policies towards Palestinians, it also seeks a "reform" of the country's judicial system, which is viewed as upholding Palestinian rights and being hostile to the ultra-religious community. In January, four Bills were introduced in the Knesset to effect the required changes: they diluted the court's powers of judicial review, gave the executive greater say in the selection of judges, and also sought to protect the Prime Minister from criminal proceedings. However, the government was totally unprepared for the ferocity of the opposition to these changes. The demonstrators have included businesspersons, professionals, workers, and even military reservists. In the face of such fury, on March 27, Mr. Netanyahu grudgingly announced a "time-out" in the implementation of the changes, saying this was "to prevent the nation from being torn apart".

The agitations have revealed the deep split in Israeli society between those seeking to protect the country's liberal order from the increasing influence of the ultra-orthodox. Thus, this is an intra-Jewish divide. Generally, both sides uphold Jewish superiority over the Arabs and Israel's control over the occupied territories, and neither voices support for Palestinian aspirations.

Netanyahu fights back

Given Mr. Netanyahu's cunning and strong survival instincts, observers have been surprised by his failure to anticipate the strength of the opposition to the judicial initiatives. Through April, it became clear that his reputation had been severely tarnished — he was widely seen as a leader who placed his personal interests above the country's democratic order.

These negative assessments were reflected in polls: over two-thirds of Israelis supported judicial review and opposed changes in selecting judges; more than half of them faulted the administration for governance failures. Public opinion swung in favour of the opposition; polls showed that, as against the 64 seats won five months ago by the parties in government, they would now win just 50, while the National Unity Alliance led by Benny Gantz would move from 12 seats to 28 seats, becoming the largest party in the Knesset.

It is in this background that Mr. Netanyahu has played the "security" card. Already, at the end of March, there had been reports that the government would try to divert popular attention from the judicial changes by highlighting a "security threat" from the Palestinians or the Iran-backed Hezbollah. Soon thereafter, on April 5, Israeli forces attacked the Al-Aqsa Mosque and arrested

300 Palestinians, setting the stage for tit-for-tat violence. Israeli media anticipated a major military operation "to bolster the coalition's legitimacy in the eyes of the public".

The ground for the next stage of violence was carefully prepared by Defence Minister Yoav Gallant. He said on April 20 that "the era of limited conflicts" was over, and that Iran was mobilising multiple anti-Israel fronts that would include Palestinian militants in Gaza and Lebanon, the Hezbollah and other Iran-backed militants in the region. He also provided details of massive financial transfers from Iran to these militants.

A few days later, Israeli media highlighted the Defence Minister's focus on the impending "multi-front war". It was said that Israel's enemies had been emboldened by widespread anti-government agitations over the previous four months and perceptions that the United States was distancing itself from Mr. Netanyahu.

This is the backdrop to the latest round of Israeli-Palestinian violence. The Associated Press reported on May 11 that, after weeks of Mr. Netanyahu's plunging popularity, "the bombardment of Gaza has united the country against a common threat and appeared to put the seasoned leader back in control". Mr. Netanyahu has begun to project himself as the country's unifier and saviour. The latest polls show a gain of three seats for his party.

The next few weeks will show whether Mr. Netanyahu will survive in office on the basis of this blood-letting. Or, whether the Israeli people will see through the machinations of their cynical and wily leader and seek his speedy departure from office.

# KERALA: AN EXEMPLARY STORY IN PALLIATIVE CARE

*Devi Vijay is Professor at the Indian Institute of Management, Calcutta*

Achapan (70) lives with his wife, daughter, and his grandson atop a hill in Wayanad, Kerala. He built his two-room house through a State housing scheme for Scheduled Tribes. He worked as a daily-wage labourer till he had a stroke at his work site in 2009. Since then, he has had multiple episodes of hospitalisation. For follow-ups and medicines, Achapan walked at least 12 km through the hilly terrain to the nearest government medical facility. In 2018, a Wayanad-based community palliative care organisation arranged weekly home visits by a nurse and a volunteer team for Achapan. They provide free medicines and doctor visits when required. In these ways, the community organisation provides 'total care.'

**A global exemplar**

The World Health Organization (WHO) considers palliative care as an approach to improve the quality of life of patients and families confronting life-threatening illnesses such as cardiovascular diseases, cancer, and chronic obstructive pulmonary disease. The 2018 Lancet Commission on palliative care and pain relief refers to such conditions as 'serious health-related suffering' that requires physical, social, spiritual, and emotional support alongside medical intervention. More than 80% of individuals who experienced serious health-related suffering in 2015 were from low- and middle-income countries. As a middle-income country with an ageing population and a growing non-communicable disease burden, how equipped is India to deal with large-scale serious health-related sufferings? Quite poorly as India struggles with approximately 4% coverage for palliative care unevenly anchored around mega cities. In sharp contrast with the rest of India, Kerala's palliative care model is a global exemplar in inclusive care infrastructure.

In 1993, Dr. M.R. Rajagopal and his student, Dr. Suresh Kumar, experimented with a pain relief clinic for terminally-ill cancer patients at the Government Medical College, Kozhikode. This experiment mushroomed over the years into more than 400 community palliative care organisations across Kerala, driven by volunteers and nurses, with doctors' home care on a need-basis. Volunteers from diverse social groups looked beyond terminal cancer, including what was then considered unconventional conditions for palliative care such as spinal injuries, HIV/AIDS, and geriatric cases. Volunteers also understood the social suffering of families in their neighbourhood when confronted with such conditions. An early volunteer reflected that "where doctors know symptoms, volunteers understand suffering". The community identified that "the patient's suffering is 20% medical, 80% social" and reframed care. Community ownership brought in home-based 'total care', i.e., medical, social, financial, bereavement, and rehabilitative support for patients and families. Kerala was experimenting with a community model distinct in scale and scope from hospital-based approaches in the rest of the world.

By 2004, community organisers felt the need for the State's involvement. What began as the Pariraksha project with Malappuram panchayats cascaded into a landmark palliative care policy introduced by the Left Democratic Front government in 2008. Over time, all 14 districts provided palliative care, with mandates at the primary, community, and tertiary levels.

Certainly, an evolving healthcare field creates new challenges. For example, metrics for evaluating palliative care delivery are primarily developed for hospitals and hospices in the Global North. Public health integration remains uneven across Kerala. Nevertheless, through 30 years of this evolving model, we now see the societal consequences and spin-offs. As per the 2018 Lancet report, Kerala has a network of over 841 of India's 908 palliative care sites — one of the largest palliative networks in the world.

Further, community mental health initiatives have spun off from Kerala's palliative care movement. Kerala mobilised palliative networks for relief work during the 2018 floods. It was arguably the only Indian State where the government routinely referenced palliative care during COVID-19 briefings. Overall, Kerala's community palliative care model merits attention as a global exemplar, not just for healthcare, but also for broader social and public innovations.

**Practice implications**

Firstly, only 14% of patients who need palliative care worldwide receive it, highlighting the limited access and affordability of hospitals and hospices. Kerala's community model covers more than 60% of the patients. The Institute of Palliative Medicine in Kozhikode and Pallium India in Thiruvananthapuram are nodal organisations offering training informed by the community approach for doctors, nurses, and volunteers. Second, public health palliative care integration debunks myths about the "impossibility of public health infrastructure in India" or that "the State cannot deliver healthcare".

The State and the community created possibilities for the private sector, creating a 'crowding-in effect.' Here, private healthcare must offer better standards than public and community organisations for patients to choose the former. Finally, the Kerala story exemplifies how diverse groups of people — across religious, caste, and gender divides — forged solidarities to create care infrastructure. These community organisations are strong reminders of how people organise across differences.

# IRDAI TWEAKS SURETY INSURANCE NORMS TO EXPAND MARKET

N. RAVI KUMAR
HYDERABAD

Insurance regulator IRDAI has introduced changes to surety insurance guidelines on solvency margin and exposure limit to expand the market and encourage more insurers to foray into the segment.

"Solvency requirement applicable for such products has been reduced to control level of 1.5 times from 1.875 previously prescribed. The existing 30% exposure limit applicable on each contract underwritten by an insurer has been removed," the regulator said in a circular.

**More insurers**

Welcoming the change to the solvency requirement, a senior-level executive in a private general insurer said the relaxation was likely to make more insurance companies qualify to underwrite the policies. The market potential is big and with more awareness, this is bound to benefit contractors, particularly those leveraged. Opting for the insurance cover will free up funds for such contractors.o Constitution Benches of the Supreme Court of India delivered important judgments last week. The first case decided that the Delhi government headed by the Chief Minister — and not the Lieutenant Governor appointed by the central government — will control civil services working for the Delhi government. The second case involved the formation of the current government in Maharashtra following the "split" in the Shiv Sena party.

Contradiction of a core principle

Both judgments, which were unanimous, were authored by the Chief Justice of India; they explain the constitutional position clearly. However, the

Maharashtra judgment contradicts the core principle applied in the Delhi case. The problem arises from the fact that the Maharashtra judgment adheres to the Tenth Schedule of the Constitution (the anti-defection law), which, at its heart, is incompatible with the structure underlying parliamentary democracy.

The issue in the Delhi case was to determine whether the civil services in the Delhi government would be accountable to the Delhi cabinet or to the Union government. Delhi is a Union Territory with a legislature, and the demarcation of powers is spelt out in Article 239AA. The Supreme Court stated that parliamentary democracy implied a government accountable to the people. The judgment explains that this entails a triple chain of command: civil service officers are accountable to Ministers; Ministers are accountable to the legisla

# TIMELY CAUTION

*The top court has rightly cautioned probe agencies against crossing limits*

The Supreme Court's exhortation to the Enforcement Directorate (ED) not to create an atmosphere of fear indicates how much the agency needs to temper its zeal in investigating allegations against political opponents of the current regime. Responding to complaints that the ED is harassing employees of the Excise Department in Chhattisgarh in the name of investigating the money-laundering aspects of an alleged liquor scandal, a Bench has made the pertinent point that even a bona fide cause would seem suspect if a law enforcement agency conducted itself in a way that created fear. The observation is both a caution against transgressing the limits of a lawful investigation and a warning against letting a perception gain ground that the agency would go to any lengths to implicate someone. Given that several leaders and Ministers from States ruled by parties other than the BJP have been summoned by the ED, or arrested and imprisoned, not many will be surprised at the charges levelled on behalf of the Chhattisgarh government that the agency is running amok and that its officers were threatening State officers, in an alleged bid to implicate the State's Chief Minister, Bhupesh Baghel. These charges may or may not be accurate, but the core problem is that the number of political adversaries under the agency's adverse notice is unusually high.

A major complaint from the Opposition concerns the alleged politicisation of investigations and the personnel heading the agency. Some parties fear that the money-laundering law is being used for a political witch-hunt. The list of offences that may attract a money-laundering probe, over and above the police investigation into them, is quite long. Corruption allegations being quite common against politicians holding public office, each time a scam or a scandal is uncovered, the ED follows closely on the heels of the agency conducting the anti-corruption probe, to register a separate case under the Prevention of Money Laundering Act. While there is no problem with a stringent law on the subject, its executors have to be cautious about excessive zeal and expansive probes without identifying specific payoffs or following a money trail. The current Director of Enforcement was appointed for a two-year term in 2018, but continues to this day, thanks to extensions and a change in the law governing such extensions. The government has now assured the Supreme Court that he will not continue beyond November 23. The government often says the agency is only doing its duty and holding lawful investigations, but the perception of others is unlikely to be positive in the backdrop of the way it controls the agency's leadership.